



WYOMING LEGISLATIVE SERVICE OFFICE

ISSUE BRIEF

Legislative Redistricting

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by

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PURPOSE

The purpose of this Issue Brief is to provide general information on state legislative redistricting, as well as redistricting in Wyoming, to the Joint Corporations, Elections and Political Subdivisions interim committee.

REDISTRICTING OVERVIEW

The U.S. Constitution generally requires congressional and legislative districts to be apportioned based on population¹. The U.S. Supreme Court held in *Reynolds v. Sims* that the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution further requires state legislative districts to be drawn to reflect substantially equal populations.² Through its holding in the decision, the Court extended the 'one-person, one-vote' principle noting that one person's voting power should be as equal as possible to another person's voting power within the same state.³ The Court ultimately found that a ten percent standard deviation from the ideal district population size is not a prima facie violation of the Equal Protection Clause.⁴ While the Equal Protection Clause only requires periodic reapportionment, the Court found decennial reapportionment to be a rational approach to compliance with the Equal Protection Clause.⁵ Population changes recorded during the 2020 Census will

¹ U.S. Const. Art. I, § 2.

² See *Reynolds v. Sims*, 377 U.S. 533 (1964); see also <http://www.ncsl.org/research/redistricting/redistricting-and-the-supreme-court-the-most-significant-cases.aspx>

³ *Id.*

⁴ See *Gaffney v. Cummings*, 412 U.S. 735 (1973).

⁵ See *Reynolds v. Sims*, 377 U.S. 533 (1964).

necessarily result in new congressional and legislative districts in order to maintain districts with substantially equal populations.

Traditional principles of redistricting include:⁶

- Compactness: minimal distance between all parts of a district.
- Contiguity: all parts of a district are connected.
- Preservation of counties and other political subdivisions: county, township, and special district lines should be upheld.
- Preservation of communities of interest: upholding areas in which residents have common political interests that do not necessarily follow county or political subdivision boundaries.
- Preservation of cores of prior districts: maintaining previous districts to the extent possible.
- Avoidance of pairing incumbents: avoidance of creating a district in which two or more incumbents reside.
- Prohibition of favoring or disfavoring an incumbent, candidate, or party: incumbents, future candidates, and party-affiliation of candidates should not be favored or disfavored.
- Prohibition on using partisan data: incumbent residences, election results, party registration, and other socio-economic data sources should be avoided when redrawing district boundaries.
- Competitiveness: districts with relatively even partisan votership should be favored to encourage competition among candidates.
- Preservation of partisan advantage: maintaining current partisanship in each district.

While many of these principles are used by states to ensure equality across congressional and legislative districts, some states (e.g., California) rank the principles by priority to avoid potential disputes.⁷

By April 1st, 2021, the U.S. Census Bureau will release population information including city, township, voting-district boundary, and ‘Census-Block’ level data.⁸ Most states will redraw district lines before the candidate-filing deadlines for the 2021 or 2022 elections.⁹ With just one congressional

⁶ Wendy Underhill, NCSL, Redistricting Criteria (2019), <http://www.ncsl.org/research/redistricting/redistricting-criteria.aspx>

⁷ *Supra*, note 6.

⁸ Wendy Underhill, NCSL, Election Dates for Legislators and Governors Who Will Do Redistricting (2018), <http://www.ncsl.org/research/redistricting/election-dates-for-legislators-governors-who-will-do-redistricting.aspx>

⁹ *Supra*, note 8.

district, Wyoming will only redraw its legislative districts following the 2020 Census.¹⁰ The new districts will be used for the first time in the 2022 election.

