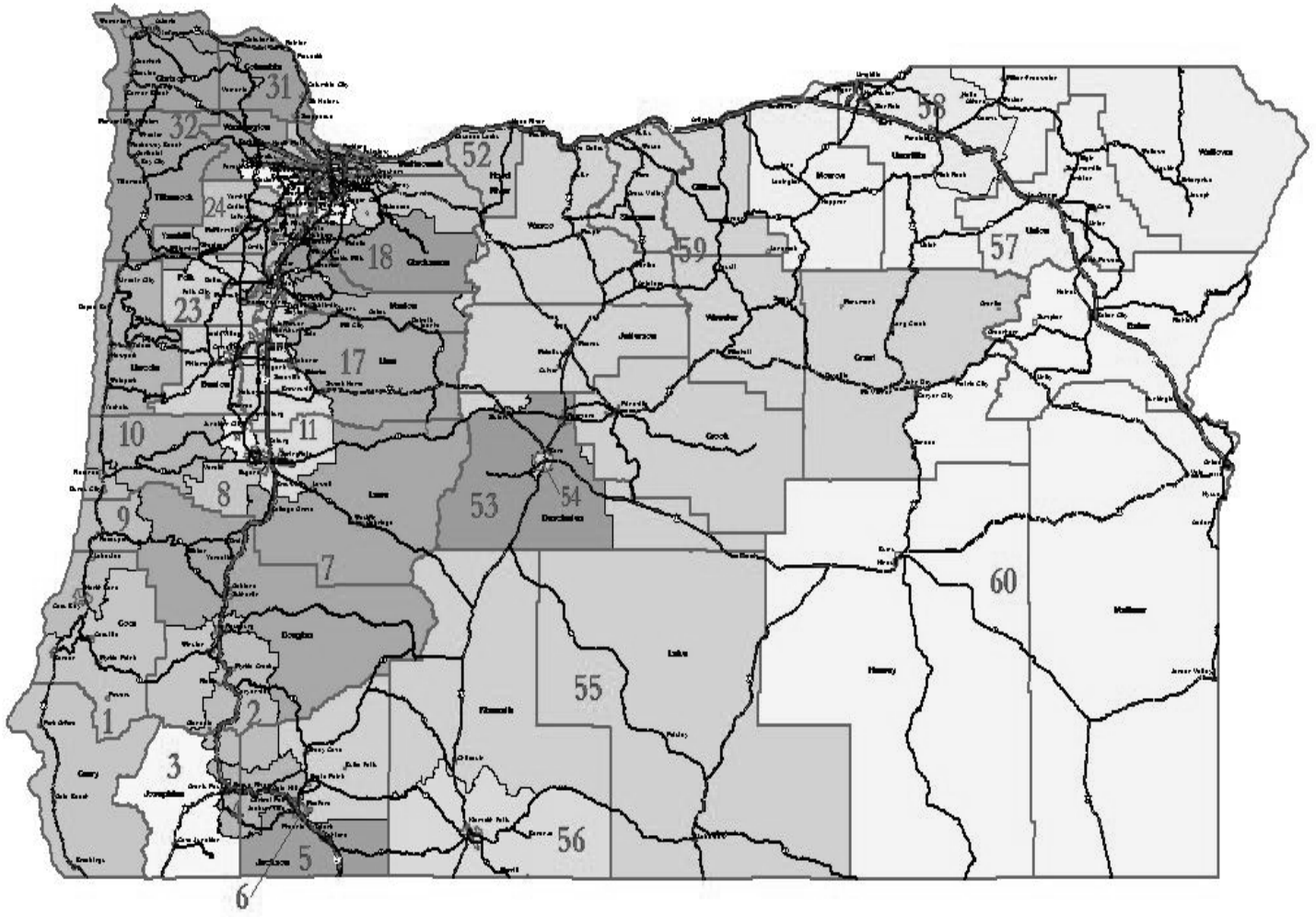


# REDISTRICTING IN OREGON



A Study of Current Processes and Future Possibilities



LEAGUE OF WOMEN VOTERS® OF OREGON  
EDUCATION FUND

1330 12th St. SE, Salem, Oregon 97302, Phone: 503-581-5722, Fax: 503-581-9403  
email: [lwvor@lwvor.org](mailto:lwvor@lwvor.org), web: [www.lwvor.org](http://www.lwvor.org)

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# 1. Introduction

The U.S. Constitution requires that states reapportion their congressional districts and state assembly districts after each federal decennial (10 year) census. The Constitution does not require a particular process for this action, and various states accomplish the task in different ways. According to Michael P. McDonald in *State Politics and Policy Quarterly*, Winter 2004, legislative redistricting is among the most intensely fought battles in American politics as American political parties seek to control government.

After each census, Congress by law reapportions the number of congressional seats to each state. Before the 1960s, each state legislature drew its congressional and legislative district boundaries without federal guidelines. In 1962, the U.S. Supreme Court concluded that apportionment issues could be resolved through the courts (*Baker v. Carr*<sup>1</sup>). In 1964, the Court decided that the concept of “one person, one vote” (See Glossary) should be the standard for redistricting purposes (*Reynolds v. Sims*<sup>2</sup>). Since these decisions were rendered, the redistricting process has become increasingly complicated, controversial and political. New laws have been enacted and more court cases have followed.

With the introduction of computers into the process in the 1970s, and the use of demographic and past voting data, legislatures have increasingly been able to reconfigure districts to favor particular political parties and/or incumbents. The practice (often called “gerrymandering”) at times may seem more like incumbents choosing their voters, than voters choosing their representatives. The increasing partisanship in legislatures has made the redistricting process even more controversial.

For many years, the League of Women Voters of Oregon (LWVOR) has had a significant interest in the redistricting process in Oregon. However, the LWVOR has relied on the 1982 LWVUS Statement of Position on Apportionment,<sup>3</sup> which only supports near-equal population for congressional districts and other governmental legislative bodies. More general positions about voter rights<sup>4</sup> also may apply. When asked about the details of the Oregon redistricting process, the LWVOR has been constrained by these limited national positions. The LWVOR undertook this study in order to achieve a better understanding of the Oregon redistricting process and to facilitate advocacy for possible changes. Through this study, the LWVOR seeks to answer the following questions:

- What should the criteria be for drawing district boundaries?
- Who should draw district boundaries?
- What should the schedule be for redistricting?
- What part should the courts play in the redistricting process?

This report focuses on the process for redistricting Oregon’s state legislative districts, although many of the same considerations could apply to the process the Oregon Legislature uses for congressional districts. In conducting the study, the LWVOR used written analyses, some of which are available on the Internet (see Bibliography), and personal interviews. Interviews with Judge Wallace Carson, immediate past Chief Justice of the Supreme Court, Phil Keisling, former Secretary of State, and Paddy McGuire, current Deputy Secretary of State, provided insight into the process from their perspectives. The experiences of these individuals who have worked on redistricting issues give depth to the sections on the role of the courts and on 1991 and 2001 redistricting activities.

## 2. Concepts of Representation

Our government is a representative democracy, in which citizens elect representatives to speak for their interests in governmental bodies. There are many possible kinds of representation. As an example, geographic representation emphasizes such things as businesses, farming, mining and roads as much as the people who reside in that geography. If these are what voters value most, then geographic representation is fine. However, it may be important in some communities to represent different ethnic groups, religious groups, economic classes, or other groups. Or it may

be more important to equitably represent political philosophies, perhaps as represented by political parties. In examining possible changes to our system of redistricting, it is worthwhile to consider all the different types of representation and what type is best for governance.

The type of representation we choose also has implications for exactly how we choose our representatives fairly. For example, it might be possible to use other types of voting systems, such as rank-order voting (see Glossary) to more fairly represent the interests of citizens. However, this report is limited to examining options for redistricting with our current voting system and with primarily geographic representation.



# 3. Redistricting – The Oregon Process

The Oregon Constitution requires that legislative redistricting be done in the legislative session of the year following each federal census. Article IV, Section 6 of the Constitution details the regulations for conducting the redistricting and gives authority to the Oregon Supreme Court to determine the final plan. (Although the Constitution uses the word “reapportionment,” the more commonly used term today is “redistricting.”)

## 3.1 Legislative Responsibility

The Oregon Legislature has been assigned the primary duty of redistricting the state’s 60 House districts and 30 Senate districts, as well as the state’s U.S. congressional districts. The Oregon Supreme Court has the authority to review the redistricting plan at each stage of the process. Under Oregon law, when the Legislature is unable to agree on legislative and congressional redistricting plans, the process for redrawing the districts is split. The Secretary of State becomes responsible for the legislative districts and the federal courts for the congressional districts.

The final redistricting plan must be completed by December 15 of the year following the national census.

In Article IV, Section 6, subsection (1) the Oregon Constitution requires that the Legislature determine the number of representatives and senators and affix them in districts according to population. When the Legislature enacts a plan, the Governor must concur or veto the plan by or before August 1. If the Governor concurs, the plan goes into effect then unless legal challenges are filed. These are sent directly to the Supreme

Court for judicial review. If all is deemed in order, the redistricting goes into effect September 1. If the Supreme Court determines that the plan does not comply with the requirements in subsection (1), its written opinion shall declare the plan void and specifically state the non-compliance. This opinion must be filed by September 15.

## 3.2 Secretary of State Responsibility

If the Legislature’s plan is voided, the Secretary of State must draft a redistricting of the state legislative districts, conduct a public hearing, file a transcript of the hearing, and file a corrected redistricting plan with the Supreme Court by November 1. The Court may order additional corrections; otherwise the new plan becomes operative on November 15.

Justice Carson believes that the process for the Court is unwieldy and awkward and frustrates people, but that a review process is necessary.

