

LINES THAT DON'T DIVIDE

A City Club of Portland report on improving Oregon's redistricting process



City Club *of* Portland

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City Club members will vote on this report on Friday, February 17, 2012. Until the membership votes, City Club of Portland does not have an official position on this report. The outcome of the vote will be reported in the City Club of Portland Bulletin dated March 2, 2012 and online at www.pdxcityclub.org.

City Club *of* Portland

The mission of City Club is to inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship.

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EXECUTIVE SUMMARY

In 2011, the Oregon Legislature completed plans for redrawing the lines of legislative and congressional districts for the first time in a century without the help of the secretary of state or changes ordered by the courts. Legislative observers attribute this achievement to the close balance between Republicans and Democrats in both chambers and the personalities of the leaders who chaired the redistricting committees. Both factors contributed to a bipartisan and cooperative redistricting process.

The recent success of Senate and House members in Salem, however, masks what has been one of the most contentious and partisan activities of Oregon's elected lawmakers. While legislators exhibited bipartisan cooperation and openness during the 2011 redistricting process, more typically, charges of bias, unfairness and gridlock characterize redistricting efforts. Many see redistricting as exacerbating excessive partisanship in Salem.

In February 2011, City Club of Portland formed a study committee charged with examining Oregon's redistricting process and history. By the end of its twelve-month investigation, our committee concluded the following:

- Partisanship, real or perceived, is inherent in redistricting when it is under the control of a partisan legislature.
- While lawmakers have the best, detailed information about the people and characteristics of the districts they represent, allowing legislators to draw legislative lines leaves them open to conflict of interest charges – that they are able to choose their voters instead of vice-versa.
- The current redistricting process could result in serious partisan gerrymandering in cases where both houses of the Legislature and the governor's office are controlled by the same political party.
- Oregon law is silent on the responsibility, timing and process of congressional redistricting. It does not specify when congressional redistricting must occur, does not assign legal responsibility for congressional redistricting, nor does it spell out which court is designated to review congressional plans. These gaps could open the process to abuse.

- Oregon’s standards for the execution of redistricting, particularly “the communities of common interest” standard, are subject to varying interpretation and in some cases provide leeway to defend on statutory grounds what is in reality a partisan redistricting plan.

Committee members considered multiple ways of addressing these problems, including alternative methods of redistricting. Our committee concluded that an independent,

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n o n p a r t i s a n commission is the best and most effective way to improve Oregon’s redistricting process because it would eliminate the conflict of interest inherent in the present system as well as the potential for partisan abuse. An independent commission would have the authority to create the original

redistricting plan itself and go furthest in removing partisan politics from the process. That is the case particularly in the instance where a legislature and governorship are controlled by one party bent on achieving a highly partisan redistricting plan.

We therefore recommend that a constitutional amendment, by legislative referral, be put before Oregon voters to establish such an independent commission along with provisions regarding its composition, operation and funding. That commission would be responsible for determining the district lines of Oregon’s House of Representatives and Senate and of Oregon’s United States congressional representatives.

The commission would take input from lawmakers and the public but be responsible for drawing congressional and legislative district boundaries in all cases. The commission would draft maps, hold hearings around the state on its work and issue a report justifying its final legislative and congressional lines against Oregon’s constitutional and statutory redistricting standards.

Commission members could not run for or serve in partisan-elected offices, or be political party officers or

registered lobbyists, during, and for five years before and after service on the commission. The commission would include four members chosen by legislative leaders, as well as an additional five members chosen by the four initial members.

The redistricting commission would have financing independent of the normal legislative budget process and operate under strict rules of transparency. As is the case now, redistricting plans would be subject to court review if challenged by any citizen.

In addition, our committee believes that Oregon’s statutory redistricting guidelines could be improved by adding an additional criterion: minimal disruption to existing district boundaries in order to preserve continuity of representation. The redistricting standards now in the statute should be included in the referral and added to the state constitution.

Oregon has not experienced political polarization to the degree seen in Congress and some other state legislatures. Though the next round of redistricting is a decade away, the time to improve the process is now. As 2021 approaches, it becomes more likely that partisans who see opportunity for political gain in the Legislature and congressional delegation will

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block efforts to establish an independent redistricting commission. Oregon may have a brief window to adopt a nonpartisan redistricting process while the Legislature is still controlled by lawmakers who put the state’s interest before partisan politics.

INTRODUCTION

Redistricting is the process through which the district boundaries of elected officials of representative government – federal, state, regional and sometimes local – are redrawn to conform to changes in population. It is distinct from *reapportionment*, which is the decennial adjustment of the number of representatives from each state in the U.S. House of Representatives, according to national shifts in population.

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In January 2009, City Club of Portland issued “Bridging the Partisan Divide: A

City Club Report on Reducing Excessive Partisanship in the Oregon Political System.” The report examined the topic of redistricting within the context of a much larger exploration of the nature of partisanship in the Oregon Legislature. The report concluded that while it was impossible to determine the motivations of elected officials, as long as redistricting was in the hands of partisan officials there would be the perception of excessive partisanship, which could in turn increase animosity and further partisanship.

One recommendation in City Club’s 2009 report was that the Legislature refer a constitutional amendment to voters establishing a nonpartisan redistricting commission, removing the responsibility for redistricting from lawmakers. A second recommendation was that City Club establish a study committee to draft a detailed prescription for such a commission.¹

In 2011, City Club’s Board of Governors heeded the recommendations in the 2009 report by authorizing a new study committee to conduct an even deeper investigation of Oregon’s redistricting process. Besides asking the new study committee to address the history and challenges of redistricting in Oregon and in other states, the Board of Governors gave the committee an opportunity to reassess whether Oregon should indeed utilize a redistricting commission and

if so, what role it should play, how it should be formed and what rules it should follow.

STUDY PROCESS

Our study committee, formed in January 2011 and composed of 13 members, began its work in earnest in February 2011 and met nearly every week for twelve months. We reviewed the history of redistricting nationally and in Oregon. We studied redistricting processes in other states and focused on diverse commission models in seven states: Arizona, California, Idaho, Iowa, Maine, Texas and Washington. We examined redistricting guidelines in Oregon and other states. We heard testimony on redistricting from 17 witnesses, including the current and three former secretaries of state, the current and a former president of the Oregon Senate, a senior political reporter and House and Senate leaders of the 2011 redistricting effort. Our members also attended redistricting committee meetings of the Oregon Legislature and reviewed books and academic and news articles on redistricting.

LIMITS OF GEOGRAPHIC REPRESENTATION

In the study charge to our committee, we were asked to address the fact that the Oregon Legislature does not reflect the gender or cultural diversity of the state. However, our committee ultimately concluded that without alternative forms of representation, lines on a map alone cannot create a Legislature or congressional delegation that fully represents Oregon’s demographics. Geographic boundaries capture only the interests of groups and communities within them. A community or interest group dispersed geographically, while significant as a whole, may be disadvantaged because it is not concentrated within one representative district.²

While it is important to consider the extent to which our Legislature and congressional delegation reflect the demographic characteristics of Oregon, such as race and gender, our committee concluded that we cannot expect the redistricting process to address this issue effectively as long as we rely solely on our current form of geographical representation. The potential of other forms of representation, such as multi-member districts or proportional representation, was outside the scope of the study charge and this committee’s research.

BACKGROUND

A NATIONAL PERSPECTIVE

The framers of the U.S. Constitution forged a republican form of government, granting the people the right to elect representatives who would speak for them and ultimately answer to them. Article I of the U.S. Constitution specifies that each House member be elected every two years, and establishes a decennial census with the primary purpose of apportioning House members among the states, according to population.

Though the results of the decennial census dictate the number of House members from each state, the states themselves (by tradition, state legislatures) determine the shapes of the districts that each House member represents. By tradition too, state legislatures draw the lines for their own representatives, based primarily on results of the U.S. Census.

