

Citizens Redistricting Committee

Comparison to Commissions in Other States

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This document shows how the New Mexico Citizens Redistricting Committee (“CRC”) compares to commissions in other states. Information on all the commissions is available online at:

<https://www.dropbox.com/s/88wvnh5ot04pa7i/Redistricting%20Commissions%20for%20Congressional%20%26%20Legislative%20Plans.pdf> (last updated Apr. 26, 2021)

Size. The size of congressional redistricting commissions in the 16 other states ranges from five (Arizona, Montana, Washington) to 16 (Virginia), with an average of ten and median size of nine. The size of legislative redistricting commissions in the 25 other states ranges from three (Arkansas) to 20 (Missouri), with an average of nine and a median of seven.

New Mexico’s seven-member committee is a little smaller than the average of commissions in other states, and at the median for legislative commissions.

Executive Branch Members. Arkansas and Ohio include the governor as a member of the commission; Arkansas, Mississippi, Oklahoma, and Texas include the attorney general; Arkansas, Ohio, and Mississippi include the secretary of state; Ohio includes the state auditor; Oklahoma includes the superintendent of public instruction and the state treasurer; and Texas includes the lieutenant governor, the comptroller of public accounts, and the commissioner of the general land office. Alaska, Colorado, Missouri, Utah, and Vermont have the governor appoint some members of the commission.

New Mexico has no executive branch members.

Judicial Branch Members. Alaska, Mississippi, New Jersey, Pennsylvania, Vermont, and Washington require the chief justice of the supreme court to appoint or be a member of the commission. Colorado has a panel of three retired appellate court judges create a pool of qualified applicants and, with some drawing by lot and some participation by caucus leaders, the panel selects the commissioners.

New Mexico requires one member appointed by the state ethics commission to be a retired justice of the supreme court or judge of the court of appeals.

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Legislative Branch Members. Every state but Arkansas, California, Missouri, New Jersey, Oklahoma, and Vermont provides for legislative leaders to serve as or appoint members.

Of New Mexico's seven members, four are appointed by the speaker and minority leader of the house and the president pro tempore and minority leader of the senate.

Public Members. Pennsylvania prohibits the chair from being a public official. Maine provides for the appointment of three "public" members. Virginia appoints a committee of five retired judges to review applications from members of the public to serve as a "citizen" commissioner, who must have voted in two of the last three general elections but not have been deeply involved in partisan politics or a close relative of someone who has. The committee submits the names of qualified applicants to the four caucus leaders, who each select at least 16 citizens to be considered for appointment by the committee. The committee selects two citizens from each slate, for a total of eight citizen members to match the eight legislators appointed by caucus leaders. By February 1 of the year ending in one, the commission must elect one of its citizen members to serve as chair. Illinois requires that four of the eight members not be legislators. Idaho and Washington prohibit any public official from serving on the commission. Montana prohibits public officials from serving on the commission and prohibits commission members from running for public office for two years after the redistricting. Missouri prohibits a member of the commission from serving in the General Assembly for four years after the redistricting. California prohibits all members and their immediate family from having engaged in various kinds of political or legislative activity within the ten years preceding their application for appointment; requires them to have voted in two of the last three statewide general elections; prohibits them from having changed their party registration within the five years preceding their appointment; and prohibits them from holding an appointive public office or working as a legislative staff member or lobbyist for five years after their date of appointment. Colorado, Michigan, and Utah have requirements similar to California's. Other states provide for appointments by legislative leaders or party officials and do not specify whether the appointees may be public officials.

New Mexico includes two members appointed by the state ethics commission who are not members of the largest or second largest political parties in the state. During the two years before appointment, a committee member must not have been: a public official; a candidate for public office; a lobbyist; an officer of a state or federal political party; a close relative of a member of congress, the legislature, or the public education commission; or an employee of congress, the legislature, the executive branch or other state office required to be redistricted by the committee.

Partisan Balance. Every state but Alaska, Arkansas, Mississippi, Oklahoma, and Texas provides for some form of partisan balance on its redistricting commission, either by requiring equal membership from the two major political parties or by giving some appointments to the minority party in the state or in each house.

Breaking Ties. Where the membership is otherwise divided equally between the two major parties, some device is used to break the ties that inevitably result. Montana has the four equally divided members choose the fifth, who is the chair. Connecticut and Hawaii have the eight equally divided members select the ninth; Hawaii makes this member the chair. New York requires the eight equally divided members to select two additional members. Maine has the two parties each appoint a public member, and those two appoint a third public member. New Jersey requires the

chief justice of the supreme court to appoint an eleventh member if the ten members chosen equally by the chairs of the two major parties fail to develop a plan by the deadline. Illinois gives the eight equally divided members one month to develop a plan; if they fail, the state supreme court selects two persons not of the same political party, one of whom is chosen by lot to be the ninth member. In Pennsylvania, if the four caucus leaders fail to agree on a fifth person to serve as chair, the chair is chosen by a majority of the supreme court. In Washington, if the four caucus appointees fail to appoint a fifth person to serve as the nonvoting chair, the state supreme court makes the appointment; if the four caucus appointees are deadlocked on a plan, the supreme court draws it.