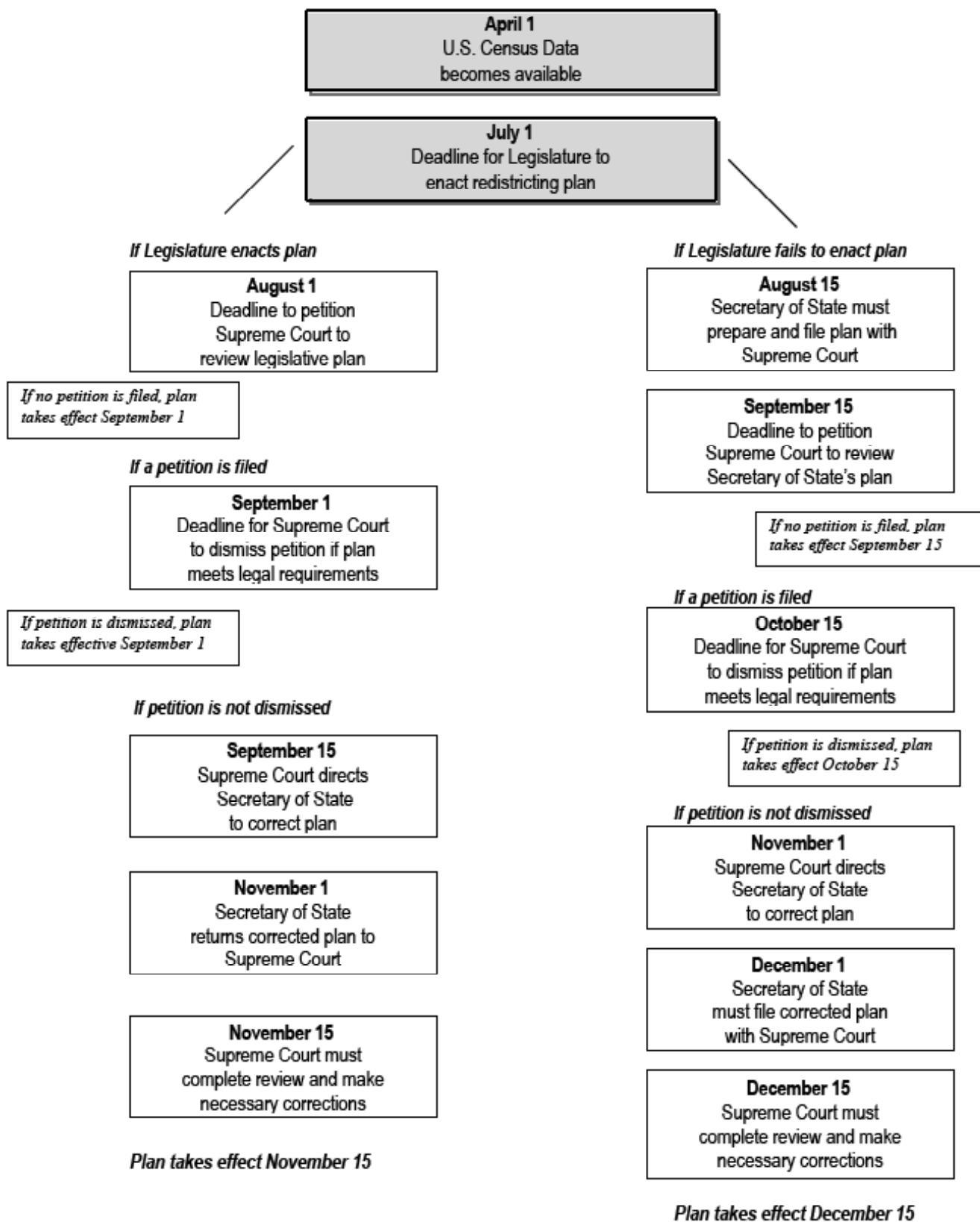
The Secretary of State is also responsible for drafting a plan if the Legislature fails to enact a plan by July 1. For 1971 and 1991, the Legislature was unable to agree on a plan by July 1. In 2001, the Governor vetoed the enacted plan. In these cases, Article IV, Section 6, subsection (3) requires that the legislative redistricting

must be done by the Secretary of State with a deadline of August 15 for filing with the Supreme Court. The Secretary of State’s plan goes into effect September 15 unless a petition to review is filed with the Supreme Court by that date.

## 3.3 Oregon Supreme Court Responsibility

As explained earlier, the Oregon Supreme Court reviews any legal challenges to the Legislature’s redistricting plan and also reviews the Secretary of State’s corrected plan. In addition, in response to a complaint petition, the Court is required to review the redistricting plan and the public record made by the Secretary of State when the Legislature fails to act. The Court

**2001 REDISTRICTING DEADLINES**  
Article 4, Section 6, Oregon Constitution



has until October 15 to review, and if it agrees with the Secretary of State's plan, the new redistricting plan goes into effect October 15. If not, it goes back to the Secretary of State for a corrected version, which must be filed by December 1. The Court then reviews the corrected version for compliance and adopts a plan by December 15.

The role of the Oregon Supreme Court in redistricting is not only defined by Article IV, Section 6 of the Oregon Constitution, but also constrained by the 14<sup>th</sup> Amendment to the U.S. Constitution, which requires equal rights for all citizens and representation based on numbers of citizens. The Court also evaluates redistricting plans according to the criteria described in Oregon Revised Statute (ORS) 188.010 (See Appendix 9.1), and the Secretary of State's Administrative Rules. The Supreme Court must provide written opinions. In addition the plan approved by the Court must maintain the ratio of population to senators and representatives.

According to former Chief Justice Wallace Carson, the Oregon Supreme Court's limited review focuses on finding whether the submitted plan deviates from the criteria required by ORS 188.010. The Court does not offer advisory opinions, nor does it change the plan unless a challenge is brought, and then not often. Justice Carson believes that the process for the Court is unwieldy and awkward and frustrates people, but that a review process is necessary. He also stated that the short timelines for the entire process are problematic.

## 3.4 Oregon Criteria

The criteria for redistricting in the Oregon Revised Statutes (ORS 188.010) include that the districts, "as nearly as practicable, shall be contiguous, be of equal population, utilize existing geographic or political boundaries, not divide communities of common interest, and be connected by transportation links." Furthermore, "no district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person. No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group. Two state House of Representative districts must be wholly included within a single state senatorial district." Finally, a guideline generally used in Oregon permits a deviation of no more than one percent in the population ratio between districts. (Federal

law permits a deviation of up to 10%.)

In 1964, the U.S. Supreme Court declared the doctrine of "one person, one vote." At that time Oregon adopted single-member House and Senate districts. Prior to that, county boundaries were often used as the district boundaries with some districts being multi-member districts. (See Glossary for definitions.)

## 3.5 Oregon Redistricting in 1991

In 1991 Secretary of State Phil Keisling followed the legislative redistricting process from the beginning and encouraged the Assembly members to come up with a plan. When none was agreed upon, there was an extremely tight timeline to draft a plan, hold hearings, write revisions, and deliver it to the Supreme Court by August 15. A computer redistricting application, a Geographic Information System (GIS), which allows very small population units to be examined, was in its early stages of development. It was a somewhat helpful and important tool, but it made the process more contentious because it increased the number of possible boundaries. None of the Legislature's proposed plans were used, and the Secretary of State's work was done from scratch. Criteria in the statute, such as equal population, contiguous districts, and no dilution of minority voters, were used as a base, and others were added such as preserving city and county boundaries, honoring pre-existing neighborhoods, and having a plus or minus one percent population deviation between districts. The Cascades were a natural barrier, with the plan finally settling on the Sandy to Snake River corridor. The Secretary of State convened a 12-member committee, which he determined was "balanced." These citizens reviewed criteria and maps, participated in the public meetings with the drafts, and proposed their own alternatives. Their work provided a level of objectivity for Secretary Keisling, limiting accusations of partisanship. There were few challenges, and the Court sustained only two. Oregon was one of the first states to complete its redistricting.

When interviewed for this study, Secretary of State Keisling raised questions about why the process splits congressional and legislative districts. His recommendations for change would include clarifying the crite-

ria and adjusting the deadlines to allow more time for plan preparation. For example, he suggested having the legislative plan deadline be June 1. The Secretary of State submitted some “lessons learned” process bills on redistricting for the 1993 Legislature, but no hearings were held. In considering how the process might be improved today, Secretary Keisling said that there needs to be a change in language and attitude about districts among legislators and others. A legislator should not think of a district as “mine,” he said, but they are part of the state and belong to the people who live in them. He thinks the ultimate point of redistricting is “capturing the feelings of belonging that people already have” and translating that sense of community into maps with lines. Criteria could be divided by law into three parts: constitutional requirements, legal requirements, and “above and beyond” goals.

## 3.6 Oregon Redistricting in 2001

In 2001 both houses of the Legislature appointed active redistricting committees. Computers with census data were available at the Capitol. Several plans were produced and discussed; the one that passed did so along political party lines. The Governor vetoed it. The Republicans, with a majority, tried to pass a resolution overturning the veto, which required a two-thirds vote. The Democrats refused to come back for the vote, staying on the Warm Springs Indian Reservation where the state troopers could not reach them. The veto held, and since it was almost at the July 1 deadline, Secretary of State Bill Bradbury took over the process.

Because of past history, the Secretary of State initiated a process for his office early in the session by checking the State Archives for the redistricting principles used by Secretary of State Keisling in 1991. The time frame was daunting because a plan had to be drafted between July 1 and July 15 in order to get through the public hearings and challenges for a final plan to reach the Supreme Court by September 1. In addition to the 1991 principles (see Appendix), Secretary of State Bradbury added “no division of cities with less than 58,000 population and serious consideration of the role that counties play in rural areas.” None of the legislative draft plans were used, and the 1991 district lines

were used as the beginning. Staff members were hired to work on the technical side of the plan and on assuring public access.

