

UNLOCKING FAIR MAPS

The Keys to Independent Redistricting



Acknowledgments

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TABLE OF CONTENTS

Introduction to Independent Redistricting Commissions	2
Organizing an Independent Redistricting Commission	4
Selecting and Removing Commissioners	7
Commissioner Qualifications and Disqualifications	16
Public Input and Engagement	21
Operations and Budget	28
Redistricting Mapping Criteria.....	32

INTRODUCTION TO INDEPENDENT REDISTRICTING COMMISSIONS

Redistricting, the redrawing of voting district boundaries, is integral to effective democracy in the United States. Every 10 years following the federal census, the U.S. Constitution requires states and smaller jurisdictions to redraw voting maps by creating districts with equal numbers of residents. This accounts for any population shifts in the prior decade and ensures that communities of the same size have the same number of representatives in government.

This process plays a fundamental role in determining the balance of power in Washington, D.C., state capitols, and every other level of government. Because of its importance, redistricting has been subject to gamesmanship and politicization since the founding of our republic.

The effort to take advantage of the redistricting process by manipulating the boundaries of voting districts is called **gerrymandering**. This practice, which remains stubbornly pervasive in our democracy, is typically used to aid the political fortunes of one candidate, group, or political party. It increasingly undermines representative democracy by allowing politicians to choose their voters instead of the other way round and weaken communities' political power through vote dilution. Supreme Court decisions and federal laws limit some types of gerrymandering, but those protections continue to weaken in the 21st century.

Voting rights advocates' efforts to use litigation to eliminate the scourge of **partisan gerrymandering**, the manipulation of districts to serve a political party, hit a wall in *Rucho v. Common Cause*. The U.S. Supreme Court ruled in *Rucho* that partisan gerrymandering claims are nonjusticiable political questions—and therefore cannot be challenged—in federal courts.¹ The U.S. Supreme Court gutted the Voting Rights Act by eliminating federal oversight of voting laws, including voting maps, in jurisdictions with a history of voter discrimination.² The Court also continues to limit the tools to challenge **racial gerrymandering**, the impermissible use of race in redistricting.³ Federal legislative solutions for this rollback of fair redistricting protections exist,⁴ but Congress has passed no such legislation.

A solution for this decades-long fight for fair redistricting exists: **independent redistricting commissions (IRCs)**. These multimember and cross-partisan entities have the final authority to draw voting districts every decade instead of allowing politicians to approve maps. Advocates and organizers have been advocating for this solution in city halls and state legislatures, and as ballot initiatives. We know it works because many states and cities in the last few decades have successfully implemented new voting maps using an independent redistricting commission.

“Redistricting is about all about giving power back to voters. ... When politicians are trying to draw districts in their favor, [instead of] what’s in the best interest of their residents or their communities, that is a rooted problem in politics. We have seen the success [of] city and state level redistricting that when states, cities have redistricting commissions, they get to focus on issues other than politics or covenants or election results.”

— *Luis Gonzalez, Commissioner, City of Austin Independent Citizens Redistricting Commission*

IRCs lead a people-centered process that takes place in public instead of behind closed doors and prioritizes input from community members. They are also prohibited from considering political advantage for any candidate or political party.

While many states and localities use some form of a redistricting commission, not all are fully independent. Some, like those in New York and Washington, are politician-appointed and ultimately still controlled by legislators. Others, such as in Iowa or Utah, advise the state legislature, which retains final approval authority.

“The last two times that there was redistricting, I felt that there were issues. ... There was a lot of backdoor politics and so I wanted to be a part of the citizens having a say in drawing the new boundaries.”

— *Sharon Diggs Jackson, Commissioner, City of Long Beach Independent Redistricting Commission*

This report delves into the considerations advocates and policymakers face when proposing an independent redistricting commission. It describes and assesses the common elements of contemporary commissions. Each section of this report provides sample statutory language from existing jurisdictions, though not every example comes from an IRC. Every IRC should be set up to best serve the needs of your state or locality because there is no one-size-fits-all model for an independent commission. Where possible, we provide recommendations or guidance as to best practices and what to avoid.

ORGANIZING AN INDEPENDENT REDISTRICTING COMMISSION

One of the first decisions to make when forming an IRC is how it will be organized. At its core, an IRC is considered independent because it retains full authority to adopt new voting maps. IRCs adopt voting maps that go into effect without the approval of an executive or legislative body and defend those maps in any legal challenges.

There are a few additional considerations central to setting up an IRC, including (1) the number of commissioners, (2) the partisan identification of commissioners, and (3) their length of service.

Length of Service

There are typically two approaches to the length of the term a commissioner will serve on an independent redistricting commission: (1) the length of the time it takes to draw and adopt final maps for the new decade or (2) the duration of the decade until a new commission is appointed.

EXAMPLES

- **California:** “The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission.”⁵
- **Austin, Texas:** “The term of office of each member of the commission expires upon the appointment of the first member of the succeeding commission in the year following the year in which the national census is taken.”⁶
- **Michigan:** “The terms of the commissioners shall expire once the commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete.”⁷

Commissions constituted for the entire decade until the succeeding commission is in place have several advantages. These decade-long commissions can operate and respond to challenges to maps that are brought through the courts and adopt compliant maps as deemed necessary. Additionally, after the adoption of maps, commissioners can provide recommendations on the process for future cycles, support the recruitment of future commissioners, and engage in mid-decade redistricting education.

If jurisdictions instead create commissions that disband after the adoption of final maps—typically for budgetary reasons or the challenge of retaining the same commission members for a decade—it is important to have provisions within the commission’s enabling language to allow for the commission to be reconstituted in case of a map challenge. Without this additional language, it would not be possible for the commission to fulfill its role of defending the maps it adopted, nor would the commission be able to implement new maps if ordered to by a court.

Number of Commissioners

The size of commissions across the country varies greatly. Key factors that should be considered in determining the number of commissioners include having enough members to reflect the diversity of the jurisdiction and whether to have an odd or even number of commissioners.

Many politician-appointed commissions, such as Arizona and Montana, are five-member commissions. In several of these states, the majority and minority leaders of both state legislative chambers each appoint one member, and the four appointed members select a nonpartisan fifth member to round out the commission.⁸ However, such a limited number of commissioners creates challenges, including a greater likelihood of stalemates and partisan deal-making in which the commission arrives at a decision when the nonpartisan chair sides with one major party's commissioners over the objections of the other major party's commissioners.⁹ Another likely consequence of a smaller commission is the lack of broad representation of communities across the jurisdiction.

Fully independent commissions have more members to ensure that commissioners reflect the geographic, racial, ethnic, gender, and/or other forms of diversity of the jurisdiction. These commissions include states like California and Michigan, with 14 and 13 commissioners, respectively.¹⁰

Partisanship of Commissioners

One goal of an IRC is overcoming partisan debates and gamesmanship to ensure a trustworthy redistricting process. As a result, balancing the partisanship of commissioners is one strategy for ensuring an IRC's success. For IRCs, there are two typical approaches: (1) a commission with balanced partisanship or (2) a nonpartisan commission, although there are other approaches used in politician or advisory commissions.

For example, in some states with politician or advisory commissions, only the two largest parties are represented on the commission.¹¹ This approach is not effective for true IRCs. Bipartisan commissions exclude the many residents who are members of no party or a third party. Virginia's bipartisan politician commission deadlocked during the 2020 redistricting cycle when the evenly split partisan commission voted along party lines and could not reach a consensus, ultimately requiring the state supreme court and a special master to step in and implement new voting maps.¹²

Commission With Balanced Partisanship

Ensuring that no political party dominates the line-drawing process is often critical for a commission to be truly independent and to prevent partisan gerrymandering. A commission that has balanced partisanship numbers would require the same number of commissioners from the two major political parties. This would not reference specific political parties but instead require an equal number of commissioners from the two largest parties in the jurisdiction as measured by voter registration or vote totals in statewide elections for offices such as U.S. Senate or governor. It is critical to also include representation from residents not affiliated with either major party, including commissioners with a minor party or those with no party affiliation.

A commission with balanced partisanship is not the same as a commission that is bipartisan. A bipartisan commission would only consist of commissioners from two political parties, while a commission with balanced partisanship would include commissioners from other political parties or those who are not registered with any party.

EXAMPLE

→ **California:** “The commission shall consist of 14 members, as follows: five who are registered with the largest political party in California based on registration, five who are registered with the second largest political party in California based on registration, and four who are not registered with either of the two largest political parties in California based on registration.”¹³

Nonpartisan Commission

In counties or cities with nonpartisan elections and a less charged partisan climate, an alternative approach is to disregard the partisan affiliation of commission applicants to focus solely on skills and reflecting the diversity of the jurisdiction. In many cases, racial, ethnic, geographic and other demographic groups in a jurisdiction are not spread evenly among the two major parties and independents. As a result, requiring a set number of Democrats, Republicans, and those unaffiliated with either party can make it more difficult to ensure that the commission reflects the jurisdiction to the maximum extent possible. If the inclusion of community voices has historically been a greater problem in redistricting than the partisan manipulation of districts, then disregarding the partisan affiliation of commissioners to focus on other factors may be a more appropriate approach.

Some jurisdictions, such as Los Angeles County, require the partisan proportions on the redistricting commission to match those of the jurisdiction.¹⁴ This requirement could seriously undermine redistricting that centers communities in the process. It also risks lopsided partisan control and empowering the dominant political party to prioritize the consolidation of power at the expense of effective representation for the public.

SELECTING AND REMOVING COMMISSIONERS

An independent redistricting commission's selection process is paramount to its independence and integrity. A process that features greater participation of elected officials or other partisan actors decreases the commission's independence. Selection models vary widely across jurisdictions—some use a primarily random model that screens for conflicts of interest but does not assess subjective commissioner qualifications, such as skills or experience. Others use a multistep process that incorporates multiple selection modes.

This section covers (1) the overall selection process that may be considered for an IRC and (2) the options for entities to manage the selection process. Both are integral elements of commission design that can increase public confidence in the process and ensure that the commissioners selected are competent and committed to a transparent and community-centered redistricting process.

Selection Methods

There are four primary methods currently used for commissioner selection: random selection, selection by a panel of judges, appointments by politicians, or a multistep process that combines some of these approaches. For an IRC to be fully independent, a random or multistep approach that removes politician involvement and maintains a standard of impartiality throughout the process is critical for the appointment of commissioners who will operate with a focus on serving the public instead of politicians or special interests.

Random Selection

Random selection, as found in Michigan and Santa Fe, New Mexico, features a process where applicants are prescreened for conflicts of interest and minimum qualifications.¹⁵ Commissioners are then selected by random drawing from the prescreened pool. Although all selected candidates meet the minimum requirements of service, no screening entity further examines skills or experience. This is distinct from jurisdictions, such as California, in which random selection is only one step in a multistep selection process.¹⁶ In a random selection jurisdiction, no commissioners have been intentionally selected to serve.

