



GERRYMANDERING

THREAT INDEX

APRIL 2021

35 states have an extreme or high threat of having their election districts rigged for the next decade.

- **More than half of all states** have laws that put them at an **extreme risk of rigged maps**. That includes red states and blue states, large and small, across the Northeast, West, Midwest, and South; from Illinois to Georgia, Wyoming to Massachusetts to Texas.

REDISTRICTING

GERRYMANDERING

BACKGROUND:

FINDINGS: THE GERRYMANDERING THREAT INDEX

THE RISK OF RIGGED MAPS

- EXTREME
- HIGH
- MODERATE
- LOWER
- MINIMAL

METHODOLOGY: To determine the risk of rigged maps under current law, this report grades each state's laws across **five key threats**, building to a **single, cumulative score**. Methodology is described in more detail on page 12.

THREAT 1: Can politicians control how election maps are drawn?

FINDING: **33 states** allow this clear conflict of interest.

THREAT 2: Can election maps be drawn in secret?

FINDING: **26 states** fail to require the public's input in the districts that will represent them for the next decade.

THREAT 3: Can election maps be rigged for partisan gain?

FINDING: **28 states** allow partisan factions to shield themselves from accountability.

THREAT 4: Are the legal standards weak?

FINDING: **27 states** put few rules on how maps can be drawn, and the way communities can be divided.

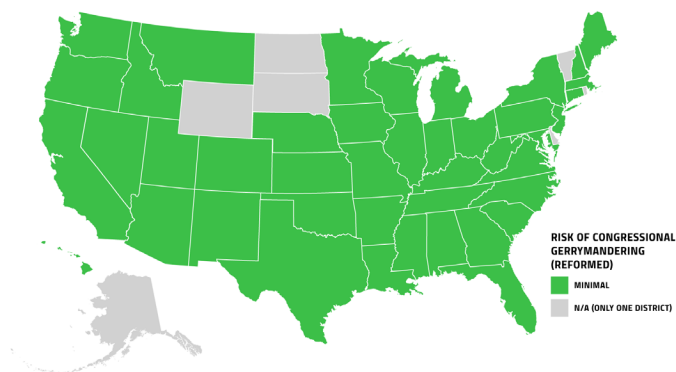
THREAT 5: Are rigged election maps hard to challenge in court?

FINDING: **20 states** make it highly difficult to reverse a gerrymandered map once passed.

Rigged maps are as unpopular as you can imagine. Among Americans familiar with the practice, **93% view gerrymandering unfavorably**, including 97% of Democrats, 93% of Independents, and 88% of Republicans.¹

SOLUTION: The US Senate is currently considering — and the US House has passed — legislation that would end the gerrymandering of congressional districts. Passing the **For the People Act (H.R. 1 / S.1)**, or a similar reform bill, would **all but eliminate the threat of rigged congressional maps nationwide**. With 25% of congressional districts already at a low threat of gerrymandering, this bill would **wipe out the threat in the remaining 325 districts, or 75% of the U.S. House**.

THE FOR THE PEOPLE ACT COULD END CONGRESSIONAL GERRYMANDERING:



¹ [ALG Research & GS Strategy Group for Campaign Legal Center](#) (December 12-16, 2019). n=800 online interviewees, with n=100 oversample of independents.

ACKNOWLEDGMENTS

This report required a nation's worth of research. Every state has a different process for drawing its election district maps, and these systems, authorities, and practices are often complex, vague, and frustratingly dense.

This risk analysis details the biggest structural threats to fair, representative election districts. It would not have been possible without the work of key redistricting experts and litigators. We gratefully direct readers especially to the following resources:

- [All About Redistricting](#). Loyola Law Professor Justin Levitt's comprehensive guides and litigation overviews are invaluable for tracking changes to the redistricting process and challenges to enacted maps around the country.
- [Brennan Center for Justice](#). Brennan Center's explainers, 50-state analyses, and white papers are essential for linking redistricting policy with advocacy. The organization's redistricting landscape report is a vital resource for understanding the legal and policy changes that will influence this redistricting cycle.
- [Campaign Legal Center](#). CLC's work at the intersection of law and reform is crucial for understanding the democracy landscape. We would refer readers specifically to the organization's guide to optimizing transparency within the redistricting process.
- [National Conference of State Legislatures](#). NCSL's work tracking Census delays and their effect on redistricting has become an essential resource this year.
- [Princeton Gerrymandering Project](#). PGP's tests of current maps, reform resources, and explainers are invaluable to all those who seek to quantify and enact better representation.

CREDITS

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Note: Redistricting procedures can shift rapidly. Please direct comments and suggestions to gerrymandering@represent.us. We will be tracking this process throughout the year, and we may update and expand this report as systems change.

ABOUT REPRESENTUS

[RepresentUs](#) brings together conservatives, progressives, and everyone in between to pass powerful state, local, and federal laws that stop political corruption and increase civic participation. With members across the country, our strategy is central to dismantling the root causes of inequities in our democracy, nationwide.

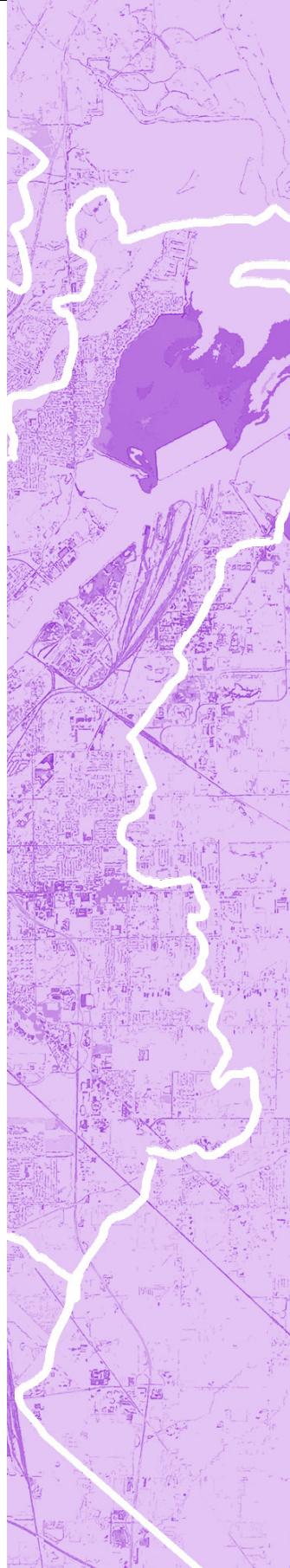


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INTRODUCTION

In describing the fight over election district maps, it's tempting to look to sports. There are teams and sidelines. There are rules of engagement. Often, there are trick plays, and winners and losers. Politicians may even write the rules and serve as their own referees.

But *redistricting*, the once-in-a-decade process of redrawing election districts to reflect changes in population, isn't a game.

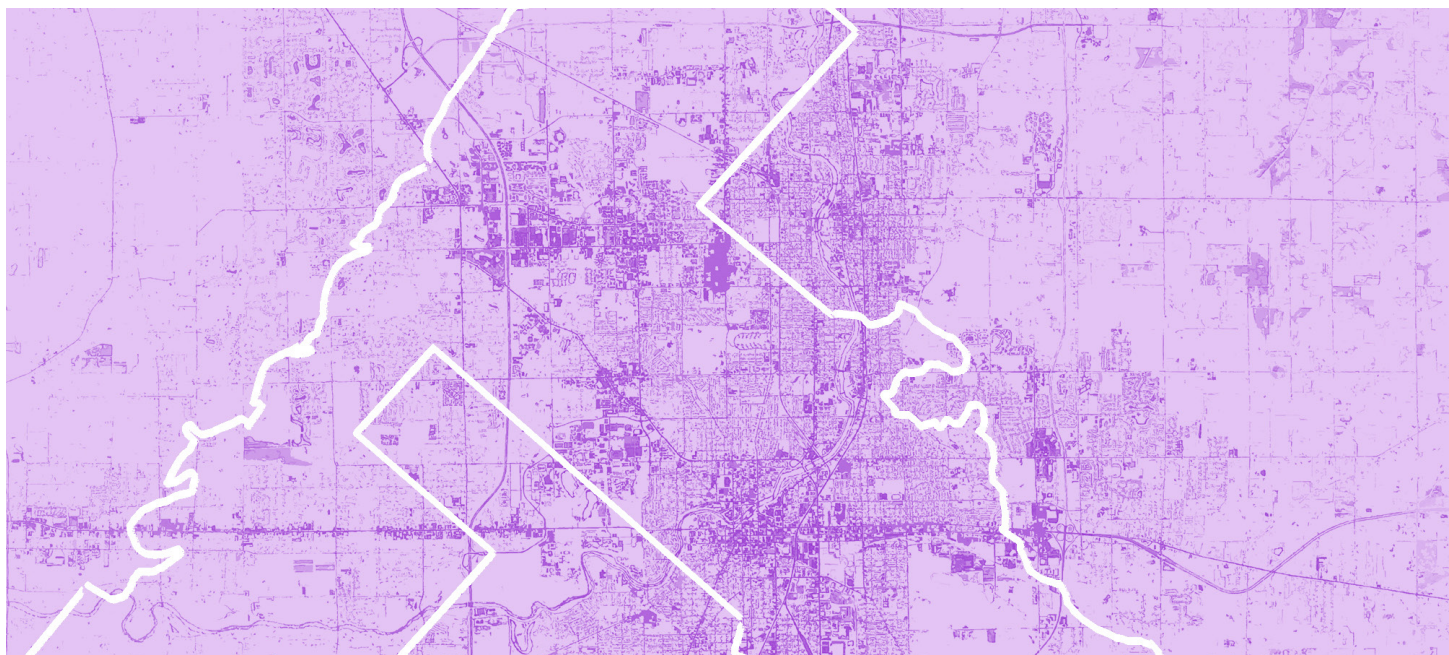
Our election district maps affect everything: how we're represented in government, whether elected officials have to pay attention to their voters, and ultimately the laws those officials create.

In many states, the district-drawing processes are ripe for abuse. The people with the most to gain — incumbent politicians — are often the ones tasked with organizing the districts they're seeking to represent. These officials often operate in secret, cutting deals to guarantee their own power. The resulting election districts, which might snake and twist and bend to include just the right groups of people, can carve up cities, towns, and neighborhoods. The act of *gerrymandering*, or manipulating election district maps to benefit one group over another, has tremendous, real-world consequences.

The structure has consequences. Gerrymandering is first and foremost a problem of process, and its effect on our representation and governance is shared. Across the country, our redistricting laws create the risk of rigged maps.

Ultimately, a system-wide crisis calls for a system-wide solution. The Constitution gives Congress clear authority to determine the manner and conduct of its own elections, and this Congress has the remarkable opportunity to effectively end gerrymandering at the federal level by passing the ***For The People Act of 2021 (H.R.1 & S.1)***.

In one fell swoop, Congress could put voters first and pull the map-drawing process away from partisan gamesmanship and back-room deals — on both sides of the aisle. It's the opportunity of a lifetime, and a chance our United States can't miss. The threat of rigged maps is too great to ignore.



EXECUTIVE SUMMARY

THE 5 KEY THREATS

By its nature, redistricting is complex. Americans have increasingly sorted themselves into different parts of the country, with Democrats tending to cluster in cities, and Republicans in rural areas. Not every uncompetitive district is gerrymandered, of course, but advanced computing power and the precision of modern map-making tools have only made it easier for those in power to squeeze any available advantage out of a district plan. And they do.

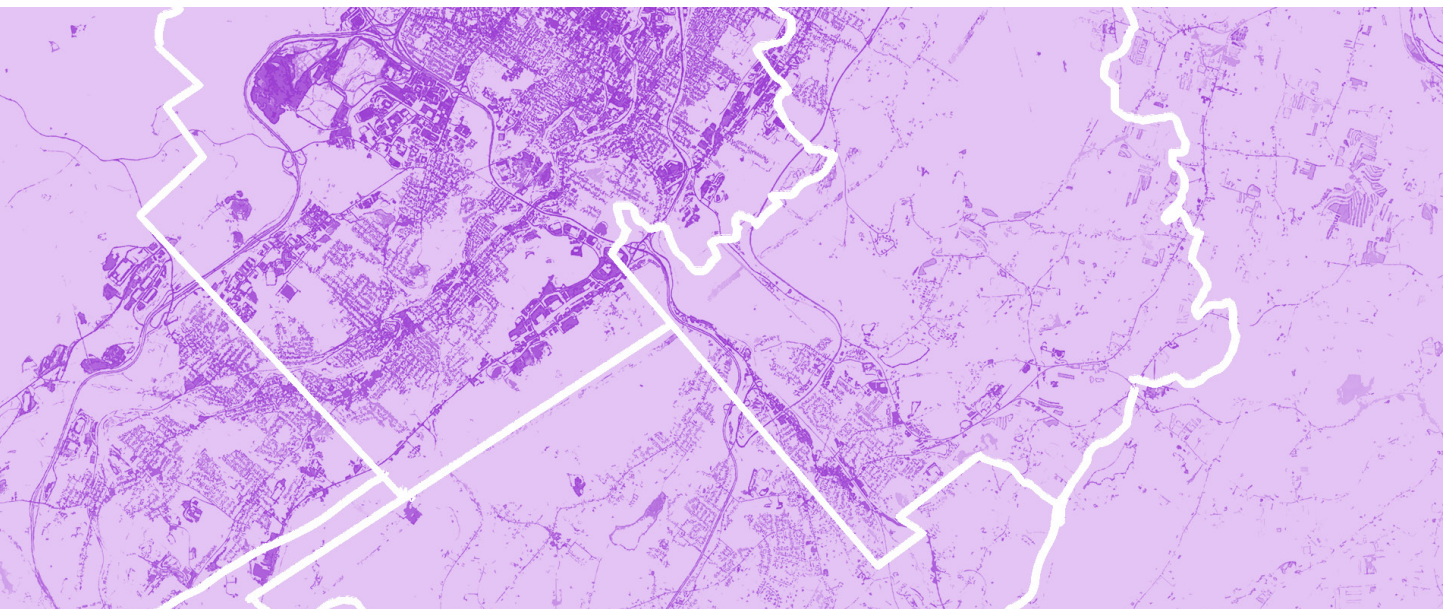
The risk of gerrymandering thrives in the complexity of the process. Politicians have every incentive to create maps that protect their power, locking in their partisan advantage for ten years at a time. Without clear standards designed to protect communities or promote competition, election district lines might divide a group into several districts, leaving groups of voters unable to elect candidates who represent their interests. And making it harder to challenge rigged maps in court can allow the powers-that-be to put plans in place with no fear of reproach.

Gerrymandering is nothing new. This country has a long and ongoing history of rigging election district maps to deny racial, ethnic, and language

minority groups the representation they deserve. While there are federal restrictions against racial gerrymandering, the 2021 redistricting cycle will be the first in modern memory to take place without federal preclearance provisions, standards that previously required places with a history of racially discriminatory voting policies to clear any changes with a federal court or the Department of Justice. In these states, this shift may change the redistricting playbook.

All of these factors can stack on top of one another, or hold each other in check. Ultimately, each of these pieces matter.

To assess the threat of rigged maps across the country, we have to break this process into component parts. This report zeroes in on **five key threats**, detailed on the following page, to identify the risk of rigged maps across the country. For each key threat, a “yes” raises red flags.



THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

The officials or groups charged with drawing and approving election district maps vary by state. The laws that guide redistricting play the primary role in limiting or empowering people who would rig the maps for political benefit. Every state uses a different structure.

- **High risk states** put current officials, often the state legislature, front and center in the map-drawing process, allowing politicians to choose their voters.
- **Moderate risk states** have hybrid systems, such as allowing independent commissions to propose maps that the legislature can approve with a super-majority or bipartisan vote.
- **Low risk states** empower independent commissions to redraw the district maps, requiring bipartisan or cross-partisan support for approval.

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

In some states, the maps first appear to the public when they are all but finished, the product of backroom deal-making and a closed-door process. In others, the map-drawers hold public hearings around the state, allowing individuals the chance to offer their thoughts on proposed plans, or to submit maps of their own.

- **High risk states** do not require hearings or opportunities for public input by law, and often limit transparency.
- **Moderate risk states** may have minimal transparency requirements, or different standards for congressional and state legislative map-drawing.
- **Low risk states** require redistricting authorities to hold public hearings, generally opening up their processes to greater citizen input and public scrutiny.

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

A process is only as good as the people who control it. The more groups required to contribute to the redistricting process, the less likely the maps are to be radically rigged.

- **High risk states** allow one party complete control over the election district-drawing process.
- **Moderate risk states** have some checks on partisan redistricting, but may see those protections diminish as political power shifts.
- **Low risk states** create systems that require robust, cross-partisan support to pass an election district map, reducing the risk of foul play.