A primary part of the plan was public participation, and 22 meetings were held across the state to discuss the draft plan. The staff toured the state, taking testimony and posting it on the website each day, along with map proposals, notes and suggestions. Resources such as lists of newspaper subscribers, as well as geographical barriers, were used to identify communities of interest. Regional maps were overlaid on a state map, and a special geographer was hired. The Secretary of State refused to participate in any private conversations with anyone during the entire process. The drafts were changed significantly from the first until the final draft, and the public access went well. The final draft had a population deviation of only one percent between the legislative districts across the state.

Thirteen challenges were offered to the proposed 2001 plan, but the court sustained only one. That problem was recognized and corrected by Secretary of State Bradbury during the process. It occurred because the prison population in Sheridan was mistakenly put outside the city by the federal census. When the boundary of the legislative district within the city was moved to include the prison, then the district did not cross the city boundary.

According to Deputy Secretary of State Paddy McGuire, problems in the redistricting process include the following:

- an unrealistic timeline when the Legislature does not act,
- the splitting of the legislative and congressional redistricting plans,
- the lack of specifics in public hearing requirements,
- the need for more specific principles with specific descriptions,
- and the need for recognition that the process will be political.

His recommendation is that the process be taken away from the Legislature and that an elected official draft the plan.

## 4. Redistricting in Other States

Although all states undertake redistricting, they have adopted many different processes for drawing new district boundaries. Most states can, however, be grouped into two broad categories: the legislative model or the independent commission model. Some states use the same model for drawing state and congressional districts, while other states do not. Congressional redistricting is primarily handled by legislative action (38 states); the other states use commissions for congressional redistricting.

### 4.1 Legislative Model of Redistricting

Twenty-six states use the legislative process alone for legislative redistricting; seven states use the legislative process and a commission; and five states use other processes. Roughly half the states approach redistricting much as they would any other piece of legislation. Committees in the State Legislature propose maps, hold hearings to gather public input and debate the maps, and eventually pass a bill instituting the new boundaries. The Governor may then sign the bill into law or veto it. In the latter case, the Legislature may override the veto with a supermajority vote.

Some states add a few unique twists to this normal legislative process for the special case of redistricting. In several states, a commission serves as a backup in case the Legislature cannot agree on new maps. In Maryland, for example, it is the Governor who draws the initial map and then sends it to the Legislature for approval. In Mississippi and North Carolina, the Governor cannot veto a plan passed by the Legislature. In Florida and Kansas, plans that pass the Legislature are routed to the state Supreme Court rather than the Governor for final approval.<sup>5</sup>

Even in states with one party in control of the Legislature, there are political tensions and the potential for court action after the plan has been drafted and approved. As one might expect, the legislative model of redistricting can become very contentious when control of state government is split between the majority parties. When

partisan control of state government is divided, a bipartisan compromise may be reached with “bipartisan gerrymandering.” (See Glossary.) Sometimes a bipartisan compromise results from the expectation that the plan would go to a court considered to be “friendly” to one political party. When a legislature cannot agree on new maps, the task of redistricting is often turned over to the courts. Split legislatures commonly avoid this deadlock by agreeing that each chamber will draw its own map. Thus a Democratic-controlled senate can firm up its control of the chamber at the same time a Republican-controlled house retains control of its chamber. These redistricting plans may create a disadvantage for the incumbents of the minority party of each chamber in subsequent elections, but generally, the balance of power within state government is maintained.

### 4.2 Legislative Model: California

California is a fairly typical example of a state that uses the legislative process to conduct redistricting. Each house in the Legislature is responsible for redrawing its own districts and the two collaborate to redraw the congressional boundaries. The Governor has the power to veto these plans, but this veto can be overturned by a two-thirds vote in each house. There are no deadlines for completing redistricting in the California Constitution, but in the case of a deadlock, the state Supreme Court becomes involved to resolve the impasse.

All maps must create districts that are contiguous and meet the legal requirements of the 1965 Voting Rights Act. State legislative districts also must respect existing political boundaries, such as county boundaries. All maps may also be drawn to keep together communities of interest, but this consideration is not required.

The public can take a role in the California process in many ways. The Legislature makes available to the public a database that contains 10 years of election data that corresponds to census data. Information about the plans, including maps, is made available through the Internet. Citizens can attend public hearings, comment on specific maps, and engage in advocacy much as they would in any legislative process.

The results of the 2001 redistricting created very stable districts that protected incumbents. In the 2004 elec-

tion, all incumbents retained their seats. No seats, at either the state or congressional level, changed parties. Only six of 100 races for the state Legislature had competitive outcomes (a margin of victory 10% or less).<sup>6</sup>

## 4.3 Independent Commission Model of Redistricting

Twenty states use an independent commission at some point in the state redistricting process. Seven states have a commission that leads the way, and twelve others use a combination. A commission is used as a backup to legislative inability to draw a plan in seven states. These commissions take many different forms, but their creators share the common goal of reducing the potential for partisan, bipartisan, incumbent-protection, or other types of gerrymandering.

There are two types of commissions, known as the Ohio model and the Texas model. From 1851 on, Ohio placed state legislative redistricting authority in a three-member Apportionment Board composed of the Secretary of State, the Governor and the State Auditor. Eleven states use this model and over time have established different methods of selecting commission members.

The Texas model uses a commission as a back-up if the legislative process fails. Texas adopted this process in 1948. The commission has five members who are partisan-elected officials and who adopt a plan on a majority vote. Other states adopted this model in the 1960s and 1970s and use it now.

There are two key factors that affect the redistricting plan adopted by a commission (1) how its members are selected, and (2) how the decision is made to adopt the plan.

A variety of configurations for independent commissions are in use today. About one-third of the commissions seat an odd number of members and use a majority vote to make decisions. Another one-third of the commissions are composed of an even number of members plus a tiebreaker who is designated either at the outset of the process or at the time it becomes necessary. This tiebreaker may be selected by commission members themselves or appointed by outside parties, such as the state supreme court. A few even-number

commissions avoid the tiebreaker problem by requiring a supermajority vote. One state, Maine, requires that its commission make decisions unanimously.<sup>7</sup>

Commission members are usually appointed by government officials, such as the Governor, Secretary of State, or Chief Justice of the Supreme Court; legislative leaders, such as the Speaker of the House, President of the Senate, or minority leaders; or party officials, such as the state chairs of the two major political parties. Often an equal number of commissioners must come from each major political party. The designated “tiebreaker” member is often not affiliated with a major party or, alternatively, must be someone acceptable to all the partisan commission members. Several states stipulate that members cannot be public officials at the time they are appointed. Several states forbid members from running for elected office for two to four years after the redistricting process is completed.<sup>8</sup>

## 4.4 Independent Commission Model: Arizona

Arizona provides a much-discussed and fairly typical model of a state that uses an independent commission to perform redistricting. The Arizona Independent Redistricting Commission is composed of five appointed members and uses a majority vote (three of five) to make decisions.

The appointment process is complicated. First, the state’s Commission on Appellate Court Appointments nominates a pool of 25 candidates. During the previous three years, these candidates cannot: have been appointed to, elected to, or run for a public office (with the exception of school board); served as an officer of a political party; served as an officer of another candidate’s campaign; or served as a registered paid lobbyist. Second, the Speaker of the House, House minority leader, President of the Senate, and Senate minority leader each, in turn, appoint one commission member from the pool. As the legislative leaders make their appointments, they must keep two additional restrictions in mind: no more than two members of the commission may be members of the same political party and no more than two of their appointees may live in the same county. Finally, the fifth member of the commis-

sion is selected from the pool by a majority vote of the four appointed commission members. This person cannot be registered with any party already represented on the commission. He or she then serves as the commission's chair.

Commissioners must consider several goals spelled out in the law to make the district boundaries they draw: (1) comply with federal law, in particular the Voting Rights Act; (2) have equal population; (3) be geographically compact and contiguous; (4) respect communities of interest; (5) respect existing geographic and political boundaries; and (6) encourage competitive districts. Information about the homes of incumbents and candidates cannot be used during this process. The law also requires the Legislature to provide a minimum level of space and funding (\$6 million for the 2001 redistricting) to enable the commission to do its work.

Draft maps must be made available to the public for at least 30 days so that citizens, including legislators, can offer comments. Final authority for approving the maps rests with the commission.

Voters through the initiative process established this redistricting process in 2000. The League of Women Voters of Arizona was one of many civic groups who joined in coalition to place the measure on the ballot. Previously, Arizona used the legislative model to perform redistricting.

Election results indicate that the Arizona Independent Redistricting Commission created maps that did not significantly increase competition. Since the 2001 redistricting, 15 of the 16 U.S. House seats were retained by incumbents by a margin of victory of more than 20%. Almost half of the 30 state senate seats were uncontested; none of those seats that were contested was considered competitive.<sup>9</sup>

## 4.5 Independent Commission Model: Iowa

Iowa provides a second, unique model for redistricting. It combines elements of both the independent commission and legislative models for redistricting.

The Legislative Service Bureau takes the place of a more typical independent commission. The Legislative Service Bureau is a professional, nonpartisan support

office for the Legislature. Its normal work includes research and bill-writing assistance. In 1980, responsibility for drawing new district boundaries was added to its activities.