Although random selection increases impartiality and minimizes third party influence, challenges may arise regarding commissioner diversity and balancing the necessary experience and expertise to have a successful commission.

EXAMPLES

- ➔ **Michigan:** The secretary of state facilitates the application process by soliciting applications for the commission and eliminating candidates who do not meet the minimum requirements of service or whose applications are incomplete.¹⁷ The secretary randomly selects 200 applicants: 60 Democrats, 60 Republicans, and 80 unaffiliated with either party. After legislative leaders conduct their legislative strikes, the secretary of state randomly selects four Democrats, four Republicans, and five unaffiliated with either party to serve as commissioners.

- **Santa Fe, New Mexico:** The city clerk solicits applications, which are only reviewed for completeness.¹⁸ The city clerk then randomly selects one commissioner for each position as designated in city ordinance (one per council district, plus one resident who is a statistician and one resident who is a geographer or cartographer).

Panel of Judges

In some municipalities, such as San Diego, California, and Minneapolis, Minnesota, a panel of judges selects commissioners from a broad applicant pool. These judges are typically retired from service and appoint commissioners based on the jurisdiction's selection criteria. Some jurisdictions, such as Colorado's IRCs, use a panel of retired judges as one step in a multistep selection process.¹⁹

Empowering judges may provide a degree of impartiality. However, the increasing polarization and politicization of the bench could reduce residents' and communities' faith in the appointed commissioners. In addition, retired or active judges may often fail to reflect the diversity of the broader community. If a selection process involves judges, ensuring partisan balance or making their participation one part of a multistep process may better serve the goal of commissioner independence.

EXAMPLES

- **San Diego, California:** A panel of three retired judges appoints commissioners.²⁰ Retired judges who are willing to serve submit their names to the city clerk, who selects three judges at random. The city clerk solicits applications for the commission, and the panel of retired judges selects commissioners from that pool of applicants.
- **Minneapolis, Minnesota:** The independent redistricting work in Minneapolis is conducted by its charter commission, which is appointed by the Chief Judge of the local county district court.²¹

Multistep Selection

A multistep selection process combines different selection methods to create a more balanced and representative commission, and to minimize the influence of politicians. Multistep selection most often features an initial random selection of commissioners from designated pools. The randomly selected commissioners then select the remaining commissioners with considerations for diversity, skills, or other criteria.

Sample Multistep Process:

In a jurisdiction with 15 commissioners, a candidate pool is established by selecting the most qualified applicants for the commission.

- **Step One:** A selection entity randomly selects eight commissioners from the candidate pool.
- **Step Two:** The initially selected commissioners select the remaining seven commissioners from the same candidate pool and must select commissioners while considering diversity, geographic representation, and other criteria.

“How can you show from things you have done that you uphold impartiality? Can you tell a story of a time when a group changed your mind on something in the decision-making process? Can you talk about an organization that you were a part of that had a diverse membership? Actual concrete examples of how they had embodied these values. And it produced a commission, the 14 of us, that was just strikingly fair-minded. It was like being on a really good jury, I think, where people just wanted to do the right thing.”

— *Russell Yee, Commissioner, California Citizens Redistricting Commission, reflecting on the multistep selection process in California.*

Multistep commissioner selection processes aim to meet the many demands that an IRC faces, including seating commissioners with the requisite expertise and qualifications while ensuring that the commission is balanced geographically and considers all forms of diversity. There are many approaches to tailoring multistep processes to best serve a jurisdiction, such as narrowing the initial candidate pool to a “most qualified” subpool to conduct the random selection step or specifying how the first set of selected commissioners will select the remaining candidates.

EXAMPLE

→ **California:** An applicant review panel, consisting of three independent auditors from the California State Auditor reviews all applications and selects 120 of the most qualified applicants.²² The applicants are divided into three subpools based on party affiliation. The 120 applicants are narrowed down to 60, and the 60 applicants are presented to the state legislature with the opportunity for legislators to strike up to eight applicants from each subpool. Step One: The State Auditor randomly draws three names from the subpool of Democrats, then three names from the subpool of Republicans, and two from the subpool of applicants of neither of the two parties. Step Two: Those eight selected commissioners then select the remaining six commissioners, two from each subpool.

Politician Appointment

Many state redistricting commissions may have the authority to adopt voting maps without the state legislature’s approval but feature a selection process in which legislative leaders or other elected officials appoint the members of the commission directly. This includes states such as Montana and Washington, where majority and minority leaders from both chambers of the state legislature each select a member of the commission, and a fifth member who is unaffiliated with either major party is selected to round out the commission.²³

Such direct appointments often jeopardize the commission’s independence. Commissioners may operate at the behest of the legislator that appointed them, focus on representing their political party’s interest over those of residents, or depend too heavily on the commissioner unaffiliated with either party to serve as a tiebreaker.

The 2021 redistricting cycle demonstrates examples of each of these concerns. In Washington, commissioners are appointed along party lines and passed a voting map only after going behind

closed doors to strike a deal between the two sides.²⁴ In Montana, the fifth member of the commission, unaffiliated with either of the two major parties and appointed by the state supreme court, had to play a critical role in breaking the stalemate between the four other commissioners.²⁵

In some instances, politician involvement is scaled back from direct appointment to establish more independence in the commission. States like California offer legislative leaders a limited number of strikes to remove applicants from the candidate pool, whereas states like Colorado allow legislative leaders to advance a number of applicants for selection consideration.²⁶ It is important to note the pros and cons of including legislative strikes. They can provide an efficient mechanism for identifying and removing partisan applicants from the pool. However, they can also be used by legislators who are hostile to the commission to tamper with it. In the last redistricting cycle, California's legislative strikes increased the odds that no Latinos would be selected in the random selection part of the process, and that is exactly what happened in a state that is 40% Latino.²⁷ Fortunately, that was remedied in the second part of California's selection process in which the randomly selected commissioners fill out the remaining spots to ensure that the commission is representative of the state's diversity.

EXAMPLES

- ➔ **Arizona:** The state's commission on appellate court appointments nominates 10 Republicans, 10 Democrats, and five individuals not affiliated with either major party.²⁸ The legislative leaders of both chambers (majority and minority leaders of both chambers) each choose one commissioner from this pool. The four appointed commissioners then select a fifth commissioner not affiliated with the same party as any other commissioner.
- ➔ **Montana:** Each of the four legislative leaders (majority and minority leaders of both chambers) select one commissioner, and the four selected commissioners select a fifth commissioner to serve as chair.²⁹ When the four commissioners are unable to agree on the fifth commissioner, the Montana Supreme Court selects the fifth commissioner.

Selection Panels/Entities

Establishing an IRC requires creating or identifying an entity that will process applications to become a commissioner. This entity may either sort candidates for minimum qualifications, create a pool of the most qualified candidates in a multistep process, or directly appoint qualified candidates to an IRC.

An important task in this stage of commission construction is to ensure that the entity is reasonably distant from direct political influence. Some panels or entities that have been charged with commissioner selection include independent auditors, a panel of judges, elections officials, or an ethics body.

Auditors

In states or municipalities where auditors play a role in the selection process, they often process applications, narrow the pool of candidates by removing individuals who do not meet the minimum qualifications, and select the most qualified candidates in a narrowed applicant pool to move forward.

EXAMPLES

- **California:** The State Auditor initiates the commissioner application and selection process and establishes an Applicant Review Panel that consists of three qualified independent auditors that are responsible for screening applicants.³⁰ The three independent auditors must include one registered with the largest political party in the state, one with the second largest party, and one registered with neither. The Applicant Review Panel selects 60 of the most qualified applicants. After legislative strikes of this pool of 60, the State Auditor randomly draws names from the remaining pool to establish the first eight of 14 commissioners. The first eight commissioners then select the remaining six.
- **Austin, Texas:** The City Auditor initiates the application and selection process, which includes seeking applications for all qualified independent auditors who reside within the City and meet the City Charter's requirements.³¹ Any independent auditor who fails to satisfy the qualifications or conflicts of interest criteria are removed from the pool. The City Auditor then randomly draws three qualified independent auditors to serve on the Applicant Review Panel. The Panel then narrows the pool of qualified commissioner applicants to the most qualified top 60. After the City Council's allocated strikes, the City Auditor randomly selects eight names from the remaining pool. The first eight selected then appoint the remaining six members of the commission.

Panel of Judges

In some jurisdictions, a panel of judges screens applicants, narrows the applicant pools, and/or selects IRC commissioners.

EXAMPLE

- **Colorado:** The Chief Justice of the Colorado Supreme Court designates a panel of three recently retired judges from Colorado courts.³² The judges cannot be affiliated with the same political party. This panel randomly selects 300 applicants who meet the qualifications to serve as commissioner from the state's largest political party, 300 from the second largest party, and 450 applicants not affiliated with any party. The panel then narrows the three pools to choose 50 from each category by considering applicants' experience and engagement in Colorado, relevant analytical skills, the ability to be impartial, and the ability to promote consensus. Of the 50 in each pool, two commissioners are randomly selected from each pool, totaling six. Legislative leaders then put forward four pools of 10 applicants, and the judges' panel selects one commissioner each from these pools, plus two more commissioners unaffiliated with any party, totaling 12 commissioners.

Elections Officials

Elections officials, such as registrars of voters or county clerks, who typically are charged with administering elections at the county level, often lead the selection process. Elections officials may be charged with advertising and soliciting applications for the IRC, conducting checks for minimum qualifications, and/or narrowing down the candidate pool to the most qualified applicants. The impartiality of the roles that these election officials at the local or county level play often ensures that the selection of commissioners remains apolitical and nonpartisan.

EXAMPLE

→ **County of Los Angeles:** Applications to serve as commissioner are managed by the county elections official, in this case, the Los Angeles County Registrar-Recorder/County Clerk.³³ The elections official eliminates any candidates who are not qualified and selects 60 of the most qualified applicants. The County Auditor-Controller then conducts a random drawing to select eight commissioners. Those first eight appointed commissioners select the remaining six members of the commission, for a total of 14.

A similar model is used in many California counties that feature IRCs, including Riverside, Fresno, Kern, Orange, and Santa Barbara.³⁴

Ethics Body

Some jurisdictions have empowered an ethics commission to participate in the IRC selection process.

EXAMPLE

→ **Sacramento, California:** Although the City Clerk begins the application process by soliciting applications, the city's ethics commission narrows the applications to a pool of the 25 to 30 most qualified applicants, with representation from each existing council district.³⁵ The panel will then randomly select eight commissioners from the narrowed pool. The first eight selected will then select five additional commissioners to fill out the commission.

Commissioner Removal and Vacancies

When a commissioner violates any of the restrictions or requirements of their service (see the “Commissioner Qualifications and Disqualifications” section) or otherwise violates the rules governing the commission, the commissioner should be removed from service. There may also be instances during the years of service on a commission where a commissioner may choose to resign or move out of the jurisdiction, rendering their position vacant. This section covers commonly used procedures for commissioner removal and filling vacancies.