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

Because map-makers start with a blank slate, the legal standards binding the process in each state play a significant role in determining the finished product. Explicit requirements that districts prioritize political and racial fairness and keep communities together can go a long way toward preventing partisan rigging.

- **High risk states** create few standards for the shape of districts beyond equal population and racial and language minority requirements.
- **Moderate risk states** may have strong standards for one set of maps but not another, or they might put tough requirements in basic state law, which is subject to revision by the legislature, rather than the state constitution, which is harder to amend.
- **Low risk states** have strong map standards in their state constitutions, including protections for existing communities and enclaves of interest, an electoral competition requirement, and/or a ban on partisan or pro-incumbent bias.

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

The United States Supreme Court ruled in 2019 that federal judges cannot consider partisan gerrymandering cases. As a result, state-level legal processes have become all the more important. Allowing citizens to challenge rigged maps for being too partisan provides an important defense against gerrymandering.

- **High risk states** make the process for challenging maps unclear, or limit the scope of those challenges. When the courts have reviewed the maps in these states, they have set bad precedent, either not taking action or allowing rigged maps to survive.
- **Moderate risk states** may provide a vague pathway for challenges, or they may have a checkered history of judicial review around election district maps.
- **Low risk states** provide a clear opportunity for people to challenge bad maps in court. In these states, there is a precedent of judicial action in gerrymandering cases.

The fight over rigged maps will be especially sharp in a number of battleground states. For this reason, this analysis goes into far greater detail in **six key spotlight states**: Florida, Georgia, North Carolina, Pennsylvania, Texas, and Wisconsin.

Because the election district-drawing process sometimes varies between state legislative districts and federal (US House) congressional districts, this analysis factors both into a single, comprehensive score. We detail the differences below.

Finally, and crucially, this analysis focuses on the map-making laws — not the people in power, who come and go. If recent political history has taught us anything, it's that norms are only as sturdy as they are allowed to be. **The risk of rigged maps is embedded in the very structure of the map-drawing system.**

FINDINGS

35 states have an extreme or high threat of gerrymandering.

That's **70% of the nation**, containing more than 188 million Americans, bridging the political spectrum. Across the country, map-drawing laws create a serious risk of rigged maps. By failing to constrain partisan politicians, dozens of states have kneecapped fair representation.

The states with the worst systems cross every spectrum imaginable. This analysis finds serious risk in blue states, red states, and swing states; in states in the South, Northeast, Midwest, and West.

While the states at the "low risk" end of the spectrum are fewer, they also vary — ranging from Idaho to Michigan to Hawaii.

What follows is an overview of the findings, described in more detail below:

THE FULL THREAT OF RIGGED MAPS:

STATE	TOTAL RANKING	Threat 1: Can politicians control how election maps are drawn?	Threat 2: Can election maps be drawn in secret?	Threat 3: Can election maps be rigged for partisan gain?	Threat 4: Are the legal standards weak?	Threat 5: Are rigged election maps hard to challenge in court?
Alabama	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD
Arkansas	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD
Delaware	EXTREME	HIGH	HIGH	HIGH	MOD	HIGH
Georgia	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
Illinois	EXTREME	HIGH	L† / H*	HIGH	L† / H*	HIGH
Indiana	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
Kansas	EXTREME	HIGH	HIGH	MOD	HIGH	MOD
Kentucky	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD
Louisiana	EXTREME	HIGH	HIGH	MOD	HIGH	MOD
Maryland	EXTREME	HIGH	MOD	HIGH	HIGH	HIGH
Massachusetts	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD
Minnesota	EXTREME	HIGH	HIGH	MOD	HIGH	HIGH
Mississippi	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
Nevada	EXTREME	HIGH	MOD	HIGH	HIGH	HIGH
New Hampshire	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
New Mexico	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
North Carolina	EXTREME	HIGH	HIGH	HIGH	MOD	LOW
North Dakota	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
Rhode Island	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD

* congressional maps rating

† state legislative maps rating

★ spotlight state

STATE	TOTAL RANKING	Threat 1: Can politicians control how election maps are drawn?	Threat 2: Can election maps be drawn in secret?	Threat 3: Can election maps be rigged for partisan gain?	Threat 4: Are the legal standards weak?	Threat 5: Are rigged election maps hard to challenge in court?
South Carolina	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
South Dakota	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
Tennessee	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD
★ Texas	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
Utah	EXTREME	HIGH	LOW	HIGH	HIGH	HIGH
West Virginia	EXTREME	HIGH	HIGH	HIGH	HIGH	HIGH
★ Wisconsin	EXTREME	HIGH	HIGH	MOD	HIGH	HIGH
Wyoming	EXTREME	HIGH	HIGH	HIGH	HIGH	MOD
Alaska	HIGH	HIGH	MOD	HIGH	MOD	LOW
Connecticut	HIGH	MOD	HIGH	MOD	HIGH	MOD
★ Florida	HIGH	HIGH	HIGH	HIGH	LOW	LOW
Missouri	HIGH	L [†] / H*	L [†] H*	M [†] / H*	HIGH	HIGH
Nebraska	HIGH	HIGH	LOW	HIGH	HIGH	LOW
Oklahoma	HIGH	HIGH	MOD	HIGH	MOD	MOD
Oregon	HIGH	HIGH	LOW	HIGH	MOD	LOW
Vermont	HIGH	HIGH	HIGH	MOD	MOD	LOW
Maine	MODERATE	MOD	LOW	MOD	M [†] / H*	MOD
★ Pennsylvania	MODERATE	M [†] / H*	MOD	MOD	MOD	MOD
Iowa	LOWER	MOD	LOW	MOD	MOD	LOW
Montana	LOWER	LOW	MOD	MOD	MOD	LOW
New Jersey	LOWER	LOW	H [†] / L*	LOW	M [†] / H*	MOD
New York	LOWER	MOD	LOW	MOD	LOW	MOD
Ohio	LOWER	L [†] / M*	LOW	MOD	LOW	HIGH
Virginia	LOWER	MOD	LOW	LOW	MOD	MOD
Arizona	MINIMAL	LOW	LOW	LOW	LOW	HIGH
California	MINIMAL	LOW	LOW	LOW	LOW	LOW
Colorado	MINIMAL	LOW	LOW	LOW	LOW	MOD
Hawaii	MINIMAL	LOW	LOW	LOW	L [†] / M*	LOW
Idaho	MINIMAL	LOW	LOW	LOW	MOD	MOD
Michigan	MINIMAL	LOW	LOW	LOW	LOW	MOD
Washington	MINIMAL	LOW	MOD	LOW	LOW	LOW

* congressional maps rating

† state legislative maps rating

★ spotlight state

METHODOLOGY OVERVIEW

To create a comprehensive risk rating, the report gives the most weight to **issues of process and authority — the “Who” and the “How” (threats 1 and 3)** — because the single greatest threat to fair maps is a system that allows a political faction to create the maps by itself, locking in its own advantage.

With lesser weight, the analysis factors in the **legal standards** and **transparency components (threats 4 and 2)**. Strong map requirements can limit the worst partisan abuses by making them illegal. And while popular input may not be enough to stop a rigged map, public pressure can make passing and defending it harder—and more politically risky. Finally, with the lowest weight, the risk rating adds in the question of **legal recourse (threat 5)**. The lack of a clear legal challenge procedure can make it hard to put bad maps in front of a judge.

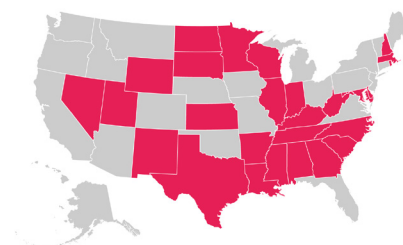
Ultimately, the report assigns states one of five overall threat levels: **extreme, high, moderate, lower, and minimal**. Note: In each state, the score is not a guarantee or even a prediction of the outcome. Redistricting is a shifting, human-led process, and that complexity can lead to positive or negative results against expectations.

The report below describes these systems and their risks in great detail. At the broadest level, the nation divides as follows:

EXTREME THREAT OF RIGGED MAPS: 27 STATES

Extreme-threat states give politicians control over an often-secretive, poorly-protected process. These states earn almost universally poor marks across process, partisan abuse, redistricting criteria, and public access categories, with map-drawing systems that can be steered toward political domination, incumbent protection, and partisan bias.

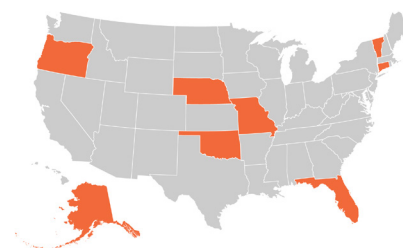
The extreme-threat states: Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, Wyoming.



HIGH THREAT OF RIGGED MAPS: 8 STATES

High-threat states are ripe for rigged maps, but may see minor protections in their current political landscape, basic transparency requirements, or simple legal legal standards for mapmakers. With few exceptions, current politicians control the redistricting process.

The high-threat states: Alaska, Connecticut, Florida, Missouri, Nebraska, Oklahoma, Oregon, Vermont.



MODERATE THREAT OF RIGGED MAPS: 2 STATES

Moderate-threat states are a mixed bag, with some good protections against rigged maps, and some key weaknesses.

In these states, there is some threat that one faction will be able to dominate the process. The existing safeguards largely depend on the current political landscape.

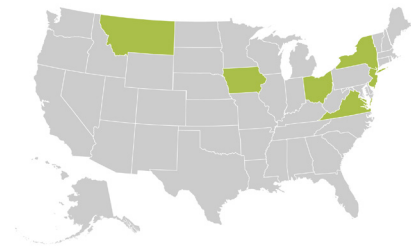
The moderate-threat states: Maine and Pennsylvania.



LOWER THREAT OF RIGGED MAPS: 6 STATES

Lower-threat states tend to have open map-drawing systems that prevent the worst gerrymandering, but may allow politicians more of a say in the design. The systems in place in these states have consistent strengths and a varied set of weaknesses: some have looser legal standards, while others limit transparency or allow for some partisan decision-making.

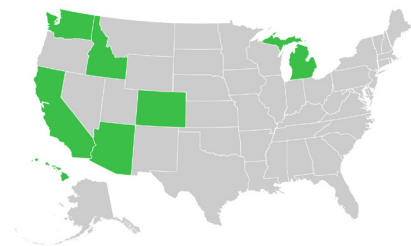
The lower-threat states: Iowa, Montana, New Jersey, New York, Ohio, Virginia.



MINIMAL THREAT OF RIGGED MAPS: 7 STATES

Minimal-threat states have stronger protections against rigged maps and clear, structured systems that encourage citizens to get involved. The map-drawing laws these states have put in place allow for more independence and require maps to earn cross-partisan support, drastically reducing the likelihood of rigged maps.

The minimal-threat states: Arizona, California, Colorado, Hawaii, Idaho, Michigan, Washington.



THE SYSTEM-WIDE SOLUTION: IMMEDIATE FEDERAL ANTI-GERRYMANDERING REFORM

Rigged maps are first and foremost a problem of weak redistricting laws. As described above, and as illustrated in far more detail below, these issues are varied, nuanced, and surprisingly complex. They are thorny. But they are also problems of policy, and policy problems can be addressed through clear law.

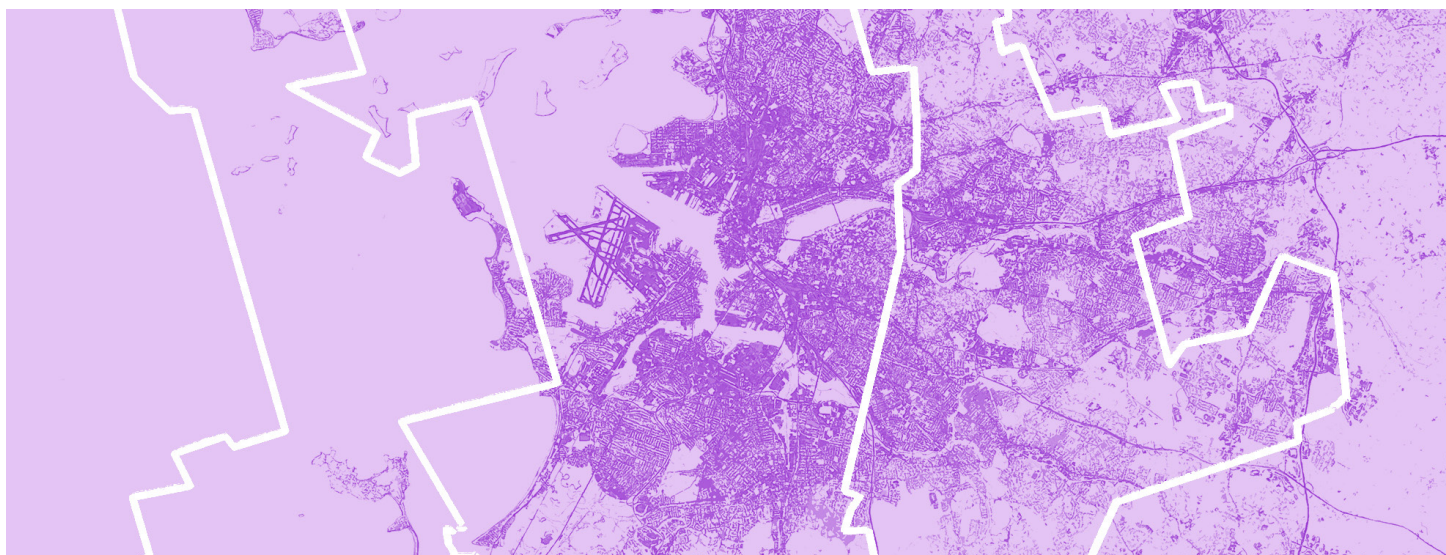
Right now, we face one such opportunity. The prospect of transformative reform is within arm's reach.

The For The People Act of 2021 (H.R.1 & S.1) has the power to eliminate the threat of rigged maps at the federal level. With this piece of legislation, already passed by the House, or a similar anti-gerrymandering bill, we can fix the threat of rigged maps for congressional districts before it's too late — in every state.

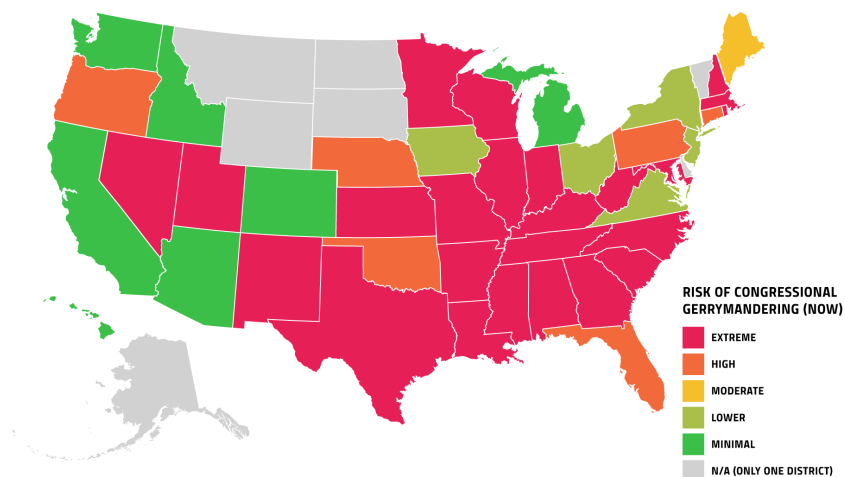
This report lays out the problem. We stand at the precipice — gerrymandering will begin in the fall once Census data are final. But if Congress acts now, it can swiftly prevent the next decade of gerrymandering corruption. With a single federal bill, we could:

- Require **bipartisan support for approval** of any new election district maps. A single political party should not be able to control the process.
- Require **public transparency** throughout the process.
- Strengthen the **legal map requirements** to prevent communities being carved up and districts from being made uncompetitive. Fair representation depends on real standards.
- Provide a **clear pathway for fair court review**, giving voters a final line of defense against rigged maps passed in their state.