After a census, Legislative Service Bureau staff members prepare many alternative redistricting plans. The director chooses what he/she considers the best and presents it to the Legislature's Temporary Redistricting Advisory Committee. The Legislature holds at least three public hearings around the state to take public comment and then votes to accept or reject the plan without amendment. All three plans (U.S. House, Iowa House, and Iowa Senate) must be accepted as one package. If the package is rejected, the director picks a second plan and sends it to the Legislature for consideration with the same restrictions on amendment and adoption. If the second plan fails, then the director selects a third plan, and the process repeats itself one last time. If the Legislature votes down this third package, it may then amend the plan's boundaries or even create its own, new plan from scratch. In all instances, the final redistricting plan must be approved by the Legislature and is subject to veto by the Governor. If the final plan is not in place by September 1, the state Supreme Court draws the district boundaries.

In drawing the plan, the law requires consideration of these four criteria. They are, in descending order of precedence: (1) population equality, (2) contiguity, (3) unity of counties and cities, and (4) compactness. In addition, plan designers are forbidden from using political affiliation, previous election results, the addresses of incumbents, or any demographic information (other than raw population numbers for purposes of population equality) as they draw district boundaries.

In the three redistricting years since 1980, the Legislature has adopted one of the plans submitted by the Legislative Services Bureau (1981 – 3rd plan; 1991 – 1st plan; 2001 – 2nd plan). In addition, the adopted plans generated no court challenges in 1981 or 1991. In terms of competition, some analysts say the system works. In 1991, for example, the Democratic-controlled Legislature approved a plan that made it vulnerable to competition. By 2001, the Republicans controlled both houses of the state Legislature and four of the five congressional seats.<sup>10</sup>

Some point out that Iowa's success cannot be wholly

attributed to its unique system. The state's relatively homogenous racial demographic and less partisan political culture explains the ease with which its plans have been completed. Others believe that the competitiveness of Iowa's races is overstated. In 2004, all of its U.S. House incumbents were re-elected with an average margin of victory of 18%. Further, the incumbency rate has been nearly 98% since the process was reformed in 1980.<sup>11</sup>

## 4.6 How Often Do States Redistrict?

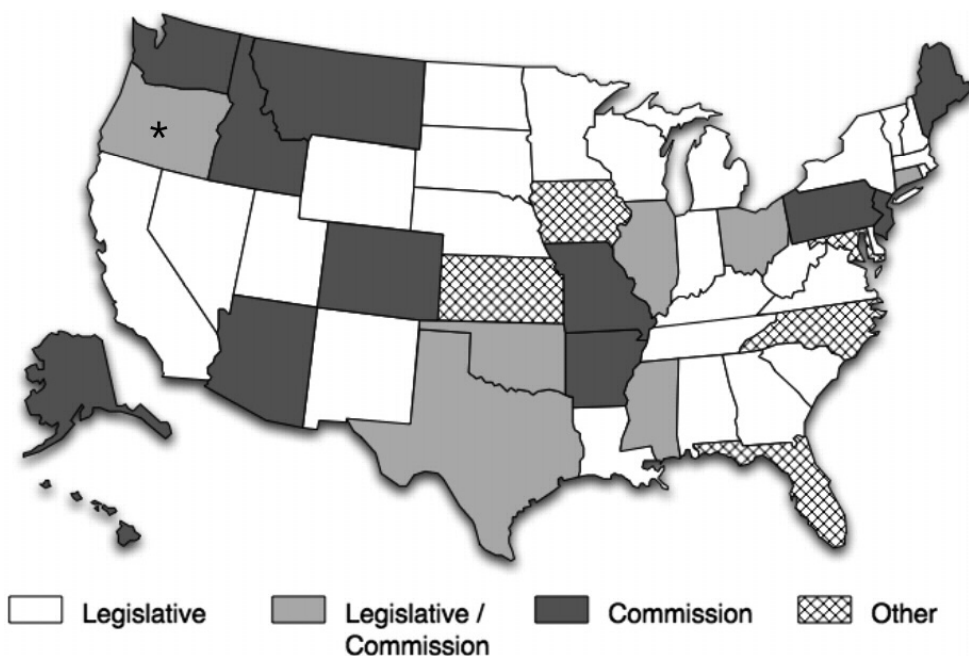
Traditionally, states have redrawn their district boundaries only once every 10 years, immediately after new population data was available from the U.S. census. Since 2001, however, a handful of states have undertaken mid-term redistricting. The best-known example occurred in 2003 in Texas.

The initial Texas redistricting process began in 2001 when a split legislature could not agree on new maps. A three-judge federal court, believed by some to be friendly to Republican Party interests, was charged with performing the redistricting. The court used the map created in 1991, which favored Democratic Party interests, as its starting point. The resulting new maps were viewed as favoring Democratic candidates in the

state Legislature, but the districts for the two federal congressional seats gained by Texas were viewed as favoring the Republicans.

By 2003, the Republicans had gained control of the state Legislature. Although the Texas Constitution does limit state redistricting to the session after the census, federal congressional redistricting is not bound by such a limit. Arguing that the new state Legislature was now prepared to fulfill their responsibility to craft a redistricting plan, the Republican majority drew new congressional boundaries that they hoped would increase their numbers in the U.S. House of Representatives from 15 to as many as 22 (of 32 total Texas seats). Democratic legislators fled the state to deny the Republicans the quorum necessary to vote, but eventually they returned during a special session and the new plan passed. In the 2004 elections, the Republicans did, indeed, win 21 seats.

A challenge to this mid-term plan reached the U.S. Supreme Court for resolution. The court's decision (*League of United Latin American Citizens v. Perry*) did not prohibit mid-term redistricting. As a result, many people wonder if mid-term redistricting will become a more common occurrence. Only about half the states have specific language in their constitutions or statutes that limit redistricting to once every 10 years.



**Drawing State Legislature District Boundaries<sup>12</sup>** \* In Oregon if the Legislature does not complete a plan, the Secretary of State has the responsibility.

# 5. Criteria

Various criteria are specified for redistricting in different states, but all criteria can be separated into two categories: (1) criteria required by various court cases or federal law, and (2) generally used criteria. The following criteria are those often specified in federal or state constitutions and laws. The various criteria conflict with each other, so in most states the redistricting criteria must be prioritized. Some political scientists and politicians believe that the criteria should be prioritized by their effect on the competitiveness of districts.

## 5.1 Required Criteria

### 5.1.1 Equal Population

In a series of cases, the U. S. Supreme Court has ruled that congressional and state legislative districts must be of equal population size. In subsequent cases, the Supreme Court has ruled that congressional districts must be perfectly equal in population, though small deviations are allowed if there is a compelling state interest. Texas' 1991 plan with 0.82% deviation was upheld, while a Kansas plan with 0.92% deviation was rejected, because a compelling state interest was judged to be present in one case, but not the other.

For state legislative districts, the U. S. Supreme Court has generally allowed larger deviations, upwards to 10%. Some state constitutions have specific equal-population clauses, and state supreme courts have interpreted the state constitutions to require less than a 10% deviation.

Population equality constrains gerrymandering, since there are fewer maps that can be created with equal population. However, allowing some flexibility in equal population can allow more competitiveness in districts and help meet other redistricting goals.

### 5.1.2 Voting Rights Act

Under certain circumstances, the federal Voting Rights Act (VRA) requires the drawing of special districts that have a majority of a minority population group. If a minority population is large enough to draw a district around it, and if the population has racially polarized voting patterns (i.e., racial groups voting for

candidates along racial lines), then a special majority-minority district is required. Originally, the 1965 VRA was designed to protect African-Americans, but was extended in 1982 to include "language minorities" such as Hispanics.

The effect of the VRA is to require racial and ethnic gerrymandering, in that it produces non-competitive elections within the majority-minority districts. Because minorities tend to vote at lower rates than non-minorities, then majority-minority districts need to contain a super-majority of minority voters in order for minorities to be able to elect a candidate of their choice. Furthermore, such an area usually already contains similarly partisan non-minority voters, so the result is a highly "safe" partisan district.

Districts created under the VRA often do not meet other criteria such as compactness. The districts are often contorted in shape in order to include enough minority voters. Then nearby districts also must be contorted.

### 5.1.3 Contiguous

Contiguity means that all parts of a district must be connected. Sometimes this is further specified as being connected by land or connected by more than a single point. Contiguity is the most widely accepted criterion for drawing districts. Every state constitution requires contiguity, as does the federal law that mandates single-member districts for Congress.

### 5.1.4 Single Member vs. Multi-Member Districts

The same law that specifies the process for reapportioning Congress after each census also requires that states draw a single district for each member of the House of Representatives.<sup>13</sup> There is no such requirement for state legislative districts and some states (including Oregon and Washington) have or have had multi-member districts.

Generally, the larger the district, the more difficult it is to finely slice district boundaries to effect a gerrymander. Thus, congressional districts are relatively harder to gerrymander. However, state legislative districts with their smaller populations are relatively easier to gerrymander. Thus, the use of multi-member districts

can be used to decrease the gerrymandering possibilities and increase the competitiveness of the districts. However, the use of multi-member districts, with at-large elections for each seat, can reduce most types of representation.

## 5.2 Generally Used Criteria

### 5.2.1 Compact

Compactness is another criterion for redistricting that is often encoded into state constitutions. It encapsulates, together with contiguity, the notion that a district should not have an odd shape. It also allows representatives to more efficiently communicate with their constituents. However, there is no accepted definition for compactness, and the federal courts have declined to adopt a more specific standard.<sup>14</sup> Furthermore, it is still possible to have gerrymandered districts that are relatively compact in shape. The following four criteria are more specific representations of the political goals of compactness.