Drawing the lines of congressional and state legislative districts has been controversial since the early days of the republic. In the colonial era, governments used both land units and population as measures of apportionment. County-based systems of redistricting led to great differences in the number of people represented by each legislator. The U.S. Constitution incorporated both land-based (the Senate) and population-based (the House) representation. Most states entering the union used population-based representation in redistricting, but some used a combination of both. Malapportionment – unequal representation by population – was common as states limited the impact of population shifts to urban areas, preserving rural power in state houses.³

Controversial too was the practice of *gerrymandering* – drawing political lines to favor incumbents or particular political parties. The term refers to Elbridge Gerry, the Democratic-Republican governor of Massachusetts who in 1812 sought to draw legislative district lines in his state in such a way as to ensure his party's dominance of the state senate. The resulting map prompted an artist to add wings, claws and a beak to a Boston-area district. The press called the creature a "Gerrymander."⁴

Gerrymandering is still practiced today and takes many forms. *Bipartisan gerrymandering* occurs when political parties agree to draw lines favoring incumbents, thus discouraging newcomers and thwarting voters' desire for change. *Packing* is a form of gerrymandering that occurs when lines are drawn to corral voters of one party

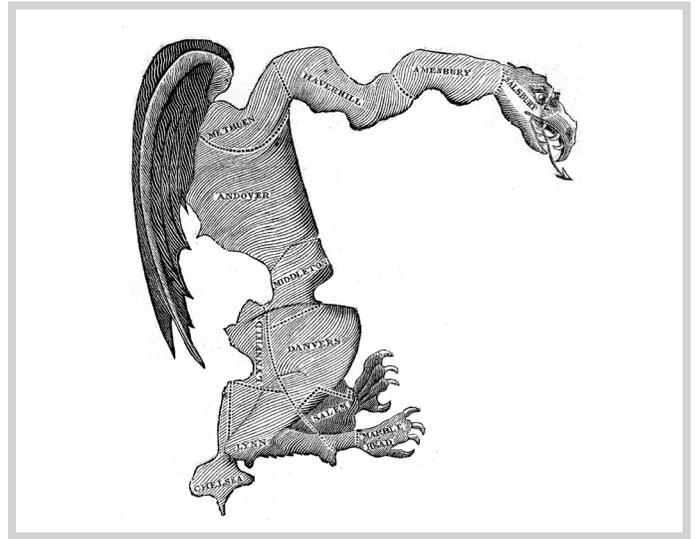


Figure 1: Elkanah Tisdale's original Gerrymander, as it appeared in the Boston Gazette, March 26, 1812.

substantially in one or more districts, thus diluting their power to affect the vote in other districts. *Cracking* is a form of gerrymandering that dilutes partisan voters' strength by scattering them among several districts. These techniques have also been used to concentrate or dilute the voting power of minority groups.

By the early 1900s, population disparities among representational districts throughout the United States had become common. Yet courts initially were reluctant to insert themselves in the political machinations of redistricting. As late as 1946, in *Colegrove v. Green*, the United States Supreme Court declined to give relief in an Illinois case where one district had nine times more people than did another.⁵

By 1962, however, the U.S. Supreme Court had had a change of heart. In *Baker v. Carr*, the court intervened in a suit brought by urban residents who contested the make-up of the rural-controlled Tennessee Legislature, which had not been redistricted since 1901. The court held that complaints against malapportionment were "justiciable" and remanded the case to a lower court. The high court, however, did not specify what level of population disparity between districts could be constitutionally allowable.

But two years later, the U.S. Supreme Court established the "one-man, one-vote" rule, which had far-reaching impact on redistricting across the country. The court, in *Wesberry v. Sanders*, invoked the 14th Amendment's equal protection clause, striking down Georgia's congressional redistricting plan. The court said that "as nearly as is practicable, one man's vote ought in a congressional election to be worth as much as another's."



Figure 2: Texas' 6th congressional district (1991). A district gerrymandered for partisan advantage according to U.S. Supreme Court Justice John Paul Stevens (*Bush v. Vera*, 1996).

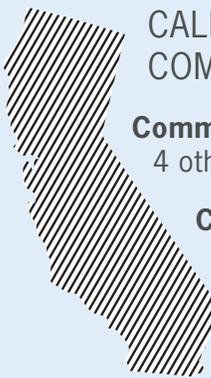
In a second 1964 case, *Reynolds v. Sims*, the court held that both houses of a bicameral state legislature must be “based substantially on population.”⁶

The two high court decisions brought a flurry of lawsuits at the state level as reformers sought to correct years of malapportionment in state legislatures. By 1966, 46 of the 50 states had brought their apportionments into conformity with the standard of population equality.

While these court decisions helped address malapportionment, they proved not to be a cure-all for the problem of gerrymandering. Majority parties used the dictum for equal representation to justify bizarrely-shaped districts that preserved their status. In later years, the court began to allow some deviation in district population to preserve political boundaries and to recognize other factors important in representation, such as the cohesion of minority populations.

While more than half the states invest their legislatures with full power to redistrict, an increasing number use commissions for all or part of the redistricting process. At present, 23 states use some kind of commission in the redistricting process. The make-up and role of these commissions is diverse. Some commissions have sole authority to conduct redistricting; others are merely advisory to the legislature. Some commissions are used only as a back-up in case the legislature fails to produce a plan. Some commissions are made up of state elected officials or legislators; others include nonpartisan lay citizens.

Below are two examples of commissions from neighboring states:



CALIFORNIA REDISTRICTING COMMISSION

Commission size: 14 (5R, 5D, 4 other)

Commission formation: State auditors choose 20 Republicans, 20 Democrats, and 20 who are neither. Each of the 4 legislative leaders cut 2 people from each pool. 8 commissioners (3 Democrats, 3 Republicans, 2 neither) are chosen randomly from the remaining nominees; those 8 choose 6 final commissioners (2 Republicans, 2 Democrats, 2 neither).

Map approval: To become final, a map must get at least 9 votes: 3 Republicans, 3 Democrats, and 3 neither.

Legislative review: None



WASHINGTON REDISTRICTING COMMISSION

Commission size: 5

Commission formation: 4 legislative leaders each choose 1 commissioner; those 4 then choose a 5th chairperson, who does not vote on the final map.

Map approval: 3 out of 4 of the voting commissioners must approve a map for it to become final.

Legislative review: The commission's map may be adjusted by the legislature with a 2/3 vote in each house. Changes can only shift 2 percent of the population in any given district.

AN OVERVIEW OF REDISTRICTING IN OREGON

Redistricting for the Oregon legislature is governed by the Oregon Constitution (Article IV, Section 6) and by statute (ORS 188.010). The constitution specifies that redistricting of the 60 seats in the Oregon House of Representatives and the 30 seats in the Oregon Senate shall occur in the odd year after the decennial census, and designates the Legislature as the body responsible. As a practical matter, the Legislature also conducts redistricting for Oregon's five United States congressional representatives, even though there is no express provision in the Oregon or federal constitutions on how congressional redistricting should be done. By its terms the criteria of ORS 188.010 also apply to congressional redistricting. The redistricting plans take the form of legislation which is forwarded to the governor for approval or veto. The constitution specifies that the Legislature must finish its work on Oregon legislative redistricting by July 1 of the year following the census. There are no time requirements set out in law for U.S. congressional redistricting.

If lawmakers fail to pass a redistricting plan or if the plan is vetoed by the governor and the veto is not overridden by the Legislature, the task falls to the secretary of state.

Legislative redistricting plans produced either by lawmakers or the secretary of state are subject to legal challenge. Article IV, Section 6 of the Oregon Constitution expressly provides that original jurisdiction for review of legislative redistricting lies in the Oregon Supreme Court.

There is no such express provision for congressional redistricting. Since the U.S. Supreme Court has determined that redistricting, even for congressional seats, is generally an issue for the states and state courts, federal courts have jurisdiction only to review limited constitutional and federal question issues. This means that parties unhappy with legislative redistricting of congressional seats may engage in court shopping: looking for a more favorable county court in which to bring challenges to congressional redistricting.

Oregon has not been subject to gerrymandering on a scale seen in other states, but redistricting has nonetheless been difficult to achieve, in large part due to partisan differences. Only once since 1911 has the Legislature completed a redistricting plan that has

gone into effect without modifications by the secretary of state or the courts. That was in 2011.

Oregon was a leader in using population as a key criterion for redistricting. At the 1857 Constitutional Convention, delegates chose population, rather than land or number of legal voters, as the guiding principle. Still, delegates preserved the land-unit theory of representation by declaring that no county could be divided by district, and also that if a county were entitled to more than half a representative, it would have a full member.

But over time the Legislature failed to redraw legislative representation lines to match the growing urban population. In 1920 Multnomah County had one-third of the state's population, but only 27 percent of the representatives in the Legislature. By mid-century, populations in House districts ranged from 6,522 to 41,925 and Senate districts from 8,401 to 85,138.⁷

Like federal courts, Oregon courts were reluctant to involve themselves in redistricting issues. A suit filed in Multnomah County in 1943 to force redistricting was dismissed. A three-judge panel declared that "the courts are without authority to compel the legislature to make such apportionment or to require enactment of any legislation..."⁸

The Legislature's repeated failure to redistrict to address population changes led a group of reformers to put an initiative on the ballot in 1952, which voters overwhelmingly approved. It deleted the reference to the "white population" in determining representation, temporarily redrew district lines so that district populations were substantially equal and gave authority to the secretary of state to redistrict if the Legislature failed to do so by July 1 of the year after the census. It also gave the Oregon Supreme Court original jurisdiction to review the Legislature's redistricting plan.⁹

The constitutional amendment was unique among states at the time for possessing a mandatory enforcement provision and for reaffirming population

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as the foremost criterion for redistricting. Since that time the state constitution has been amended twice to make changes in redistricting. In 1954 the constitution was amended to allow subdivision of counties into individual House and Senate districts, instead of having at-large representatives. In 1986 the constitution was amended to give the secretary of state more time to develop a redistricting plan and to allow more time to correct a plan deemed unconstitutional by the court.