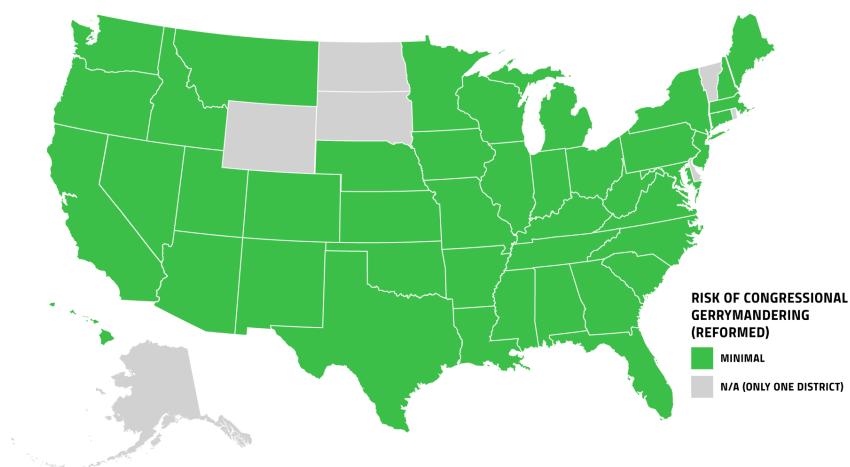
At present, just 25% of U.S. House districts currently have a minimal risk of gerrymandering. Almost overnight, the For the People Act could **solve the risk of rigged maps in the rest — 325 U.S. House districts, or 75% of the U.S. House.** We have never had an opportunity like this one.



CURRENT RISK OF RIGGED CONGRESSIONAL MAPS



FUTURE RISK OF RIGGED CONGRESSIONAL MAPS (UNDER THE FOR THE PEOPLE ACT)

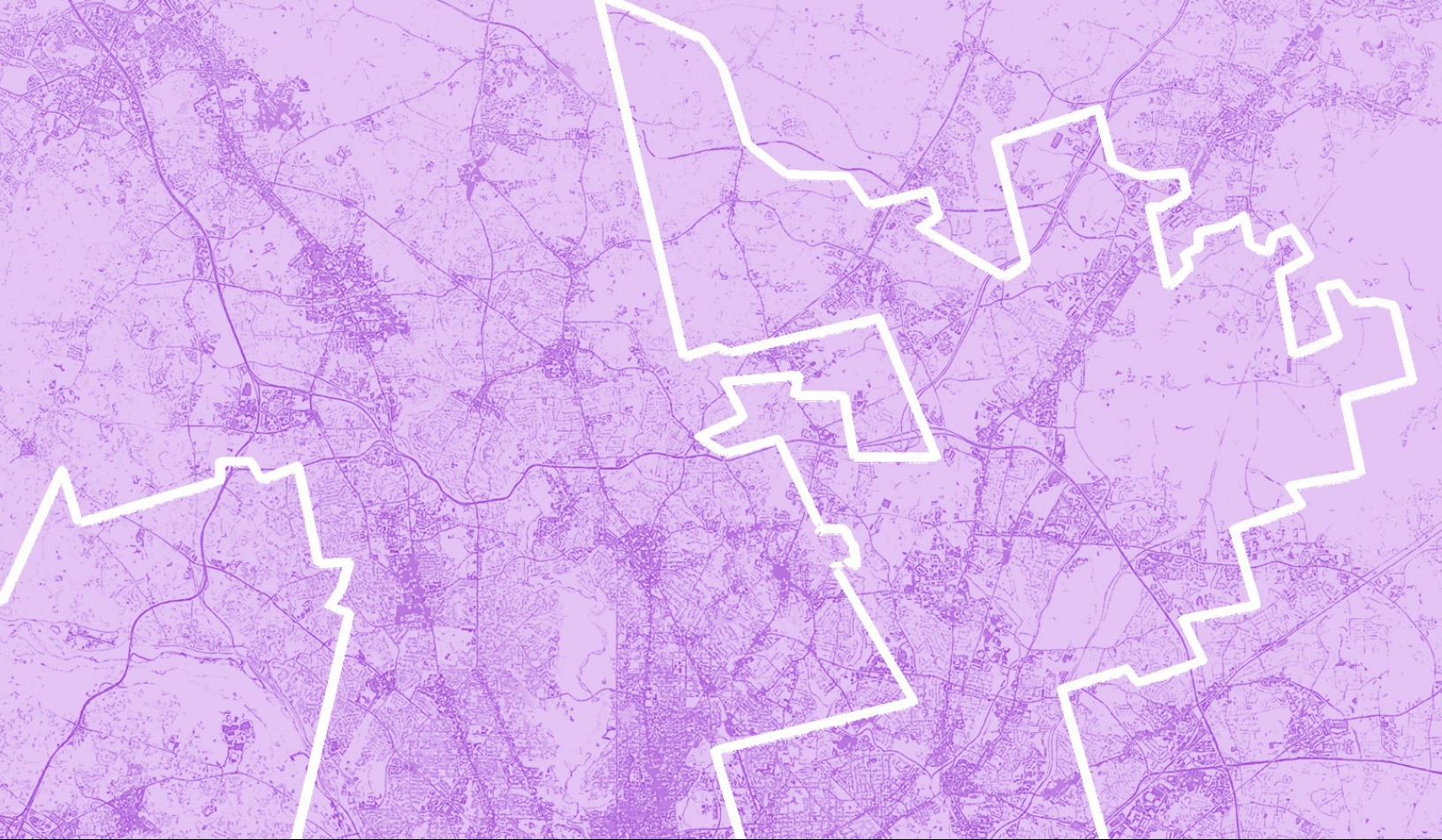


Note: Montana, which currently has only one seat, is projected to gain a second seat in the U.S. House when population data are released. Two-seat Rhode Island is projected to lose one district.

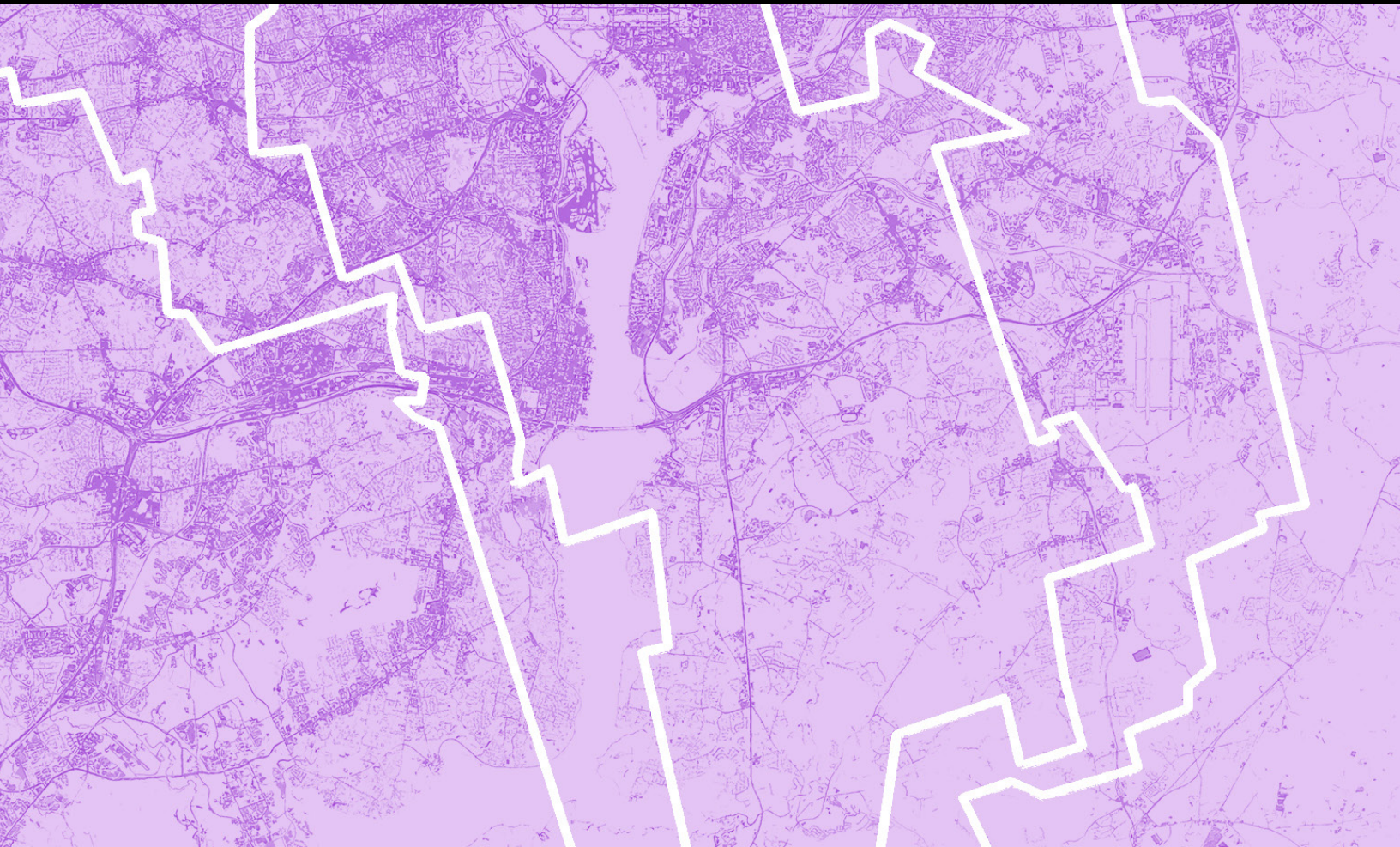
States around the country have cleared a path to victory, passing sweeping anti-gerrymandering laws that greatly reduce the risk of rigged maps. Over the last decade, Michigan, Virginia, Colorado, and Ohio have all lowered their threat level through state-level reform, and those efforts should inspire future change. While Congress deliberates, **states can still take action.**

The road to better representation starts here. Ultimately, the need for reform has never been clearer. The state-specific risk analyses, detailed below, underscore the importance of this moment.

We cannot let this opportunity pass us by.



STATE-BY-STATE SUMMARIES



ALABAMA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The legislature retains the authority to draft and approve congressional and state legislative redistricting plans by simple statute. A Permanent Legislative Committee on Reapportionment, which balloons during the redistricting cycle, oversees the process. While the governor has the authority to veto redistricting plans, the legislature needs only a simple majority to override the veto. Once reapportioned, state legislative districts may not be redrawn until after the next Census.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	There are no public access requirements around redistricting in Alabama, though the Legislative Committee on Redistricting is empowered to hold public hearings. In the 2011 cycle, the committee held a number of hearings, and allowed members of the public to submit redistricting plans.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite (House-Senate-Governor) control of the redistricting process, with large margins in both legislative houses. Vetoes may be overridden by a simple majority.
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Threat 4: Are the legal standards weak?

HIGH RISK	Alabama has minimal mandatory, unranked criteria for state legislative redistricting in the State Constitution, including a requirement that senate districts contain nearly equal populations and restrictions against subdividing counties between districts, creating non-contiguous districts, or redrawing districts before the next redistricting cycle. Congressional redistricting does not appear similarly constrained. During the 2011 cycle, the legislative redistricting committee adopted further, stronger guidelines for the redistricting process, including requirements that districts not dilute minority voting strength or pit incumbents against one another, remain contiguous and compact, and that they respect communities of interest, with community and political leaders to be consulted about the lines. The committee also imposed stricter transparency and public comment requirements upon itself. It is unclear whether the committee will adopt similar standards for the 2021 cycle. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> . The absence of a preclearance requirement may change the redistricting calculus.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	It does not appear redistricting plans are automatically reviewed. Challenges to state legislative and congressional redistricting plans must be commenced in the Circuit Court of Montgomery County. In the 2011 cycle, a federal challenge to congressional districts was unsuccessful, though a federal trial court threw out a number of state legislative districts for their drafters' improper use of race.
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ALABAMA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Alabama Const. Art. IX, §200
Supermajority Vote Needed?	No	Requires:	Constitutional criteria: State senate districts must be nearly equal in population.
Governor Signs/ Vetoes?	Yes	Prohibits:	For state Senate districts, the Constitution prohibits: subdivided counties, and districts with non-contiguous counties
Special Legal Process?	Not automatically reviewed. Citizens may challenge maps in the Circuit Court of Montgomery County.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: May 2021	United/Divided Government?	United - Republican
Hearings start:	Potentially May 2021	Governor:	Kay Ivey (R)
Required # of Hearings:	None (but held in 2011)	State House:	75R - 28D (R: 73%)
Public Comment:	Not Required (but past practice)	State Senate:	27R - 8D (R: 77%)
Likely Committees:	Legislative Cmte on Reapportionment	Veto-Proof Leg. Supermajority?	Yes (1/2)
		Supreme Court:	Partisan elections (and vacancy appointments): 9R - 0D

Timing note: Per the Alabama Constitution, state legislative redistricting must be completed during the first legislative session after the taking of the Census, set to finish May 18, 2021. It is unclear how the state will proceed pending the Census delay, though another provision in the Alabama Constitution provides for a state-level enumeration to serve as the basis of the apportionment in a case where the federal census is not taken, or is not full and satisfactory. There are no prescribed deadlines for congressional redistricting.

Citations and references: Alabama Const. Art. IX, §198-201; Alabama Code §29-2-50 - §29-2-52; Alabama Code §29-1-2.5; Princeton Gerrymandering Project.

Relevant recent cases: Per Justin Levitt's All About Redistricting: Chestnut v. Merrill, 446 F. Supp. 3d 908 (2020), Alabama Legis. Black Caucus v. Alabama, 575 U.S. 254 (2015); 231 F.Supp.3d 1026 (M.D. Ala. 2017).

ALASKA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>HIGH RISK</p>	<p>An appointed commission (Redistricting Board) adopts legislative districts by simple majority vote. The commission consists of five members. Two are appointed by the presiding officers of the house and senate respectively, two by the governor, and one by the chief justice. All four judicial districts must be represented, and appointees cannot hold public office. Technically, party affiliation cannot be considered when choosing members, but the selection system functionally allows for one party to dominate the commission.</p> <p>Alaska has a single at-large congressional district, and is not expected to gain any additional seats after the 2020 Census.</p>
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Threat 2: Can election maps be drawn in secret?

<p>MODERATE RISK</p>	<p>The board is required to hold an unspecified number of public hearings. Last cycle, several public hearings were held in April after maps were drafted. Audio recording, minutes of private meetings, and the board's proposed map drafts are available on the board website. Last cycle, citizens, groups, and organizations were encouraged to submit their own maps to be evaluated at hearings.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>HIGH RISK</p>	<p>There is no effective, formal mechanism that keeps the independent board from becoming a functionally partisan body. This cycle, three members are registered Republicans and two are unregistered.</p>
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Threat 4: Are the legal standards weak?

<p>MODERATE RISK</p>	<p>There are mandatory, unranked criteria in the state constitution including criteria requiring districts to be contiguous and compact, preserve local government boundaries, nest house districts in senate districts, use geographic features in describing boundaries, and preserve communities of interest, defined as "relatively integrated socio-economic area[s]." There is no competitiveness criteria. Consistent with the Hickel process, initial maps must be drafted using only these state criteria. The maps are then tested against the Voting Rights Act and altered only if necessary. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i>. The absence of a preclearance requirement may change the redistricting calculus, particularly regarding the voting power of Native Alaskans.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>LOW RISK</p>	<p>Original jurisdiction in all matters relating to redistricting is vested in the Alaska Superior Court. There is no automatic review, but a superior court will review the plan if a singular qualified voter petitions. If appealed, the Supreme Court will review the case in an expedited process, and in the past, that court has been relatively active in scrutinizing redistricting schemes. Several cases were brought against the Redistricting Board and decided in the plaintiff's favor last cycle, resulting in the maps being redrawn twice.</p>
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ALASKA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Political appointee commission (Redistricting Board)	Source:	Alaska Constitution art. VI, § 6; Hickel v. Southeast Conference (1992)
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): contiguous, compact, preserving local government boundaries, nesting House districts in Senate districts, using geographic features in describing boundaries, and preserving communities of interest, defined as “relatively integrated socio-economic area[s].”
Governor Signs/ Vetoes?	No	Prohibits:	N/A
Special Legal Process?	No automatic review, but citizens may challenge maps in the Superior Court	Allows:	N/A

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State leg: Draft maps due 30 days after report of census data, final plan due 90 days after report	United/Divided Government?	Functionally Divided - Republican governor, Republican Senate, House - coalition government dominated by Democrats
Hearings start:	Likely fall 2021	Governor:	Mike Dunleavy (R)
Required # of Hearings:	One	State House:	14D + 3I + 1 NP + 2R - 19R + 1D (D-dominated coalition: 50%)
Public Comment:	Not required (but past practice)	State Senate:	13R + 1D - 6D (R: 70%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Appointed from judicial commission nominees: 4 R-appointed - 1 I-appointed

Timing note: Legislative maps must be drafted 30 days after census data are reported, and the final maps are due 90 days after the data are obtained. Last cycle, hearings started in April 2011; the timing of the process this cycle will fully depend on census data delay. Candidates must file for the state primary elections by June 1, 2022; a delay will likely not affect the process.

Citations and references: Alaska Const. Art VI, §6-10; Princeton Gerrymandering Project; Redistricting Board Website Archive.