### 5.2.2 Respect for Communities of Interest

Communities of interest may be defined by shared socio-economic, ethnic, geographic, or other interests. The definition should not include any relationship between a community and a political party, incumbent or candidate. Basing districts on communities with shared interests allows an elected public official to better represent these interests. This criterion promotes the representation of diverse views in a legislature, but may make compromise more difficult. Sometimes communities of interest correspond to existing boundaries, but this is not always the case, as communities of interest may sometimes be bounded by something as mundane as a road. The U.S. Supreme Court has accepted varying definitions of “communities of interest,” but state legislatures seldom define it. This

criterion may require states to hold citizen meetings in locations across a jurisdiction in order to determine where communities of interest exist. To satisfy this criterion, the redistricting process may engage traditionally underrepresented communities by drawing lines that do not result in the dilution of their voting strength.

There is a risk that communities of interest could be used as pretexts to justify district boundaries that do not further other legitimate objectives. In particular, competitiveness can be greatly reduced when too much

weight is given to communities of interest or existing political boundaries and geographic barriers. Consider for example a county that has 10 districts and a city with several identifiable communities of interest that would vote heavily for Democrats. Defining three districts in the city would respect the communities of interest and polit-

ical boundaries. However, packing Democratic voters into a few districts would make these districts uncompetitive and also allow a gerrymander to define seven districts where Republicans would likely win.

### 5.2.3 Respect for Existing Political Boundaries

This criterion is often included as a way to identify communities of interest because existing political boundaries are easy to identify on a map. This criterion also reduces the proliferation of political boundaries that confuse voters and make election administration more difficult. Sometimes communities of interest correspond to existing boundaries, but this is not always the case.

### 5.2.4 Respect for Geographic Barriers

Geographic barriers like mountains, rivers, lakes or freeways often separate communities of interest. Respecting geographic barriers makes it easier for candidates and public officials to communicate with their constituents.

The various criteria  
conflict with each  
other, so in most states  
the redistricting criteria  
must be prioritized.

## 5.2.5 Connection via Transportation Links

This criterion is also sometimes used to help identify communities of interest and to promote easier communication between candidates, public officials and their constituents.

## 5.2.6 Nesting

Nesting is where two or more adjacent smaller districts are wholly contained within the jurisdiction of a larger district. The current districting of Oregon nests two state representative districts within each state senate district. With Oregon's current five congressional districts and 30 state senate districts, six state senate districts could be neatly nested within each congressional district. Such nesting curtails possible attempts to gerrymander, reduces voter confusion over multiple political boundaries, and simplifies election administration. However, nesting can also lessen the competitiveness of the districts, as well as conflict with other criteria.

## 5.2.7 Not Favor Any Incumbent or Candidate

Those drawing the redistricting maps are prohibited from knowing the location of incumbents' or candidates' residences. Not prohibiting this can allow incumbent protection gerrymandering or allow the punishing of some incumbents for partisan disloyalty.

This and the following criteria seek to remove political considerations from redistricting, which might compromise partisan fairness and electoral choice. These improve competitiveness by limiting these two powerful interests, incumbent and partisan, both of which prefer safe districts. However, the U.S. Supreme Court has implicitly acknowledged that incumbency and partisanship are possible legitimate goals of the redistricting process, though the Court has ruled in *Davis v Bandermere* that there is a limit to partisan gerrymandering.

## 5.2.8 Not Favor Any Political Party

This criterion prohibits the consideration of voter registration and voting history data in defining redistricting maps. However, this could have a negative effect on competitiveness, since political data is necessary to determine the competitiveness of a district.

## 5.2.9 Competitiveness

If political data is used, then competitiveness among major political parties is the objective. This is also sometimes known as "partisan fairness. (See Glossary.) Competitiveness can be defined in various ways, but all definitions require the detailed use of voter registration or voting history data down to the precinct level. One definition is that a district has a history of being won by a margin of 10% or less. Another definition is that a district contains no more than a seven percent difference in the registration of voters of the two major parties. The modern use of computers makes these calculations easy.

Some reformers would have all other criteria judged on their effect on the competitiveness of each district in a redistricting plan. In this view "safe" districts are bad because they do not allow voters to hold their elected representatives accountable, responsible and responsive. Competitiveness is valued for its effect in yielding representatives more likely to be attentive to a broader community because the outcome in a district is not foreordained. If the voters can never "throw the bums out," eventually their legislatures may be filled with incumbents. The opposing view is that safe districts and long-term incumbency allow for stable representation and more seniority that increases the benefits for a district.

If all district maps are drawn to be lopsided and non-competitive, then political power shifts from the voters to the mapmakers. Pursuing competitiveness is made more difficult by the extent to which residential populations self-segregate by party. Many reformers believe that the principle of competitiveness should be followed wherever possible, even if it is not a feasible objective everywhere.

# 6. Technology and the Art of Gerrymandering<sup>15</sup>



In the early 1800s, Massachusetts Governor Elbridge Gerry drew a borderline around a politically friendly district that favored his political party. The result was a district the shape of a salamander. His name is now associated with the word “gerrymandering,” the art of drawing odd-shaped legislative districts to favor the political party in power.

Both parties engage in the practice of gerrymandering in states where they control the drawing of the districts to solidify, if not increase, their number of seats in the legislature. Over the years, this practice has been fine-tuned to an art through the use of technology. A short history of the use of technology over the past 30 years in redistricting helps to explain the process.

In the 1970s, district maps were drawn on paper and were done mostly with mechanical adding machines that crunched numbers. Districts tended to reflect larger units of geography, like counties and townships, because they were easy building blocks to use and tally. In the late 1970s, a Common Business Oriented Language (COBOL) computer program was used for creating districts based on flexible criteria.

In the 1980s, different colored punch cards were used for census blocks (similar to city blocks) and precincts. The cards would be loaded into a mainframe computer that would generate geographical data for redistricting. About 10 different district scenarios could be generated for a state. However, maps still needed to be drawn by hand. In a few states, mini-computers began to crunch the census block data and demographic data into various district plans and to map the results. Personal computers (PCs) did not come into existence until 1983, and there were no programs for Geographic Information Systems (GIS) at that time.

Later in the 1980s, the Census Bureau developed a database that would revolutionize the redistricting process. It created the first seamless digital map of the entire U.S. using new GIS software. Color coded maps could

now be drawn on a computer screen showing different levels of concentrations for any data item, like minority voting strength and concentrations of each party in a given area.

During the 1990s, large databases were created for redistricting as well as for political data analysis. Now trends in districts could be calculated and projected. The new software allowed users to see where concentrations of minority populations lived, and then to draw districts to encompass those concentrations. The 1991 round of redistricting saw an unprecedented increase in minority seats and showed how technology played a significant role in redistricting.

After the 2000 census, the increased power of the computer and GIS technology refined the redistricting process even more. The result was that over 1000 district scenarios could be drawn for a given state using such information as detailed socio-economic data and results from hundreds of elections in every precinct. Now the magnitude of the effects of shifting small areas from one district to another could be seen. The cost of the software decreased considerably from \$60,000 to \$75,000 in the 1980s to \$3,000 after the 2000 census. Now redistricting technology was becoming more affordable for states. For the redistricting process in Oregon in 2001, a computer program was used to help draw the district lines before the plan was taken around the state for public testimony.

The use of the computer and GIS technology makes it easier than ever to draw new district lines using a set of criteria. With hundreds of scenarios possible, this technology also makes gerrymandering easier, allowing the party in power to pack more of the minority party into fewer districts. The practice of partisan gerrymandering for redistricting includes the use of “stacking,” which places many opposition party supporters into a few districts, and “cracking,” which spreads opposition supporters across districts comfortably favoring the gerrymandering party, wasting opposition party votes in districts that their party cannot win.

The U.S. Supreme Court restricts states from drawing districts that dilute the influence of minorities. However, the court still gives the states much freedom to redistrict based on politics. Despite this, there is some evidence that the effects of gerrymandering disappear after two to three election cycles as demographics and political affiliations change over time.

# 7. Options for Oregon

It is quite clear that redistricting is a political process. Political parties try to gain power, minority groups seek representation, and incumbents try to keep their decision-making jobs. The 50 states practice two types of redistricting: the legislative process and the commission process. Details about how states use these two systems are in Section 4 of this report, “Redistricting in Other States.”

As explained earlier, the states have not settled on a single, best system for redistricting. The elements of any redistricting system – who, how, and when – can be mixed and matched in many configurations. This section outlines these possibilities along with their advantages and disadvantages as identified by scholars, politicians, citizens, and others. Any significant change to Oregon’s redistricting process, as previously described in Section 3, “Redistricting – the Oregon Process,” will undoubtedly require constitutional amendments and new statutes.

The current Oregon redistricting system for state legislative districts is legislative-based, but when no agreement is reached by the Legislature or when the Governor vetoes the adopted plan, the authority to develop a plan goes to the Secretary of State, and then to the Oregon Supreme Court. The Secretary of State can appoint a special commission to assist in drafting the plan, but is under no obligation to use one or to make that body nonpartisan.

Though there are exceptions, the legislative process in a state with one party control of the legislature usually results in a partisan gerrymandering, while a divided legislature or a unified legislature with a governor of the opposite party often leads to a bipartisan gerrymander. Bipartisan gerrymandering happens when the two major parties trade creating safe districts until they have to compromise on a very few competitive districts. This often takes the form of creating safe districts that protect incumbents, i.e., an incumbent-protection gerrymandering. Any kind of gerrymandering, where safe districts are created, reduces the competitiveness of the districts, and the voters lose

part of their ability to hold their elected representatives accountable.

In the commission systems, membership and voting rules produce three types of commissions, partisan, bipartisan and nonpartisan. A partisan commission usually leads to partisan gerrymandering. A bipartisan commission often leads to a bipartisan gerrymandering as explained above. A truly nonpartisan commission usually leads to a compromise redistricting that may be the best for voters’ ability to hold their representatives accountable; however, the problem is defining and recruiting commissioners who are truly nonpartisan. Often, a nonpartisan commission is really a balanced multi-partisan commission. In any commission system, the commission may not always represent the majority of the people in the state.