Removal

The removal of a commissioner may be necessary if the commissioner violates the requirements or qualifications for service, conducts themselves in a manner that violates the independence of the commission, neglects their duty, or otherwise engages in misconduct. Enumerating a removal procedure is important in the unlikely event a commission may have to take action against a commissioner. A removal procedure should at least include clear grounds justifying removal, the vote requirement for approving removal, and whether any violations warrant immediate dismissal with fewer pre-removal procedural requirements.

Grounds for removal may include

- substantial neglect of duty;
- gross misconduct in office;
- inability to discharge the duties of office;

- violations of service requirements, qualifications, or disqualifications, or the commissioner no longer meets such qualification requirements;
- excessive unexcused absences;
- violations of a commission’s transparency requirements; or
- being charged with or convicted of a felony offense or other crimes.

The process for removal may include

- requiring a supermajority (two-thirds or three-fourths) of other commissioners to vote in favor of removal;
- requiring a certain number of commissioners within each political party affiliation group to vote in favor of removal;
- automatic removal of a commissioner under some grounds (e.g., being convicted of a crime or violating service requirements);
- providing written notice to the commissioner and giving an opportunity to respond; or
- providing the commissioner with a public hearing.

Most jurisdictions with a commissioner removal process require a supermajority vote or some support for removal within all political party affiliation groups to ensure that commissioners are not removed for partisan reasons. Additionally, requiring the commissioners to discuss the removal in a public hearing promotes transparency. Giving the commissioner being removed an opportunity to respond creates some avenue for due process.

EXAMPLES

→ **Michigan:**³⁶

“A commissioner’s office shall become vacant upon the occurrence of any of the following:

- (a) Death or mental incapacity of the commissioner;
- (b) The secretary of state’s receipt of the commissioner’s written resignation;
- (c) The commissioner’s disqualification for election or appointment or employment pursuant to article XI, section 8;
- (d) The commissioner ceases to be qualified to serve as a commissioner under part (1) of this section; or
- (e) After written notice and an opportunity for the commissioner to respond, a vote of 10 of the commissioners finding substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.”

→ **Orange County, California:**³⁷

“(a) The commission may only remove a commission member for substantial neglect of duty, gross misconduct in office, causing the commission to be unable to discharge its duties with nine affirmative votes, or if it is later discovered that the commission member did not meet the required qualifications, as set forth in subdivision (d) of Section 21582,

at the time of appointment or if the commission member no longer meets those required qualifications while serving on the commission. At least three affirmative votes to remove a member shall be from commission members of one political party, and at least three affirmative votes to remove a member shall be from commission members of one other political party.

(1) A commission member or alternate commission member who is subject to removal shall not vote on their own removal.

(b) Prior to removal pursuant to subdivision (a), a commission member is entitled to receive all of the following from the commission:

(1) The reasons for their proposed removal, in writing.

(2) At least one week's written notice of the public meeting where the commission will vote on their proposed removal.

(3) The opportunity to respond to or rebut the reasons for their removal in writing and at the public meeting described in paragraph (2).

(c) The commission may employ legal counsel in seeking removal of a commission member pursuant to this section.

(d) The decision of the commission to remove a member pursuant to this section is final, nonappealable, and is not subject to judicial review.”

Vacancy

In instances where commissioners are removed from their office or resign, the commission must fill the vacancy. The commission may fill the vacancy through one of several methods, depending on how the commission was originally constituted. This includes (1) the selection of an alternate to fill the vacancy, (2) returning to the remaining pool of qualified candidates, or (3) where there is no qualified pool, returning to the selection process.

Some commissions appoint alternate, nonvoting members to fill a vacancy when necessary. These alternate commissioners attend meetings like a regular commissioner but cannot vote unless they have been appointed to fill a vacancy on the commission. Commissions vary to the extent that alternates may participate—some give alternates a voice in the process but no vote, while other commissions require alternates to attend meetings but not participate unless they are selected to fill a vacancy. When selecting from alternates, a commission may be required to choose an alternate of the same political party as the commissioner that vacated the position or represent a similar community or constituency as that vacated commissioner.

EXAMPLES

➔ **Orange County, California:** “The commission shall consist of 14 voting members and 2 alternate, nonvoting members. ... Each alternate commission member may attend commission meetings, other than closed session meetings ... and may give public comment to the commission. Unless subsequently appointed to serve on the commission as a voting

member, an alternate commission member shall not vote in commission meetings or hearings. ... If a commission member resigns or is removed ... the chair of the commission shall select one alternate commissioner to fill the vacancy as a voting member. The alternate member who is appointed to fill the vacancy shall have the same political party preference as the commission member who vacated their position.”³⁸

- **Santa Fe, New Mexico:** “The city clerk shall set a date, time and place for the members to be selected by means of a drawing by lot, so that one (1) member for each position ... is selected, along with one (1) alternate, in the event the member resigns in writing prior to the end of the term of the commission. An alternate shall be subject to the same requirements of a member. An alternate shall be required to attend commission meetings; however, an alternate shall not be allowed to participate in the meetings unless they are called upon to fill the term of a vacant member position.”³⁹

If a jurisdiction does not designate alternates or none are qualified, the commission may consider returning to the remaining pool of qualified candidates to select a replacement. In rare cases where there are no remaining eligible candidates in the selection pool, the commission may have to conduct the selection process anew or return to an earlier stage of the selection process to find an additional commissioner.

EXAMPLES

- **California:** “Any vacancy, whether created by removal, resignation, or absence, in the 14 commission positions that occurs prior to December 31 of a year ending in the number two shall be filled by the commission within the 30 days after the vacancy occurs, from the subpool of applicants of the same voter registration category as the vacating nominee that was remaining after all legislative leaders exercised their strikes pursuant to subdivision (e) of Section 8252.”⁴⁰
- **Michigan:** “If a commissioner’s seat becomes vacant for any reason, the secretary of state shall fill the vacancy by randomly drawing a name from the remaining qualifying applicants in the selection pool from which the original commissioner was selected.”⁴¹

COMMISSIONER QUALIFICATIONS AND DISQUALIFICATIONS

Commissioner qualifications establish the independence and integrity of an IRC. The inclusion of partisan actors, elected officials, or those with deep ties to these individuals would derail an IRC's ability to draw voting maps impartially and in a nonpartisan manner.

Requirements for service may include affirmative qualifications, skills, and attributes needed for a successful IRC. They may also include disqualifying characteristics and restrictions on certain activities to preclude conflicts of interest or bias that can jeopardize the commission's independence. Enforcing these qualifications and disqualifications ensures that the commissioners ultimately selected for service have the skills needed to engage in the mapping process and will do so in service of the people, not politicians.

This section breaks down these requirements into a few categories: (1) basic service requirements, (2) preservice disqualifications, (3) during-service restrictions, and (4) post-service restrictions. Violations of these measures often form the basis for a commissioner's removal.

Qualifications for Service

The threshold qualifications for commissioner service often include residency length and skills needed to successfully contribute to the work of the commission.

Residency and Voter Status: Commissioners should have a strong connection to the jurisdiction. Requiring that a commissioner has lived in the jurisdiction for some minimum amount of time can help ensure that commissioners have a sincere commitment to fair representation for those communities, that they understand the jurisdiction well enough to faithfully engage in the process, and that partisan actors cannot be parachuted into a jurisdiction at the last moment.

EXAMPLES

- **Colorado:** "Commissioners must be registered electors who voted in both of the previous two general elections in Colorado."⁴²
- **Portland, Oregon:** "The Commission consists of thirteen (13) residents of the City who represent a diversity of race, gender, age and geography."⁴³

Some jurisdictions may require that commissioners be registered voters or have voted in recent elections. However, redistricting impacts all residents of a state or jurisdiction, and maps are drawn using total population and not only of those eligible to vote.⁴⁴ Recent efforts in local jurisdictions to implement IRCs have done away with the requirement for commissioners to be registered voters to expand opportunities for other residents to participate fully.⁴⁵

EXAMPLE

- **City of Los Angeles, California** (proposed charter amendment): “Each Commission member shall be at least 18 years old and a resident of the City at the time of selection, and shall have resided in the City for at least five years immediately preceding the person’s submission of an application. A Commissioner is not required to be a registered voter or a citizen of the United States.”⁴⁶

Skills and Attributes: Commission selection processes often seek applicants with positive attributes described by law. Common attributes that are highlighted as desirable in potential commissioners include relevant analytical skills, the ability to be impartial, and an appreciation for the jurisdiction’s diversity and geography. These qualities serve as a guide for any applicant review panel or body to select the best candidates from among those who meet minimum qualifications.

EXAMPLES

- **Austin, Texas:** “These persons shall be the most qualified applicants on the basis of relevant analytical skills, ability to be impartial, residency in various parts of the city, and appreciation for the City of Austin’s diverse demographics and geography.”⁴⁷
- **Colorado:** “[Candidates] ... who best demonstrate: (I) Experience in organizing, representing, advocating for, adjudicating the interests of, or actively participating in groups, organizations, or associations in Colorado; and (II) Relevant analytical skills, the ability to be impartial, and the ability to promote consensus on the commission.”⁴⁸

Preservice Disqualifications

Enabling laws establishing independent commissions nearly always have sections on disqualifying criteria to remove commissioner applicants with conflicts of interest. Strong disqualification requirements increase public confidence in an IRC, reduce commissioner bias, and promote commission independence. These disqualifying criteria also prevent partisan influence from infecting the independent map-drawing process and focus map-drawing on public input.

Disqualifying criteria must cover a time period long enough preceding a commissioner’s service to eliminate candidates with close ties to current political actors and incumbents. They also must cover a broad range of activities. These can include working for an elected official or their campaign, political party leadership, working as a lobbyist, and donating money to candidates or campaigns.

These restrictions examine the applicant’s own experiences and typically extend to their spouses and immediate family members. Including family members further protects the IRC from sources of influence that may exist within a commissioner’s household.

Common disqualifying criteria include

- recent election, appointment, or candidacy for office in the jurisdiction;
- service as an agent, employee, or consultant for a campaign committee or political party representing the jurisdiction;

- service as staff for an elected official in the jurisdiction;
- service as a member of a political party’s central committee (a political party’s governance body);
- status as a lobbyist in the jurisdiction or representing the jurisdiction; and
- contributions toward a single candidate for office over a certain amount.

EXAMPLES

→ **California** (statewide commission):⁴⁹

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

- (i) Been appointed to, elected to, or have been a candidate for federal or state office.
- (ii) Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.
- (iii) Served as an elected or appointed member of a political party central committee.
- (iv) Been a registered federal, state, or local lobbyist.
- (v) Served as paid congressional, legislative, or State Board of Equalization staff.
- (vi) Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year, which shall be adjusted every 10 years by the cumulative change in the California Consumer Price Index, or its successor.

