

A Primer on Redistricting for the U.S. House of Representatives Positions
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Introduction

Advocates for fair representation in elected positions of our government should understand the legal underpinnings of what will be a redistricting process following the 2020 Census in the U.S. This paper provides information available from public sources to create foundational knowledge of requirements and issues that impact notions of what is “fair”. Where practical, sources are quoted verbatim and an internet link to the source is provided to assist the reader who may want to delve more deeply into the topic.

National Conference of State Legislatures (NCSL) – Nov. 24, 2018

“Federal requirements in brief:

All states, of course, must comply with federal laws. The most important federal principle is one person, one vote. Over time, court rulings have established that the equal protection clause of the U.S. Constitution applies to redistricting, giving rise to the one-person, one-vote rule that underpins modern redistricting. In the case of U.S. House districts, one person, one vote has been interpreted to mean the population as reported by the census must be divided equally between a state’s congressional districts, down to a person. In the case of legislative districts, the court’s interpretation has a bit of flexibility.

States can establish an acceptable level of “deviation” from exact population equality for districts. Many do not do so, in which case the goal is to draw districts as close to the same population as possible, with the amount of variance determined by legislative leadership. See NCSL’S [Redistricting Law 2010](#) book for details. (The 2020 version will be published in May 2019.)

The 14th Amendment and the Voting Rights Act, taken together, lead to the second federal principle: plans may not discriminate based on race, color or language minority. Again, see NCSL’s web pages for details.

As of this writing in November 2018, there is no federal court guidance on partisanship; while there may be a level that is determined to be unconstitutional in the future, so far none has been established.”

“These **traditional districting principles (or criteria)** have been adopted by many states:

- **Compactness:** Having the minimum distance between all the parts of a constituency (a circle, square or a hexagon is the most compact district).

- **Contiguity:** All parts of a district being connected at some point with the rest of the district.
- **Preservation of counties and other political subdivisions:** This refers to not crossing county, city, or town, boundaries when drawing districts.
- **Preservation of communities of interest:** Geographical areas, such as neighborhoods of a city or regions of a state, where the residents have common political interests that do not necessarily coincide with the boundaries of a political subdivision, such as a city or county.
- **Preservation of cores of prior districts:** This refers to maintaining districts as previously drawn, to the extent possible. This leads to continuity of representation.
- **Avoiding pairing incumbents:** This refers to avoiding districts that would create contests between incumbents.

These **emerging criteria** have been considered and adopted in a few states since 2000:

- **Prohibition on favoring or disfavoring an incumbent, candidate or party.** The prohibition in a given state may be broader, covering any person or group, or it may be limited to intentionally or unduly favoring a person or group. Details on these prohibitions are included in the state descriptions below.
- **Prohibition on using partisan data:** Line drawers, whether they be commissioners (California and Montana), nonpartisan staff (Iowa), or legislators (Nebraska), are prohibited from using incumbent residences, election results, party registration, or other socio-economic data as an input when redrawing districts.
- **Competitiveness:** Districts having relatively even partisan balance, making competition between the two major parties more intense. This criterion typically seeks to avoid the creation of "safe" districts for a particular party. For instance, the Arizona constitution (cited below) states that "to the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals."
- **Preservation of partisan advantage:** A North Carolina congressional redistricting committee required plan drafters to "make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina's congressional delegation."

This **future criterion** has been adopted by Ohio for legislative districts beginning in 2021:

- **Proportionality:** The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters. "

Source: <http://www.ncsl.org/research/redistricting/into-the-thicket-a-redistricting-starter-kit-for-legislative-staff.aspx>

What Process States Use For Redistricting

According to the Brennan Center for Justice at New York University Law School, as of January 30, 2019 states use a variety of processes for redistricting:

- a. State Legislatures – 31 states
- b. Advisory Commission then approval by state legislatures – 4 states (Utah, Iowa, New York, Connecticut)
- c. Independent Commission to draw and approve maps – 4 states (Arizona, California, Colorado, Michigan)
- d. Political Appointee Commission to draw and approve maps – 3 states (Washington, Idaho, New Jersey)
- e. Elected Politicians (appointed by Governor, party officials, or State Supreme Court) – 1 state (Arkansas)
- f. One Congressional District States – 7 states (Montana, Wyoming, North Dakota, South Dakota, New Hampshire, Delaware, Alaska)

Source: <http://www.brennancenter.org/analysis/who-draws-maps-states-redrawing-congressional-and-state-district-lines>

Maryland General Assembly on Reapportionment and Redistricting (2012)

“Legal Requirements

The U.S. Constitution and the state constitution requires Maryland to redraw its congressional and legislative district lines every 10 years following the census to maintain equal population. The Supreme Court ruled in Wesberry v. Sanders that Article I, Section 2, of the U.S. Constitution requires congressional districts to be as equal in population as practicable. The 14th Amendment and **Article III, Section 4** of the Maryland Constitution requires legislative districts be of substantially equal population.

Redistricting Process in Maryland

Maryland’s constitution also lays out the process by which legislative districts are redrawn. **Article III, Section 5** requires the Governor to conduct public hearings and introduce a legislative district plan on the first day of the legislative session in the 2nd year following each census. This will occur on January 11, 2012. The plan takes effect on the 45th day of the legislative session unless the General Assembly enacts its own plan before the deadline.

The Governor is not legally required to draft a congressional plan, however, the Governor traditionally introduces a congressional plan to the General Assembly for consideration. This year, a special session is anticipated to finalize congressional districts in time for the 2012 election cycle.”

Source: <http://mgaleg.maryland.gov/Other/Redistricting/Redistricting.htm>

Additional Sources

1. Five Thirty Eight – The Atlas of Redistricting - web article showing different maps for MD based on different redistricting criteria

<https://projects.fivethirtyeight.com/redistricting-maps/maryland/>

2. Amicus Brief to Supreme Court in the Wisconsin Gerrymandering Case written by Bernard Grofman and Ronald Gaddie; explains that advances in social science allow for measurement of 3 criteria that can be used to assess unacceptable levels of partisan gerrymandering: partisan asymmetry, lack of responsiveness, and causation:

<http://www.scotusblog.com/wp-content/uploads/2017/08/16-1161-ac-Bernard-Grofman.pdf>

3. Truthout: Support for Redistricting Reform Crossed Party Lines in 2018

<https://truthout.org/articles/support-for-redistricting-reform-crossed-party-lines-in-2018/>

4. The Hill: Democrats Make Legislative Gains Over GOP in Redistricting Battle, Nov. 27, 2018

<https://thehill.com/homenews/campaign/418356-democrats-make-legislative-gains-over-gop-in-redistricting-battle>