Court action remains the final word in redistricting if no agreement can be reached by either legislative or commission action. Challenges to plans are usually based on the redistricting criteria found in state and federal constitutions and statutes. The basic regulations require that districts have equal population, that all parts of the district must be contiguous, that a district not be drawn for the purpose of diluting the voting strength of a racial minority, and that each district elect only one representative.<sup>16</sup> Another constraint is the number of districts into which the political entity can be divided.

The requirement that electoral districts must have equal population may cause major changes to a district under redistricting. Migration between states as well as within a state may result in district population shifts, and the population imbalance in one district may cause a ripple effect across a state.

The Public Commission on the Oregon Legislature (PCOL) has made detailed recommendations about redistricting. (See Appendix 9.5.)

The charts on the following pages show the advantages and disadvantages of the various options.

## 7.1 Who should draw district boundaries?

Option	Advantages	Disadvantages
State Legislature	<ul style="list-style-type: none"> <li>• This can be an efficient process if legislature and executive are controlled by one party.</li> <li>• Legislators who adopt a map that is unacceptable to citizens can be held accountable and voted out of office.</li> <li>• An attempted partisan gerrymander won't last because demographics and political context change over time.</li> <li>• The inherently political nature of redistricting is made clear rather than cloaking it in falsely nonpartisan rhetoric and process.</li> <li>• This has worked in the past. If it's not broken, don't fix it.</li> </ul>	<ul style="list-style-type: none"> <li>• Partisan gerrymanders: Majority party can draw maps that will solidify or increase its number of seats at the expense of the minority party.</li> <li>• Incumbent gerrymanders: Legislators may exercise self-interest to create a plan that unfairly protects incumbents by minimizing competition.</li> <li>• There is an inherent conflict of interest if legislators draw their own districts.</li> <li>• Partisan conflict in a split legislature and/or executive can lead to an inefficient process and even a failure to create a map.</li> <li>• Redistricting can be used as a "bargaining chip" in unrelated negotiations that are part of the larger legislative process.</li> </ul>
Independent commissions	<ul style="list-style-type: none"> <li>• Maps drawn to protect incumbents are less likely when non-legislators draw boundaries.</li> <li>• If commission is bipartisan or nonpartisan in membership, partisan gerrymanders are less likely.</li> <li>• Independence of commission keeps redistricting from becoming bargaining chip in the larger legislative process.</li> </ul>	<ul style="list-style-type: none"> <li>• Because commission members usually are appointed by partisans, the commission may suffer from the same partisan conflict, on a smaller scale, as the legislature.</li> <li>• Appointees may represent the values of those who appoint them rather than the citizens.</li> <li>• Appointed commissioners are not directly accountable to voters.</li> <li>• A bipartisan gerrymander is still possible.</li> </ul>
Other government officials	<ul style="list-style-type: none"> <li>• This keeps redistricting out of the larger legislative process.</li> <li>• Maps drawn to protect incumbents are less likely when non-legislators draw the boundaries.</li> </ul>	<ul style="list-style-type: none"> <li>• Appointed officials are less accountable than legislators to citizens.</li> <li>• This will take time and resources away from the official's normal work.</li> <li>• If a single, partisan official draws the map, it may favor his/her own party (or even the opposition, if he/she is working to overcome charges of bias).</li> </ul>

Option	Advantages	Disadvantages
Courts	<ul style="list-style-type: none"> <li>Judges are more likely to be nonpartisan and act independently of partisan politics.</li> </ul>	<ul style="list-style-type: none"> <li>Judges are less accountable than legislators to citizens.</li> <li>Drawing district maps is far outside the normal scope of work of the judicial branch.</li> <li>The judicial branch needs to remain independent of partisan politics to maintain its integrity and impartiality.</li> <li>If courts have a direct role in redistricting, court appointments could become more contentious.</li> </ul>

## 7.2 What criteria should be considered when drawing district boundaries?

The authors of a redistricting plan may consider many criteria when creating a redistricting plan. In addition to debating which of these criteria should be used, reformers must also decide the priority order and weight that should be given to each one.

Option	Advantages	Disadvantages
Equal population	<ul style="list-style-type: none"> <li>Current federal law requires this.</li> <li>Each citizen's vote is given equal weight.</li> </ul>	<ul style="list-style-type: none"> <li>Requiring too small of a population deviation could make meeting the other criteria more difficult.</li> </ul>
Not dilute representation of minorities	<ul style="list-style-type: none"> <li>Current federal Voting Rights Act requires this.</li> <li>Demographics of legislature can better match demographics of population.</li> </ul>	<ul style="list-style-type: none"> <li>Strangely shaped districts can be drawn.</li> </ul>
Single member district	<ul style="list-style-type: none"> <li>Current federal law requires this for congressional districts.</li> </ul>	<ul style="list-style-type: none"> <li>This makes it more difficult for an elected official to represent anything but geographic interests.</li> </ul>
Nested districts	<ul style="list-style-type: none"> <li>Voters can more easily identify their districts.</li> <li>Fewer boundaries make composing a plan easier.</li> </ul>	<ul style="list-style-type: none"> <li>Meeting other criteria can be more difficult for house districts.</li> </ul>

Option	Advantages	Disadvantages
Contiguity	<ul style="list-style-type: none"> <li>• Current federal law requires this for congressional districts.</li> <li>• Gerrymanders, with their odd shapes, will be easier to detect.</li> <li>• It is easier for voters to identify their districts and participate in politics with their neighbors.</li> <li>• Legislators can represent their constituents more easily.</li> </ul>	<ul style="list-style-type: none"> <li>• This may break up communities of interest.</li> </ul>
Compactness	<ul style="list-style-type: none"> <li>• Gerrymanders, with their odd shapes, are easier to detect.</li> <li>• It is easier for voters to identify their districts and participate in politics with their neighbors.</li> <li>• Legislators may represent their constituents more easily.</li> </ul>	<ul style="list-style-type: none"> <li>• Precise definition of what it means to be compact is required.</li> <li>• Communities of interest may be broken up.</li> <li>• Gerrymandering is still possible.</li> </ul>
Competitiveness	<ul style="list-style-type: none"> <li>• If voters believe their parties' candidates have a chance of winning, turnout may increase.</li> <li>• Highly ideological candidates may be less likely to dominate than in districts that are safe for one party.</li> <li>• An increased possibility of election victory may encourage potential challengers and increase the number of races with more than one candidate on the ballot.</li> </ul>	<ul style="list-style-type: none"> <li>• Maximizing competitiveness may dilute minority voters or communities of interest.</li> <li>• No foolproof way exists to determine how competitive a district will be.</li> <li>• Past voting or party registration data must be considered.</li> <li>• The cost of campaigning may increase and discourage potential candidates.</li> <li>• Because voters sometimes self-segregate, oddly shaped or non-compact districts may be required to increase competitiveness.</li> <li>• A representative from a competitive district is less likely to be in office long enough to attain seniority.</li> </ul>
Respect existing geographical and political boundaries	<ul style="list-style-type: none"> <li>• People with common interests may be kept together.</li> <li>• Citizen participation with neighbors and media coverage of races may be easier.</li> </ul>	<ul style="list-style-type: none"> <li>• Other, more important, communities of interest may be split.</li> </ul>

Respect communities of interest	<ul style="list-style-type: none"> <li>Shared traits or values may be more relevant than geography in producing accurate representation.</li> </ul>	<ul style="list-style-type: none"> <li>There is no clear definition of community of interest.</li> <li>It is unclear how competing communities of interest shall be weighed against each other.</li> </ul>
Not favor any political party	<ul style="list-style-type: none"> <li>Voters in a minority party are more likely to vote if their candidates have some chance of winning.</li> <li>The drawing of “safe” districts is less likely so representatives are less partisan or ideological.</li> </ul>	<ul style="list-style-type: none"> <li>Partisan fairness may be a legitimate political goal.</li> </ul>
Not favor any incumbent or candidate	<ul style="list-style-type: none"> <li>Incumbents don’t have an unfair advantage over challengers</li> <li>Other criteria are more important than protecting incumbents or candidates.</li> </ul>	<ul style="list-style-type: none"> <li>If the legislature has a seniority system, citizens may favor incumbent protection to increase the influence of their legislator compared to those from other more competitive districts.</li> </ul>
Connection via transportation links	<ul style="list-style-type: none"> <li>Transportation links make it easier for legislators to represent their constituents.</li> <li>Voters are better able to communicate with each other.</li> </ul>	<ul style="list-style-type: none"> <li>Mass communication and modern media can ease communication between legislators and voters.</li> </ul>

## 7.3 How often should boundaries be drawn?

Traditionally, redistricting occurs once every 10 years after the national census results are released. As the recent mid-decade redistricting in Texas demonstrates, this is not the only possibility.