Redistricting in 1991 and 2001

In 1991, the Republican-controlled House and the Democratic-majority Senate could not agree on a redistricting plan, so the task fell to Secretary of State Phil Keisling. Keisling, a Democrat, had been appointed secretary of state after only one term in the House. Presented with four varying plans from the Legislature, Keisling opted to start from scratch. He appointed an advisory committee of citizens that he deemed politically balanced to help him with the task. The committee members attended public hearings, reviewed multiple criteria, examined proposed maps and ultimately suggested their own alternative maps. Keisling established a clear policy of no meetings with legislators or others behind closed doors. He also made a point of not using party registration in drawing district lines, and

he and his staff developed written justifications for each decision they made. In the end, Keisling's 1991 redistricting plan was accepted with general praise from Republicans, grudging acceptance from Democrats, and only two minor revisions after Oregon Supreme Court review.¹⁰

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In 2001, redistricting proved to be particularly rancorous. The Legislature faced a 20 percent increase in the state's population over the previous decade. The growth was unevenly distributed, which meant redrawing many district lines.

Republicans controlled both the House and the Senate and pushed through plans for congressional redistricting on party-line votes. Democratic Governor John Kitzhaber vowed not to sign any redistricting

plan that did not have bipartisan support and vetoed both the Republican congressional and legislative redistricting plans. House Republicans tried to pass a resolution for legislative redistricting that would not require the governor's signature, but House Democrats bolted from the capital and prevented a quorum for five days.

In the end, the Legislature ran out of time to complete redistricting. The task of legislative redistricting again fell to the secretary of state, Bill Bradbury, while congressional redistricting would be decided by the courts.

Unlike Keisling, Bradbury was a 14-year Democratic lawmaker, and had been both Senate majority leader and Senate president before being appointed secretary of state in 1999. Bradbury unveiled his initial plan for legislative redistricting on July 17, 2001. It drew immediate criticism from Republicans because, among other complaints, it shifted majority party registration in six House seats from Republican to Democrat. "Bradbury," according to political reporter Jeff Mapes, "was seen as much more political and more of a Democratic Party person than Phil Keisling."¹¹

Bradbury's final legislative redistricting plan, unveiled on August 15, also drew Republican criticism, in large measure because it put slices of heavily-Democratic Multnomah County in several suburban districts. Bradbury argued that county lines in the Portland metro area were less important than other "communities of interest" and transportation corridors. Republicans said that even though the final plan made some changes they had sought, it did not honor Multnomah County political boundaries and appeared to increase the number of legislative districts Democrats might win.

A variety of groups challenged Bradbury's legislative plan in court, but the Oregon Supreme Court upheld it with one small change to correct a mistake of assigning the inmates of the federal correctional institution in Sheridan to the wrong House district. Justice R. William Riggs, writing the majority opinion, noted that even if the redistricting plan led to changes in political control for some districts, the challengers had failed to prove that such changes were intended by the secretary of state.¹²

The issue of congressional redistricting was resolved in the Multnomah County Circuit Court, where Judge Jean Kerr Maurer considered Democratic and Republican proposals. In the end Maurer adopted the Democrats'

congressional redistricting proposal, saying that it disrupted existing boundaries less than the GOP plan and did a better job preserving communities of interest.¹³

Though Republican leaders continue to criticize Bradbury's role in the 2001 congressional redistricting process, the Democratic secretary of state had no part in the drawing of those boundaries. The Oregon Constitution assigns no role to the secretary of state in congressional redistricting.

Republicans have also argued that Bradbury's legislative redistricting plan was intended to shift power from the then Republican-controlled Legislature to the Democrats. But the evidence and subsequent legislative election results provide inadequate support for this proposition. Republicans in the Oregon House of Representatives actually gained two seats in the 2002 election, which immediately followed the 2001 redistricting process. In 2004, the House Republicans lost two seats, but retained the same majority they enjoyed prior to the adoption of Bradbury's redistricting plan. It was not until 2006 that Republicans lost their majority in the Oregon House of Representatives, but the 2006 election saw significant Democratic electoral gains throughout the nation, not only in Oregon.

Republicans in the Oregon Senate experienced immediate losses after the 2001 redistricting plan took effect, but these losses only continued a downward trend that had started two election cycles before Bradbury proposed his redistricting plan. Oregon Senate Republicans reversed this trend and started making gains in the 2008 and 2010 elections while Bradbury's redistricting lines were still in place.

One could argue, of course, that Oregon Republicans would have experienced greater gains or smaller losses had a more bipartisan redistricting plan been enacted in 2001. But our committee found no compelling evidence

in support of this proposition. The larger and more important point, however, is that having one partisan elected official – the secretary of state – draw legislative lines will almost inevitably lead to charges of bias from opponents.

... having one partisan elected official – the secretary of state – draw legislative lines will almost inevitably lead to charges of bias from opponents.

Redistricting in 2011

Unlike in past legislative sessions, the Oregon Legislature in 2011 produced both legislative and congressional redistricting plans that went unchallenged in the courts. It was the first time since 1981 that lawmakers were able to agree on redistricting plans, and the first time in 100 years that the Legislature completed redistricting without the help of the secretary of state or modification by the courts.¹⁴ Even so, a few Republicans voiced criticism of the legislative plan, stating that they went along only to avoid having the task given once again to a Democratic secretary of state, in this case Kate Brown.¹⁵

The outcome was indicative of the bipartisan spirit that prevailed in the 2011 session – with a few exceptions. Senate President Peter Courtney, D-Salem, made successful redistricting a priority by appointing three Republicans and three Democrats to the chamber's redistricting committee, even though Democrats held power by a slight margin. Courtney, a legislator for 25 years, acknowledged the Legislature's past failure to deal with redistricting, but argued it was lawmakers' duty to get it done. "Just because it's hard," Courtney said, "isn't any reason we shouldn't do it."¹⁶

The House Redistricting Committee also had equal major party representation, reflecting the 30-30 split between Republicans and Democrats in that chamber. A Republican and a Democrat co-chaired the House committee.

The House and Senate redistricting committees met in joint sessions for all meetings, streamlining the process. They held 12 hearings around the state to gather public input. Republicans and Democrats agreed each party would produce its own plans for public review.

The draft plans were released on May 11, 2011. The main difference was in the two congressional redistricting plans. Democrats continued the 2001 redistricting blueprint that divided heavily Democratic Multnomah County among the First, Third and Fifth congressional districts, while the Republican alternative concentrated the county in one district: the Third. The Democratic plan would also have left current party registration percentages essentially untouched in Oregon's five congressional districts, whereas the Republican plan would have decreased the Democratic edge in the First and Fifth districts, represented by Democrats in Congress.

The Democratic congressional plan drew fire because it extended the boundaries of the Third Congressional District all the way from Hood River to Rainier. The Republican draft was criticized because it moved more than 500,000 residents into new districts.¹⁷

State legislative redistricting plans were less contentious. Republicans avoided creating districts that left coastal residents represented by House and Senate members living in the Willamette Valley. Both parties created districts in which incumbents in the opposite party would have to run against one another. Republican House Redistricting Co-Chair Shawn Lindsay argued that the Democrats' plan decreased the number of "competitive" legislative districts.¹⁸

The committees held three hearings in Salem on the redistricting plans and heard testimony that fell into several general areas: some legislators complained that proposed boundaries violated the concept of communities of interest; several local officials pointed out that their communities were split between districts; partisans criticized the way the Portland area was treated in the drawing of lines; and other witnesses said they wanted a stronger political voice for Asian-Americans in certain districts.¹⁹

After the hearings, House and Senate redistricting committee leaders met in private to work out differences. On June 7 the chairs announced they had reached a deal on a legislative plan. In an interview with our committee, Democratic House Co-Chair Chris Garrett of Lake Oswego cited two reasons why legislators reached agreement. First, though the original Democratic and Republican plans differed, they had enough in common to make negotiators believe a compromise plan was indeed possible. Second, Rep. Garrett said, negotiators from the outset pledged to be open and honest with one another. Rep. Lindsay confirmed that the negotiators built a level of trust that allowed them to be frank with one another.²⁰

Rep. Kevin Cameron, the Republican vice-chair of the House redistricting committee, remained critical. Cameron said an important factor for Republicans in the negotiations was that legislative redistricting would have fallen to the Democratic secretary of state without an agreement in the Legislature.