REDISTRICTING IN WYOMING

Wyoming is one of twenty-two states that require the use of Census data for legislative redistricting and one of twenty-five states that require districts to be drawn by the state legislature.¹¹ While the Wyoming Constitution provides that “each county shall constitute a senatorial and representative district,” in 1991, the federal District Court of Wyoming found that specific provision of the Wyoming Constitution to be unconstitutional based upon the ‘one-person, one-vote’ concept required by the U.S. Constitution.¹² In 2011, the Joint Corporations, Elections and Political Subdivisions interim committee adopted redistricting principles for the Committee to adhere to when adopting redistricting plans.¹³ The principles included: districts that are contiguous, compact, and reflective of communities of interest; districts with a substantially equal population within a deviation range of ten percent; districts that follow county and census-block boundaries to the extent possible and consider geologic features; and districts that avoid diluting the voting power of minorities.¹⁴ The redistricting principles also stipulated that the House of Representatives shall have sixty seats and the Senate shall have thirty.¹⁵ The redistricting principles, and ultimately the Legislature, also required there be two contiguous House of Representative districts within each Senate district,¹⁶ called ‘nesting’. The Legislature put in place the concept of ‘nesting’ in 1992 in response to a court challenge to the 1991 redistricting plan. Currently, Wyoming Statutes 28-2-118 and 28-2-119 set forth the actual Senate and House of Representative district boundaries, respectively.

REDISTRICTING IN OTHER STATES

The responsibility of redrawing district boundaries is different in each state. Some state legislatures are responsible for redrawing district lines while other states use commissions. Redistricting commissions either serve an independent role, in which they have primary responsibility for

¹⁰ Wyo. Const. Art. III, § 47.

¹¹ Wyo. Const. Art III, §§ 3, 48.

¹² *Gorin v. Karpan*, 775 F.Supp. 1430 (D. Wyo. 1991).

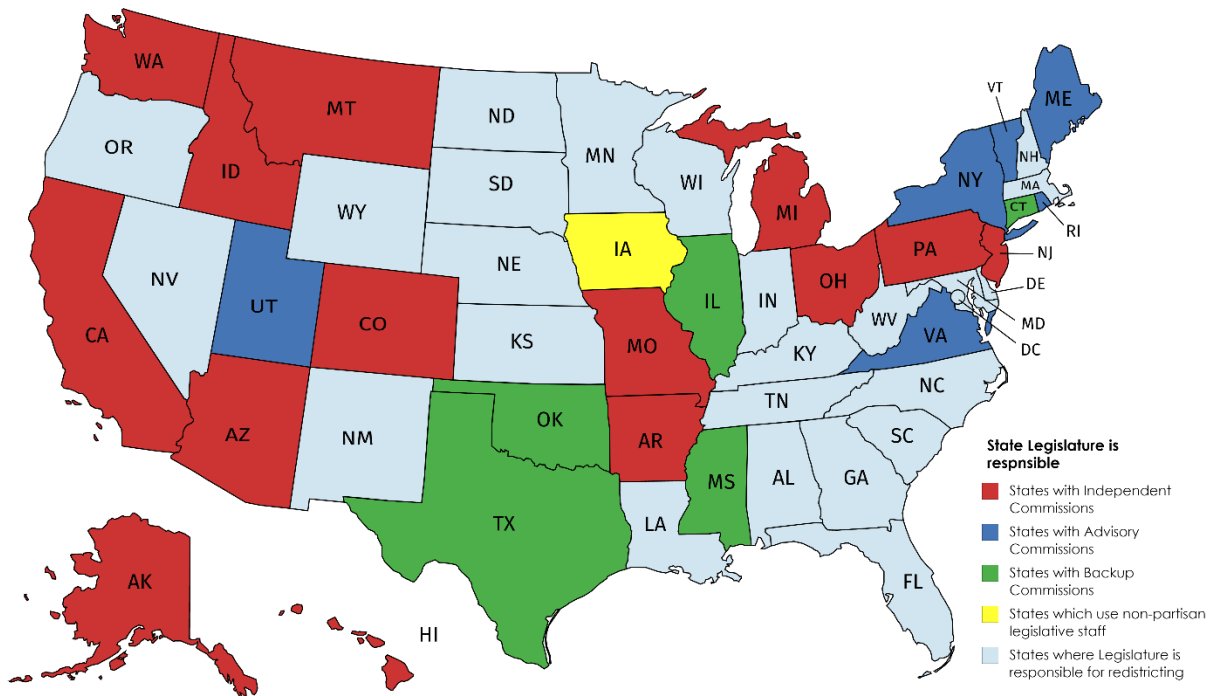
¹³ State of Wyoming Legislature, Redistricting Principles – 2011 (2011), <https://www.wyoleg.gov/Redistricting/Adopted%202011%20Redistricting%20Principles%204-12-11.pdf>

¹⁴ *Id.*

¹⁵ *Id.*; see also Wyo. Stat. Ann. §§ 28-2-118, 119 (2019).