Relevant recent cases: Per Justin Leavitt’s All About Redistricting: Hickel vs. Southeast Conference 846 P.2d 38, 44-46 (1992); In re 2011 Redistricting Cases (2012): 274 P.3d 466, 282 P.3d 306, 4FA-11-2209CI, 2013 WL 6074059.

ARIZONA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>Arizona empowers an independent redistricting commission to draft and adopt legislative and congressional redistricting plans by simple majority vote. The commission consists of five members. One member is selected by each of the four party leaders in each chamber of the legislature from an applicant pool solicited and narrowed down to 25—10 Democrats, 10 Republicans, and five unaffiliated applicants—by the Commission on Appellate Court Appointments. Next, one non-major party member is selected from the applicant pool by the four previously selected members. No more than two commission members may be from the same county, and no more than two members may share any partisan affiliation. Commission members cannot have held elected office or worked as a party officer or registered lobbyist three years prior to appointment.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>Arizona has strong open meetings rules; all commission meetings are open to the public and held in various locations in the state, a 30 day period of public comment is required, draft maps are published, and redistricting data are publicly available. During the 2011 cycle, the commission held 45 hearings across two public comment periods from July to November.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>LOW RISK</p>	<p>The commission's appointment and approval structure helps to mitigate partisan risk: no party's affiliates can control the process, the application pooling system helps to control the partisanship of the members, and the requirement that redistricting plans receive cross-partisan support for approval serves to limit the bias of the plans. There have been accusations of partisan influence in the past and during the current cycle, though these claims have been cast aside.</p>
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Threat 4: Are the legal standards weak?

<p>LOW RISK</p>	<p>There are mandatory, unranked redistricting criteria in the Arizona Constitution, which mandates, first, the creation of a map of districts of equal population drawn in a grid-like pattern, from which adjustments are made to make districts compliant with federal requirements, contiguous and competitive, respectful of communities of interest, drawn to use city, town, county, census district, and other geographical boundaries, and competitive, where practicable. Party registration and voting history data may be used to test the maps against these criteria, but the residence of incumbents or candidates may not be considered. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i>. The absence of a preclearance requirement may change the redistricting calculus.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>HIGH RISK</p>	<p>There is no automatic judicial review of new district maps following the redistricting process in Arizona, and it is not clear citizens enjoy a right to challenge approved maps. In the past, cases related to the redistricting process have gone through both state and federal courts. In state courts, the Arizona Supreme Court struck down the governor's effort to impeach Commission Chair Mathis in 2011, and the Superior Court of Maricopa County dismissed Democratic challenges to commission nominees in 2020. The United States Supreme Court has twice ruled in favor of the redistricting commission, once reaffirming its right to exist (<i>AZ State Leg. v. AZ Ind. Redistricting Commission</i>, 2015) and once dismissing challenges to its adopted districts (<i>Harris v. AZ Ind. Redistricting Commission</i>, 2016).</p>
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ARIZONA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Independent commission	Source:	Arizona Const. Art. IV, pt. 2
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for both state leg. and congressional districts (unranked): Nest house districts in senate districts; compactness; contiguity; preserve communities of interest; follow geographic, municipal, county, and census tract boundaries; favor competitive districts, except when doing so would create significant detriment to the other criteria
Governor Signs/ Vetoes?	No	Prohibits:	The Constitution prohibits using party affiliation and voting history data to draft maps, but it may be used to test compliance with other criteria. Consideration of incumbent or candidate addresses is also prohibited.
Special Legal Process?	Maps are not automatically reviewed, and it's unclear if citizens can challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	None	United/Divided Government?	United - Republican
Hearings start:	Not specified	Governor:	Doug Ducey (R)
Required # of Hearings:	None specified	State House:	31R - 29D (R: 51%)
Public Comment:	Public comment period of 30 days after map drafting, all commission meetings open to public	State Senate:	16R - 14D (R: 53%)
Likely Committees:	Public comment period of 30 days after map drafting, all commission meetings open to public	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Assisted appointment: 7R - 0D

Timing note: Legislative and congressional maps have no deadline for drafting or adoption. Last cycle, maps were approved by the commission in January of 2012. Because Arizona has no formal deadline and a late 2022 primary, the commission should be able to weather the delay in Census population data transmission.

Citations and references: Arizona Const. Art. IV, Pt. 2; State of Arizona Redistricting Commission Website; "Top Democrats sue over Arizona redistricting panel list," The Associated Press (Oct. 23, 2020); Princeton Gerrymandering Project; Brennan Center.

Relevant recent cases: Per the Princeton Gerrymandering Project: Arizona State Legislature v. Arizona Independent Redistricting Commission (2015); Harris v. Arizona Independent Redistricting Commission (2016); Fernandez v Commission on Appellate Court Appointments (2020).

ARKANSAS

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts Congressional districts as a regular statute by majority vote, which does require the Governor's approval. Vetoes can be overridden with another majority vote. An unbalanced politician commission adopts state legislative districts by majority vote. The Commission consists of 3 members: the Governor, Secretary of State, and Attorney General.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	No public access/participation requirements in the redistricting context, although for state legislative maps, the politician commission has accepted public comment and posted hearing transcripts. There have been no announcements on public input for this cycle from either the legislature nor the politician commission.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite (House-Senate-Governor) control of the redistricting process, with large margins in both legislative houses and control over the offices empowered to sit on the commission that redraws state legislative maps, with no apparent constraints on redistricting for partisan advantage.
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Threat 4: Are the legal standards weak?

HIGH RISK	Arkansas has mandatory criteria in the State Constitution for state legislative districts, including criteria requiring state senate districts to be contiguous, and to follow county lines and keep the population of districts as equal as possible (where practicable). Note: Keeping whole "communities of interest" is not an express criterion. There are no state-specific criteria for Congressional districts.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	The Arkansas Supreme Court has original jurisdiction over any state court challenges to state legislative lines, and the court will review the plan if a citizen petitions. The pathway for challenges to congressional maps is less clear. In the last cycle, both sets of maps were challenged in federal court and were rejected. Neither plan was challenged in the 2000 cycle, so it is hard to say how this court would treat an anti-gerrymandering challenge.
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ARKANSAS REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Congressional: legislature State leg.: politician commission	Source:	Ark. Const. Art. 8, § 2, 3, 4
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state Senate districts (unranked): contiguous, and that they follow county lines except where necessary to comply with other legal requirements. It also requires the districts to be equally populated "as nearly as practicable".
Governor Signs/ Vetoes?	Congressional: Yes State leg.: No	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed in court, but the Supreme Court has original jurisdiction	Allows:	Multi-member districts

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: Feb. 1, 2021	United/Divided Government?	United - Republican
Hearings start:	Not specified	Governor:	Asa Hutchinson (R)
Required # of Hearings:	None	State House:	78R - 2D (R: 78%)
Public Comment:	Not required (but past practice)	State Senate:	26R - 9D - 1I (R: 77%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	Yes (simple majority needed)
		Supreme Court:	Nonpartisan election: 7 nonpartisan members

Citations and references: Arkansas Const. Art. 8, §1-5; Arkansas Secretary of State

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Larry v. Arkansas*, No. 4:18-cv-00116, 2018 WL 4858956 (E.D. Ark. Aug. 3, 2018); *Jeffers v. Beebe*, 895 F. Supp. 2d 920 (E.D. Ark. 2012).

Timing note: Arkansas state law imposes no deadline for the drawing of Congressional maps; last cycle they were passed on April 13, 2011. Legislative maps should be adopted by February 1, 2021 according to the state constitution, but census data is not expected to be available until after that date; last cycle they were passed on July 29, 2011.

CALIFORNIA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

LOW RISK	The independent California Citizens Redistricting Commission is composed of 14 members, 5 from both major parties and 4 unregistered independents. First, the 120 most qualified candidates are interviewed by the Applicant Review Panel, 60 divided evenly across party affiliations are selected. The Legislature can then remove up to 24 candidates before passing the pool to the State Auditor who randomly selects the first 8 commissioners. These 8 members then choose the remaining six. According to the State Constitution, the Commission must be "independent from legislative influence and reasonably representative of [the] State's diversity." Commissioners cannot have held party officer positions 10 year prior to selection, and they cannot have ever held political office, worked as a lobbyist, or contributed large amounts to political campaigns. To approve final maps, 9 affirmative votes are required, 3 from each of the 2 major political parties and 3 unaffiliated members. Final maps may be subject to referendum if one is requested.
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Threat 2: Can election maps be drawn in secret?

LOW RISK	The redistricting process is subject to strong open meetings rules; all meetings are livestreamed, and the commission must hold public hearings before and after releasing draft maps. In the last cycle, the commission held 34 public meetings in which more than 2,700 people participated; 20,000 written comments were also submitted.
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Threat 3: Can election maps be rigged for partisan gain?

LOW RISK	California's independent redistricting authority, applicant review system, balanced partisan interests, and cross-partisan map approval requirements greatly minimize the risk of partisan map-making.
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Threat 4: Are the legal standards weak?

LOW RISK	In addition to the Voting Rights Act, state criteria for both state legislative and congressional maps are ranked in this order: compact, contiguous, preserve political subdivisions, and preserve communities of interest, defined as "a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation." The commission is also prohibited from considering partisan data except to comply with federal law, and drawing maps to favor or disfavor an incumbent, candidate, or party is prohibited. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> . The absence of a preclearance requirement may change the redistricting calculus.
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Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK	There is no automatic judicial review of new district maps in California, but the State Supreme Court will review the plan if a registered voter petitions. The Supreme Court also has the power to draw its own maps if the commission fails to approve one. In addition to the recent extension of the deadline for maps granted by the State Supreme Court, there have been two other cases relating to the commission's redistricting process. In <i>Radanovich v. Bowen I</i> (2011), the State Supreme Court rejected a challenge of the commission's use of racial identity data when drawing maps. In <i>Connerly v. California</i> (2017), a state trial court dismissed a case alleging that the commission's requirement to reflect the diversity of the state was illegal.
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CALIFORNIA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Independent commission (California Citizens Redistricting Commission)	Source:	California Const. Art. XXI, § 2(d)
Supermajority Vote Needed?	Yes	Requires:	Constitutional criteria for both state legislative and congressional districts (ranked): (1) Contiguity, (2) follow political boundaries and preserve communities of interest to the extent possible, (3) compactness, (4) nest two house districts within each senate district to the extent practicable.
Governor Signs/ Vetoes?	No	Prohibits:	Constitutional criteria for both state legislative and Congressional districts: Cannot consider incumbent or candidate residences, cannot draw districts with the purpose of favoring or discriminating against a candidate, incumbent, or party, partisan data may not be used unless required by federal law.
Special Legal Process?	Maps aren't automatically reviewed, but citizens can challenge maps in court	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	After court-granted extension, final plans are due Feb. 14, 2022	United/Divided Government?	United - Democratic
Hearings start:	Not specified	Governor:	Gavin Newsom (D)
Required # of Hearings:	None specified	State House:	60D - 19R - 11 (D: 75%)
Public Comment:	Required	State Senate:	30D - 9R (D: 76%)
Likely Committees:	None	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Gubernatorial appointment: 5D - 2R

Timing note: In July, the Supreme Court granted a one-time extension of the deadline due to the census data delay. The deadline is now February 14, 2022 for state legislative and congressional maps. If the commission does not pass a plan by that time, the California Secretary of State must ask the California Supreme Court to appoint special masters to do so. There is no set deadline for the special masters to complete their plan, but the filing deadline is March 11, 2022 for all candidates.

Citations and references: California Const. Art. XXI, §1-3; California Gov. Code §8252-8253

Relevant recent cases: Per Justin Levitt's All About Redistricting: Legislature of the State of California v. Padilla (2020); Radanovich v. Bowen I (2011); Connerly v. California (2017).

COLORADO

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>In 2018, Colorado voters approved a constitutional amendment establishing two 12-member independent commissions to draw maps for state legislative and U.S congressional districts, respectively. Both commissions are filled as follows: An initial pool of 300 Democrats, 300 Republicans, and 450 unaffiliated voters are chosen at random from all applicants. A panel of multi partisan retired state appellate judges review applications and select 50 candidates from each political affiliation, and then randomly choose 2 of the remaining candidates from each political affiliation. The four legislative leaders then put forward 10 additional candidates each and the judges panel selects 1 candidate from each of these pools of 10 with an eye towards racial, ethnic, gender, and geographic diversity. Each commission is thus composed of 4 Democrats, 4 Republicans, and 4 independents.</p> <p>For each commission, nonpartisan staff first prepare an initial plan which commissioners can then modify after public hearings. 8 votes are required to approve plans, including support from 2 unaffiliated commissioners. If commissioners cannot agree on a plan, nonpartisan staff must prepare 3 new plans, and if none of these are passed, the "third" plan as designated by the nonpartisan staff is enacted. The Colorado Supreme Court then reviews the approved plans from each commission, and must make its decision by Nov 1, 2021 for the Congressional maps and Nov 15 for the state legislative maps.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>Colorado has strong open meetings laws and public participation opportunities. The commission must hold 3 public hearings in each congressional district and welcomes citizens to submit their own maps and written comments on the commission websites throughout the process. Public input is also publicly available here online.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>LOW RISK</p>	<p>This cycle will be the first in which Colorado uses the independent commissions in place of the legislature. The new process is untested, but the independent commissions have been deliberately constructed to decrease partisan influence, and the final plans must be accompanied by reports explaining how the plan reflects the balance of political competitiveness with other state criteria.</p>
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Threat 4: Are the legal standards weak?

<p>LOW RISK</p>	<p>State legislative and congressional districts maps must have a population deviation of less than 5%, must be contiguous, compact, and preserve communities of interest and political subdivisions. After these criteria are met, maps must be drawn to promote competitiveness. The commissions are prohibited from drawing maps to favor or disfavor an incumbent, candidate, or party. They are also prohibited from drawing maps that harm the right of any citizen to vote or the ability of a racial or language minority group's electoral influence.</p>
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COLORADO REDISTRICTING SUMMARY

Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK

There is automatic judicial review of redistricting plans. The Colorado Supreme Court has two months to approve or reject the plans for both state legislative and congressional districts. In the 2011 cycle, the Colorado Supreme Court upheld Congressional maps that favored Democrats, but rejected state legislative maps on equal population and county integrity grounds.

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Two independent commissions	Source:	Colorado Const. Art V, § 46-48
Supermajority Vote Needed?	Yes	Requires:	Constitutional criteria for both state legislative and congressional maps (unranked): Population deviation of less than 5%, contiguity, compactness, preserve communities of interest and political subdivisions. After other criteria are met, maximize the number of competitive districts.
Governor Signs/ Vetoes?	No	Prohibits:	Constitutional criteria for both state legislative and congressional maps: Cannot draw districts to favor or disfavor incumbent members, candidates, or any political party, cannot draw districts to "harm the right of any citizen to vote or ability of a racial or language minority group's electoral influence."
Special Legal Process?	Maps are automatically reviewed in the Colorado Supreme Court	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State leg: September 15, 2021 Congressional: September 1, 2021	United/Divided Government?	United - Democratic
Hearings start:	Not specified	Governor:	Jared Polis (D)
Required # of Hearings:	21 (3 in each Congressional district)	State House:	41D - 24R (D: 63%)
Public Comment:	Required	State Senate:	20D - 15R (D: 57%)
Likely Committees:	None	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Appointed: 7D - 0R

COLORADO REDISTRICTING SUMMARY

Timing note: Initial plans for both state legislative and congressional redistricting are due 30-45 days after the census data becomes available. Public hearings must be conducted by July 7, 2021 for Congressional redistricting and July 21, 2021 for state legislative redistricting. Final plans for congressional districts must be adopted by September 1, 2021 and September 15 for state legislative districts. The state Supreme Court also has deadlines of November 1, 2021 and November 15, 2021, respectively, to review and approve or return submitted maps. Final maps must be approved by the Supreme Court no later than December 15, 2021 and December 29, 2021, respectively. Crucially, both commissions have the authority to adjust these deadlines to accommodate "conditions beyond the commission's control" (like a delay in census data).

Citations and references: Colorado Const. Art V, §44-48; "How will Colorado's redistricting commissions work in 2021?" The Denver Post (Dec. 22, 2020)

Relevant recent cases: Per Justin Levitt's All About Redistricting: Hall v. Moreno, 270 P.3d 961 (2012); In re Reapportionment of Colo. General Assembly, 332 P.3d 108 (2011)

CONNECTICUT

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

MODERATE RISK	After the plans for state legislative and congressional maps are drafted by the bipartisan Reapportionment Committee, the Legislature adopts both plans by supermajority (2/3) vote, which is not subject to veto by governor. If the Legislature fails to adopt districts, a backup commission selected by legislative leadership and appointed by the governor is convened—with two members chosen by each of the four leaders, and the initial eight commissioners choosing a ninth—five of nine commission members are required to approve the new plans. If the commission fails to approve a plan, the process falls to the authority of the State Supreme Court.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Connecticut has strong open meeting laws that apply generally to the redistricting process, but there are no redistricting-specific public hearing or citizen map submission requirements. Last cycle, 6 public hearings on the redistricting process were held in July.
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Threat 3: Can election maps be rigged for partisan gain?