"It should be recognized that this plan is based on the current [2001] plan, which 10 years ago was gerrymandered to give Democrats maximum political advantage," he said in a Republican Party news release. "While we appreciate the willingness of the Democratic

co-chairs to work with us," he added, "this plan is neither fair nor balanced."²¹

The compromise legislative redistricting plan passed the Senate 27-3 and the House 47-10.

Approving a congressional redistricting plan proved more difficult, and several commentators suggested the Legislature might not succeed by the July 1 deadline. The chief stumbling block was Multnomah County. Democrats wanted to continue dividing the heavily Democratic area among three congressional districts; Republicans wanted to contain it within one.²²

Republicans, in a pre-emptive move, had filed a lawsuit in May 2011 in Yamhill County. The apparent strategy behind this move was that if congressional redistricting were to fail in the Legislature, it would be resolved in a conservative court that might prove more favorable to Republicans. (After the Legislature reached agreement, the case was dismissed.)

In something of a surprise, the parties announced a compromise on June 29, 2011. Republicans backed off their insistence that Multnomah County be in one district, but the final plan allowed for Districts 1 and 5 to become more Republican. One stated incentive for both sides to reach agreement was the cost of a court fight, which would have been borne by the state during an extremely tight fiscal period.²³

The successful adoption of a legislative redistricting plan in 2011 was a product of the closely divided Legislature, the cooperative personalities of individual legislative leaders charged with developing the plan, and the motivation of both parties to control the outcome rather than turn it over to the secretary of state. Our committee concluded that the 2011 process was thus unique and it is doubtful that a similar outcome could be expected in future legislative sessions.

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Recent reform efforts

In recent years, there have been attempts to overhaul redistricting in Oregon by introducing an independent commission into the process.

In 2006, the Public Commission on the Legislature, a body created by House and Senate leaders to review the structure and operation of the Legislature, recommended establishing a five-member redistricting commission appointed by a state controller, a new, nonpartisan public office with a term of six years. The commission, using professional help from the controller's office, would draft legislative and congressional district lines, using census data and following Oregon's redistricting laws. The commission would submit its work to the Legislature, which could amend it by three-fifths vote of each chamber. "Redistricting and its related processes," the report stated, "are one function whose purpose and credibility requires them to be undertaken on an arm's length nonpartisan basis." Yet none of the recommendations in the report related to redistricting have been enacted by the Legislature.²⁴

In 2009, lawmakers introduced several constitutional amendments to change Oregon's redistricting process. One would have created a commission of retired judges to create a legislative redistricting plan, subject to amendment by two-thirds vote of both houses of the Legislature. A second would have created a panel of retired judges to create a plan if the Legislature failed to do so by a three-fifths majority in each chamber. A third would tap retired judges to create both congressional and legislative redistricting plans, but submit them to voters for approval. All three proposals died in committee, as did a fourth measure that ordered a future study to evaluate the 2011 redistricting process.²⁵

In the 2011 Legislature, House Republicans proposed a constitutional amendment that would have created a panel of retired judges, selected by House and Senate leaders, to come up with a redistricting plan. The plan would have been submitted to voters as a referral for approval or rejection. However, the measure, HJR 46, similar to one of the proposals in 2009, died in committee.²⁶

Efforts have also been made to change the legislative process via the initiative system. In 2010, an initiative petition to take control of redistricting from the Legislature was circulated, but failed to gain the requisite number of valid signatures to place it on the ballot.

The proposed amendment to the Oregon Constitution would have created a redistricting commission of retired circuit court judges, appointed by the chief justice of the Oregon Supreme Court and confirmed by a majority of members of the court. The commission would be charged with creating a redistricting plan by September 1 of the year following the decennial census, or the task would fall to the Oregon Supreme Court.

A similar initiative for the November 2012 ballot has been approved for circulation by the secretary of state's office. Like the 2010 initiative petition, it is being promoted by former Republican state Rep. Kevin Mannix. If approved, it would repeal the Legislature's 2011 redistricting plans and establish a panel of five senior judges chosen from each of Oregon's congressional districts to re-do the work in 2013. Thereafter, the judges' panel would be responsible for redistricting. Most of Oregon's existing redistricting criteria would be eliminated and replaced with a new criterion: districts would be drawn as maximally compact as possible. The proposal would be an amendment to the state constitution.²⁷

Mannix, in a committee interview, stated that redistricting should be removed from control of the Legislature and made as nonpartisan as possible. Under the current system, he said, the first order of business for lawmakers involved in redistricting is to make sure the lines are drawn to their own re-election advantage.

"I do think that neither Democrats nor Republicans should be given much power to control this process because one or the other will always be trying to turn it to their advantage," Mannix said, indicating that he spoke from the perspective of having once chaired the Oregon Republican Party.²⁸

Our committee admired a number of features in the Mannix proposal. It is simple, it strives to create a nonpartisan process outside the Legislature and it clearly spells out the criteria and the process to be used by the commission.

But our committee found several problems with Mannix's proposal that ultimately prevented us from supporting it. First, the proposed "maximally compact" criterion is a mathematical formulation that would result in only one possible set of district lines, according to the author of the formula, George L. Clark.²⁹ While the Mannix proposal states that lines should be drawn

as maximally compact “as nearly as practicable,” our committee believes a computer-generated redistricting map would leave very little room for judgment and modification by an appointed redistricting commission. If the commission were to make adjustments, the absence of other criteria means there would be no standards by which to judge whether the commission’s changes were justified.

Additionally, making senior judges responsible for redistricting adds a partisan element to the judiciary. Our committee also believes that a commission made up of senior judges would not reflect the demographics of the state.

Finally, the proposed initiative, if successful, would overturn the Legislature’s 2011 redistricting plan. Our committee believes that redistricting should be done – once – every 10 years following the census. Retroactive changes in between are both inappropriate and destabilizing.

Redistricting criteria

All states must follow federal law and court decisions in redistricting, but states vary greatly as to other criteria they apply to the process. While criteria aim to bring

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common standards to the act of redistricting, they sometimes wind up in conflict with one another. For example, creating a “majority-minority” legislative district (a district in which the majority of residents are minority-group members), might allow a racial minority group to elect a member to the state assembly. But it could conceivably conflict with a criterion that specifies legislative districts must be compact. Or a criterion that fosters competitive races in a district could conflict with a standard that specifies that as few people as possible should be shifted from one district to another in redistricting.

The U.S. Supreme Court ruled in 1964 that populations of congressional districts must be equal “as nearly as practicable.” For state legislative districts, the court’s standard is less exacting – they must show only “substantial equality of population.” The court has not defined substantial equality. Over a series of court cases, however, substantial equality has come to mean

a legislative district in most cases can vary no more than 10 percent from the average district population.³⁰

States are also governed in redistricting by the federal Voting Rights Act of 1965, which outlaws any law or practice restricting the right of individuals to vote based on race, color or minority language status. In 1982, Congress amended the act specifically to prohibit any law or practice that denies minorities equal opportunity “to participate in the political process and to elect representatives of their choice.”

Among the 50 states, common redistricting criteria include requirements that districts be contiguous (i.e., not consisting of two or more separated parts) and compact (i.e., not spread over great distance in odd shapes). Another common criterion involves nesting (i.e., containing legislative districts entirely within a congressional district, or containing two or more state house districts within a state senate district). And because some redistricting standards are in tension with others, some states specify which standards have priority.

Many states, including Oregon, include “communities of interest” among their redistricting criteria. Definitions of these communities of interest vary widely. Vermont specifies that districts should recognize and maintain “patterns of geography, social interaction, trade, political ties and common interests.” Virginia’s 2011 legislative redistricting committees stated that the Legislature would consider “economic factors, social factors, cultural factors, geographic features, governmental jurisdictions and service delivery areas, political beliefs, voting trends and incumbency considerations” as elements of communities of interest.

Many states, including Oregon, include “communities of interest” among their redistricting criteria.

Despite the differences in definition, all of these “communities of interest” share a similar problem: they are so open-ended, that almost any grouping of citizens can be defended as a community of interest under these definitions. Consequently, it requires little imagination to justify partisan-drawn lines as an effort to respect existing communities of interest.

Redistricting in Oregon, as in other states, is first and foremost governed by federal court cases that require districts to be substantially of equal population, and the Voting Rights Act and related laws which protect minority interests in the process.