California requires that five of its 14 commissioners be registered with the largest political party, five commissioners be registered with the second largest political party, and four commissioners not be registered with either of the two largest political parties. Colorado requires that four of its 12 commissioners be affiliated with each of the two largest political parties and four be unaffiliated with any political party. Michigan is similar, except that it requires five of its 13 commissioners to be unaffiliated with any political party.

In New Mexico, the state ethics commission appoints two voters who are not members of the largest or second largest political parties in the state, plus a retired appellate judge who serves as the seventh member and chairs the committee.

Districting Principles. Federal law requires that districts be equal in population and not discriminate against certain racial or language minorities. In addition, most states have set forth in their constitution, statutes, court decisions, or resolutions their own districting principles, as shown in the publication *Districting Principles for 2010 and Beyond*, <https://www.dropbox.com/s/igzdffkq4zn3ynj/DistrictingPrinciplesFor2010andBeyond-9.pdf> (last updated Apr. 26, 2021).

The most common of these are that districts must be composed of contiguous territory, be compact, and preserve the boundaries of political subdivisions. Twenty-seven states require that districts preserve communities of interest, 12 require that they preserve the cores of prior districts, 12 require that they avoid pairing incumbents, 16 require that they not favor an incumbent, 17 require that they not favor a political party, and five require that they be politically competitive.

Kansas and Nebraska impose a requirement of “understandability to the voter.” Minnesota, New York, and Washington require that they be “convenient.”

With regard to partisan fairness, states have imposed a variety of requirements. Eleven states have some variation of Florida’s language, which requires that plans and districts not “be drawn with the intent to favor or disfavor a political party.” Nevada’s 2011 court-imposed criteria authorized the Special Masters drawing congressional and legislative plans to “review the issue of representative fairness in the drawing of the maps, but are not to become enthralled in any representative, racial or partisan gerrymandering.” A 2015 amendment to the Ohio Constitution requires that, in legislative plans and under certain circumstances, “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 of Ohio.”

North Carolina's 2016 congressional district guidelines required the redistricting committee to "make reasonable efforts to . . . maintain the current partisan makeup of [the] congressional delegation," *N.C. Cong. Plan Criteria*, Joint Select Comm. on Cong. Redist. (Feb. 16, 2016), but a 2019 state court suggested that the General Assembly enact a new congressional plan using a process "that ensures full transparency and allows for bipartisan participation and consensus to create new congressional districts" that meet state constitutional requirements to not discriminate against the voters of a political party. *Harper v. Lewis*, [No. 5:19-CV-452](#) (E.D.N.C. Oct. 28, 2019). The General Assembly did so. N.C. SESS. LAWS [2019-249](#).

A 2020 amendment to the Missouri Constitution requires, for legislative plans, that the difference between the total "wasted votes" cast for candidates of each of the two major parties, divided by the total votes cast for candidates of the two parties, not exceed 15 percent.

New Mexico includes all the traditional districting principles, but does not require partisan fairness or that districts be competitive.

Deadlines. The constitutions of most other states include deadlines for when the commission must be formed, when it must report its first plan, and when it must complete its final plan. The deadline for formation ranges from September 1, 2020, (Alaska) to three days after the legislature convenes in 2023 (Maine). The deadline for an initial plan ranges from February 1, 2021, (Arkansas and New Jersey) to 120 days after the legislature convenes in 2023 (Maine). The final deadline ranges from one month after the census data becomes available (New Jersey) to 210 days after the legislature convenes in 2023 (Maine).

New Mexico requires the committee to be formed by July 1, 2021, and by August 1 in future years ending in zero. The deadline for the committee to recommend plans to the legislature is October 30, 2021, and September 1 in future years ending in one.

Need for Legislative Enactment. Of the 25 other states that have redistricting commissions, all but Maine, New York, Utah, and Vermont provide for the plan to become effective without legislative enactment.² Montana requires its commission to submit a legislative plan to the legislature before the plan may take effect. The legislature has 30 days to submit recommendations to the commission, and the commission has 30 days after receiving the legislature's recommendations to revise the plan, if it chooses. Maine requires the commission to submit its plan to the legislature for enactment, but if the legislature fails to enact the commission's plan or a substitute by a two-thirds vote within 30 days after receiving it, the supreme judicial court has 60 more days to adopt a plan. Vermont requires the commission to submit its plan to the general assembly by May 15 of the year following the census (90 days after the census data is released in 2021 only). The general assembly must enact the plan, or a substitute, during that biennial legislative session.

New Mexico requires the CRC to submit its proposed plans to the legislature, but the legislature need not act on them.

² Five states (Connecticut, Illinois, Mississippi, Ohio (for congressional plans), Oklahoma, and Texas) wait until the legislature has failed to meet a constitutional deadline before forming a commission.

Mandatory Judicial Review. The constitutions of Colorado, Florida and Kansas mandate that a redistricting plan for the legislature be presented to the state supreme court for a declaratory judgment of the plan's validity before it takes effect. Colorado also requires that a redistricting plan for Congress be presented to the state supreme court.

New Mexico does not mandate judicial review of a plan before it takes effect.

Application to Congressional Districts. While 25 states use commissions to draw legislative districts, only 17 states use a commission to draw congressional districts.

New Mexico directs the CRC to draw both congressional and legislative districts.