Legislative Action on Redistricting Commissions

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Who does redistricting? Traditionally, the task of redrawing state legislative and congressional district boundaries has been a core responsibility of state legislatures. And yet, judging from recent legislation (if not enactments), separate commissions to draw the lines are of increasing interest. Currently there are more than 40 bills in 17 states addressing redistricting commissions.

Proponents of commissions recommend using them as a way to remove politics from redistricting. Traditionalists scoff, saying that politics is inherent to this task, and that no one understands a state as well as its legislators.

Redistricting commissions are not new. The first commissions were established in the 1960s. Since then, every decade one or two states have adopted commissions, either to assist the legislature or even replace it.

State Action

Each redistricting commission is unique. For instance, Arkansas has the smallest commission, with only three members. Rhode Island has the largest, with 18 members. Missouri has two commissions, with a total of 26 members.

Even so, redistricting commissions can be grouped into at least three camps: advisory, backup and commissions with primary responsibility for drawing the boundaries. Within each category, commissions vary by size and, more importantly, by the qualifications required to serve, the appointment process and the vote required to pass a plan.

Advisory commissions. Advisory commissions draw maps, which are then presented to the legislature for a vote. Because the legislature votes and can amend the proposal, the legislature retains control. Maine, New York, Ohio, Rhode Island, Vermont and Virginia use advisory commissions to define boundaries for state and/or congressional districts. New York’s commission was adopted in 2014, and will be used for the first time during the 2020 cycle.

Backup commissions. Rules to establish backup commissions are included in five states’ constitutions. These commissions are called upon to help in the redistricting process only if the legislature can’t come to an agreement over its plans. Some of these, such as the backup commission in Connecticut, are used often; others are rarely used. Connecticut and Indiana’s backup commissions are used for drawing both state and congressional lines, while Illinois, Mississippi, Oklahoma and Texas have backup commissions just for state legislative districts.

Commissions with Primary Responsibility. Thirteen commissions have primary responsibility...
for drawing state legislative plans, seven of which also have the primary responsibility for drawing congressional plans. In these states, the legislature does not play a role in developing, approving, rejecting or amending the plans—those tasks are reserved for commissioners.

Even so, most of these commissions are still linked to the legislature in some way, often by legislative leaders who appoint commissioners. In Pennsylvania, for instance, majority and minority leaders of both chambers each select one member. Those four select a chair, who cannot be a public official. Governors and political party officials can also play a role in selecting members.

In recent years, there have been attempts to remove legislators almost entirely from the process, with what are sometimes referred to as “independent” or “citizen” commissions. California’s commission has the most complex process for selecting members. Members must be registered California voters who voted in two of the last three elections, continuously registered with the same political party or as a nonpartisan for the previous five years, and meet a bevy of restrictions about familial and financial ties to candidates and elected officials. They submit this information to the state auditor, who reduces the total applicant pool to three much smaller pools: 20 Democrats, 20 Republicans and 20 independents. Majority and minority leaders from both chambers are allowed to strike two people from each of the three pools. The auditor then selects at random three members each from the Democrat and Republican pools, and two from the independents. These eight members select six more, for a total of 14 members.

Another recent trend has been replacing “majority rule” to pass a plan to some higher standard. In California, three Democrats, three Republicans and three independents must vote yes for a plan to pass. For Ohio’s legislative redistricting commission, created in 2015, a bipartisan majority vote of four members (out of seven total) is required to adopt any final district plan.

Are commissions more successful than legislatures in passing good redistricting plans? Not necessarily. One way to define success is by whether the plans withstand scrutiny in the courts. On that basis, through the 2000 cycle, commission-drawn plans were neither more nor less likely to be challenged or survive challenges than plans drawn by legislatures.

In the 2010 cycle, when the California commission first drew the lines, they were relatively smoothly adopted. On the other hand, Arizona’s commission plans, which were also intended to be independent, faced several challenges, two of which made their way to the U.S. Supreme Court. In Arizona State Legislature v. Arizona Independent Redistricting Commission, the Court ruled that voters, via citizens’ initiative, can transfer redistricting powers held by the Legislature to an independent commission. In Harris v. Arizona Independent Redistricting Commission, the commission’s legislative redistricting plan was upheld after a challenge alleging that differences in the number of people in each district were unconstitutional. The case did not establish a “bright line” test for population deviation in legislative districts, as some had hoped.

Perhaps as important as who draws the lines is what criteria a state’s constitution requires, and whether these are provided in priority order.

**Federal Action**

All states must comply with federal requirements. First, the “one person, one vote” rule, requiring districts of equal population, stems from the U.S. Constitution. Second, the Voting Rights Act of 1965 prohibits “the denial or abridgement of the right to vote on account of race or color. The U.S. Supreme Court often has played a key role in determining whether maps are constitutional, and by doing so has governed redistricting throughout the nation—regardless of whether plans are drawn by legislatures or commissions.

### Did You Know?

- Iowa is a rare example in which the nonpartisan legislative staff draw the maps. The legislature can vote them up or down, but cannot amend them.
- Commissions use specific criteria—such as contiguity, compactness and communities of interest—just as legislatures do, to draw district maps.
- When either legislatures or commissions fail to create maps, courts sometimes step in to do the task.