Oregon redistricting standards state that “communities of common interest” should not be divided, but provide few details as to how to identify these communities. “Communities of interest” may be applied in redistricting in two ways: by combining the interests in a single district to amplify their influence or by dividing these communities of interest among multiple districts. Dividing the interests, some argue, would make legislators more sensitive to those who have a common interest not shared by the majority in a district. The question is, are citizens better served by having a lawmaker giving a strong voice to a united group, or by lawmakers serving more diffused communities of interest?

The federal courts have already decided this issue when it comes to racial and ethnic minorities – that they should not be divided.

Some witnesses suggested that district lines should be drawn to make districts more competitive in elections. This would require disaggregating people of similar political beliefs and voting patterns. The rationale is that competitive districts, with a balance of political affiliations, would promote political moderation because legislators would likely adopt centrist positions in order to appeal to the majority of the district’s voters.

Oregon’s specific criteria are spelled out in ORS 188.010, passed in 1979. There are four provisions:

1. Each district, 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.
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.

Oregon Administrative Rules (165-008-0060) provide further guidance to the secretary of state if he or she becomes responsible for redistricting. In addition to following federal and state law governing the process, the secretary of state must:

- When possible, draw districts to utilize county lines and maintain cities within a single district;
- Make an effort to retain within one district identifiable communities, such as urban neighborhoods and rural communities. Consideration must be given to market areas covered by local media;
- Create districts that have at minimum a county road within the district that connects one area of the district to another. This does not apply to unpopulated areas of the district.

Some of the redistricting criteria are unavoidably in tension with one another. For example, adhering to strict population equality among districts may impact the ability to draw lines honoring political or geographic boundaries.

Nevertheless, several witnesses before our committee argued that Oregon’s redistricting criteria are well-conceived, noting in particular the prohibitions against favoring incumbents or parties and against diluting the voting strength of minority groups. They advised against trying to rank-order the criteria. Doing so, they said, would erode the flexibility needed to balance competing interests. The exception was Kate Brown, the current secretary of state, who told our committee that prioritization might be helpful.

Our committee agreed that Oregon’s redistricting criteria allow needed flexibility in the redistricting process, and that rank-ordering the criteria would hamper the work of a redistricting body by limiting its ability to balance competing interests.

Nevertheless, our committee recognized that this flexibility grants wide latitude to those who make redistricting decisions, creating the possibility of drawing lines for improper or partisan purposes. Because of this, our committee thought it best to propose changing who makes the redistricting

... our committee thought it best to propose changing who makes the redistricting decisions instead of changing the criteria used to make the decisions.

decisions instead of changing the criteria used to make the decisions. In other words, retain the flexible criteria, but transfer the redistricting decision-making process to a body that is less susceptible to partisan motivation.

Oregon is distinct from many states in not having district compactness as a redistricting criterion. A compactness criterion prevents drawing district lines that wander far and wide over a large area, capturing wanted constituencies or excluding unwanted ones. However, given Oregon’s diverse geography and uneven population distribution, witnesses told our committee that compactness generally should not be a mandate in Oregon. It could, for example, fracture areas of like economic interest, such as the Oregon Coast.

Our committee discussed the possibility of adding redistricting criteria to Oregon’s list. One possible criterion was minimal disruption to continuity of representation (i.e., moving the least number of people from one district to another during redistricting). Recent research suggests that redistricting can raise significant barriers to electoral and public participation in political life. Political scientists Danny Hayes and Seth McKee have recently argued that redistricting has the potential to “systematically discriminate against redrawn voters, in many cases solely as part of an effort to expand... majorities or consolidate party strength.”³¹ Continuity of representation allows voters and lawmakers to know and understand each other better, thus in theory enabling representatives to serve their districts more effectively.

Our committee recognized that there is a natural tension between this “minimal disruption” criterion and the possible need to correct district boundaries that were originally drawn for partisan or improper purposes. Nevertheless, our committee thought that the possible difficulties such a tension would impose on the process were outweighed by the potential benefits this criterion offered.

Our committee therefore recommends one additional criterion: minimal transfer of constituents from their present districts to new districts, for the sake of continuity of representation and maintaining civic participation.

Our committee therefore recommends ORS 188.010 be amended to include one additional

criterion: minimal transfer of constituents from their present districts to new districts, for the sake of continuity of representation and maintaining civic participation. This criterion should be weighed and balanced with existing criteria. All the criteria should be placed in the state constitution. Doing so would limit the ability of a political party controlling the Legislature to change the criteria for partisan advantage.

Lack of legal authority for congressional redistricting

Oregon lacks specific direction in the law for which body is responsible for congressional redistricting, as well as which court is responsible for adjudicating any legal challenge to a congressional redistricting plan. That leaves challengers free to pick the court to which they bring their case, and such judicial forum-shopping could impact the outcome of a court challenge. Oregon law also fails to identify the year in which congressional redistricting must be performed, nor does it specify a timeline for its completion.

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Counting prisoners

Oregon law does not specify where incarcerated individuals should be counted for redistricting purposes. The growth in the prison population and the creation of large prisons in sparsely scattered rural areas make this question an important one. Since the Census Bureau counts prisoners as residing where they are incarcerated, Oregon and most other states count them in the same manner for purposes of drawing district boundaries.

Proponents of counting prisoners where they are incarcerated argue that they are part of the community, using community services such as water and sewer. Further, they say, it cannot be assumed they will return to their last place of residence when they are released.

But opponents counter that large prison populations can seriously distort the one-man, one-vote principle,

giving communities with significant prison populations more influence than their population of permanent residents would warrant. For example, five percent of the population of Oregon House District 60 in far eastern Oregon is in the Snake River Correctional Facility near Ontario. This gives the other, non-prisoner members of the district a disproportionate political influence compared with other House districts of Oregon. At the city level, the impact of prisons is even more pronounced – Salem has two wards that are 12 percent prisoners and Pendleton has a ward with 28 percent prisoners.

Some states have passed and others are moving to pass legislation that would count prisoners for purposes of redistricting at their last residence before incarceration. A bill that would do just that, Senate Bill 720, did not receive a hearing in the 2011 Oregon Legislature.

... including prison populations in the district where the prison is located distorts the one-man, one-vote principle, giving communities with prison populations more influence than their population of permanent residents would justify.

Our committee concluded that including prison populations in the district where the prison is located distorts the one-man, one-vote principle, giving communities with prison populations more influence than their population of permanent residents would justify.

Our committee recommends that the Legislature reconsider Senate Bill 720 and pass it in the next session. Passage of such a bill would create greater clarity on how prisoners should be counted, thus removing a potential source of discord from the redistricting process. It would also correct the situation in which certain districts have unwarranted advantage in political representation because of large prison populations.

DISCUSSION

ADVANTAGES AND DISADVANTAGES OF OREGON'S CURRENT REDISTRICTING PROCESS

Our committee considered all aspects of redistricting, looking at past and current state processes for redistricting as well as current and past proposals for modification. Throughout our work the most significant and difficult decision to make was determining who should have the authority to approve the final district boundaries in Oregon.

The state Legislature is in many ways the natural body to create a statewide redistricting plan. Members reflect much of the diversity of Oregon and they are uniquely familiar with their districts.³²

As Shawn Lindsay, the Republican who co-chaired the House Redistricting Committee in 2011, put it to our committee: "They have walked every street, they have met with every school district, every community of faith and they really have a feel for the place and they know those districts."

Legislators are also directly accountable to citizens. Voters unhappy with a redistricting proposal have the ability to lobby their legislators for changes or vote against them in the next election.

Additionally, the Legislature is a traditional forum for addressing and balancing competing interests, which are part and parcel of the redistricting process.

While Oregon lawmakers historically have had little success in producing redistricting plans implemented without change, the successful 2011 effort exemplifies

how elegantly the legislative redistricting process can work. Legislators acting in a spirit of bipartisan cooperation formed relationships across the aisle and ultimately reached a compromise plan from disparate proposals. If redistricting could be expected to function (or if it had

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The results in 2011, however, seem unlikely to be repeated, given the historical record. The circumstances of the 2011 session were unusual: an evenly divided House (30 Democrats, 30 Republicans); a Democratic-majority Senate president whose determination to achieve redistricting in the Legislature led him to give equal weight on the redistricting committee to Republicans; and bipartisan trust and openness among redistricting committee leaders. In committee interviews, redistricting chairs repeatedly attributed their success to trust and positive relationships within the groups. These types of personality matches make for good politics, but are difficult to predict or to design into a system.

There are also risks inherent in any redistricting procedure where the Legislature has decision-making authority. Most alarming is the possibility that a single party controlling both houses and the governorship could pass a plan ignoring the concerns of the minority. Since 1949, fully one-quarter of Oregon's legislative sessions have been marked by one-party control of both houses and the governorship, although this has occurred only once (in 1951) during a redistricting year.