¹⁶ *Id.* and Wyo. Stat. Ann. § 28-2-118 (2019).

redistricting; an advisory role, in which they assist the legislature in drawing maps; or a back-up role, in which the commission is only used if the legislature misses the submission deadline for new districts.



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Figure 1. Fourteen states have Independent Commissions, six states have Advisory Commissions, and five states have Backup Commissions. The remaining twenty-five states require state legislatures to redistrict.

<http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>

Colorado¹⁷

As of 2018, an independent commission made up by twelve commissioners is responsible for redistricting in Colorado. A primary reason Colorado created an independent commission for redistricting was to mitigate political gerrymandering. While Colorado's independent commission has full responsibility for redrawing district boundaries, it must abide by constitutional mandates including equal population across districts.

¹⁷ Colo. Const. Art. V, § 46-48.3.

*Idaho*¹⁸

Idaho also uses an independent commission for redistricting, consisting of six members designated by leaders of the two largest political parties in the state. The commission must file a redistricting plan to the Idaho Secretary of State within ninety days after the commission has been organized or after the necessary census data is available, whichever comes first. The Idaho Constitution also provides that districts must be contiguous and preserve county lines.

*Iowa*¹⁹

Iowa's redistricting process is unique in that non-partisan legislative staff redraw congressional and legislative district lines. After legislative staff members finish the proposed districts, a Temporary Redistricting Advisory Commission conducts public hearings and delivers the redistricting plan to the Iowa Legislature. The Iowa Legislature may reject the proposed new district, resulting in staff having to propose a new plan.

*Montana*²⁰

Montana uses a five-member independent commission for redistricting. Commissioners are initially chosen by majority and minority leaders of each chamber of the Montana Legislature and cannot hold public office prior to selection. Montana's redistricting commission must submit a plan for legislative redistricting to the Montana Secretary of State at the session following the release of sufficient Census data. Within sixty days, the Legislature makes necessary changes and approves the plan to become law, after which the commission dissolves. The commission must abide by the Montana Constitution, which specifies the need for compactness, contiguousness, equal populations, and nesting.

*Nebraska*²¹

Like Wyoming, Nebraska's Legislature is responsible for redrawing district lines. The Nebraska Legislature is unicameral, however, with just one chamber making up state government. The Nebraska Constitution stipulates that districts must be as equal in population as possible, be contiguous and compact, and must follow county lines wherever possible. Nebraska's Constitution

¹⁸ Idaho Const. Art. III, § V.

¹⁹ Iowa Legislative Services Agency, Legal Services Division, Legislative Guide to Redistricting in Iowa (2007), <https://www.legis.iowa.gov/docs/publications/LG/9461.pdf>

²⁰ Mont. Code Ann. § 5-1 (2017).

²¹ Nebraska Legislative Research Office, Redistricting 2011: Statutory and Constitutional Provisions (2010), https://nebraskalegislature.gov/pdf/reports/redistricting/2010_02_19.pdf

also provides a deadline for the completion of redistricting of one year prior to the next general election so that candidates can reside in new districts for at least one year.

*South Dakota*²²

In South Dakota, also like Wyoming, the state legislature is responsible for redistricting and is subject to a gubernatorial veto. The South Dakota Constitution requires equal population across districts, contiguousness, compactness, and nesting of senate and house of representative districts. While the South Dakota Constitution requires similar criteria to other states, it further requires that districts protect communities of interest, as well as geographical boundaries (e.g., rivers), and political boundaries.

*Utah*²³

Utah uses an advisory commission for redistricting, with seven commissioners appointed by the governor, the President of the Utah Senate, the Speaker of the Utah House of Representatives, and leaders of the largest minority political parties in each chamber. Each commissioner's term lasts until a successor is appointed, or until the commissioner's death, resignation, or removal. The advisory commission submits up to three redistricting plans to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Legislative Research and General Counsel. The Utah legislature then either amends or enacts the plan after making it available to the public.