MODERATE RISK	There are several checks against partisan abuse in the Connecticut redistricting process. First, maps must receive the approval of a 2/3 supermajority to pass the legislature. The backup commission is evenly balanced, with no party able to control the map approval process. Should the backup commission fail, the State Supreme Court is empowered to assume redistricting authority. While there is still a chance of pro-incumbent bias in the final maps, the structural constraints should limit runaway partisan advantage—though a future change in legislative composition could hamper these safeguards.
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Threat 4: Are the legal standards weak?

HIGH RISK	Connecticut has criteria in the State Constitution for state legislative districts only, including contiguity and a requirement for state house districts to follow town boundaries when practicable. There is no express prohibition on partisan, pro/anti-incumbent, and racially-discriminatory gerrymandering. Notably, there are no state-mandated criteria for congressional maps.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	Legislative maps are not automatically reviewed by the State Supreme Court, but maps will be reviewed upon petition from any registered voter with a response deadline of 45 days after receiving the petition. The Supreme Court also drafts the maps if the backup commission fails to draft them by the November 30th deadline. Original jurisdiction to challenge a redistricting plan is vested with the State Supreme Court. The Connecticut Supreme Court dismissed a Republican challenge to maps drawn by Supreme Court-appointed special master Nathaniel Persily in 2012.
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CONNECTICUT REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Proposed by bipartisan Reapportionment Committee, passed by legislature or backup commission if necessary	Source:	Connecticut Const. Art. III, § 3-6; Connecticut Const. amend. Art. XVI; XXVI; XXX
Supermajority Vote Needed?	Yes	Requires:	Constitutional criteria for state legislative districts (unranked): contiguity, follow town boundaries when practicable for House districts No criteria for congressional districts
Governor Signs/ Vetoes?	No	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	September 15, 2021	United/Divided Government?	United - Democratic
Hearings start:	Not specified	Governor:	Ned Lamont (D)
Required # of Hearings:	None (but past practice)	State House:	97D - 54R (64% D)
Public Comment:	Required	State Senate:	23D - 12R (65% D)
Likely Committees:	Reapportionment Committee	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Gubernatorial appointment: 7D - 0R

Timing note: Both state legislative and congressional maps must be adopted by the Legislature by September 15, 2021. The current legislative session runs from January 6, 2021 through June 9, 2021. Based on the 2011 cycle, public hearings should be held in July. If the Legislature fails to approve maps, the backup commission has until November 30 to adopt a plan. Last cycle, maps were adopted in February 2012 after the Supreme Court intervened. Even without census delays, Connecticut has a history of missing redistricting deadlines and triggering the backup commission.

Citations and references: Connecticut Const. Art. III, §3-6; Connecticut Const. Amend. Art. XVI; XXVI; XXX.

Relevant recent cases: Per Justin Levitt's All About Redistricting: In re Petition of Reapportionment Comm'n, 36 A.3d 661 (Conn. 2012)

DELAWARE

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	<p>The Legislature adopts state legislative districts as a simple statute by majority vote, which requires gubernatorial approval. Vetoes can be overridden with a 3/5 majority vote in each chamber.</p> <p>Delaware has a single at-large congressional district, and is not expected to gain any additional seats after the 2020 Census.</p>
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	<p>There are no public hearing requirements within the redistricting process. In the past the state has implemented stronger transparency and comment policies.</p>
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	<p>Democrats have tripartite control of the state legislative redistricting process, with relatively large margins in both houses. There do not appear to be structural constraints on the legislature's ability to redistricting for partisan gain.</p>
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Threat 4: Are the legal standards weak?

MODERATE RISK	<p>Delaware's mandatory unranked criteria in statute include contiguity, the following of major roads and natural boundaries, and the prohibition of undue favoritism towards any person or party.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	<p>There is no automatic judicial review of maps and no redistricting-specific legal recourse defined by statute. There were no legal challenges to maps in the past 2 cycles.</p>
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DELAWARE REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Delaware Code Ann. Title 29, § 804-5
Supermajority Vote Needed?	No	Requires:	Statutory criteria for both state legislative and congressional maps (unranked): Contiguity, follow major roads and natural boundaries
Governor Signs/ Vetoes?	Yes	Prohibits:	Statutory criteria for both state legislative and congressional maps: Undue favoritism towards any person or party
Special Legal Process?	Maps aren't automatically reviewed. It's unclear if citizens can challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	June 30, 2021	United/Divided Government?	United - Democratic
Hearings start:	Likely April	Governor:	John Carney (D)
Required # of Hearings:	Not specified	State House:	26D - 15R (D: 63%)
Public Comment:	Not Required (but past practice)	State Senate:	14D - 7R (D: 66%)
Likely Committees:	House Admin. Comm., Senate Admin. Services Comm.	Veto-Proof Leg. Supermajority?	State House: no; Senate: yes (2/3)
		Supreme Court:	Assisted appointment: 5D - 0R

Timing note: State legislative maps must be adopted by June 30, 2021 (the end of the regular 2021 session) under statute. The legislature has the authority to extend this deadline and convene a special session if needed.

Citations and references: Delaware Code Ann. Tit. 29, §804-5; "Delaware Senate Votes to Open Redistricting to the Public" Ballotpedia (2011)

Relevant recent cases: N/A

★ SPOTLIGHT: FLORIDA

THIS REPORT HIGHLIGHTS SEVERAL BATTLEGROUND STATES WHERE THE REDISTRICTING PROCESS IS LIKELY TO BE ESPECIALLY CONTENTIOUS.



Timing note: Legislative maps must be adopted in the 2022 regular session (1/11/22 – 3/12/22). Hearings can begin far sooner; last cycle they started in June of 2011. There is no deadline for U.S. House maps; last cycle they were passed at the same time. Note: A special session could be called to pass house maps in mid-2021.

Threat 1: Can politicians control how election maps are drawn?

HIGH RISK

The legislature adopts legislative districts by majority-vote joint resolution, which does not require the governor's approval. However, the legislature adopts congressional districts by majority-vote bill, which requires the governor's approval.

Threat 2: Can election maps be drawn in secret?

HIGH RISK

The legislature is probably not legally required to hold public hearings or take public comment, though it has done so extensively in prior cycles. Florida has strong open meeting laws, especially in the redistricting context.

Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK

Republicans have tripartite (House-Senate-Governor) control of the redistricting process, with large margins in both houses. Florida has a history of partisan gerrymandering.

Threat 4: Are the legal standards weak?

LOW RISK

The State Constitution prohibits intentional partisan and pro/anti-incumbent gerrymandering, which is well-developed in Supreme Court case law. The Constitution also prohibits minority vote dilution and retrogression. Note: Keeping whole "communities of interest" is not an express criterion.

Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK

Legislative maps are automatically reviewed by the Supreme Court. Florida has strong anti-gerrymandering precedent. The composition of the Court has changed dramatically in recent years, however.

SPOTLIGHT: FLORIDA

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Fl. Const. Art. III, §20
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for both congressional and state legislative districts (ranked): 1. contiguity 2. nearly equal in population 3. compactness 4. follow political/geographic boundaries
Governor Signs/ Vetoes?	State legislative: No Congressional: Yes	Prohibits:	Constitutional criteria for both congressional and state legislative districts prohibits: partisan, incumbent, & racially discrim. gerrymandering
Special Legal Process?	Legislative maps automatically reviewed by the Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State legislative: March 2022 Congressional: None	United/Divided Government?	United - Republican
Hearings start:	Likely 2021	Governor:	Ron DeSantis (R)
Required # of Hearings:	None (but dozens in 2011)	State House:	78R - 42D (R: 65%)
Public Comment:	Not Required (but past practice)	State Senate:	24R - 16D (R: 60%)
Likely Committees:	House Redistricting Cmte. Sen. Reapportionment Cmte	Veto-Proof Leg. Supermajority?	State legislative: N/A Congressional: No (2/3 supermajority needed)
		Supreme Court:	Appointing governor (merit): 7R - 0D

SPOTLIGHT: FLORIDA

THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

In Florida the state legislature controls the process for both state and congressional redistricting. However, the processes for adopting legislative and congressional maps are slightly different.

For state legislative redistricting: Under the state constitution, the legislature adopts its own legislative districts through a joint resolution passed by both houses.¹ The resolution requires a majority vote of both houses to pass. Unlike a bill, joint resolutions are not presented to the governor for signature or veto.² Once new maps are adopted, the attorney general automatically petitions the Supreme Court for “a declaratory judgment determining the validity of the apportionment.”³

For congressional redistricting: The state constitution does not specify who is responsible for congressional redistricting.⁴ By default, this power falls to the state legislature, the same as state redistricting. But unlike in the case of state redistricting⁵, which is accomplished through a joint resolution, congressional redistricting plans are passed as ordinary bills.⁶ A bill becomes law if passed by a majority vote of both houses and if the governor either signs the bill or fails to veto it within seven days (or 15 days if the legislature has adjourned).⁷ A governor’s veto of a congressional redistricting plan, like any veto, may

be overridden by the Legislature by a two-thirds vote of each house.⁸ In another departure from state redistricting, there is no requirement that the Supreme Court review the legality of congressional maps.

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

There are no redistricting-specific or even general legal requirements that the legislature hold public hearings and receive public comment on redistricting. With that said, Florida does have very strong open meeting laws, which the Supreme Court has strengthened in the redistricting context. Last cycle, the legislature held dozens of public hearings in different locations where the public could provide comment.

Open Meetings: Under the Florida Constitution, all legislative meetings need to be “open and noticed,” unless the legislature, by a two-thirds vote of each house, passes a general law exempting itself from this requirement.⁹ The exemption must explain the “public necessity justifying the exemption,” and may be “no broader than necessary to accomplish the stated purpose of the law.” The constitution defines legislative meetings broadly: “all prearranged gatherings, between more than two members of the legislature, or between the governor ... the purpose of which is to agree upon formal legislative action ...

1 Fl. Const. Art. III, §16 (a).

2 See Fl. Const. Art. III, §7; 8. See also Brennan Center, “50 State Guide to Redistricting: Florida” (Upd. Jun. 7, 2019), <https://www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting>.

3 Fl. Const. Art. III, §16 (c).

4 The only reference to congressional redistricting is in Fl. Const. Art. III, §20, which specifies the criteria for redistricting without indicating who is responsible for it.

5 See Brennan Center, “50 State Guide to Redistricting: Florida” (Upd. Jun. 7, 2019) (Legislature redistricting congressional seats), <https://www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting>. See also U.S. Const. Art. I, §4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof”); *Arizona State Legislature v. Arizona Independent Redistricting Comm’n*, 576 U.S. 13 (2015) (U.S. Constitution assigns congressional redistricting to the state’s legislative authority, which may be assigned to an independent commission).

6 This follows from the fact that a special means (joint resolution) is provided for state redistricting, while none is provided for congressional redistricting. See Senate Bill 1174 (Ch. 2012-2) (2010 cycle redistricting bill). See also Brennan Center, “50 State Guide to Redistricting: Florida” (Upd. Jun. 7, 2019) (congressional redistricting accomplished by bill).

7 Fl. Const. Art. III, §7; §8 (a).

8 Fl. Const. Art. III, §8 (c).

9 Fl. Const. Art. III, §4 (e); Fl. Const. Art. I, §24 (b)-(c).

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shall be reasonably open to the public.”¹⁰ However, the legislature is the “sole judge for the interpretation, implementation, and enforcement” of this protection.¹¹

The constitution also provides the public with a right to “inspect or copy” any public record, including legislative records, unless similarly exempted by a two-thirds vote.¹² However, the legislature has enacted a statute exempting from copying or inspection any “draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.”¹³

In the redistricting context, the Supreme Court has held that a non-transparent redistricting process may support an inference that a plan was created with illegal partisan intent. Last cycle, the Court upheld a lower court finding that the Legislature had violated the State Constitution’s prohibition on partisan gerrymandering by “communicat[ing] and collaborat[ing] with partisan political operatives, in the shadow of the Legislature’s purportedly open and transparent redistricting process, to produce a map favoring Republicans and incumbents.”¹⁴ The existence of this “parallel process is important evidence in support of the claim that the Legislature thwarted the constitutional mandate.”¹⁵

Hearings: Past hearings have been held at the Legislature’s discretion, as there are no laws guaranteeing the public a voice in the redistricting process.¹⁶ Although final maps will likely be passed during the January to March 2022 regular session, public hearings can begin far earlier. In the 2010 cycle, hearings began in June of 2011.

In the 2010 redistricting cycle, the Florida legislature held 26 public hearings in different cities across the state from June through September 2011. The Legislature also held 23 legislative committee or subcommittee hearings on redistricting from September 2011 through January 2012 before adopting final maps in February.¹⁷

Public Comment: The traditional practice of legislative committees has been to permit public comment, including in the redistricting process; however, there is no guarantee in either the House or Senate Rules that the public may speak before the committee.¹⁸ The House Rules give the committee chair the discretion “to impose time limitations on testimony and presentations by non-members.”¹⁹ The Senate and the House both require nonmember speakers to complete an “Appearance Record” form prior to speaking. The Senate’s includes the disclaimer that “While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.”²⁰

10 Fl. Const. Art. III, §4 (e)

11 Fl. Const. Art. III, §4 (e).

12 Fl. Const. Art. I, §24 (a); (c).

13 Fl. Stats. Tit. III, §11.0431 (e).

14 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 376 (Fla. 2015).

15 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 394 (Fla. 2015).

16 Brennan Center, “50 State Guide to Redistricting: Florida” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting.

17 Meeting archives may be found here: Florida House of Representatives’ Redistricting Committee, “Meeting Transcripts,” <https://mydistrictbuilder.wordpress.com/meeting-transcripts/> (accessed Dec. 9, 2020).

18 See *Herrin v. City of Deltona*, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase “open to the public” means that “meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings”). See also House Rule 7.3 (“The chair has all authority necessary to ensure the orderly operation of the committee or subcommittee, including, but not limited to, presiding over meetings, establishing each meeting agenda, determining the order in which matters are to be taken up, recognizing or not recognizing non-member presenters, and deciding questions of order.”) (emphasis added);

19 House Rule 7.21. See also 7.20 (presenters must submit a “committee appearance record”).

20 Florida Senate, “Appearance Record,” <http://www.flsenate.gov/UserContent/Committees/CommitteeAppearanceForm.pdf> (accessed Dec. 10, 2020).

SPOTLIGHT: FLORIDA

Transparency and Participation in Redistricting:

The Supreme Court has repeatedly stressed that “transparency is critical in light of ... the purpose of the [Florida Constitution] to outlaw partisan manipulation.”²¹ As discussed above, a non-transparent process may support a finding that the Legislature impermissibly engaged in partisan gerrymandering. In 2015, in ordering the Legislature to redraw congressional redistricting maps, the Court also provided four guidelines it “urged the Legislature to follow.” They were:

“(1) conduct all meetings in which it made decisions on the new map in public and to record any non-public meetings;

“(2) provide a mechanism for challengers and others to submit alternative maps and to permit debate on the merits of the proposed alternative maps;

“(3) preserve all e-mails and documents related to the redrawing of the map; and

“(4) to publicly document the justifications for its chosen configuration.”²²

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

Republicans have a state government “trifecta” in Florida: Republicans control both houses of the Legislature (by substantial margins) and the Governor’s Office. As a result, Republicans fully control both the state and congressional redistricting process and are not required to negotiate with Democrats. There are no apparent constraints on the legislature’s ability to enact partisan lines.

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

Florida has strong anti-gerrymandering protections in its State Constitution. In 2010, voters passed two constitutional amendments, collectively referred to as the “Fair Districts Amendment,” which added new criteria and prohibitions for state and congressional redistricting to the state constitution. The Supreme Court has explained that “[t]here is no question that the goal of minimizing opportunities for political favoritism was the driving force behind the passage of the Fair Districts Amendment.”²³ While the congressional and legislative redistricting criteria are separately codified in Sections 20 and 21 of Article III, respectively, the criteria (discussed in detail below) are essentially identical.²⁴

Florida’s constitution also includes other general protections, like state free speech and equal protection rights, which have been successfully used to challenge partisan gerrymandering in other states.²⁵ However, because Florida’s constitution already has strong anti-gerrymandering protections, these potential ancillary protections have not been thoroughly examined or developed in case law.