Although such abuse by the majority party has not occurred in Oregon, the potential exists nonetheless, as is evident in other states. In Illinois, Republicans sued over legislative redistricting approved in 2011 by the Democratic-controlled Legislature and signed by the Democratic governor. Republicans charged that the plan put more than two dozen incumbent Republican lawmakers in districts with one another, with the possibility that some of them will lose their seats when they run again. Illinois Republicans also sued over the congressional redistricting map, arguing that Democrats gerrymandered it such that the GOP could lose six seats in Congress. Republicans also charged that the plan did not fully take into account the state's growing Hispanic population.³³

In Texas, the U.S. Justice Department has charged that redistricting maps drawn by Republicans in 2011 violate minority voting rights. Only one of four new congressional districts has a majority of minority-group residents, despite the growth in the Hispanic population over the past decade.³³

Our committee spent considerable time weighing evidence of partisanship in Oregon’s redistricting process. We heard testimony and read news articles that one party or another was taking partisan advantage in redrawing representational boundaries. This was particularly evident in accounts of the 2001 redistricting effort.

In the end, committee members concluded that it was effectively impossible to say that a specific redistricting plan was the product of intentional partisan maneuvering to the exclusion of other, valid justifications for the results.

What is undeniably true, however, is that until 2011, the Legislature has failed to produce a redistricting plan that has gone into effect without changes ordered by the court or the task being assumed by the secretary of state.

Aside from the record of historical failure, our committee was concerned about the issue of public perception. As City Club’s 2009 report on partisanship indicated, “So long as the redistricting process is controlled by partisan elected officials, many voters will assume that the political party in power is taking advantage of the redistricting process...”³⁵

Added to that is the frequently repeated charge in the media and among reformers that legislative redistricting

contains a built-in conflict of interest: the ability of a legislator to influence the very lines of the district in which he or she will run.

The current system also puts undue pressure on the secretary of state when redistricting falls to that official. The secretary of state has just 45 days to produce draft redistricting maps, hold public hearings, make changes based on public input, and produce final maps. Keisling, secretary of state in 1991, calls the process a “tough, complex task.” Paddy McGuire, deputy secretary of state under Bill Bradbury in 2001, also cited the short, unrealistic timeline a secretary of state faces when redistricting fails in the Legislature.³⁶

As a partisan office-holder, the secretary of state is particularly susceptible to charges – whether true or not – of using the redistricting process for partisan gain. In our committee’s interviews, reactions to Secretary Bradbury’s redistricting came up repeatedly. Our committee also heard complaints that Secretary Keisling’s 1991 redistricting improperly favored Republicans, in his attempt to appear “fair.”

As the current secretary of state, Kate Brown, told our committee, “Any time one person draws the maps, it’s controversial.”³⁷

OREGON’S CURRENT REDISTRICTING PROCESS

Advantages

- Directly-elected citizen representatives are charged with redistricting; citizens have recourse at the ballot box as a remedy for unpopular or partisan outcomes.
- Legislators who depend on voters for reelection have deep knowledge of the people and characteristics of their districts, giving them insights on where lines should be drawn.
- The redistricting process allows extensive public input through legislative hearings and testimony.
- If the Legislature cannot agree on a legislative redistricting plan, there is a back-up procedure in law: giving the secretary of state an opportunity to develop a plan.
- Court review is available for final legislative and congressional redistricting plans.

Disadvantages

- Lawmakers may be motivated by partisanship, making it difficult for the Legislature to reach agreement on redistricting plans.
- Back-up plan responsibility is in the hands of a single, partisan-elected state official, the secretary of state.
- A redistricting process led by partisan lawmakers can create the perception, if not the reality, that the process is being used for partisan advantage; legislators may select their voters, instead of vice-versa.
- A political party controlling both the legislative and executive branches of state government can enact a highly partisan redistricting plan, ignoring the concerns of the minority party.
- The Legislature was unable to complete redistricting without the intervention of the secretary of state or the courts for 100 years.

ALTERNATIVE REDISTRICTING MODELS

Our committee determined that the disadvantages of Oregon’s current redistricting system outweigh its advantages. We then explored multiple possible solutions for addressing the problems with the current system and ultimately settled upon an independent, nonpartisan redistricting commission.

Many witnesses before our committee stated that there is value in having a commission involved in the redistricting process, from serving as a “watchdog” over the legislative process to boosting the public’s confidence in the fairness of the process.

Reducing the visible conflict of interest and working to remove the partisan elements in the redistricting

Public opinion polls show that voters across the nation are wary of legislative redistricting and in general prefer an independent commission.

process is, in the end, a change aimed at helping what is at least a perceptual problem. Public opinion polls show that voters across the nation are wary of legislative redistricting and in general prefer an independent commission.³⁸

Our committee members agreed that an outside, independent body responsible for redistricting would improve the process and increase public confidence in it. In addition, all members agree that the Legislature should continue to play an important role in redistricting, and that the process should begin with lawmakers submitting reports to the commission on how districts should be configured.

Legislatures in 37 states have primary control of state legislative redistricting. Seven states have redistricting commissions made up of politicians; just six states have independent commissions. Our committee reviewed the redistricting processes in every state, concluding that no existing system would be a perfect fit for Oregon. Our goal of reducing partisanship ruled out most states as models. A partisan-based commission may simply mirror the partisanship of a legislature. The commission that came closest to achieving the committee’s goals in our charge was California’s. But the cost and complexity of that system seemed inappropriate for Oregon. Thus, we arrived at our

own unique independent commission model, which we believe combines the best ideas from other states and academic studies with the specific needs and characteristics of Oregon.

Before embracing the idea of an independent commission as the best choice for Oregon, our committee considered a more modest proposal – a back-up commission that would fulfill the role the secretary of state now plays when the Legislature fails to pass a redistricting plan.

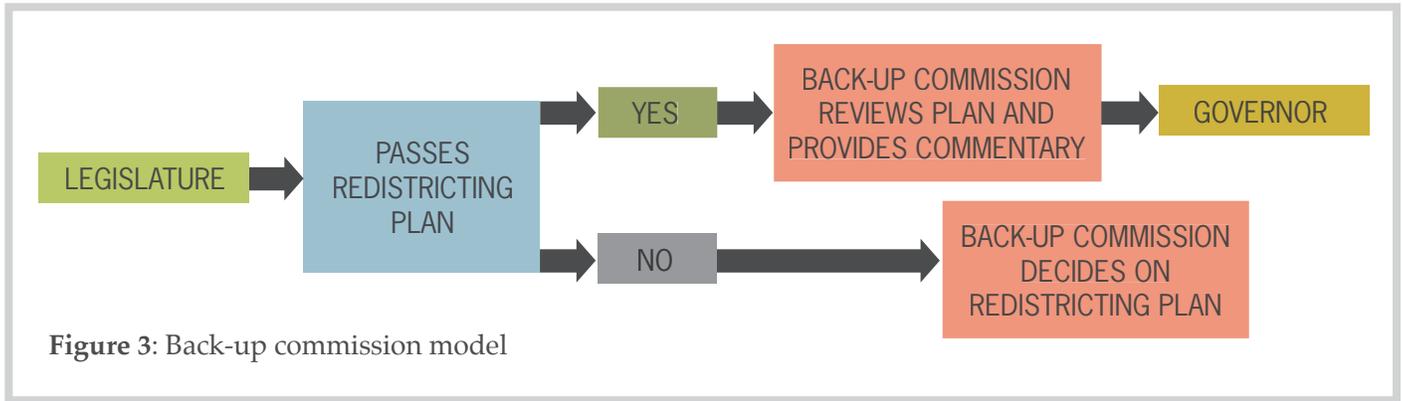
In developing both the independent and back-up commission models, our committee was determined to provide a significant role for the Legislature. Our committee concluded that lawmakers’ knowledge of their districts is an invaluable asset in constructing representational lines – an asset not easily duplicated among other individuals or groups.

Oregon’s Legislature has not exhibited the depth of polarization found increasingly in Congress and in the legislatures of other states. If the Legislature, however, were to become more politically polarized, redistricting, already difficult, would become even more so. Therefore, Oregon may have only a limited window to create a nonpartisan commission while the Legislature is controlled by lawmakers who have the state’s best interests at heart.

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The back-up commission: a model considered but rejected

The back-up commission model would have the Legislature retain primary responsibility for redistricting. The back-up commission would review and comment on redistricting plans developed by lawmakers. The commission would issue a formal, public report detailing how well the Legislature’s work conformed to Oregon’s redistricting criteria and evaluating the transparency of the process, but would have no power to alter the plan. The idea is that having an official agency sitting in judgment on



the Legislature’s redistricting work would dampen if not eliminate excessive partisanship in the process. Should the Legislature fail to produce redistricting plans by the July 1 deadline, the commission would be responsible for developing such plans, taking the role now filled by the secretary of state.