(B) Staff and consultants to, persons under a contract with, and any person with an immediate family relationship with the Governor, a Member of the Legislature, a Member of Congress, or a member of the State Board of Equalization, are not eligible to serve as commission members. As used in this subdivision, a member of a person’s ‘immediate family’ is one with whom the person has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.”

→ **California** (state law applicable to local independent commissions):⁵⁰

“(c) A person shall not be appointed to serve on the commission if the person or any family member of the person has been elected or appointed to, or been a candidate for, an elective office of the local jurisdiction in the eight years preceding the person’s application.

(d) A person shall not be appointed to serve on the commission if either of the following applies:

- (1) The person or the person’s spouse has done any of the following in the eight years preceding the person’s application:
 - (A) Served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate for elective office of the local jurisdiction.
 - (B) Served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee.

(C) Served as a staff member or a consultant to, or who has contracted with, a currently serving elected officer of the local jurisdiction.

(D) Been registered to lobby the local jurisdiction.

(E) Contributed five hundred dollars (\$500) or more in a year to any candidate for an elective office of the local jurisdiction. The local jurisdiction may adjust this amount by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.

(2) A family member of the person, other than the person's spouse, has done any of the following in the four years preceding the person's application:

(A) Served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate for elective office of the local jurisdiction.

(B) Served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee.

(C) Served as a staff member of or consultant to, or has contracted with, a currently serving elected officer of the local jurisdiction.

(D) Been registered to lobby the local jurisdiction.

(E) Contributed five hundred dollars (\$500) or more in a year to any candidate for an elective office of the local jurisdiction. The local jurisdiction may adjust this amount by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.”

During-Service Restrictions

The restrictions outlined in the preservice disqualifications must extend for the duration of a commissioner's service. Criteria that would disqualify an applicant from initial service on a commission can also apply to removal from a commission.

EXAMPLE

→ **Michigan:** “A commissioner's office shall become vacant upon the occurrence of any of the following:

... (d) The commissioner ceases to be qualified to serve as a commissioner under part (1) of this section.”⁵¹

Note: Part 1 of Michigan's constitutional language on the independent commission lays out its qualifications and disqualifications for service.

Furthermore, additional restrictions may be enumerated to ensure clarity and add an additional enforcement mechanism or grounds for removal should commissioners participate in restricted activities.

EXAMPLE

→ **Long Beach, California:** “While serving on the Commission, a commissioner shall not endorse, work for, volunteer for, or contribute to any candidate campaign for City elective office. Commissioners choosing to engage in such activity may resign at any time, including after the approval of a final map to ensure that the commissioner no longer serves if the Commission is reconvened to redraw districts.”⁵²

Post-service Restrictions

Laws enacting IRCs frequently restrict certain types of activity even after a commission disbands to ensure that commissioners do not take actions that promote their own future interests. These restrictions may be time limited or for the duration of the voting map’s use.

These post-service restrictions may include

- ban on running for office in any of the districts that the commissioner took part in drawing;
- prohibition on serving as staff or consultant to an elected official elected from the districts the commissioner took part in drawing;
- ban on receiving noncompetitive bids from the jurisdiction; or
- prohibition on serving as a lobbyist in the jurisdiction.

EXAMPLE

→ **Long Beach, California:** “A commissioner shall be ineligible, for a period of ten years beginning from the date of their appointment, to hold City elective office. A commissioner shall be ineligible, for a period of four (4) years beginning from the date of their appointment, to be appointed to another City commission, to serve as paid staff for or as a paid consultant to any City elected official or candidate for City elective office, to receive a non-competitively bid contract with the City, or to register as a City lobbyist.”⁵³

PUBLIC INPUT AND ENGAGEMENT

An IRC should operate in a transparent, inclusive, and participatory manner to ensure that public input drives the commission's work. Encouraging this input and being responsive to it is a key element of shifting from a system in which redistricting serves politicians to one that empowers ordinary people.

To accomplish this, an IRC must establish effective procedures for the following:

- Public input and comment
- Public hearings and meetings
- Meeting notices
- Language access
- Community outreach and engagement
- Communications outside of public meetings
- Records and data

“Independent redistricting commissions are operated by ordinary citizens. We are most accountable to the people. ... And that ten-year time span, we are more concerned about what our neighbors and friends might have to say about the districts than the political elites. So the key to independent redistricting is transparency, on the one hand, transparency to the people, but also ensuring that communities have a voice and actually listening and being responsive to that voice.”
—Sara Sadhwani, Commissioner, California Citizens Redistricting Commission

Public Input and Comments

Receiving and making mapping decisions based on public input is a cornerstone of an IRC. An IRC's enabling law must include provisions that uplift and enshrine the role of public input in the redistricting process and require that the commission take steps to receive public input in multiple forms: draft maps, written or online feedback, testimony in public hearings, public education workshops, and other avenues.

By creating various avenues for public input, IRCs can foster an environment that encourages public participation. For example, in the 2020 redistricting cycle, with multiple options to provide input and feedback, the California Citizens Redistricting Commission received over 30,000 written comments and nearly 4,000 verbal comments. Colorado's commissions saw more than 5,000 public comments and 170 proposed maps, whereas Michigan's independent commission received almost 30,000 comments through its over 120 public hearings.⁵⁴

EXAMPLES

- **Long Beach, California:** “The Commission shall establish and implement a process for accepting written public comment, including the submission of draft maps and draft partial maps for the Commission’s consideration.”⁵⁵
- **California:** “The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps. In addition, hearings shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process. The commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment shall be taken for at least 14 days from the date of public display of the first preliminary statewide maps of the congressional, State Senatorial, Assembly, and State Board of Equalization districts, which shall be publicly displayed no later than July 1 in each year ending in the number one.”⁵⁶

“You need to listen to people from both sides of the aisle. You need to listen to people from every community, every part of your city, whether they are in a higher or lower income bracket, whether they’ve gone to college or not, whether they have children or not. And that’s why our commission in Austin brought together fourteen very different people with very different ways of life, very different lived experiences, but all coming together around that common goal and that common mission to strengthen democracy at a time when, unfortunately, it’s a little fragile and attacked on many sides.”

—Luis Gonzalez, Commissioner, City of Austin Independent Redistricting Commission

Public Meetings and Hearings

All decisions and deliberations about the mapping process should be conducted in open meetings that allow the public to witness the mapping process and provide feedback to commissioners. Meetings should adhere, at a minimum, to any applicable open meeting laws of the state or jurisdiction and ensure that all draft maps, reports, and other documents are made publicly available well ahead of a meeting for public review.

Requirements for public meetings may include the following:

- **Number of meetings:** There must be an ample number of commission meetings to take public input and testimony on communities of interest and draft maps.
- **Location of meetings:** Requiring meetings in different parts of the jurisdiction will allow for more broad-based participation in the redistricting process and ensure that communities located farther

from city hall or the state capitol are not disenfranchised. In addition, the location of meetings must be made with consideration for communities with limited access to reliable transportation and for rural and tribal communities.

- **Timing of meetings:** Having meetings at varied times throughout the week and at different times during the day, including evenings and weekends, will increase public engagement. This will ensure that people with various time-specific obligations, such as work or caretaking, can participate.
- **Meetings on draft and final maps:** Many jurisdictions and states require a minimum number of meetings before any draft maps are released, during the drafting process, and before a final map is adopted. A minimum number of meetings at various stages of the process ensures that the process increases engagement and promotes increased deliberation before final adoption.
- **Meeting accessibility:** A commission must develop and implement an accessibility plan to ensure that people with disabilities can access and fully participate in any meetings or hearings.

These considerations are important to ensure that there are ample opportunities for members of the public to provide feedback to commissioners. Limiting public meetings, only conducting meetings during business hours, or only holding meetings in one place discourages members of the public from engaging in the process.

During the 2020 redistricting cycle, Florida’s politicians led the map-drawing process in Tallahassee, the state capital, forcing advocates who wanted to provide public testimony to travel hundreds of miles to give input.⁵⁷ Politicians also limited the amount of time for input, cutting short public testimony. This is in stark contrast to the listening sessions that took place across the state in previous cycles. Hawaii’s politician commission only posted draft maps right before meetings were held to consider the maps, which did not provide adequate time for members of the public to review the draft maps and provide thorough feedback.⁵⁸

“We had a very transparent process. We actually broadcasted on YouTube all of our map drawing sessions. And so if somebody wanted to see why we made the choice to draw a line on First Street versus Fifth Street, they could go back and hear that discussion and I think that was an important part of who we were, that being open and transparent, and that was kind of core to what it meant to be a commissioner.”

—Rex Facer, Commissioner, Utah Independent Redistricting Commission

EXAMPLES:

- ➔ **Sacramento, California:** “The commission shall establish and implement an open meeting process for public input and deliberation that is promoted through an outreach program to solicit broad public participation in the redistricting process. The commission shall comply with all applicable state and city requirements for open meetings.”⁵⁹

- **Colorado:** “The commission must, to the maximum extent practicable, provide opportunities for Colorado residents to present testimony at hearings held throughout the state. The commission shall not approve a redistricting map until at least three hearings have been held in each congressional district, including at least one hearing that is held in a location west of the continental divide and at least one hearing that is held in a location east of the continental divide and either south of El Paso county’s southern boundary or east of Arapahoe county’s eastern boundary. No gathering of commissioners can be considered a hearing for this purpose unless it is attended, in person or electronically, by at least ten commissioners. The commission shall establish by rule the necessary elements of electronic attendance at a commission hearing.”⁶⁰
- **Michigan:** “Before commissioners draft any plan, the commission shall hold at least ten public hearings throughout the state for the purpose of informing the public about the redistricting process and the purpose and responsibilities of the commission and soliciting information from the public about potential plans. The commission shall receive for consideration written submissions of proposed redistricting plans and any supporting materials, including underlying data, from any member of the public. These written submissions are public records. ... After developing at least one proposed redistricting plan for each type of district, the commission shall publish the proposed redistricting plans and any data and supporting materials used to develop the plans. ... The commission shall hold at least five public hearings throughout the state for the purpose of soliciting comment from the public about the proposed plans.”⁶¹

Meeting Notices

Providing sufficient advanced notice of meetings or hearings is crucial to an open process that provides transparency. Some jurisdictions or states may already have minimum notice requirements in their open meeting or sunshine laws, but any meeting of an IRC must be noticed a few days in advance. The meeting notice should include any meeting agenda, draft maps (including in shapefile format to enable thorough review), reports, other documents, or actions to be considered at that meeting. Some jurisdictions shorten the notice period closer to the final deadline for map adoption to ensure that the commission has the necessary flexibility to act more quickly to successfully adopt a final map.