REDISTRICTING TRENDS

Although redistricting occurs only once every ten years, trends across the United States shape the way each state addresses redistricting. A few criteria have gained attention, including: prohibiting the favoring or disfavoring of a political party, prohibiting the use of political data, encouragement of competitiveness, and preservation of partisan advantage.²⁴ Other trends in redistricting, which are gaining more momentum as states begin to prepare for the 2020 redistricting cycle, include independent commissions, and proportionality, public involvement, as well as gerrymandering.

²² S.D. Const. Art. III, § V.

²³ Utah Code Ann. § 20-19-201 (2018).

²⁴ Alexis Stangl, Minnesota Legislature, Redistricting Basics (2019), <https://comm.ncsl.org/productfiles/126372337/Alexis-Stangl-PowerPoint.pdf>

Independent Commissions

In 2018, Colorado, Michigan, and Utah approved independent commissions for redistricting.²⁵ In total, fourteen states will use independent commissions during the 2020 redistricting cycle,²⁶ each appointed differently by state leaders. The purpose of independent commissions is to remove politics from redistricting, or potential biases that arise from state legislatures redrawing district lines.²⁷

*Proportionality*²⁸

Proportionality is an emerging criterion for the upcoming redistricting period. Based on the proportion of partisanship across the state, the goal of proportionality is for each district's proportion of partisanship to match votership records during the previous ten years. For example, if a state's population has, on average, voted 60% Republican and 40% Democratic during each election of the past ten years, then each district should include 60% Republican and 40% Democratic votership population. Ohio adopted proportionality as a criterion for its legislative redistricting to begin in 2021.

*Public Involvement*²⁹

Across the U.S., the public increasingly seeks involvement with the redistricting process. Sixteen bills across eight states regarding public involvement in redistricting have already been introduced in 2019. The ways in which the public seeks involvement include: contributing their own map designs to redistricting officials, gaining access through public hearings and published information, receiving notice of meetings or other actions regarding redistricting, and seeking court review of enacted plans for redistricting. Public involvement can be achieved in an economical way through today's technology, including online forums, livestreamed meetings, or interactive maps.

Gerrymandering

Gerrymandering, of which there are many forms, occurs when districts are drawn to favor political, racial, or otherwise biased views, and to discourage competition among candidates. This last form of gerrymandering occurs when legislators attempt to protect their office, otherwise known as

²⁵ Wendy Underhill, NCSL, Redistricting Commissions: State Legislative Plans (2019), <http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>

²⁶ *Supra*, note 21.

²⁷ Matthew Domboski and Wendy Underhill, NCSL, Legislative Action on Redistricting Commissions (2017), <http://www.ncsl.org/research/redistricting/legislative-action-on-redistricting-commissions.aspx>

²⁸ Wendy Underhill, *supra* note 4.

²⁹ Wendy Underhill, Elections and Redistricting Team, NCSL, Public Input and Redistricting (2019), <https://comm.ncsl.org/productfiles/126372337/Redistricting-Basics-Public-Input.pdf>

incumbent-protection gerrymandering.³⁰ This year, the United States Supreme Court ruled on two cases pertaining specifically to political gerrymandering: *Rucho v. Common Cause* and *Benisek v. Lamone*.³¹ These two cases arose from political gerrymandering in North Carolina where district boundaries were drawn to favor Republicans and in Maryland where the districts were drawn to favor Democrats.³² Ultimately, in a 5-4 vote, the Supreme Court held that political gerrymandering cases present political questions which are beyond the reach of the federal courts.³³ In other words, such cases are non-justiciable political questions in federal courts and should be decided by the states.³⁴

If you have any further questions, please do not hesitate to contact LSO Research at 777-7881.

³⁰ Miles Rapport, The Kennedy School at Harvard, Mass., Redistricting Basics (2019), <https://www.facebook.com/NCSLorg/videos/483907555759998/>

³¹ See 588 U.S. ____ (2019), also available at https://www.supremecourt.gov/opinions/18pdf/18-422_9o11.pdf; See also 585 U.S. ____ (2019), also available at https://www.supremecourt.gov/opinions/17pdf/17-333_b97c.pdf.

³² *Id.*

³³ *Id.*

³⁴ See *Baker v. Carr*, 369 U.S. 186, (1962).