Advantages of the back-up commission model:

- Maintains much of current practice, substituting the commission for secretary of state as the back-up entity; might make proposed changes more palatable to politicians and the public
- Creates an independent “watchdog” to assess the redistricting work of the Legislature, potentially eliminating or reducing partisan abuses
- Respects the Legislature as a body directly accountable to the people who have the power to vote lawmakers out of office if they disapprove of their actions.
- Captures and incorporates lawmakers’ knowledge of their districts

Disadvantages of the back-up commission model:

- Allows lawmakers to produce partisan or bipartisan gerrymanders which the commission could criticize but not overturn
- Opens the Legislature to conflict of interest and/or partisanship charges if it completes redistricting without commission involvement
- Makes the commission seem expendable if it turns out only to have a commenting role

While the back-up commission has the advantage of not radically changing current practice, our

committee ultimately rejected this model because it fails to adequately address three significant issues: the conflict of interest inherent in lawmakers being in charge of redrawing the lines of their own districts, the perception of partisanship when redistricting is under legislative control, and the possibility that a state government dominated by one party could seriously abuse the redistricting process, despite any objections from the commission.

The independent commission: the preferred model

This model envisions an independent commission responsible for producing final redistricting plans, removing the responsibility from the Legislature. The Legislature, however, would retain a role: each chamber would be required to submit a report to the commission on how districts should be configured. In addition, any number of minority reports could be submitted to the Legislature by individual lawmakers or minority caucuses. All plans would become public upon submission.

Any group or member of the public could comment on the plans or submit ideas via mail, email, the Web, or in other ways.

As with the back-up commission, the independent commission would publish draft maps and comments for and against the input it received from the Legislature, hold public hearings on the drafts and justify its final product against the state redistricting criteria. If the commission were unable to reach agreement, the redistricting function would default to the Oregon Supreme Court, which could make changes it deemed necessary, or refer the draft plan back to the commission for changes.

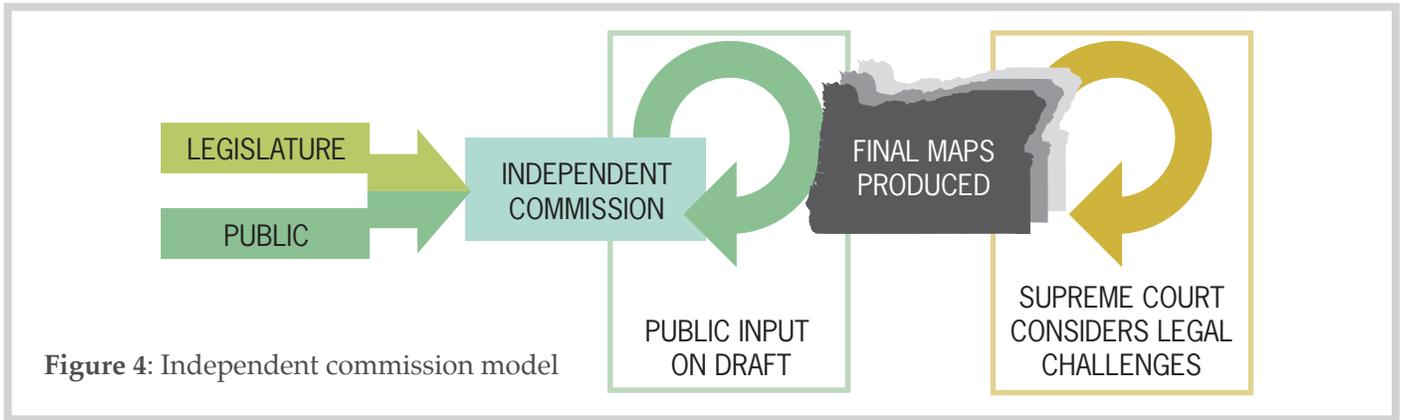


Figure 4: Independent commission model

Advantages of the independent commission model:

- Leverages the specific knowledge of lawmakers about the characteristics of their districts
- Removes (real or perceived) conflict of interest in lawmakers drawing the lines of their own districts
- Produces redistricting maps with desired distance from the party in power in the Legislature and secretary of state and governor’s office
- Reduces the impact of other political factors (pending legislation, relationships between legislators, incumbency) on the redistricting process
- Reduces the time the Legislature (and the secretary of state’s office) must spend on redistricting
- Provides a commission model that is time-tested and largely uncontroversial internationally

Disadvantages of the independent commission model:

- Gives authority for an important political function to an unelected body, taking it away from voter-accountable lawmakers
- Creates an incentive for legislators to submit their most partisan proposals to the commission since they would not be responsible for the final redistricting plan

Though each model has advantages, in the end our committee opted for an independent, nonpartisan commission with authority to draw legislative and congressional lines every 10 years. Such a commission would solve three major problems: conflict of interest, the perception of partisanship and potential redistricting abuse by a dominant political party. In

the instance where both houses of the Legislature and the governor’s office are controlled by one party, the back-up commission would be powerless to prevent a political gerrymander.

Our committee also agreed with the findings of Jonathan Winburn, a political scientist who has studied redistricting in eight states, including Washington. Winburn concluded that an independent, nonpartisan commission operating under clear standards tends to reduce gerrymandering.³⁹

The independent commission: details on selection and operations

In developing the criteria for selection and operation of the proposed commission, our committee was guided by several values we deemed to be of utmost importance: absence of partisanship and conflicts of interest among commission members, independence in commission operations and funding, and complete transparency of the process. Some committee members argued that a commission free of all partisan bias is not achievable. Nonetheless, our committee suggests a commission selection process and rules of operation that, we believe, will increase public confidence in redistricting

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and reduce the ability of partisans to shape the outcome. These suggestions are neither comprehensive nor unchangeable; rather they are offered to advance characteristics the committee believes are vital.

Selection

The commission shall be made up of nine citizen members drawn from a pool of qualified nominees and applicants. Our committee believes a committee of nine is large enough to reflect the geographic and demographic diversity of Oregon, yet not so large as to make the commission unwieldy. Having an odd number of commission members prevents tie votes.

All nominees and applicants must be screened to assure that they meet the following criteria: They are registered voters, they are legal residents of Oregon, and they have not been a registered lobbyist, a political party official or run for or held a partisan elective office for five years prior to service on the redistricting commission. Nominees and applicants who are selected to serve on the commission are prohibited from being a registered lobbyist, a political party official or holding a partisan elected-office for five years after service on the commission.

Our committee has proposed this future restriction in order to assure that the commission is not dominated by politicians, but rather by citizens who are motivated by nonpartisan goals. Other states include similar

Other states include prohibitions on running for office for a period of time after serving on the state's redistricting commission.

prohibitions on running for office for a period of time after serving on the state's redistricting commission. For example, California prohibits commission members from holding an elected public office for 10 years following their appointment to the commission.

Idaho prohibits partisan political activity for five years after service. Washington has a similar two-year prohibition after service on the state's commission. Your committee favored a similar prohibition in order to assure that the commission members would fulfill their obligations without being motivated by personal political ambitions. Such a prohibition would not preclude a commission member from holding a nonpartisan elected office after having served on the commission.

Our committee suggests a two-phase commission selection process that both honors legislative tradition and opens the process to regular citizens. The first four members would be selected by the House and Senate legislative leaders (House Speaker and minority leader, Senate president and minority leader) from a list of nominees. Those four would select five members from the pool of qualified applicants. Nominees not selected by legislative leaders may apply to be citizen members. Selection of the initial four members must be completed by January 31 of the year following the decennial census.

The director of the Audits Division would be charged with screening nominees and general commission applicants to assure they meet general qualifications and have no conflicts of interest. Our committee chose the Audits Division because it is part of the secretary of state's office, which is charged with overseeing the administration and fairness of elections and assuring that public funds are spent properly. Furthermore, the Audits Division already has in place protocols assuring objectivity and nonpartisanship for tasks including financial and performance audits and investigations of governmental activities.

Nominations for appointment to the commission would be requested from organizations and individuals with knowledge of statewide issues such as, but not limited to:

- Current and former governors and secretaries of state
- Former Oregon Supreme Court justices
- Former members of Congress
- Oregon University System presidents
- Oregon Bar Association president
- The Oregon Commission on Black Affairs
- The Oregon Commission on Hispanic Affairs
- The Oregon Commission on Asian and Pacific Islander Affairs
- The Oregon Commission for Women

Nominators would be charged with recommending individuals who they believe will represent the interest of the state as a whole, and not the interest of any group. All nominees must state their willingness and ability to serve, pledge to be impartial and disclose political party affiliation, any relevant financial information and any conflict of interest.