EXAMPLES

- **County of Los Angeles:** “(A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible. (B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.”⁶²
- **California:** “The commission shall provide not less than 14 days’ public notice for each meeting held for the purpose of receiving public input testimony, except that meetings held in August in the year ending in the number one may be held with three days’ notice.”⁶³

Language Access

Commissions should engage with residents of all language backgrounds and provide all necessary documents and resources for public education, information, and participation available in the languages commonly found in the jurisdiction or state, including sign language. Languages covered in the jurisdiction by Section 203 of the federal Voting Rights Act for voting materials can be a useful guide to the languages in which a commission should produce materials. However, a commission may choose to do more to engage language minorities. Additionally, commissions should be prepared to provide live translation of their proceedings if a request is made before the hearing.

EXAMPLE

- **County of Los Angeles:** “(A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing. (B) For purposes of this paragraph, an ‘applicable language’ means a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.”⁶⁴

Community Outreach and Engagement

Increasing public participation in the redistricting process is only possible if the commission actively reaches out to the community. The commission should consider increasing engagement by disseminating information through traditional and ethnic media along with other trusted sources like community leaders or providing easily accessible information and resources online. Another proactive step an IRC should take includes working with—and providing funding for—local organizations already trusted by their communities to conduct outreach and collect input.

“It matters to make sure people have a voice and are able to participate in redistricting because their lives depend on it, whether it’s education or safe housing, whether it’s their health care, anything and everything and how they experience life depends on it. If their districts are fair, the process allows them to be able to weigh in so that their concerns are met.”

—*Jeniece Brock, Policy and Advocacy Director, Ohio Organizing Collaborative and Former Co-chair, Ohio Citizens Redistricting Commission*

EXAMPLE

- **County of Los Angeles:** “The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:
- (A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of Los Angeles that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.”⁶⁵

Requiring Communications to Take Place in Public

All deliberations and discussions about the drawing of voting maps should be conducted in open meetings, so a ban on ex parte communications is critical. Ex parte communications include individual or private communications between commissioners or commission staff and outside entities or individuals about the decisions being made in the mapping process. Commissions must prohibit such communications held behind closed doors or outside of an open meeting. Allowing these communications would violate the public trust and eliminate the transparency at the core of an IRC.

Such a ban can have some exemptions for communications that are unrelated to the placement of district boundaries. Public education about the redistricting process, legal issues to be discussed with the IRC’s attorney, or administrative matters between commissioners and staff may all be logical exemptions from the prohibition to ensure the effective functioning of the commission.

EXAMPLES

- **California:** “Commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. This paragraph does not prohibit communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by the Bagley-Keene Open Meeting Act or its successor outside of a public hearing.”⁶⁶
- **Michigan:** “The commission, its members, staff, attorneys, and consultants shall not discuss redistricting matters with members of the public outside of an open meeting of the commission, except that a commissioner may communicate about redistricting matters with members of the public to gain information relevant to the performance of his or her duties if such communication occurs (a) in writing or (b) at a previously publicly noticed forum or town hall open to the general public.”⁶⁷
- **Sacramento, California:** “Commission members and staff may not communicate with or receive communications about redistricting matters from anyone except at a public meeting or through the process established for accepting written public comment. This subsection does not prohibit:
 - (1) communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by state and city open meeting requirements; or
 - (2) commissioners, staff, legal counsel, or consultants from engaging in public education and outreach, including explaining how the commission functions and encouraging public participation in the redistricting process.”⁶⁸

Records and Data

All records and data should be made available at any time to the public to ensure the transparency and openness of the redistricting process. This extends from the mapping data used by the commission to draw the maps to the comments and submissions provided to the commission from the public. Other records and data may include data from Voting Rights Act analyses, the commission's meeting minutes, or any reports generated for the commission. These records and data must be preserved for at least the duration of the enacted map's effectiveness and need to be made easily accessible to anyone seeking information. This information may be stored or archived on the website of the jurisdiction or commission.

EXAMPLE

- **Syracuse, New York:** “The records of the commission and all data considered by the commission are public records that will be made available in a manner that ensures immediate and widespread public access.”⁶⁹
- **Long Beach, California:** “(a) The Commission shall comply with the California Public Records Act, commencing with section 6250 of the California Government Code, or its successor, and any City laws regarding public records, to the degree they require greater disclosure and retention of Commission records than is provided in this article.

(b) The Commission and its subcommittees shall keep minutes of all discussion and actions taken at public meetings. The minutes should be adopted at the next public meeting of that body. To the greatest extent practicable, all public meetings of the Commission and its subcommittees shall be video recorded.

(c) To the greatest extent practicable, the Commission shall make available to the public a free electronic mapping tool, loaded with relevant population and demographic data, which tool can be used to create draft maps and draft partial maps.”⁷⁰

OPERATIONS AND BUDGET

After a commission is constituted and the work of redistricting begins, there are operational and administrative considerations that will impact how the commission functions. Some of these considerations include (1) hiring staff and consultants, (2) ensuring there is an adequate budget, and (3) handling legal challenges after a new voting map is selected.

Staff and Consultants

Commissioners will require support from staff and consultants to provide technical assistance, public outreach, and more. A commission should be given the authority to hire its own staff and consultants independent of the jurisdiction's elected officials and determine for themselves the support needed to successfully draw a voting map. The same conflicts of interest, transparency, and ethics requirements that apply to commissioners should apply to consultants to maintain the integrity of the commission. Consultants to the commission may include Voting Rights Act experts, legal counsel, or mapping experts. In order to ensure that there is consensus on which staff or consultants to hire among the commissioners, a higher threshold of affirmative votes (such as a supermajority) may be necessary, including votes from different represented parties.

EXAMPLES

- **Austin, Texas:** “The commission shall hire commission staff, legal counsel, and consultants as needed; provided, however, that compensation of such persons shall be limited to the period in which the commission is active. The commission shall establish clear criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct. The commission shall apply the conflicts of interest listed in subdivision 3(1)(3) to the hiring of staff, legal counsel, and consultants. The commission shall require that at least one of the legal counsel hired by the commission has demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 and following). The commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes.”⁷¹
- **California:** “The commission shall hire commission staff, legal counsel, and consultants as needed. The commission shall establish clear criteria for the hiring and removal of these individuals, communication protocols, and a code of conduct. The commission shall apply the conflicts of interest ... to the hiring of staff to the extent applicable. The State Auditor shall provide support functions to the commission until its staff and office are fully functional. ... The commission shall require that at least one of the legal counsel hired by the commission have demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 et seq.). The commission shall make hiring, removal, or contracting decisions on staff, legal counsel, and consultants by nine or more affirmative votes including at least three votes of members registered from each of the two largest parties and three votes from members who are not registered with either of the two largest political parties in California.”⁷²

Budget

Nearly all enabling laws constituting a commission call for the legislative body of a jurisdiction to provide “adequate funding” for the operations of the commission. In certain instances—particularly when reform has been implemented over the objections of a legislature seeking to maintain the power to draw maps—legislators can be hostile toward independent commissions. Legislative language should guarantee a permanent and stable budget for the commission’s operations and limit legislators’ discretionary power to financially hobble the commission. Appropriations for the commission must also include the necessary budget to defend the commission’s actions or adopted maps in a legal challenge.

EXAMPLES

- **Michigan:** “Beginning no later than December 1 of the year preceding the federal decennial census, and continuing each year in which the commission operates, the legislature shall appropriate funds sufficient to compensate the commissioners and to enable the commission to carry out its functions, operations and activities, which activities include retaining independent, nonpartisan subject-matter experts and legal counsel, conducting hearings, publishing notices and maintaining a record of the commission’s proceedings, and any other activity necessary for the commission to conduct its business, at an amount equal to not less than 25 percent of the general fund/general purpose budget for the secretary of state for that fiscal year. Within six months after the conclusion of each fiscal year, the commission shall return to the state treasury all moneys unexpended for that fiscal year.”⁷³
- **Colorado:** “The general assembly shall appropriate sufficient funds for the payment of the expenses of the commission, the compensation and expenses of nonpartisan staff, and the compensation and expenses of the panel of judges as described in section 44.1 of this article V. Members of the commission shall be reimbursed for their reasonable and necessary expenses and may also receive such per diem allowance as may be established by the general assembly.”⁷⁴

During the map-making process, commissioners will devote significant time to the commission’s work, which may pull them away from their jobs or other income sources. Therefore, commissioners should be compensated for their time and service to increase the pool of residents who can serve and ensure the commission reflects the jurisdiction’s socioeconomic diversity.

EXAMPLES

- **Michigan:** “Each commissioner shall receive compensation at least equal to 25 percent of the governor’s salary. The State of Michigan shall indemnify commissioners for costs incurred if the legislature does not appropriate sufficient funds to cover such costs.”⁷⁵
- **California:** “Members of the commission shall be compensated at the rate of three hundred dollars (\$300) for each day the member is engaged in commission business. For each succeeding commission, the rate of compensation shall be adjusted in each year ending in nine by the cumulative change in the California Consumer Price Index, or its successor. Members of the panel and the commission are eligible for reimbursement of personal

expenses incurred in connection with the duties performed pursuant to this act. A member's residence is deemed to be the member's post of duty for purposes of reimbursement of expenses."⁷⁶

“And we didn’t get any lawsuits, which is even more amazing because we fully expected it. In fact, we had budgeted \$4.3 million for lawsuits to defend our maps and ended up not having to spend any of that. So we really saved California money by using this process.”

—Russell Yee, Commissioner, California Citizens Redistricting Commission

Legal Challenges

After a commission adopts a final set of redistricting plans, those plans should take effect for the next decade until the following decennial census, except when a court orders a new map after a legal challenge. A commission's enabling law may also specify a deadline for legal challenges of the adopted map and the redistricting process prior to the adopted map taking effect. Such provisions, however, do not preclude the adopted map from being challenged through other means, such as a federal constitutional challenge. The commission should be designated as the body to defend an adopted map or to draw a remedial map if ordered by a court. The law should also guarantee that the commission will receive the necessary resources to defend against a legal challenge.

EXAMPLES

- **California:** “Any registered voter in this state may file a petition for a writ of mandate or writ of prohibition, within 45 days after the commission has certified a final map to the Secretary of State, to bar the Secretary of State from implementing the plan on the grounds that the filed plan violates this Constitution, the United States Constitution, or any federal or state statute. Any registered voter in this state may also file a petition for a writ of mandate or writ of prohibition to seek relief where a certified final map is subject to a referendum measure that is likely to qualify and stay the timely implementation of the map.”⁷⁷
- **Austin, Texas:** “The commission has the sole legal standing to defend any action regarding a certified final map, and shall inform the city council if it determines that funds or other resources provided for the operation of the commission are not adequate. The city council shall provide adequate funding to defend any action regarding a certified map. The commission has sole authority to determine whether the city attorney or other legal counsel retained by the commission at its discretion shall represent the commission in defense of a certified final map.”⁷⁸

Some jurisdictions may require a court to review the commission's final maps before they take effect. In Colorado, the redistricting commissions' adopted maps are reviewed by the state supreme court, and any relevant legal challenges to the maps must be brought to the state supreme court during that time. If the court rejects a map, the commission can draw another map that resolves the court's concerns.