Option	Advantages	Disadvantages
Only once every 10 years	<ul style="list-style-type: none"> <li>Stability and thus accountability of representation for citizens and candidates are possible.</li> </ul>	<ul style="list-style-type: none"> <li>Rapid demographic changes may lessen validity of boundaries.</li> </ul>
More frequent redistricting	<ul style="list-style-type: none"> <li>Districts can better match demographic and political reality on the ground.</li> <li>If one legislature fails to produce a plan, a subsequent legislature might be able to agree on a plan.</li> </ul>	<ul style="list-style-type: none"> <li>It is costly in time and money to create each plan and defend it from any court challenges.</li> <li>The tug-of-war between parties for control of the legislature can worsen.</li> <li>Citizens may have trouble remembering who represents them if boundaries change often.</li> </ul>

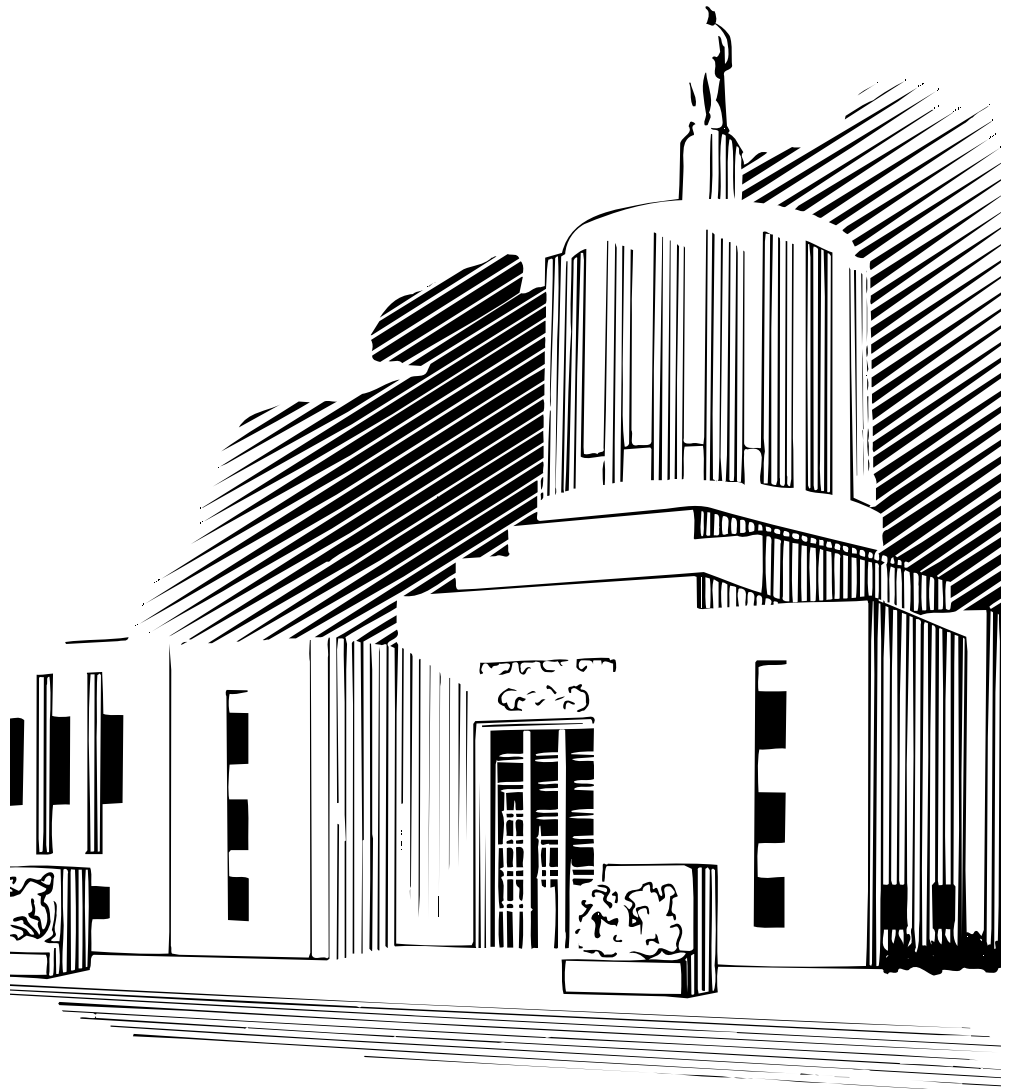
## 7.4 How should the public be involved in the redistricting process?

Opportunities for public participation in the redistricting process can vary in both quality and quantity.

Option	Advantages	Disadvantages
Public hearings with sufficient notice	<ul style="list-style-type: none"> <li>• Citizens and communities of interest can advocate for what they see as better boundaries.</li> <li>• Public gains confidence that the process was fair.</li> </ul>	<ul style="list-style-type: none"> <li>• Too many hearings may cause the process to become bogged down.</li> </ul>
All meetings open to public	<ul style="list-style-type: none"> <li>• The possibility that authors will make back room deals is reduced.</li> <li>• Public gains confidence that the process was fair.</li> </ul>	<ul style="list-style-type: none"> <li>• Some delicate negotiations may be more honest or open if conducted in private session.</li> </ul>
All records open to public	<ul style="list-style-type: none"> <li>• Citizens and communities of interest can use the same information to advocate for their proposals. Gives public confidence that the process is fair.</li> </ul>	<ul style="list-style-type: none"> <li>• Making all records available can be expensive.</li> </ul>
Computers and other technology available to public	<ul style="list-style-type: none"> <li>• Citizens and communities of interest can produce their own plans to demonstrate how boundaries could be better drawn.</li> <li>• Using the same technology gives the public confidence that the process is fair.</li> </ul>	<ul style="list-style-type: none"> <li>• Providing technology and support to the public can be costly.</li> </ul>
Non-judicial appeal process	<ul style="list-style-type: none"> <li>• Citizens and special interests can contest the plan without resorting to the courts.</li> </ul>	<ul style="list-style-type: none"> <li>• The timeline for approving the plan can be compressed or otherwise impacted.</li> </ul>

## 8. Conclusion

The redistricting of legislative and congressional districts is one of the most important issues for citizens in our representative democracy. How it is accomplished, as indicated by the information in this study, is equally important. In considering the implications of the various ways to redistrict, think carefully about which criteria should be used, who should control the process, and which ways might be used in Oregon to gain the required result of one person, one vote. The Oregon Legislature and, consequently, the Oregon voters have three years to change the current system or to keep it. The LWVOR has the opportunity to influence how it will be done.



# 9. Appendix

## 9.1 ORS 188.010 Criteria in Apportionment for Legislative Assembly and Congress

The Legislative Assembly or the Secretary of State, whichever is applicable, shall consider the following criteria when apportioning the state into congressional and legislative districts:

- (1) Each district, as nearly as practicable, shall:
  - (a) Be contiguous;
  - (b) Be of equal population;
  - (c) Utilize existing geographic or political boundaries;
  - (d) Not divide communities of common interest; and
  - (e) Be connected by transportation links.
- (2) No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.
- (3) No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.
- (4) Two state House of Representative districts shall be wholly included within a single state senatorial district. [1979 c.667 §1; 1981 c.864 §2]

## 9.2 Principles for Redistricting by Phil Keisling, Secretary of State, July 15, 1991

1. Fully incorporate cities within a single district when possible.  
Possible exceptions:
  - a. City boundaries cross a county line (e.g. Lake Oswego; Mill City)
  - b. Can be shown that compelling interest exists to divide. Example:
    - \* To better adhere to zero deviation and the other eight goals

\* To meet other community of interest needs

- c. If a city is divided, at a minimum it should be reunited in a Senate district, not further divided.

Possible guideline: The more dependent the city's economy is on resources in unincorporated areas, more justifiable to divide.

2. Respect for County Boundaries
  - d. Wherever practicable, a county that could be wholly incorporated in a single district should not be divided among more than two districts; if in two, then among three; if in three, then among four, etc.
  - e. Especially pay heed to county lines in more rural areas, where community activities are more tied to counties.

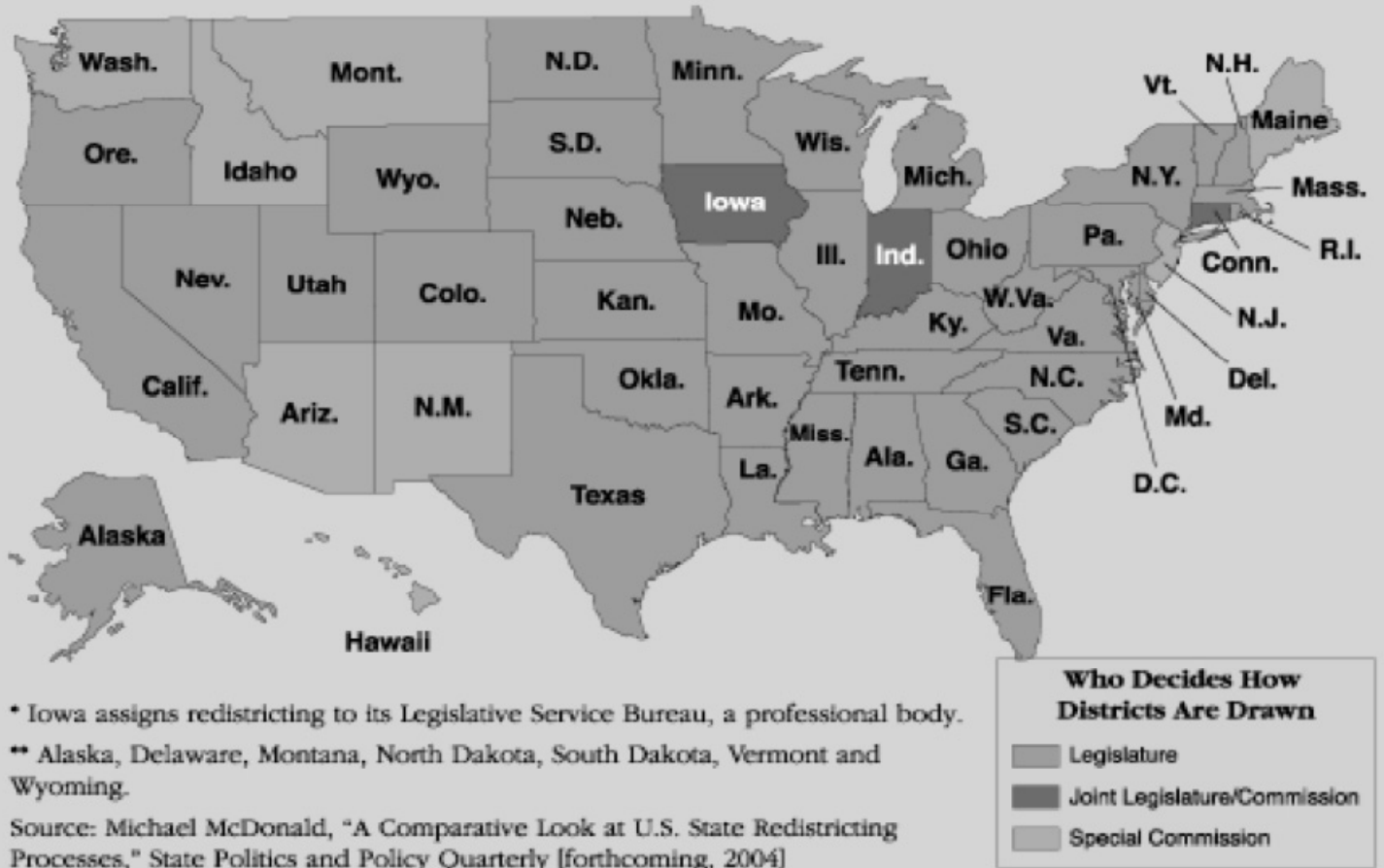
Possible exception: Cross county lines to maximize minority representation.