Finally, like all states, Florida must comply with federal legal restrictions on redistricting, which include the Fourteenth Amendment’s Equal Protection Clause (which addresses equal population standards and the use of race as a redistricting criterion) and Section 2 of the Voting Rights Act (which prohibits discrimination against racial and language minorities).²⁶ Formerly, several Florida counties were covered by Section 5 of the Voting Rights Act and required preclearance; however, in *Shelby County v.*

21 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 415 (Fla. 2015) (citations omitted).

22 *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 265 (Fla. 2015) (summarizing prior order).

23 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 374 (Fla. 2015) (citations omitted).

24 The only difference is that Section 21 provides that “[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent,” whereas Section 20 says “[n]o apportionment plan or *individual* district shall be drawn with the intent to favor or disfavor a political party or an incumbent.” (Emphasis added.) The difference is probably a drafting error and most likely legally immaterial.

25 See Samuel S. Wang, Richard F. Ober Jr., & Ben Williams, “Laboratories of Democracy Reform: State Constitutions and Partisan Gerrymandering,” 22 U. Pa. J. Const. L. 203 (2019) (identifying the following general constitutional rights in Florida which might prohibit partisan gerrymandering: “Freedom of Speech, Freedom of Assembly, Due Process, Equal Protection”).

26 U.S. Const. amend. XIV, § 1; 52 U.S.C. § 10101 et seq.

SPOTLIGHT: FLORIDA

Holder, the U.S. Supreme Court struck down the formula for which jurisdictions were subject to preclearance.²⁷ Therefore, for this cycle, no Florida counties are subject to federal preclearance.

Returning to the express redistricting criteria in Florida's constitution, Sections 20/21 create what the State Supreme Court has described as "tier-one" and "tier-two" standards for redistricting. The tier-one criteria include (1a) **a prohibition intentional partisan or pro/anti-incumbent gerrymandering**, (1b) **a prohibition on drawing maps with the intent or result of disenfranchising racial or language minorities**, and (1c) **a requirement that districts be contiguous**.²⁸ The tier-two criteria, which may only be followed to the extent they do not violate federal law or tier-one criteria, require (2a) **nearly equal population**, (2b) **compactness**, and (2c) **using political and geographic boundaries**.²⁹ The constitution specifies that the ordering of the criteria within a tier "shall not be read to establish any priority of one standard over the other."³⁰

Each criterion is examined further below.

Tier-One Mandatory Standards:

(1a) Partisan or Incumbent Gerrymandering: The state constitution prohibits adopting a redistricting plan or district "with the intent to favor or disfavor a political party or an incumbent."³¹ The Supreme Court has emphasized this "provision prohibits intent, not effect," and a map that has "the effect or result of favoring one political party over another is not per se unconstitutional in the absence of improper intent."³²

However, the intent standard is strict: "there is no acceptable level of improper intent" and "a showing of malevolent or evil purpose" is not required.³³ A showing of partisan or incumbent (dis)favoring intent can render a map or district constitutionally invalid.³⁴

In proving improper intent, a court will look to "both direct and circumstantial evidence of intent," and while "[o]ne piece of evidence in isolation may not indicate intent ... a review of all of the evidence together may."³⁵ The Court has highlighted several examples of circumstantial evidence which may permit an inference of improper intent, including:

- the "existence of a different, separate process that was undertaken contrary to the Legislature's public transparent redistricting effort;"³⁶
- a disregard for the "constitution's tier-two requirements, which set forth traditional redistricting principles" like compactness and following geographic boundaries;³⁷ and
- "the effects of the plan, the shape of district lines, and the demographics of an area are all factors that serve as objective indicators of intent."³⁸

This last example may mean evaluating district lines against "undisputed objective data, such as the relevant voter registration and elections data [and] incumbents' addresses."³⁹

The prohibition on partisan gerrymandering does not, however, require the creation of a "fair plan, but rather a neutral one;" the resulting districts do not

27 570 U.S. 529 (2013).

28 Fl. Const. Art. III, §20(a); §21(a).

29 Fl. Const. Art. III, §20(b); §21(b).

30 Fl. Const. Art. III, §20(c); §21(c).

31 I. Const. Art. III, §20(a); §21(a).

32 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (Fla. 2015) (citation omitted).

33 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (Fla. 2015) (citations omitted).

34 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375 (Fla. 2015).

35 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 375-376 (Fla. 2015).

36 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 394 (Fla. 2015).

37 *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 618 (Fla. 2012).

38 *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 618 (Fla. 2012).

39 *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 618 (Fla. 2012).

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need to result in representation that is proportional to registration for Florida's political parties.⁴⁰

(1b) Racially-Discriminatory Gerrymandering: The second tier-one criterion prohibits drawing districts “with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.”⁴¹ The Supreme Court has explained that these “dual constitutional imperatives follow almost verbatim the requirements embodied in the Federal Voting Rights Act” (VRA) and aim to safeguard “the voting strength of minority groups against both impermissible dilution and retrogression.”⁴² In construing this provision, the Court therefore looked to judicial construction of the federal VRA, while recognizing its “independent constitutional obligation to interpret our own state constitutional provisions.”⁴³ This leaves open the possibility that Florida's protections against racially-discriminatory gerrymandering may be interpreted differently than the federal VRA, despite the similar language.

The Florida Constitution's non-retrogression provision may take on added importance in this redistricting cycle. In the 2010 cycle, five Florida counties were covered by Section 5 of the VRA. Since the *Shelby County* decision, none are covered. However, under the State Constitution, “Florida now has a statewide non-retrogression requirement independent of Section 5.”⁴⁴

(1c) Contiguity: The last tier-one requirement is contiguity, a traditional and mostly straightforward redistricting criterion. The Supreme Court has defined contiguous as “being in actual contact: touching along a boundary or at a point.”⁴⁵ Disconnected territories or lands that “mutually touch only at a common corner or right angle” are not contiguous.⁴⁶ However, islands and districts bisected by rivers pose a special case: “[T]he presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity.”⁴⁷

Tier 2 Secondary Standards:

(2a) Population Equality: Florida's constitution requires that districts “be as nearly equal in population as is practicable.”⁴⁸ This language is taken from longstanding U.S. Supreme Court case law, which interprets the U.S. Constitution to require state legislative districts to be “as nearly of equal population as is practicable.”⁴⁹ Because of this, the Florida Supreme Court held that the Florida Constitution's equal population provision should be interpreted in mostly the same manner as the federal equal population standard.⁵⁰

Under federal jurisprudence, while equal population remains the goal, “jurisdictions are permitted to deviate somewhat from perfect population equality [when drawing legislative districts] to accommodate traditional districting objectives,” like compactness or

40 *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 643 (Fla. 2012).

41 Fl. Const. Art. III, §20(a); §21(a).

42 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 619, 620 (Fla. 2012) (citation and brackets omitted).

43 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 619, 621 (Fla. 2012) (citation and brackets omitted).

44 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 619, 624 (Fla. 2012).

45 *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 628 (Fla. 2012) (citation omitted).

46 *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 628 (Fla. 2012) (citation omitted).

47 *In re Constitutionality of House Joint Resolution 1987*, 817 So. 2d 819, 828 (Fla. 2002) (citation omitted).

48 Fl. Const. Art. III, §20(b); §21(b).

49 *Reynolds v. Sims*, 377 US 533, 577 (1964).

50 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 630 (Fla. 2012).

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preserving communities of interest.⁵¹ In which case, so long as the deviation between the smallest and largest legislative district is less than 10 percent, the plan is presumptively constitutional.⁵²

The Florida Supreme Court has “imbue[d]” Florida’s constitution with the same meaning, with one caveat: “Because obtaining equal population ‘if practicable’ is an explicit and important constitutional mandate under the Florida Constitution, any deviation from that goal of mathematical precision must be based upon compliance with other constitutional standards.”⁵³ This presumably means that, for state redistricting, population deviation up to 10 percent to accommodate other tier-one and tier-two constitutional criteria would be permissible, but deviation to accommodate traditional redistricting criteria that are not in the constitution, like preserving communities of interest, would not be.

(2b) Compactness: Districts must also be compact.⁵⁴ “[C]ompactness,” according to the Supreme Court, “is a standard that refers to the shape of the district. The goal is to ensure that districts are logically drawn and that bizarrely shaped districts are avoided.”⁵⁵ Compactness should be evaluated in two ways: “visually and by employing standard mathematical measurements.”⁵⁶ Under a visual analysis, courts look to whether a district has “an unusual shape, a bizarre design, or an unnecessary appendage unless it is necessary to comply with some other requirement.”⁵⁷ Under a mathematical analysis, courts will look at the relative geometric compactness score of different districts using any number of standard compactness

tests, like the Reock and Area/Convex Hull tests.⁵⁸

The Florida Constitution does not mandate “that districts within a redistricting plan achieve the highest mathematical compactness scores;” however, “non-compact and ‘bizarrely shaped districts’ require close examination.”⁵⁹

The Court has also made clear that compactness refers only to geographic shape. The Court rejected the “functional compactness” approach used in some other states, which looks at “whether constituents in the district are able to relate to and interact with one another.” Compactness in Florida, cautioned the Court, does not “involve a community of interest analysis.”⁶⁰

(2c) Political and Geographic Boundaries: The last tier-two criterion is that “districts shall, where feasible, utilize existing political and geographical boundaries.”⁶¹ “Political boundaries,” the Court seems to accept, “primarily encompasses municipal or county boundaries.”⁶² “Geographical boundaries” are those that are “easily ascertainable and commonly understood, such as rivers, railways, interstates, and state roads,” and not just any boundary like a “creek or minor road.”⁶³

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

As the discussion of criteria above demonstrates, there are strong legal protections against gerrymandering in Florida, with equally strong precedents applying these protections. As in most states, the

51 *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016) (citation omitted). For the standard for congressional redistricting, see *Tennant v. Jefferson County Com’n*, 133 S. Ct. 3 (2012).

52 *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016).

53 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 630 (Fla. 2012).

54 Fl. Const. Art. III, §20(b); §21(b).

55 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 636 (Fla. 2012).

56 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 636 (Fla. 2012).

57 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 634 (Fla. 2012).

58 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 639 (Fla. 2012).

59 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 635-636 (Fla. 2012).

60 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 633 (Fla. 2012).

61 Fl. Const. Art. III, §20(b); §21(b).

62 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 637 (Fla. 2012).

63 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597, 638 (Fla. 2012).

Legislature's maps have a presumption of validity; however, once an improper intent to gerrymander can be shown, the burden of justifying district boundaries' compliance with the constitution switches to the legislature. For legislative districts, the Supreme Court will automatically review districts for compliance with state and federal law. (Advocates may submit a briefing in this process.)

Good government advocates also have a track record of successful litigation: in the 2010 cycle, a coalition of advocates including the League of Women Voters successfully invalidated gerrymandered state senate and congressional maps.

However, recent changes in the composition of the State Supreme Court threaten to undermine this favorable case law. There are strong questions as to whether the new Court will overturn prior case law and adopt a far more deferential standard of review for the legislature's redistricting plans.

Legal Standard: Generally, Florida courts will show deference to the legislature's redistricting plans. A plan comes "with an initial presumption of validity" and the Court's role is "not to select the best plan, but rather to decide whether the one adopted by the legislature is valid."⁶⁴ The burden is, therefore, generally on opponents of a redistricting plan to show its invalidity.

However, "[o]nce a direct violation of the Florida Constitution's prohibition on partisan intent in redistricting [is] found, the burden [shifts] to the Legislature to justify its decisions in drawing the congressional district lines."⁶⁵ Even with the burden in their favor, "challengers still must identify some problem with the Legislature's chosen configuration," which could mean "showing a nexus between the unconstitutional intent and the district," showing a tier-two criteria violation, or showing that "the Legislature unjustifiably rejected a less favorable configuration."⁶⁶ In past challenges where such a showing was made, the Court ordered the Legislature to redraw

certain districts; however, the Court allowed that in exceptionally egregious cases an entire map may be thrown out.⁶⁷

Prior History: The Florida Supreme Court has struck down several Legislature-drawn maps under the State Constitution's anti-gerrymandering protections. In 2012, the Court upheld the State House maps but struck down the State Senate districts.⁶⁸ In separate litigation, the Court also struck down the congressional maps; because the Legislature failed to adopt a new plan, the Court adopted new maps of its own.⁶⁹

64 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 397-398 (Fla. 2015) (citations omitted).

65 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 371 (Fla. 2015).

66 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 371 (Fla. 2015).

67 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 413 (Fla. 2015).

68 *In re Senate Joint Res. of Leg. Apportionment*, 83 So. 3d 597 (Fla. 2012).

69 *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015).

★ SPOTLIGHT: GEORGIA

THIS REPORT HIGHLIGHTS SEVERAL BATTLEGROUND STATES WHERE THE REDISTRICTING PROCESS IS LIKELY TO BE ESPECIALLY CONTENTIOUS.



Timing note: There are no legal requirements for when legislative or congressional maps must be adopted. The 2021 regular session starts 1/11/21 but has no set end date. In 2011, maps were adopted in August. Note: The state/federal candidate filing deadline is 3/11/22.

Threat 1: Can politicians control how election maps are drawn?

HIGH RISK

The Legislature adopts legislative and congressional districts by majority-vote bill, which may be approved or vetoed by the Governor. Vetoes may be overridden by 2/3 vote.

Threat 2: Can election maps be drawn in secret?

HIGH RISK

Georgia has no special transparency or hearing requirements for redistricting. However, in 2011, the Legislature held a dozen public hearings. State law generally requires standing committee hearings to be open to the public.

Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK

Republicans control both legislative houses (by large margins) and the Governor's Office so can redistrict without Democrats. Georgia has had claims of partisan gerrymandering.

Threat 4: Are the legal standards weak?

HIGH RISK

The only constitutional criterion for state redistricting is that districts be contiguous. There are no requirements for congressional redistricting.

Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK

There is no special legal process for challenging redistricting maps. Supreme Court justices are selected in nonpartisan elections or, if there's a vacancy, by the Governor's appointment.

SPOTLIGHT: GEORGIA

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Ga. Const. art. III, § II
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts require contiguity. There are no criteria for congressional maps.
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically challenged in court. There's no special legal process for citizens to challenge maps.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	None	United/Divided Government?	United - Republican
Hearings start:	2021	Governor:	Brian Kemp (R)
Required # of Hearings:	None (but dozens in 2011)	State House:	103R - 77D (R: 58%)
Public Comment:	Not Required (but past practice)	State Senate:	34R - 22D (R: 61%)
Likely Committees:	House Legislative & Congressional Reapportionment Senate Reapportionment & Redistricting	Veto-Proof Leg. Supermajority?	No (2/3 supermajority needed)
		Supreme Court:	Gubernatorial appointment & nonpartisan elections: 8R - 1NP

SPOTLIGHT: GEORGIA

THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

In Georgia, the legislature ("General Assembly") controls both the state and congressional redistricting ("apportionment") process.¹ There are no special procedural considerations for redistricting plans.² Like other bills, redistricting bills are presented to the governor for signature or veto.³ All bills must be signed or vetoed within six days or they become law, unless the legislature has adjourned sine die or for more than 40 days, in which case the governor has 40 days.⁴

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

Georgia has no redistricting-specific requirement for public hearings, public comment, or open meeting and transparency requirements.⁵

Hearings: There are no redistricting-specific laws requiring public hearings prior to adopting new legislative or congressional maps.⁶ However, in the 2011 cycle, the State House and State Senate Redistricting Committees held a dozen public hearings in different

locations across the state, from May 16 through June 30, 2011.⁷ Each redistricting bill was also heard by the House and Senate Redistricting Committees in July and August before being adopted.⁸

Open Meetings: Under the state constitution, the "sessions of the General Assembly and all standing committee meetings thereof shall be open to the public," but either "house may by rule provide for exceptions to this requirement."⁹ Neither house has provided an exception for redistricting in their rules.¹⁰

Public Comment: Generally the public may speak at legislative committee meetings; however, the rules do not mandate this. In 2011, the legislature held hearings across the state for the public to provide comment.

Records: In 2011, the legislature adopted rules requiring that all "plans presented at committee meetings will be made available for inspection by the public either electronically or by hard copy available at the Office of Legislative and Congressional Reapportionment."¹¹

1 Ga. Const. art. III, § II.

2 See Brennan Center, "50 State Guide to Redistricting: Georgia" (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, "Georgia," <https://gerrymander.princeton.edu/reforms/GA> (accessed Jan. 3, 2021); Justin Levitt, "Georgia," All About Redistricting, <https://redistricting.ils.edu/state/georgia> (accessed Jan. 4, 2021).

3 Ga. Const. art. III, § V, ¶ XIII(a).

4 Ga. Const. art. III, § V, ¶ XIII(a).

5 National Conference of State Legislatures, "Public Input and Redistricting: Georgia" (Upd. Sep. 9, 2019) <https://www.ncsl.org/research/redistricting/public-input-and-redistricting.aspx>.