EXAMPLE

→ **Colorado:**⁷⁹ “(1) The supreme court shall review the submitted plan and determine whether the plan complies with the criteria listed in section 44.3 of this article V. The court’s review and determination shall take precedence over other matters before the court. The supreme court shall adopt rules for such proceedings and for the production and presentation of supportive evidence for such plan. Any legal arguments concerning such plan must be submitted to the supreme court pursuant to the schedule established by the court.

(2) The supreme court shall approve the plan submitted unless it finds that the commission or nonpartisan staff, in the case of a staff plan submitted in the absence of a commission-approved plan, abused its discretion in applying or failing to apply the criteria listed in section 44.3 of this article V, in light of the record before the commission. The supreme court may consider any maps submitted to the commission in assessing whether the commission or nonpartisan staff, in the case of a staff plan submitted in the absence of a commission-approved plan, abused its discretion.

(3) If the supreme court determines that the submitted plan constitutes an abuse of discretion in applying or failing to apply the criteria listed in section 44.3 of this article V, in light of the record before the commission, the supreme court shall return the plan to the commission with the court’s reasons for disapproval.

(4) (a) By November 1 of the redistricting year, the supreme court shall approve the plan submitted or return the plan to the commission. (b) If the court returns the plan to the commission, the commission shall have twelve days to hold a commission hearing that includes public testimony and to return an adopted plan that resolves the court’s reasons for disapproval. (c) If the commission fails to adopt and return a plan to the court within twelve days, nonpartisan staff shall have an additional three days to prepare a plan that resolves the court’s reasons for disapproval and return it to the court for approval. (d) The supreme court shall review the revised plan in accordance with subsections (1), (2), and (3) of this section.

(5) The supreme court shall approve a plan for the redrawing of congressional districts no later than December 15 of the redistricting year. The court shall order that such plan be filed with the secretary of state no later than such date.”

REDISTRICTING MAPPING CRITERIA

Commissioners must follow federal and state laws while drawing voting maps and are often provided additional guidance to follow during the mapping process. This guidance, or mapping criteria, is a set of standards, requirements, or expectations that guide the commissioners as they make decisions on where to draw district boundaries in voting maps.

Jurisdictions must adhere to certain mandatory mapping criteria regardless of whether there is a commission in place. This includes requirements deriving from the U.S. Constitution, such as equal population, and federal statutes, such as the Voting Rights Act. Mapping criteria are also often found in state constitutions, state statutes, and laws passed by local governments. These may include the preservation of communities of interest, contiguity requirements, bans on partisan gerrymandering, compliance with state-level voting rights acts, and more.

The mapping criteria that many IRCs must follow are broken down into a set of mandatory requirements and standards or guidelines. These criteria are sometimes ranked to prioritize certain criteria above others. This section covers common mapping criteria and how jurisdictions rank them.

“I think I learned a lot of things that I didn’t expect to learn in this process. One, I learned that good people could be trusted to make good decisions and follow criteria.”

—Rex Facer, Commissioner, Utah Independent Redistricting Commission

Mandatory Requirements

Federal redistricting requirements have developed from the plain language of the U.S. Constitution, interpretation of those provisions by the Supreme Court of the United States, and federal statutes. This section will detail these requirements, which all redistricting entities—including IRCs—must follow.

U.S. Constitution

Equal Population

Redistricting must take place every decade after the decennial census because population shifts usually create an uneven distribution of residents across voting districts. This uneven distribution is prohibited under the U.S. Constitution, which requires that congressional districts within a state must be as equal in population as practicable.⁸⁰ All other voting districts are required to have substantially equal population.⁸¹

The U.S. Supreme Court has established a strict population equality standard for drawing congressional districts in which even a map with a population deviation of less than 1% can be struck down if the deviation is not sufficiently justified to achieve a legitimate state objective.⁸² For this reason, many states equalize population down to zero, one, or two people across congressional districts.⁸³

The standard for voting districts other than congressional districts, such as state legislative districts, is less strict. Unlike congressional districts, other voting districts must have “substantially equal population” across districts in the state or jurisdiction.⁸⁴ A deviation of 10% in population from one voting district to another is a generally accepted outer boundary, with deviations under 10% considered to be presumptively constitutional.⁸⁵ Some states have implemented their own deviation standards, including Colorado, which prohibits state legislative districts from exceeding a 5% population deviation.⁸⁶

Although population equality is a universal requirement imposed by the U.S. Constitution, some jurisdictions have also chosen to state it expressly in mapping criteria.

EXAMPLES

- ➔ **Long Beach, California:** “(1) Council districts are as nearly equal as practicable in total population; (2) The final map complies with the U.S. Constitution; the Federal Voting Rights Act, the California Constitution; and any other requirement of federal or state law applicable to charter cities...”⁸⁷
- ➔ **Colorado** (state legislative commission): “...the commission shall [m]ake a good-faith effort to achieve mathematical population equality between districts, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house.”⁸⁸

Racial Gerrymandering and Racial Discrimination

The Fourteenth Amendment prohibits both racial gerrymandering and intentional racial discrimination. Racial gerrymandering is “the deliberate and arbitrary distortion of district boundaries for racial purposes.”⁸⁹ Intentional racial discrimination takes place when public bodies, such as map drawers, act with discriminatory intent in their actions.⁹⁰ Both of these prohibitions are incorporated into the redistricting process of any jurisdiction, regardless of whether there is an independent commission in place. Commissioners must therefore also adhere to these prohibitions in the mapping process.

Federal Law

Voting Rights Act of 1965

The Voting Rights Act of 1965 is a seminal piece of legislation that plays a significant role in the redistricting process today. Section 2 prohibits states and any political subdivision from using any “voting qualification or prerequisite to voting or standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”⁹¹

A map violates Section 2 when district boundaries are drawn in a way that intentionally or unintentionally prevents minority voters from gaining sufficient political power within a voting district to elect that community’s candidate of choice.

Vote dilution often occurs through mechanisms known as “packing” or “cracking,” where minority voters are either intentionally overrepresented in one voting district or intentionally broken apart into many voting districts to limit their political influence.

During the redistricting process, commissioners must consider the requirements of Section 2 and create districts where minority voters will have opportunities to elect candidates of their choice and be careful not to make decisions that would reduce minority voters' political power.

A community may need to be drawn together in a single district under Section 2 if it meets the criteria set forth in the *Gingles* factors, which considers whether (1) the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district, (2) the racial group is politically cohesive, and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. If a community meets these factors and demonstrates, under the totality of the circumstances, that the plan prevents the community from electing their candidate of choice, the map will be found to violate Section 2.⁹²

Challenges to voting maps under the Voting Rights Act still play a large role in the fight for fair maps. After new maps were passed in Alabama in the 2020 redistricting cycle, the state legislature diluted the power of Black voters by only creating one Black-majority congressional district.⁹³ Voters, civil rights groups, and faith groups sued the state in *Allen v. Milligan*. In its opinion, the U.S. Supreme Court reaffirmed the role of Section 2 and implemented a remedial voting map that creates two districts that serve Black voters in the state.⁹⁴

State Laws

State constitutions or statutes, even outside of the IRC enabling law, may impose additional requirements. This may include provisions of a state-level voting rights act with additional considerations that commissioners must incorporate.⁹⁵

Additional Redistricting Criteria

The remaining mapping criteria described in this section are commonly found in IRCs, although all may not always be included. Regardless of which mapping criteria are included, they should be clear and concise to minimize any disagreement about their interpretation among commissioners, the public, and other stakeholders, including courts empowered to adjudicate challenges to maps.

“I viewed that as my responsibility to abide by mapping as it was laid out by the rules and our state constitution. So as close to the numerically equal districts as possible, compact, contiguous, and then factoring in communities of interest and also, of course, abiding by the Voting Rights Act. I walked into that job with that intent, and I walked out of that role with having upheld that intent.”

—Melanie Bahnke, Commissioner, Alaska Redistricting Board

Contiguity

Contiguity is a mapping criterion found in nearly every jurisdiction. Contiguity is achieved when all parts of a voting district are in direct contact with some other part of the district. A district fails a contiguity requirement when parts of a voting district are geographically disconnected from one another. A common framing to understand contiguity is that a person traveling within a voting district should be able to travel across the district without leaving its boundaries.

There are rare exceptions to the contiguity requirement when it is not physically possible. For example, jurisdictions that include islands within their boundaries would not be able to draw a voting district that includes multiple islands in one district and be considered contiguous. Hawaii’s congressional districts fall into this exception. Hawaii’s second congressional district includes several islands across the state because there is no other way to form a district contiguously without crossing the ocean.

EXAMPLES

- ➔ **California (Local Jurisdictions):** “To the maximum extent practicable, election districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.”⁹⁶
- ➔ **Santa Fe, New Mexico:** “Each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible.”⁹⁷

Compactness

Compactness is another criterion found in nearly every jurisdiction. A perfectly compact district has a neat, even shape, and the prime example of a *noncompact* district derives from the origin of the term “gerrymandering.” In 1812, then-governor of Massachusetts, Elbridge Gerry, signed a bill that created a partisan district that critics argued was shaped like a salamander.⁹⁸ Thus, the *Gerrymander* was born.

However, a district may not be drawn in the most compact manner possible for legitimate reasons. Compactness is often ranked lower than other important criteria, such as preserving communities of interest or protecting minority voters under the Voting Rights Act. There may also be other uncontrollable limitations, such as an area’s uneven terrain or winding roadways.



Aside from the “know-it-when-you-see-it”⁹⁹ method of measurement, there are many statistical models created to measure compactness, many of which focus on using area or perimeter as a basis for analysis.¹⁰⁰ When evaluating district maps, courts may require specific methods of calculating compactness. However, it should be noted that there is no one agreed-upon gold standard of measurement. The following are a few that are often used by academics and redistricting litigation experts:¹⁰¹

- **Reock:** calculated by dividing the area of the district by the area of the smallest circle that would encompass it.
- **Polsby-Popper:** the ratio of the area of a district to the area of a circle whose perimeter is the same value as the district’s perimeter.

- **Convex Hull:** a ratio of the area of the district to the area of the smallest convex polygon that can enclose the district's boundaries.

The compactness criterion should not be considered on its own without context. Like all other criteria, it must be balanced against other considerations and should not outweigh drawing a voting district that best represents the communities in that region.