The auditor’s list of qualified nominees would be presented to legislative leaders. All four legislative leaders must agree on the legislative appointees and must choose them not based on any partisan affiliation but on the belief in their ability to create a fair redistricting plan.

In the event legislative leaders cannot agree on appointees, Democratic leaders would choose two members from nominees who are registered Republicans, and Republican leaders would choose two members who are registered Democrats.

The initial four commission members would select five additional members from a list of qualified citizen applicants. At least one of the five must not be a registered Republican or Democrat. Additionally, the initial four members must form a commission among its nine members that has the following characteristics: 1) political diversity, 2) urban-rural diversity, 3) gender diversity and 4) ethnic and racial diversity. Additionally, the commission as a whole must have at least one member from each of Oregon’s congressional districts.

Completion of membership must be achieved in time such that the commission is prepared for an initial meeting by March 1 of the year following the decennial census.

A standardized application would be required of all citizens who apply for the commission. The application would inquire about the applicant’s interest, relevant experience, and other details helpful in selecting commission members. All applicants must meet the general requirements, state their willingness to serve and be impartial, and disclose party registration, relevant financial information and any conflicts of interest.

Term of office, vacancies

Members would serve until legislative and congressional redistricting plans are completed and any court challenges are resolved. Vacancies are to be filled from the list of qualified applicants and nominees by vote of commission members.

Rules of operation, procedures

The commission will meet as soon as practicable after the full commission is selected and thereafter establish its own meeting schedule. The Legislature will submit

its plans to the commission by May 15 of the year following the census. Minority reports and comments will be accepted until June 15. The commission shall seek comment from individuals and groups, written or oral. Those comments will be public record upon submission. Thereafter, the commission shall publish draft maps for the Legislature and Congress by July 15. Publication of the draft maps shall be followed by at least one public hearing in each of Oregon’s congressional districts to seek comment on the maps. Final plans must be completed and published by October 1. The commission must publish a written report justifying its work in relation to the public and legislative input it has received, and in relation to the state criteria for redistricting. Petitions for review must be filed within 30 days of the date the maps and report are published. Oregon Supreme Court review must be completed within 45 days of the filing of the petition.

In the event the commission cannot agree on a final plan by October 1, the alternative plans and points of dispute will be presented to the Oregon Supreme Court for review. Depending on circumstances, the court may select one of the alternative plans

In the event the commission cannot agree on a final plan, the alternative plans and points of dispute will be presented to the Oregon Supreme Court for review.

over the others, rework one of the plans to meet court approval, or send the plans back to the commission with instructions to correct the deficiencies. Individual citizens or groups would be able to petition the court as intervenors in such cases. Once again, petitions must be filed within 30 days of submission to the court, and the court must make its findings within 45 days of the filing of the petitions. If the court remands the plan to the commission, the commission must complete the required changes within 30 days.

In any event, the scope of the court’s review must be to determine whether the plan or plans meet the requirements of the constitution and all other applicable laws, not to substitute its judgment as to factual disputes for the decision of the commission or its members, so long as those decisions are supported by substantial evidence. In short, our committee does not seek to alter the court’s current scope of review in any significant manner.

Transparency

Commission members must conduct themselves in accordance with Oregon's government ethics laws and rules. The commission will conduct its business in accordance with Oregon's public records and meetings laws and rules. All communications between legislators and the commission become public at time of transmittal. Legislators' contact with the commission is limited to written communication and formal public hearings. There shall be no *ex parte* contact between commissioners and anyone seeking to influence a redistricting plan.

Independent funding

The commission shall have dedicated state funding sufficient to complete its work in a timely and thorough manner, including funds to hire demographers, geographers, mapping specialists and computer experts. Our committee acknowledges that funding (or withholding funding) can be a way for the Legislature to pressure an independent commission. Our committee recommends that Oregon's proposed amendment include a provision similar to those of Arizona and California in which commission funding is established a year or two before the census. In addition, funding should be provided in an amount equal to or greater than that provided for redistricting during the previous period, plus inflation.

Compensation for commission members

Commission members would serve as unpaid volunteers, but be compensated for approved expenses incurred in the performance of their duties.

Chairperson and staff

Commission members shall choose a chairperson from among the membership by majority vote. The commission may select an executive director who serves at its pleasure and who is responsible for directing staff and for hiring, with commission approval, any necessary outside contractors such as mapmakers and demographers.

Judicial review

The commission's redistricting plans may be challenged in court by any citizen. The plans are not subject to gubernatorial veto or any alteration by the Legislature.

The Oregon Supreme Court shall be the court of original jurisdiction in all challenges of legislative and congressional redistricting plans, unless a federal legal question is raised. Sustained legal challenges to the plans shall be returned to the commission for modification according to court order.



The commission's redistricting plans may be challenged in court by any citizen.

SUMMARY OF CONCLUSIONS

1. Lawmakers have the best, most detailed knowledge of the people and characteristics of their districts, and thus their input should be considered in the redistricting process.
2. Manipulation of the redistricting process for partisan advantage has been chronic throughout U.S. history, though in Oregon the problem has not been severe.
3. Redistricting under the control of the Legislature is inherently partisan, and the results are frequently attacked as biased, whether true or not.
4. Legislative control of redistricting opens lawmakers to charges of conflict of interest, since they shape the lines of the districts in which they run for office.
5. The Legislature's successful 2011 redistricting effort was due to an unusual set of circumstances, including close cooperation between Republican and Democratic leaders, and a desire to keep the process out of the hands of the secretary of state.
6. Having a single, partisan-elected secretary of state conduct redistricting, when the legislature and governor fail to approve a plan, may lead to charges of gerrymandering from opponents, even if the secretary of state's redistricting plan is upheld in court.
7. Some of Oregon's redistricting criteria are in tension with one another. That and the lack of specificity in the definition of the "community of interest" standard mean that partisans may be able to defend a redistricting plan on statutory grounds, even if it is in reality a partisan-inspired plan.
8. The fact that Oregon's statutory redistricting standards are not rank-ordered is a positive, allowing flexibility in drawing boundaries that must balance competing interests.
9. Although the criteria for redistricting set out in ORS 188.010 apply to congressional redistricting, the Oregon Constitution does not establish who is responsible for such redistricting, nor does it specify any deadlines for such redistricting. Neither has it specified a court of original jurisdiction for legal challenges to congressional redistricting. The last situation could lead to court-shopping for a favorable outcome to a legal challenge.
10. An independent, nonpartisan redistricting commission would help mitigate the perception and reality of excessive partisanship and conflict of interest.
11. Given the increasing polarization of national and state politics in the country, Oregon may have only a limited window to adopt a nonpartisan redistricting process while our Legislature is made up of lawmakers who put the state's interest ahead of partisan politics.

SUMMARY OF RECOMMENDATIONS

1. The Legislature should refer to the people a constitutional amendment that would establish a nonpartisan, independent redistricting commission in the Oregon Constitution, taking input from legislators and the public, but having the responsibility for redrawing legislative and congressional boundaries in the state once every ten years. The amendment should include provisions for the independent operation and funding of the commission.
2. The commission should consist of nine members: four appointed by House and Senate legislative leaders from the Republican and Democratic parties, and five appointed by the initial four members from a pool of qualified applicants. The commission membership must not be homogeneous in geographical location, gender, race, or political party membership.
3. Commission members may not run for or hold partisan elective office, or hold political party posts, or lobbying positions for five years before and after appointment to the commission, and while serving on the commission. They must disclose any conflicts of interest, party registration and relevant personal financial data. Their conduct must be in accordance with the Oregon Government Ethics Law.
4. All communications between legislators and commission members will be public; the commission will conduct itself in accordance with the Oregon Public Meetings Law and members will conduct themselves in accordance with the state's ethics law.
5. The commission will have independent funding sufficient to carry out its work and is not subject to budget restrictions by the Legislature.
6. The Oregon Supreme Court shall be the court of original jurisdiction in legal challenges to congressional and legislative redistricting plans created by the commission, except in cases where challengers raise a federal legal question.
7. In order to preserve continuity of representation, an additional redistricting criterion should be added to the statutes (ORS 188.010): To the extent possible, lines should be drawn to minimize the number of persons moved from an existing district into a new district. All of Oregon's redistricting criteria should be placed in the state constitution as part of an initiative or referral to create an independent redistricting commission.
8. Oregon law on redistricting should be amended to vest congressional redistricting in the commission, and to require that it be done in the year following the decennial U.S. Census, with completion deadlines identical to those in force for legislative redistricting.
9. For purposes of redistricting, inmates of prisons and jails in Oregon should be counted in the district in which they last resided before incarceration. The Legislature should revive and pass Senate Bill 720 of 2011, which establishes this procedure.

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