6 See Brennan Center, "50 State Guide to Redistricting: Georgia" (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, "Georgia," <https://gerrymander.princeton.edu/reforms/GA> (accessed Jan. 3, 2020); Justin Levitt, "Georgia," All About Redistricting, <https://redistricting.ils.edu/state/georgia> (accessed Jan. 4, 2021).

7 See House Reapportionment Committee, "Legislative and Congressional Reapportionment - Video Archives," available at: https://web.archive.org/web/20121104064635/http://www1.legis.ga.gov/legis/2011_12/house/Committees/reapportionment/gahlcrCalendarJT.html (accessed Jan. 5, 2021).

8 See legislative history for Georgia General Assembly bills HB 1EX (State House) (enrolled Aug. 23, 2011), SB 1EX (State Senate) (enrolled Aug. 23, 2011), HB 20EX (Congress) (enrolled Aug. 30, 2011).

9 Ga. Const. art. III, § IV, ¶ XI.

10 See 2019-2020 House Rules, Rule 14.1 (adopted Jan. 14, 2019); 2019-2020 Senate Rules, Rule 1-5.1 (adopted Mar. 29, 2019). Note that while the House Rules do require open meetings of conference and interim committees, the Constitution may not. See *Murphy v. ACLU*, 258 Ga. 637, 638 n. 3 (1988).

11 Archived by the Princeton Gerrymandering Project at

<https://www.dropbox.com/s/2egd5vpo0djzt5/GeorgiaHouseCommitteeGuidelines2011-12.pdf> and <https://www.dropbox.com/s/i8zqyivtr8iozs8/GeorgiaSenateCommitteeGuidelines2011-12.pdf> (accessed Jan. 3, 2021).

SPOTLIGHT: GEORGIA

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

Republicans control the governorship and both houses of the Georgia legislature by substantial margins. As a result, Republicans fully control both the state and congressional redistricting process in 2021 and are not required to negotiate with Democrats.

Georgia has a history of gerrymandering, including in 2011, when Republicans drew lines to maximize partisan advantage.¹²

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

The Georgia Constitution provides **only one** mandatory redistricting criterion – contiguity – which applies only for state **but not congressional** redistricting.¹³ The Georgia Supreme Court explained that the constitution provides the legislature with a “general grant of plenary reapportionment power” and that the contiguity clause is a restriction on the means of exercising that power.¹⁴ This may suggest that, outside of ensuring contiguous districts, the legislature has wide latitude in drawing maps. In prior cycles, the legislature (and the courts) have also used traditional redistricting criteria – like compactness and respecting communities of interest – to draw maps.¹⁵

Unlike some states, the Georgia Constitution has no express prohibition on partisan gerrymandering. However, Georgia’s constitution does include several general civil rights protections which have been held to prohibit partisan gerrymandering in other states.

Finally, like all states, Georgia must comply with federal legal restrictions on redistricting, which include the Fourteenth Amendment’s Equal Protection Clause (which addresses equal population standards and the use of race as a redistricting criterion) and Section 2 of the Voting Rights Act (which prohibits discrimination against racial and language minorities).¹⁶ Formerly, Georgia was covered by Section 5 of the Voting Rights Act (VRA) and required preclearance; however, in *Shelby County v. Holder*, the U.S. Supreme Court struck down the formula for which jurisdictions were subject to preclearance.¹⁷ Therefore, for this cycle, Georgia’s redistricting is not subject to federal preclearance.

Contiguity: The Georgia Constitution provides that “districts shall be composed of contiguous territory.”¹⁸ The Supreme Court has not further defined the contiguity requirement. Previously, the Legislature has embraced a loose definition of contiguity which permits, for example, contiguity across bodies of water (even without bridge or ferry access) and point contiguity (where two parts of a district touch at a single point), common forms of redistricting abuse. A federal district court, in dictum, similarly assumed the state constitution required only that districts be “technically contiguous.”¹⁹

Legislatively-Adopted Criteria: While there are no other mandated criteria under the State Constitution, the legislature has typically adopted its own traditional redistricting criteria by resolution. In 2011, the two houses adopted the following “guidelines.”²⁰

12 Charles S. Bullock III, “The History of Redistricting in Georgia,” 52 Ga. L. Rev. 1057 (Summer 2018).

13 Ga. Const. art. III, § II, ¶ II. See also Brennan Center, “50 State Guide to Redistricting: Georgia” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting.

14 *Blum v. Schrader*, 637 SE 2d 396, 398 (2006).

15 See *Johnson v. Miller*, 922 F. Supp. 1556 (S.D. Ga. 1995) and *Larios v. Cox*, 314 F. Supp. 2d 1357 (N.D. Ga. 2004).

16 U.S. Const. amend. XIV, § 1; 52 U.S.C. § 10101 et seq.

17 570 U.S. 529 (2013).

18 Ga. Const. art. II § 2, ¶ II.

19 *Larios v. Cox*, 300 F. Supp. 2d 1320, 1332 (N.D. Ga. 2004) (“While all of the districts are technically contiguous (as required by state law), many districts achieve that designation through the use of water contiguity, which is predicated on the assumption of line-of-sight across a lake or other body of water, or touch-point contiguity, which is predicated on facing corners in a checker-board like fashion.”).

20 Archived by the Princeton Gerrymandering Project at <https://www.dropbox.com/s/2egd5vpo0djzqt5/GeorgiaHouseCommitteeGuidelines2011-12.pdf> and <https://www.dropbox.com/s/i8zqyivtr8iozs8/GeorgiaSenateCommitteeGuidelines2011-12.pdf> (accessed Jan. 3, 2021).

SPOTLIGHT: GEORGIA

1. Congressional districts have equal population within +/- 1 person.
2. Legislative districts have substantially equal populations.
3. Comply with VRA.
4. Comply with U.S. and Georgia Constitutions.
5. District contiguity, excluding point contiguity.
6. No multi-member districts.
7. Consider:
 - a. County and precinct boundaries
 - b. Compactness; and
 - c. Communities of interest.
8. Avoid pairing incumbents.

However, the guidelines also included the disclaimer that the “identifying of these criteria is not intended to limit the consideration of any other principles or factors that the Committee deems appropriate.”²¹

While discretionary, courts do sometimes look to these criteria. Some population deviation between legislative districts can be upheld if the deviations were necessary to other traditional redistricting criteria, for example.²² Courts will also look to these standards in adopting remedial maps. For example, in the 1990s, a federal district court redrew Georgia’s congressional districts after the Legislature was unable to. The court looked to the criteria that “heavily influenced past apportionment plans” in Georgia in the prior three decades to draw its maps, including: keeping counties intact, preserving four key “corners” districts, creating an “urban minority district,” maintaining district cores, and protecting incumbents.²³

General Civil Rights Protections: Although partisan gerrymandering claims are not justiciable under the U.S. Constitution, they may be under general state civil rights protections. In North Carolina and Pennsylvania, general civil rights protections have been used to strike down partisan gerrymanders. Georgia’s constitution includes similar provisions, like guarantees of free speech, free assembly, due process, and equal protection.²⁴ However, these provisions have not been applied by a court in the redistricting context.

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

Legal Standard: The Supreme Court has not articulated a special legal standard when reviewing redistricting maps for violations of state law. The Georgia Supreme Court remains the final arbiter of the legality under state law of any redistricting plan adopted by the Legislature.

Prior History: Georgia redistricted mid-cycle in 2015. The NAACP sued in federal court alleging the Legislature engaged in racially-discriminatory and partisan gerrymandering of the State House maps. The Court ruled against the plaintiffs but with leave to amend; the parties later agreed to dismiss the suit.²⁵

21 Archived by the Princeton Gerrymandering Project at <https://www.dropbox.com/s/2egd5vpo0djzqt5/GeorgiaHouseCommitteeGuidelines2011-12.pdf> and <https://www.dropbox.com/s/i8zqvivtr8iozs8/GeorgiaSenateCommitteeGuidelines2011-12.pdf> (accessed Jan. 3, 2021).

22 *Larios v. Cox*, 300 F. Supp. 2d 1320, 1331 (N.D. Ga. 2004).

23 *Johnson v. Miller*, 922 F. Supp. 1556, 1564-65 (S.D. Ga. 1995), aff’d *Abrams v. Johnson*, 521 U.S. 74 (1997).

24 Ga. Const. art. I § 1, ¶¶ 1, II, V, IX.

25 National Conference of State Legislatures, “Redistricting Case Summaries” (Upd. Dec. 1, 2020), <https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx>.

HAWAII

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>A balanced political appointee commission adopts legislative and congressional districts by majority vote. The Commission consists of 9 members: 2 each appointed by the majority and minority leaders of the State Senate and House. These initial eight members then select by supermajority a ninth member to serve as chair. Should the commissioners fail to agree, the Hawaii Supreme Court shall fill the vacancy. Additionally, each appointing authority is to select a person from each basic island unit to serve on an advisory committee throughout the term of the commission. The commission is to be constituted on or before May 1 of the reapportionment year, and is to file reapportionment plans within 150 days of the commission's creation.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>Hawaii statute requires the apportionment commission hold at least one public hearing on the proposed reapportionment plans in each basic island unit before passage. Hearings must be announced with at least 20 days notice, and proposed plans must be released within 100 days of the commission's establishment. At the hearings, the public is allowed to submit testimony and data, either orally or in writing.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>LOW RISK</p>	<p>The apportionment commission is balanced, with 4 members selected by the majority party, and 4 by the minority party, with a ninth commissioner chosen by supermajority vote. There is a nonzero risk of deadlock forcing the chair appointment to the Hawaii Supreme Court, which consists of 4 justices selected by Democratic governors, and 1 by a Republican governor.</p>
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Threat 4: Are the legal standards weak?

<p>STATE LEGISLATIVE: LOW RISK</p> <p>CONGRESSIONAL: MODERATE RISK</p>	<p>Hawaii has mandatory, unranked criteria prohibiting districts that unduly favor one person or political faction in the state Constitution (for state legislative redistricting) and in statute (for congressional redistricting). Those authorities also require districts contain equal proportions of population in each state legislative district, except at least one member in each house shall be allocated per basic island unit, and if the initial allocation would provide fewer than 2 senators and 3 representatives to an island unit, additional members with fractional votes shall be added to attain that number. Other criteria include: contiguity (except when district would encompass more than one island); compactness; accordance to permanent features and Census tracts, where possible; for state legislative districts, that representative districts nested within senatorial districts, where possible. State legislative districts are not to exceed basic island units or include more than four members per district. Note: Keeping whole "communities of interest" is not an express criterion, though relevant language prohibits submerging into larger districts areas in which substantially different socioeconomic interests predominate, where practicable. Unduly favoring or disfavoring a candidate or party is prohibited.</p>
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HAWAII REDISTRICTING SUMMARY

Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK	Original jurisdiction to review redistricting plans lies with the Hawaii Supreme Court. Within 45 days, any registered voter may petition the Supreme Court to compel an authority to perform its redistricting duty, or to correct errors in a plan. During the 2011 redistricting cycle, the Hawaii Supreme Court threw out the original state legislative maps, which included nonresident populations, and rejected further challenges to revised maps.
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Balanced political appointee commission	Source:	Hawaii Const. Art. IV, §4-6. HRS §25-2(b)
Supermajority Vote Needed?	No	Requires:	<p>Constitutional criteria for state legislative districts (unranked): equal proportions except at least one member in each house per basic island unit. If initial allocation would provide fewer than 2 senators and 3 representatives to an island unit, additional members with fractional votes shall be added to attain that number; contiguity (except when district would encompass more than one island); compactness; accordance to permanent features and Census tracts, where possible; representative districts nested within senatorial districts, where possible</p> <p>Constitutional criteria for congressional districts (unranked): equal population; contiguity except when encompassing more than one island; compactness; accordance to permanent features and Census tracts, where possible.</p>
Governor Signs/ Vetoes?	Congressional: No State leg.: No	Prohibits:	<p>Constitutional criteria for state legislative districts (unranked): District boundaries not to exceed basic island unit; districts not to unduly favor a person or political faction, where possible; no more than four members per district; districts not to include subareas where substantially different socio-economic interests predominate.</p> <p>Constitutional criteria for congressional districts (unranked): Districts not to unduly favor a person or political faction; districts not to include subareas where substantially different socio-economic interests predominate, where practicable</p>
Special Legal Process?	Maps are not automatically reviewed in court. Citizens may challenge maps in the state Supreme Court.	Allows:	None

HAWAII REDISTRICTING SUMMARY

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	September 21, 2021	United/Divided Government?	United - Democratic
Hearings start:	Summer 2021	Governor:	David Ige (D)
Required # of Hearings:	1 per basic island unit	State House:	47D - 4R (D: 92%)
Public Comment:	Required	State Senate:	24D - 1R (D: 96%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Gubernatorial appointment: 4D - 1R

Timing note: Legislative and congressional maps must be adopted by September 21, 2021, 150 days after the May 1 deadline for the creation of the apportionment commission. Changing constitutional timing requirements in the face of the delayed release of Census data will likely require the courts to intervene.

Citations and references: Hawaii Const. Art. IV, §2-10. HRS §25-2(b)

Recent relevant cases: Per Justin Levitt's All About Redistricting: *Kostick v. Nago*, 960 F. Supp. 2d 1074 (D. Haw. 2013); *aff'd* 134 S. Ct. 1001 (2014); *Solomon v. Abercrombie*, 270 P.3d 1013 (Haw. 2012)

IDAHO

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>A bipartisan commission adopts legislative and congressional districts by 2/3 majority vote. The Commission consists of six members: four appointed by party leaders in each house, two appointed by the chairs of the state's two largest political parties.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>Idaho has strong public input opportunities. All Commission meetings are open to the public and held in various locations in the state, draft maps are published, redistricting data and public-submitted maps are publicly available.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>LOW RISK</p>	<p>Idaho's bipartisan commission structure insulates the state's redistricting process from the worst partisan abuses, though the even partisan split may produce deadlock, requiring intervention.</p>
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Threat 4: Are the legal standards weak?

<p>MODERATE RISK</p>	<p>Mandatory, unranked criteria in the state constitution and in statute, including criteria requiring districts to be contiguous, counties preserved intact when possible, preserve traditional neighborhoods and voting precinct boundaries; prohibits oddly shaped districts, flotal districts, pro-incumbent districts. Most of the strong standards are only embedded in statute, however, making them subject to legislative amendment.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>MODERATE RISK</p>	<p>The State Supreme Court has original jurisdiction over all state court legal challenges to legislative apportionment and will review the plans if any registered voter, town, or county petitions. In the 2011 cycle, they struck down the state legislative plan and affirmed the Secretary of State's refusal to remove 2 commissioners after party leaders tried to fire them.</p>
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IDAHO REDISTRICTING SUMMARY

REDISTRICTING PROCESS	
Redistricting Body:	Political appointee commission
Supermajority Vote Needed?	No
Governor Signs/ Vetoes?	No
Special Legal Process?	Maps are not automatically reviewed in court. Citizens may challenge maps in the state Supreme Court.

REDISTRICTING CRITERIA	
Source:	Idaho Const. Art. III, §§ 2, 4, 5; Idaho Code §§ 72-1501 – 1508
Requires:	Constitutional criteria for state legislative districts (unranked): contiguity, counties preserved intact Statutory criteria for both state legislative and congressional districts (unranked): preserve traditional neighborhoods, communities of interest, voting precinct boundaries (if possible)
Prohibits:	Statutory criteria for both state legislative and congressional districts: Prohibits oddly shaped districts, floter districts, division of county lines in order to protect a political party or incumbent, use of any data besides population data
Allows:	None

DEADLINE/PUBLIC PARTICIPATION	
Redistricting Deadline:	None
Hearings start:	Not specified
Required # of Hearings:	None
Public Comment:	Required
Likely Committees:	None

POLITICAL CONTROL	
United/Divided Government?	United - Republican
Governor:	Brad Little (R)
State House:	28R - 7D (R: 80%)
State Senate:	58R - 12D (R: 82%)
Veto-Proof Leg. Supermajority?	N/A
Supreme Court:	Elected: 5R - 0D

Timing note: Legislative and congressional maps have no deadline for adoption but must be drafted within 90 days of the commission's formation or the date census data becomes available, whichever is later.

Citations and references: Idaho Const. Art. III, §§ 2, 4, 5; Idaho Code §§ 72-1501 – 1508

Relevant recent cases: Per Justin Levitt's All About Redistricting: Denney v. Ysursa, No. 39570-2012 (2012); Twin Falls County. v. Idaho Comm'n on Redistricting, 271 P.3d 1202 (2012).