EXAMPLES

- ➔ **Austin, Texas:** “To the extent practicable, district boundaries shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant populations.”¹⁰²
- ➔ **Santa Fe, New Mexico:** “Each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible.”¹⁰³

Communities of Interest

Receiving public input on how residents of a state or jurisdiction want to see their communities drawn in a voting map is at the core of an IRC's mission. The key mapping criterion that ensures an IRC will take this input into consideration and draw districts based on how residents of the region see their communities is through the preservation of “communities of interest.” How a “community of interest” is defined varies, but generally refers to a population that shares common social, cultural, historical, or economic interests that should be preserved in one voting district to better administer services to and address the concerns of these communities.

“As commissioners, we fought for our neighborhoods ... we wanted to make sure that areas weren't cut, that neighborhoods were kept intact as much as they could be.”

—Sharon Diggs Jackson, Former Commissioner, City of Long Beach Independent Redistricting Commission

Characteristics of communities of interest that may be presented to an IRC include, but are certainly not limited to, neighborhoods, cultural districts, shared socioeconomic characteristics, access to services or resources, or shared public policy concerns (e.g., education, public safety, public health, environment, transportation). Critically, a community of interest *should not* include the protection of candidate incumbency status or relationships with political parties. Commissioners can draw voting districts that preserve communities of interest based on the input, comments, and even self-drawn maps submitted to the commission by the public.

The preservation of communities of interest in a single voting district can better serve the needs of the residents of that community. For example, Black, African, Middle Eastern, Muslim, and South Asian refugee and immigrant communities in San Diego, California, advocated heavily in the 2020 redistricting cycle to be kept together as a community of interest.¹⁰⁴ The state redistricting commission and the city's commission ultimately delivered a win for this community by keeping most of the community whole across voting districts, including at the congressional, State Assembly, and county supervisorial levels.

EXAMPLES

- **Michigan:** “Districts shall reflect the state’s diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.”¹⁰⁵
- **Austin, Texas:** “[T]he geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subsections. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.”¹⁰⁶
- **City of Los Angeles** (proposed charter amendment): “To the maximum extent practicable, and where it does not conflict with the preceding criterion in this subsection, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A ‘community of interest’ is a population that shares common social or economic interests that should be included within a single election district for purposes of its effective and fair representation. Characteristics of communities of interest may include, but are not limited to, shared public policy concerns such as education, public safety, public health, environment, housing, transportation, and access to social services. Characteristics of communities of interest may also include, but are not limited to, cultural districts, shared socioeconomic characteristics, similar voter registration rates and participation rates, and shared histories. Communities of interest do not include relationships with political parties, incumbents, or political candidates.”¹⁰⁷

Political Subdivisions and Natural Boundaries

Existing boundaries within a state or jurisdiction often play a role in how a new voting district is drawn. This may include existing political subdivisions, such as counties, cities, or neighborhoods, which would benefit from being preserved in the same district where possible. It may also include natural boundaries from geographic features, such as rivers or bodies of water.

Preserving political subdivisions may not always be possible—for example, when drawing state legislative districts in a large city, the population of that city may require it to be divided into multiple districts. At the state level, some states prefer to keep counties whole when it does not conflict with equal population requirements. The preservation of political subdivisions may be important in ways similar to the preservation of communities of interest: to streamline services and resources and to better represent the needs of the community. However, communities of interest often cross county and city boundaries, so IRCs need to determine whether public testimony justifies protecting these boundaries over other considerations.

Considering natural, geographic boundaries plays a similar role to considering contiguity—even though a district may be contiguous, if a large body of water or a mountain range splits the district in half with limited means of transportation and links between the two halves, it may not be effective to include both regions in one voting district.

EXAMPLES

- **Colorado:** “As much as is reasonably possible, the commission’s plan must preserve whole communities of interest and whole political subdivisions, such as counties, cities, and towns.”¹⁰⁸
- **Long Beach, California:** “Districts should respect major topographic and geographic features of the City; District boundaries should be easily identifiable and understandable by voters. Districts should be bounded by natural and artificial barriers, by street lines, and/or by City boundary lines.”¹⁰⁹

Nesting of Districts

In states that have bicameral legislatures, two or more districts from the lower chamber may be “nested” in one district of the upper chamber. For example, in Alaska, there are 40 state House and 20 state Senate districts.¹¹⁰ Each state Senate district must be composed of two state House districts. The districts that are nested together should be contiguous or adjacent.

While district nesting typically is only found in state legislatures with two chambers, it may also be applied to other state offices, such as California’s State Board of Equalization, where each Board of Equalization district is made up of ten state Senate districts.¹¹¹

Nesting can make the administrative work of drawing districts easier. However, it can also limit the flexibility needed to ensure fair representation for the maximum number of communities. Valid but competing claims concerning communities of interest can be reconciled by adhering to one community’s wishes in one chamber of the legislature while adhering to another community’s wishes in the other chamber. This is more difficult to achieve if an IRC is constrained by a requirement to nest districts.

EXAMPLES

- **Alaska:** “Each senate district shall be composed as near as practicable of two contiguous house districts.”¹¹²
- **California:** “Where practicable each Senate District should be comprised of two complete and adjacent Assembly Districts and Board of Equalization districts shall be composed of 10 complete and adjacent State Senate Districts.”¹¹³

No Consideration of Candidates or Political Parties

An increasing number of jurisdictions prohibit consideration of an incumbent’s or political candidate’s residence and ban drawing districts to favor or discriminate against an incumbent, candidate, or political party. These rules are critical to focusing an IRC’s map squarely on the needs of the people, not politicians. They also ensure that the redistricting process remains nonpartisan, trustworthy, and impartial to political insiders’ self-interest.

For example, advocates criticized Delaware’s 2020 redistricting process as prioritizing incumbency protection over protecting communities of interest or other important criteria, resulting in maps that had few changes from the previous decade and ignored public testimony.¹¹⁴ By prioritizing incumbency protection, the map-drawing legislators broke up municipalities and communities, which resulted in less effective representation of those communities.

The U.S. Supreme Court has ruled that partisan gerrymandering claims cannot currently be litigated in federal courts.¹¹⁵ As a result, prohibiting the practice by banning consideration of incumbency, candidates, or political parties is a critical component of any IRC enacting legislation.

“Why on Earth should politicians be drawing their own lines? It runs counter to the idea of one person, one vote. When politicians can choose their voters, and it’s meant to be the other way around. So, for me, it’s a fundamental question of fairness, in our representation and providing additional opportunities for representation.”

—Sara Sadhwani, Commissioner, California Citizens Redistricting Commission

EXAMPLES

- ➔ **Long Beach, California:** “The Commission shall not consider place of residence of any individual, including any incumbent or political candidate, in the creation of a map ... [and] the Commission shall not draw districts for the purpose of favoring or discriminating against a political party.”¹¹⁶
- ➔ **Colorado:** “No map may be approved by the commission or given effect by the supreme court if: It has been drawn for the purpose of protecting one or more incumbent members, or one or more declared candidates, of the United States house of representatives or any political party...”¹¹⁷

Researchers often use statistical methods to quantitatively measure the extent of partisan bias in district maps. There are many ways to measure partisan bias, each with its own strengths and limitations.¹¹⁸ The following are a few examples of metrics that have been accepted by the court in expert testimony:

- **Efficiency Gap:** A measure of the difference between each party’s “wasted” votes (i.e., votes that do not contribute to winning a seat) because of cracking or packing its voters.
- **Mean-Median Difference:** The difference between a party’s median vote and its average vote share across all districts in a redistricting map.
- **Proportionality:** The difference between a party’s share of statewide voters and its share of seats.

Political Competitiveness

A mandate that voting districts be politically competitive may be found in some jurisdictions. A competitiveness requirement prioritizes creating the maximum number of districts with close election results between the two major party candidates. A major disadvantage of this criterion is that it is likely to sacrifice communities of interest by putting together communities with little in common to achieve mathematical parity. An independent process with prohibitions against partisan gerrymandering is likely to achieve increased competitiveness without mandating it.

Competitiveness should never be elevated as a criterion above preserving communities of interest or preventing minority vote dilution. If included, competitiveness should be ranked as a low priority.

EXAMPLE

→ Colorado:

“Thereafter, the commission shall, to the extent possible, **maximize the number of politically competitive districts** ... ‘competitive’ means having a reasonable potential for the party affiliation of the district’s representative to change at least once between federal decennial censuses. Competitiveness may be measured by factors such as a proposed district’s past election results, a proposed district’s political party registration data, and evidence-based analyses of proposed districts.”¹¹⁹

District Numbering

Some states or jurisdictions may want to provide the commission guidance on how districts are numbered to minimize voter confusion. After the mapping process is completed, the commission may be required to number districts in a manner that assigns a district number most familiar to the residents of the new voting district. For example, if a majority of residents in a new voting district resided in the previous District 3, this new voting district would also be numbered District 3.

Drafters should be clear that any rules on the numbering of districts are not meant to preserve the cores of previous districts. This is only designed to apply to the labeling of districts after redistricting is completed.

EXAMPLE

→ **Sacramento, California:** “The commission shall number each council district such that, for as many residents as possible, the number of the council district they reside in remains the same.”¹²⁰

Ranking Mapping Criteria

Commissioners must weigh the various criteria to make decisions that best serve the communities in their jurisdiction. When facing multiple decision points, it may not always be possible for commissioners to fully fulfill each criterion. To aid the decision-making process and establish which criteria will be prioritized, many IRCs have a ranking of mapping criteria.

By ranking the criteria, jurisdictions can elevate certain decisions that need to be prioritized over others. For example, most criteria ranking will begin with adherence to federal and state constitutions and laws, which are paramount in the mapping process. To ensure that communities of interest are maintained and given proper weight, this criterion may be ranked above other criteria like compactness or adherence to political subdivisions. Criteria ranked below others should be fulfilled to the fullest extent as long as it does not conflict with higher-ranking criteria.

An example of a ranking of mapping criteria that centers communities may be

- compliance with the U.S. Constitution, federal laws, including the Voting Rights Act, the state constitution, and applicable state laws;
- equal population requirement, except where deviation is necessary to comply with the law;
- contiguity;
- communities of interest;
- natural boundaries or political subdivisions; and
- compactness.

EXAMPLE

→ Austin, Texas:¹²¹

“(E) The commission shall establish the boundaries of the council districts for the City of Austin in a plan using the following criteria as set forth in the following order of priority:

(1) districts shall comply with the United States Constitution. Each council district shall have reasonably equal population with other districts, except where deviation is required to comply with the federal Voting Rights Act or is allowable by law.

(2) districts shall comply with the federal Voting Rights Act (52 U.S.C. Sec. 10101 and following) and any other requirement of federal or state law.

(3) districts shall be geographically contiguous.

(4) the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible without violating the requirements of any of the preceding subsections. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) to the extent practicable, district boundaries shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant populations.

(6) to the extent practicable, district boundaries shall be drawn using the boundaries of existing election precincts.

(7) to the extent practicable, district boundaries shall be drawn using geographically identifiable boundaries.