3. Minimize Population Deviation
  - f. West side of the Cascades, to  $\pm 1\%$  population deviation; more urban a district, the less deviation within that range.
  - g. For the approximately eight districts East of the Cascades, allow up to  $\pm 3\%$ , but only if:
    - \* Such deviation is necessary to meet other strategies, especially with respect to county boundaries and/or community of interest and the eight goals
    - \* Such deviation does not have adverse effects on the West or Districts with respect to these strategies and the eight goals
    - \* If East is short, explore desirability/legality of compensating with higher populations in the four Jackson/Josephine Districts that would logically complete the Second Congressional District

Possible Guideline: Among eight districts, under-populate those most likely to grow in next decade; close to zero (or slightly over-populate) those likely to lose population

## 9.3 Legislators Redraw Most Congressional Districts

In 40 states, the legislature or governor redraws new district lines, but the legislators have the final say. In three states, redistricting panels draw the maps and submit them to the legislatures for approval.\* In seven states, special commissions control both drawing and approving the maps. Seven low-population states have only one congressional district, so they do not regularly go through the process. \*\* A significantly larger number of states use independent commissions to redraw state legislative district lines.



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## 9.4 Public Commission on the Oregon Legislature —Process Committee— Redistricting Background 9/16/06

### Differences between legislative and congressional redistricting

Legislative Districts	Congressional Districts
<ul style="list-style-type: none"> <li>Timelines and deadlines in Oregon Constitution</li> </ul>	<ul style="list-style-type: none"> <li>No timelines or deadlines in statute or Constitution</li> </ul>
<ul style="list-style-type: none"> <li>If the legislature does not approve a plan, the Secretary of State must draw a plan</li> </ul>	<ul style="list-style-type: none"> <li>If the legislature does not approve a plan, there is no requirement for the Secretary of State to draw a plan</li> </ul>
<ul style="list-style-type: none"> <li>Challengers petition the State Supreme Court</li> </ul>	<ul style="list-style-type: none"> <li>Challengers petition a Federal Court</li> </ul>

### Legislative Action on Redistricting Plans

Year	Legislative Plan			Congressional Plan			Party of House, Senate Gov. and Sec. of State
	Approved	Vetoed	No Plan	Approved	Vetoed	No Plan	
1951			X			X	H-R; S-R; G-R; SoS-R
1961	X					X	H-D; S-D; G-R; SoS-R
1971			X	X			H-R; S-D; G-R; SoS-R
1981	X			X			H-D; S-D; G-R; SoS-R
1991			X			X	H-R; S-D; G-D; SoS-D
2001		X			X		H-R; S-R; G-D; SoS-D

## 9.5 The Public Commission on the Oregon Legislature Redistricting Recommendations

The Public Commission on the Oregon Legislature (PCOL), established by the 2005 legislature, has made comprehensive recommendations on changes to the Oregon redistricting process in their final report to the 2007 Legislature. PCOL has presented a draft legislative measure (LC 1583) to the 2007 Legislature that would establish the office of State Controller and revise the redistricting process. The nonpartisan State Controller would administer, manage and oversee state elections, elections policy, campaign finance disclosure, investigations of election and ethics issues, and legislative redistricting. The State Controller would manage redistricting with a five-member redistricting commission. PCOL determined that redistricting and related processes are functions that should be undertaken on a nonpartisan basis, in order to maintain

credibility.

A referral to voters would be required to change the constitutional provision that currently governs redistricting. If two-thirds of the House and Senate approves of the constitutional amendment referral, then it would be on the 2008 Primary election ballot. If passed by the voters, the amendment to Article IV, Section 6 would become effective January 1, 2011 in time for the redistricting after the 2010 federal census. The State Controller would appoint a five-member Redistricting Commission not later than December 1, 2010, after consultation with political parties and with individuals not affiliated with parties. The commission would have to complete the redistricting plan by June 1 of each year ending with the number one, with three affirmative votes required. The Legislature would have thirty days to act on the plan, and any amendments would require a three-fifth vote. If the commission failed to complete a plan by July 1, then the Supreme Court would adopt a plan. If the commission's or Legislature's plan did not comply with redistricting principles (criteria), then the Supreme Court would correct the plan by November 15.

# 10. Glossary

Apportionment	Assigning one or more representative seats to geographic areas or political jurisdictions according to some plan
Bipartisan gerrymandering	Trading the drawing of safe districts by two political parties to mutually protect their political interests
Competitive district	A district where candidates of more than one party have a chance of winning election
Communities of interest	Areas defined by shared socio-economic, ethnic, geographic, economic or other interests. The definition should not include any relationship between a community and a political party, incumbent or candidate.
Compact	The notion that a district should not have an odd shape, as is often the case with a gerrymandered district. There is no generally accepted definition of compactness.
Contiguous	All parts of a district must be connected, usually by land, and connected by more than a single point
Cracking	Spreading opposition party supporters across districts such that they cannot win
Incumbent protection gerrymandering	Drawing safe district boundaries that include an incumbent's residence and assure his or her re-election
Interim redistricting	Redistricting at a time other than that following the decennial census
Gerrymandering	Drawing voting districts that give unfair advantage to one political party, group or incumbent
Minority-majority districts	Concentrating members of a minority group into a district such that they have a majority to make it easier for members of that minority to win a seat
One person, one vote	The principle affirmed by the U.S. Supreme Court in 1964, which generally requires that each legislative district include an equal number of potential voters, so that each legislator represents the same number of people and the influence of each vote on government is as equal as possible
Partisan fairness	Using political data when drawing district boundaries to purposefully make districts about equally competitive between political parties
Partisan gerrymandering	Drawing enough safe districts for a political party that assures they will be elected in a majority of the districts
Racial gerrymandering	Gerrymandering to purposefully make minority-majority districts to compensate for racial discrimination against minority candidates

Rank-order voting	Like “ranked choice voting,” one of a group of voting methods that allow voters to number the candidates for a particular office in the order that they prefer them to win. This eliminates the “spoiler effect” and effectively gathers more information from voters so that the winners may more accurately represent voter preferences. An example is instant-runoff voting (IRV).
Reapportionment	Reallocation of one or more representative seats to a set of geographic areas or political jurisdictions, e.g., reassigning one or more seats to each county
Redistricting	Defining new boundaries for representative districts
Representation	The right to be represented by delegates in a legislative body
Safe district	A district drawn so that no other political party or other group is likely to have a chance of electing a representative for the district
Single member district	A district drawn to elect and be represented by only one legislator or congressperson
Stacking	Placing as many opposition party supporters as possible into a few districts so as to waste their votes on overwhelming victories
Superdistrict	A district established to elect and be represented by two or more legislators or congressmen

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- Paddy McGuire, Deputy Secretary of State. Interviewed August 8, 2006
- Phil Keisling, former Secretary of State for 1991 redistricting. Interviewed August 14, 2006

# 12. Notes

- 1 Baker v. Carr, 369 U.S, 186
- 2 Reynolds v. Sims 377 U.S. 533 (1964)
- 3 LWVUS, Impact on Issues 2004-2006, page 14
- 4 Mann, Thomas E. (2005, June), p. 4
- 5 McDonald, Michael P. (2004), p. 378
- 6 Weisbard, Ari, & Wilkinson, Jeannie, Center for Governmental Studies & Demos (2005), p. 5
- 7 McDonald, Michael P. (2004), p. 381
- 8 USC California Policy Institute (2005, July 5), p. 3
- 9 Fair Vote, Program for Representative Government (2005, June)
- 10 The Center for Voting and Democracy (2001)
- 11 Fair Vote, Program for Representative Government (2005, June)
- 12 McDonald, Michael P. (2004), p. 378
- 13 2 U.S.C. §2c
- 14 See for example, Bush v Vera
- 15 Brace, Kimball W. (2004, April 16); Ohlemacher, Stephen (2006, October 29)
- 16 2 U.S.C. §2c

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**Program Chair:** Jane Gigler

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**Study Committee:** Kathleen Shelley (Chair), Heather Drake, Kappy Eaton, Bea Epperson, Sharon Johnson, Norman Turrill

**Editing Committee:** Jeanne Armstrong, Diana Bodtker, Jane Gigler, Joan Haffner, Janet Markee, Kathleen Shelley Margaret Noel

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