(F) The place of residence of any incumbent or potential political candidate shall not be considered in the creation of a plan or any district. Districts shall not be drawn for the purpose of favoring or discriminating against any incumbent, political candidate, or political group.”

Endnotes

- 1 *Rucho v. Common Cause*, 588 U.S. 684 (2019).
- 2 *Shelby County v. Holder*, 570 U.S. 529 (2013).
- 3 See, e.g., *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221 (2024).
- 4 See, e.g., John R. Lewis Voting Rights Advancement Act, H.R. 14, 118th Cong. (2023); see also Freedom to Vote Act, H.R. 11, 118th Cong. (2023).
- 5 Cal. Const. art. XXI, § 2(c)(4).
- 6 Austin, Texas, City Charter, art. II, § 3(D)(2).
- 7 Mich. Const. art. IV, § 6(18).
- 8 See Mont. Const. art. V, § 14; see also Ariz. Const. art. IV, pt. 2.
- 9 Jim Brunner & Joseph O'Sullivan, *Washington's Redistricting Commission Emerges Tuesday Night, Post-deadline, With Agreement on Boundaries. What's Next?*, THE SEATTLE TIMES, Nov. 16, 2021, <https://www.seattletimes.com/seattle-news/politics/what-happens-now-to-washingtons-political-maps-after-redistricting-commissions-historic-failure/>.
- 10 See Cal. Const. art. XXI; see also Mich. Const. art. IV, § 6.
- 11 See, e.g., Mo. Const. art. III, § 3 (“[T]he congressional district committee of each of the two parties casting the highest vote for governor at the last preceding election shall meet and the members of the committee shall nominate... two members of their party, residents in that district, as nominees for reapportionment commissioners.”)
- 12 COALITION HUB FOR ADVANCING REDISTRICTING & GRASSROOTS ENGAGEMENT, COMMUNITY REDISTRICTING REPORT CARD (2023).
- 13 Cal. Const. art. XXI.
- 14 Cal. Elec. Code § 21532.
- 15 Mich. Const. art. IV, § 6(2); see also Santa Fe, N.M., Mun. Charter, ch. VI, § 6-18.
- 16 Cal. Gov't Code § 8252.
- 17 Mich. Const. art. IV, § 6(2).
- 18 Santa Fe, N.M., Mun. Charter, ch. VI, § 6-18.
- 19 Colo. Const. art. V, § 44.1.
- 20 San Diego, Cal., City Charter, art. II, § 5.1.
- 21 Minneapolis, Minn., City Charter, art. II, § 2.2(c), see also Minn. Stat. Ann. § 410.05.
- 22 Cal. Gov't Code § 8252.
- 23 Ariz. Const. art. IV, pt. 2, § 1; see also Wash. Const. art. II, § 43.
- 24 COALITION HUB FOR ADVANCING REDISTRICTING & GRASSROOTS ENGAGEMENT, COMMUNITY REDISTRICTING REPORT CARD (2023).
- 25 *Id.*
- 26 Cal. Gov't Code § 8252; see also Colo. Const. art. V, § 44.1.
- 27 Press Release, Common Cause California, Common Cause Calls for Improved Latino Representation in 2020 California Citizens Redistricting Commission (Jul. 13, 2020), <https://www.commoncause.org/california/press/common-cause-calls-for-improved-latino-representation-in-2020-california-citizens-redistricting-commission/>.
- 28 Ariz. Const. art. IV, pt. 2, § 1.
- 29 Mont. Const. art. V, § 14.
- 30 Cal. Gov't Code § 8252.
- 31 Austin, Tex., City Charter, art. II, § 3.
- 32 Colo. Const. art. V, § 44.1.
- 33 Cal. Elec. Code § 21532.
- 34 See generally, Cal. Elec. Code Chap. 6.
- 35 Sacramento, Cal., City Charter, Art. XII, § 174.
- 36 Mich. Const. art. IV, § 6(3).
- 37 Cal. Elec. Code § 21586(a) - (d).
- 38 Cal. Elec. Code §§ 21580 - 21588.
- 39 Santa Fe, N.M., Mun. Charter, ch. VI, § 6-18.5.
- 40 Cal. Gov't Code § 8252.5(b)(1).
- 41 Mich. Const. art. IV, § 6(3).
- 42 Colo. Const. art. V, § 44.1(2)(a).
- 43 Portland, Or., City Charter, ch. 3, art. 1, § 3-108.
- 44 *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016).
- 45 See, e.g., Los Angeles, Cal., Ordinance 188235, 2024.
- 46 Los Angeles, Cal., Resolution providing the ballot measure text and the ballot title and question for a Charter amendment, https://clkrep.lacity.org/online/docs/2024/24-1100-S6_misc_2-4-24-24.pdf.
- 47 Austin, Tex., City Charter, art. II, § 3(I)(2).
- 48 Colo. Const. art. V, § 44.1(8)(a).
- 49 Cal. Gov't Code § 8252.
- 50 Cal. Elec. Code § 23003.
- 51 Mich. Const. art. IV, § 6.
- 52 Long Beach, Cal., City Charter, art. XXV, § 2504(e).
- 53 Long Beach, Cal., City Charter, art. XXV, § 2504(d).
- 54 COALITION HUB FOR ADVANCING REDISTRICTING & GRASSROOTS ENGAGEMENT, COMMUNITY REDISTRICTING REPORT CARD (2024).

- 55 Long Beach, Cal., City Charter, art. XXV, § 2507.
- 56 Cal. Gov't Code § 8253.
- 57 COALITION HUB FOR ADVANCING REDISTRICTING & GRASSROOTS ENGAGEMENT, COMMUNITY REDISTRICTING REPORT CARD (2023).
- 58 *Id.*
- 59 Sacramento, Cal., City Charter, art. XII, § 176.
- 60 Colo. Const. art. 5, § 44.2.
- 61 Mich. Const. art. IV, § 6.
- 62 Cal. Elec. Code § 21534.
- 63 Cal. Gov't Code § 8253.
- 64 Cal. Elec. Code § 21534.
- 65 Cal. Elec. Code § 21534.
- 66 Cal. Gov't Code § 8253.
- 67 Mich. Const. art. IV, § 6(11).
- 68 Sacramento, Cal., City Charter, art. XII, § 176.
- 69 Syracuse, N.Y., Ordinance ch. 62, § 6(a)(2).
- 70 Long Beach, Cal., City Charter, art. XXV, § 2508.
- 71 Austin, Tex., City Charter, art. II, § 3(K)(5).
- 72 Cal. Gov't Code § 8253(a)(5).
- 73 Mich. Const. art. IV, § 6(5).
- 74 Colo. Const. art. 5, § 44.2
- 75 Mich. Const. art. IV, § 6(5).
- 76 Cal. Gov't Code § 8253.5.
- 77 Cal. Const. art. XXI, § 3.
- 78 Austin, Tex., City Charter, art. II, § 3(H).
- 79 Colo. Const. art. 5, § 44.5.
- 80 U.S. Const. art. I, § 2; see *Wesberry v. Sanders*, 376 U.S. 1 (1964).
- 81 *Reynolds v. Sims*, 377 U.S. 533 (1964).
- 82 *Karcher v. Daggett*, 462 U.S. 725 (1983).
- 83 National Conference of State Legislatures, 2020 Redistricting Deviation Table, <https://www.ncsl.org/elections-and-campaigns/2020-redistricting-deviation-table>.
- 84 *Sims*, 377 U.S. at 632 n. 44 (1964).
- 85 *Gaffney v. Cummings*, 412 U.S. 735 (1973).
- 86 Colo. Const. art. V, § 46.
- 87 Long Beach, Cal., City Charter, art. XXV, § 2506.
- 88 Colo. Const. art. V, § 46.
- 89 *Shaw v. Reno*, 509 U.S. 630, 640 (1993).
- 90 *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977).
- 91 52 U.S.C.A. § 10301(a).
- 92 *Thornburg v. Gingles*, 478 U.S. 30 (1986).
- 93 Adam Liptak, *Supreme Court Rejects Voting Map That Diluted Black Voters' Power*, N.Y. TIMES (Jun. 8, 2023), <https://www.nytimes.com/2023/06/08/us/supreme-court-voting-rights-act-alabama.html>.
- 94 Injunction, Order, and Court-Ordered Remedial Map, *Caster v. Allen*, No. 2:21-cv-1536 (N.D. Ala. Oct. 5, 2023).
- 95 State-level voting rights acts include laws passed in states such as California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022), Connecticut (2023), and Minnesota (2024). Other states such as Maryland, Florida, Michigan, and New Jersey have efforts underway.
- 96 Cal. Elec. Code § 21130.
- 97 Santa Fe, N.M., City Code ch. IX, § 9-1.4.
- 98 Erick Trickey, *Where Did the Term "Gerrymander" Come From?*, SMITHSONIAN MAGAZINE (Jul. 20, 2017), <https://www.smithsonianmag.com/history/where-did-term-gerrymander-come-180964118/>.
- 99 Famously, a Supreme Court concurring opinion stated, "One need not use Justice Stewart's classic definition of obscenity—"I know it when I see it"—as an ultimate standard for judging the constitutionality of a gerrymander to recognize that dramatically irregular shapes may have sufficient probative force to call for an explanation" (*Karcher v. Daggett*, 462 U.S. 725, 755 (1983)).
- 100 Bernard Grofman & Jonathan Cervas, *Recent Approaches to the Definition and Measurement of Compactness* (2021), <https://ssrn.com/abstract-391249>.
- 101 Aaron Kaufman et. al., *How to Measure Legislative District Compactness If You Only Know It When You See it*, Am. J. of Pol. Sci. 65, 3, 533-550 (2021).
- 102 Austin, Tex., City Charter, art. II, § 3(E).
- 103 Santa Fe, N.M., City Code ch. IX, § 9-1.4.
- 104 COALITION HUB FOR ADVANCING REDISTRICTING & GRASSROOTS ENGAGEMENT, COMMUNITY REDISTRICTING REPORT CARD (2023).
- 105 Mich. Const. art. IV, § 6(13).
- 106 Austin, Tex., City Charter, art. II, § 3(E).
- 107 Los Angeles, Cal., Resolution providing the ballot measure text and the ballot title and question for a Charter amendment, https://clkrep.lacity.org/online/docs/2024/24-1100-S6_misc_2-4-24-24.pdf.
- 108 Colo. Const. art. V, § 44.3.

- 109 Long Beach, Cal., City Charter, art. XXV, § 2506.
- 110 Alaska Const. art. VI, § 6.
- 111 Cal. Const. art. XXI, § 2(d)(6).
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- 118 Barry Burden & Corwin Smidt, *Evaluating Legislative Districts Using Measures of Partisan Bias and Simulations* (Sage Open, 10(4)), <https://doi.org/10.1177/2158244020981054>.
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