ILLINOIS

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>HIGH RISK</p>	<p>The legislature retains the authority to draft and approve both state legislative and congressional redistricting plans by simple statute, and to override gubernatorial vetoes with a three-fifths vote in each chamber. Should the legislature fail to approve state legislative plans by June 30, a backup commission—the Legislative Redistricting Commission—takes over. The panel is composed of one legislator and one non-legislator chosen by each of the majority and minority leaders in each chamber. That body has until August 10 to pass a plan with five votes, effectively requiring bipartisan support. Should no plan be approved, the Supreme Court sends the Secretary of State two potential commissioners of differing parties, and the Secretary randomly selects one to serve as the ninth member of the commission, which has until October 5 to finalize a redistricting plan with five votes.</p>
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Threat 2: Can election maps be drawn in secret?

<p>STATE LEGISLATIVE: LOW RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>After the state has received Census data from the federal government, Senate and House redistricting committees, or a joint committee of the two, are required to schedule at least four public hearings around the state to receive testimony and consider state legislative redistricting proposals. Congressional redistricting lacks similar transparency standards, and in the 2010 cycle, no such hearings were held prior to plan adoption.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>HIGH RISK</p>	<p>Democrats hold the governorship and veto-proof majorities in both chambers of the legislature, giving partisan actors free rein to draw maps to their benefit. The only mitigating factor may, in fact, be delays to Census data being released, which could force redistricting authority into the hands of a balanced backup commission with an incentive to compromise (lest the randomly selected ninth member be of the opposite party).</p>
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Threat 4: Are the legal standards weak?

<p>STATE LEGISLATIVE: LOW RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>The Illinois Constitution requires state legislative districts be compact, contiguous, and substantially equal in population. The Illinois Voting Rights Act, passed in 2011, adds subsequent requirements, including a mandate that the state draw, to the extent practicable, three types of districts: 1) crossover districts, in which minority populations might be numerous enough to vote in concert with majority population voters to elect candidates of the minority population's choosing; 2) coalition districts, in which various racial and language minorities may act as a coalition to elect a candidate of their choosing, and 3) influence districts, in which minority population voters may be numerous enough to exert influence on the outcome of an election without electing a candidate of their choice. Two state house ("Representative") districts nested within each state senate ("Legislative") district. There are no apparent universal standards for congressional redistricting outside of those prescribed by the US Constitution, federal law, and case law, though the statute laying out 2011 congressional districts requires unattached land be attached to contiguous districts.</p>
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ILLINOIS REDISTRICTING SUMMARY

Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	The Illinois Supreme Court does not automatically review redistricting plans, but the body retains original and exclusive jurisdiction over state legislative redistricting challenges, which are to be made by the Attorney General. State and federal court challenges to the 2011-cycle congressional and state legislative plans were ultimately turned aside.
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Congressional: legislature State leg.: legislature or 8 or 9-member backup commission	Source:	Illinois Const. Art. IV, §2, Art. IV §3; 10 ILCS 120/5-5
Supermajority Vote Needed?	Congressional: No State leg.: Only in case of 8-member backup commission	Requires:	Constitutional criteria for state legislative districts (unranked): contiguity, compactness, substantially equal pop. Statutory criteria for state legislative districts (unranked): to the extent possible: crossover, coalition, and influence districts No criteria for congressional districts
Governor Signs/ Vetoes?	Congressional: Yes State leg.: Only if leg. passes maps	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: 6/30/21 (leg.), 10/5/21 (final backup comm.)	United/Divided Government?	United - Democratic
Hearings start:	Upon receipt of Census data	Governor:	J.B. Pritzker (D)
Required # of Hearings:	Congressional: None State leg.: 4	State House:	73D - 45R (D: 62%)
Public Comment:	Congressional: Not required State leg.: Required	State Senate:	41D - 17R (D: 69%)
Likely Committees:	House and Senate Redistricting Committees, or joint committee	Veto-Proof Leg. Supermajority?	Yes (3/5)
		Supreme Court:	Partisan elections: 4D - 3R

ILLINOIS REDISTRICTING SUMMARY

Timing note: There is no deadline for congressional redistricting in Illinois, but the state constitution establishes a clear timetable for legislative redistricting. The legislature has until June 30, 2021, to enact a redistricting plan, at which point the Legislative Redistricting Commission becomes effective as an eight-person body. If the commission fails to pass a redistricting plan by August 10, the Supreme Court transmits the names of two potential commissioners of opposite parties to the Secretary of State, who randomly selects a ninth commission member. The nine-person commission is to file an approved redistricting plan by October 5, 2021. Any delay in the transmission of Census data stands to seriously imperil an ironclad constitutional timeline.

Citations and references: Illinois Const. Art. IV, §2-3, Art. IV §3; 10 ILCS 120/5-5, 77/20; Princeton Gerrymandering Project

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Cross v. Ill. State Bd. of Elections*, No. 113840 (Ill. June 7, 2012); *Radogno v. Ill. State Bd. of Elections*, 836 F. Supp. 3d 759 (N.D. Ill. 2011), *aff'd*, 133 S. Ct. 103 (2012); *Comm. for a Fair and Balanced Map v. Ill. State Bd. of Elections*, 835 F. Supp. 2d 563 (N.D. Ill. 2011); *League of Women Voters v. Quinn*, No. 1:11-cv-05569, 2011 WL 5143044 (N.D. Ill. Oct. 28, 2011), *aff'd*, 132 S. Ct. 2430 (2012).

INDIANA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts state legislative and congressional districts as a regular statute, by a majority vote subject to Governor veto. However, for congressional districts, statute provides that if the Legislature fails to pass a map by the end of session, the authority then moves to a 5-member politician backup commission, made up of the Majority Leader and the redistricting chair from each house, plus a state legislator nominated by the governor. Their map is passed with a majority vote and signed by the Governor.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Indiana law does not have specific public access/participation requirements in the redistricting context. In the last cycle Election Committees in both Houses held several public hearings.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite control of the legislative and congressional redistricting process, with large margins in both legislative houses. The backup commission is wholly unbalanced. The process allows for partisan bias at every stage.
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Threat 4: Are the legal standards weak?

HIGH RISK	Indiana has mandatory redistricting criteria in the state constitution requiring that state legislative districts be contiguous. Note: There's no such criteria for congressional districts. Keeping whole "communities of interest" is not an express criterion.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	Indiana law provides no apparent automatic judicial review or citizen-initiated legal challenges. Since neither map was challenged in the last two cycles, it is unclear how the process for legal recourse might look.
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INDIANA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	State leg.: legislature Congressional: legislature with backup politician commission	Source:	Ind. Const. Art. IV, § 5; Ind. Code § 3-3-2-2
Supermajority Vote Needed?	No	Requires:	Constitution criteria for state legislative districts: contiguity No criteria for congressional districts
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. Citizens are not able to challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Apr. 29, 2021	United/Divided Government?	United - Republican
Hearings start:	Not specified	Governor:	Eric Holcomb (R)
Required # of Hearings:	None	State House:	71R - 29D (R: 71%)
Public Comment:	Not required (but past practice)	State Senate:	39R - 11D (R: 78%)
Likely Committees:	House and Senate Redistricting Committees	Veto-Proof Leg. Supermajority?	Yes (1/2)
		Supreme Court:	Gubernatorial appointment: 5R - 0D

Timing note: Under statute, state legislative and congressional maps must be adopted by the end of the first session after the census, which is Apr. 29, 2021. For congressional districts, if the legislature fails to pass a plan by the end of session, a 5-member backup commission will have 30 days to pass new plans. These deadlines will require intervention following Census delays.

Citations and references: Ind. Const. Art. IV, §5; Ind. Code § 3-3-2-2;

Relevant recent cases: N/A

IOWA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>MODERATE RISK</p>	<p>Iowa's redistricting process is unique: statute tasks the nonpartisan legislative services agency with collecting data, preparing local and county maps in the state, and presenting state legislative and congressional redistricting plans to the legislature. Statute also empowers a redistricting advisory commission, comprised of four non-politicians selected by the four majority and minority legislative leaders and one final member selected by those four appointees, to guide the redistricting process where guidelines are unclear and hold at least three public hearings around the state after the legislative services agency has transmitted the initial plans. Following these hearings, the commission is to transmit a report containing public testimony within fourteen days. Should the legislature fail to approve the plan(s), the clerk of the house or secretary of the senate is to provide the legislative services a report detailing the reasons for not approving the plans. In that case the LSA drafts a second plan to comply with the reasons for non-approval, and submits it to the legislature. Should that plan fail to be approved, the LSA shall present a third plan, which is subject to regular legislative amendment. The governor retains veto power over the process. Should the legislature fail to approve a plan within the allotted time frame, the Iowa Supreme Court is to adopt a plan.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>The redistricting advisory commission is required to hold at least three public hearings on the initial plans the legislative services agency renders for the legislature, and to summarize public comment and testimony for the legislature shortly thereafter. It is not clear there will be a mechanism for public map submissions.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>Since adopting this redistricting process, the legislature has approved the LSA and advisory commission plans, substantially removing partisan interests from the redistricting process. However, this deference is rooted in norms, and the legislature's ultimate control creates some risk of partisan intervention.</p>
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Threat 4: Are the legal standards weak?

<p>MODERATE RISK</p>	<p>The Iowa Constitution and statute lay out criteria for redistricting both state and federal maps. The Constitution requires state legislative districts be compact, contiguous, and not in conflict with the US Constitution, and bars congressional districts from subdividing counties or containing non-contiguous counties. Stronger statutory standards stack on top of constitutional requirements, mandating nearly equal population (within 5%, except, in the case of congressional maps, to satisfy the ban against county subdivision), respect for political subdivisions, contiguity, and reasonable compactness. Districts may not be drawn to benefit a political party, incumbent, or anyone else, and may not be drawn to augment or dilute the voting power of a language or racial minority. Mapmakers may not consider incumbent addresses, voter political affiliation, past election results, or any demographic information aside from population. State house districts are to nestle within state senate districts, and, to the extent practicable after meeting the above criteria, senate districts are to nestle within congressional districts.</p>
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IOWA REDISTRICTING SUMMARY

Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK	There is no automatic review, but the Iowa Supreme Court has original jurisdiction over challenges to the district plans, which any qualified voter may bring. Should the Court find the plan noncompliant, the body will have 90 days to redraft or oversee the redrafting of the plan. It does not appear maps were challenged in the 2000 or 2010 cycles.
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislative Services Agency w/ advisory commission drafts mapss. State leg. approves.	Source:	Iowa Const. Art. III, §34, §37; Iowa Code §42.4
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): compactness, contiguity Statutory criteria for state legislative districts (unranked): districts must follow political boundaries, state house districts must be nested within state senate districts Constitutional criteria for congressional districts (unranked): districts must follow political boundaries, contiguity Statutory criteria for congressional districts: compactness
Governor Signs/ Vetoes?	Yes	Prohibits:	Statutory criteria for both state legislative and congressional districts: Districts can't favor a political party, incumbent, or augment/dilute voting strength of language, racial minority groups. They also may not use incumbent addresses, voter political affiliation, past elec. results, demographic info.
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge maps in the state Supreme Court.	Allows:	None

IOWA REDISTRICTING SUMMARY

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: 9/15/2021	United/Divided Government?	United - Republican
Hearings start:	Potentially April 2021	Governor:	Kim Reynolds (R)
Required # of Hearings:	At least 3	State House:	53R - 47D (R: 53%)
Public Comment:	Required; advisory commission reports to leg.	State Senate:	31R - 18D (R: 62%)
Likely Committees:	Unclear	Veto-Proof Leg. Supermajority?	No
		Supreme Court:	Gubernatorial appointment: 5R - 2D

Timing note: The Iowa Constitution requires the general assembly to approve state legislative district plans by September 1 of the year following the Census, and if no plan is approved by September 15, the Iowa Supreme Court is to redraw the state legislative lines by December 31. No such provision exists for congressional plans. The Legislative Services Agency, which does the initial line-drawing, is to transmit state legislative and congressional plans to the legislature by April 1, though any delay in Census data availability past Feb. 15 authorizes a proportional delay in transmission date.

Citations and references: Iowa Const. Art. III, §34-37; Iowa Code §42.2-6

Relevant recent cases: N/A

KANSAS

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The legislature adopts legislative and congressional districts as a regular statute, by majority vote subject to gubernatorial veto, which may be overridden with a 2/3 supermajority vote in each chamber.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Nothing in statute requires public access or participation, but in past cycles public meetings have been held.
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Threat 3: Can election maps be rigged for partisan gain?

MODERATE RISK	Kansas has a divided government; the Governor is a Democrat and the Legislature has a veto-proof Republican supermajority that can override the veto. The State Supreme Court has an apparent Democratic majority, which may check the powers of the Republican legislature. Future changes to the political landscape may hamper safeguards.
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Threat 4: Are the legal standards weak?

HIGH RISK	Kansas has criteria in the state constitution and in statute that requires census data to be adjusted for state legislative districts in order to count military personnel and college students at their permanent residence. Like all states, Kansas must comply with constitutional equal protection requirements, the Voting Rights Act, and other constitutional rules on race. Note: Keeping whole "communities of interest" is not an express criterion.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	State legislative maps are automatically reviewed by the Supreme Court, though congressional maps are not. In the 2001 cycle, both sets of maps were challenged and the Kansas Supreme Court upheld both. In the 2011 cycle, the legislature could not agree on either set of maps and a federal court drew lines instead.
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KANSAS REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Kansas Const. Art. 10, § 1
Supermajority Vote Needed?	No	Requires:	Constitutional and statutory criteria for both state legislative and congressional maps: adjust census data to count military personnel and college students at their permanent residence
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	State legislative maps are automatically reviewed	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: none State leg.: end of session in 2022	United/Divided Government?	Divided - Republican legislature and Democratic Governor
Hearings start:	With 2022 session	Governor:	Laura Kelly (D)
Required # of Hearings:	None (but past practice)	State House:	86R - 38D - 1I (R: 69%)
Public Comment:	Not Required (but past practice)	State Senate:	29R - 11D (R: 72.5%)
Likely Committees:	Legislative redistricting committee	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Gubernatorial appointment: 5D - 2R

Timing note: While there is no deadline for the drawing of congressional maps, state legislative maps must be adopted by Apr. 10, 2022 - the end of the 2022 regular session. Hearings are expected to take place during the 2022 legislative session, last cycle there were 14 public meetings.

Citations and references: Kansas Const. Art. II, §8, Art. X, §1; Kansas Stat. Ann. §25-205; Kansas Stat. §§11-301 – 307

Relevant recent cases: N/A

KENTUCKY

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts legislative and congressional districts as a regular statute, subject to Gubernatorial approval. Vetoes may be overridden with the vote of a simple majority in each chamber.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Kentucky has strong open meetings laws, but nothing specific to the redistricting process. It is unclear whether there will be opportunities for public participation beyond open meetings.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	While Kentucky has a divided state government, the Republican-majority legislature has wide margins to override their Democratic Governor's veto. There are no apparent structural constraints on the legislature's ability to redistrict for partisan gain.
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Threat 4: Are the legal standards weak?

HIGH RISK	Kentucky has mandatory criteria in the State Constitution, requiring minimal division of counties and nearly equal population in each state legislative district. There are no similar laws for congressional maps. Note: Keeping whole "communities of interest" is not an express criterion.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	A panel of three state circuit court judges has original jurisdiction over any challenges to state legislative lines. There are no similar provisions in state law for congressional lines. In the 2011 cycle, state legislative maps were struck down by the judicial panel for malapportionment and excessive division of counties, and new maps were not challenged. The 2001 cycle saw no such challenges.
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KENTUCKY REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Ky. Const. § 33
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): "as nearly equal in population as may be," without dividing a county, divide fewest number of counties possible No criteria for congressional districts.
Governor Signs/Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: April 15, 2022.	United/Divided Government?	Divided - Democratic Governor, Republican legislature
Hearings start:	Unclear	Governor:	Andy Beshear (D)
Required # of Hearings:	None	State House:	75R - 25D (R: 75%)
Public Comment:	Not required	State Senate:	30R - 8D (R: 79%)
Likely Committees:	State Government Committee (House) and State and Local Government (Senate)	Veto-Proof Leg. Supermajority?	Yes (simple majority required)
		Supreme Court:	Nonpartisan elections, with Gov filling vacancies: 4NP - 2R -appt'd - 1D -appt'd

Timing note: Kentucky law does not impose any deadlines for drawing U.S. House lines. For state legislative lines, the state constitution requires the General Assembly to adopt new maps during the 2022 cycle, set to last from Jan 4 to Apr. 15. Hearings will likely occur during that time frame.

Citations and references: Kentucky Const. §33, 36, 42; Kentucky Stat. § 5.005

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Brown v. Ky. Legis. Res. Comm'n*, 966 F. Supp. 2d 709 (2013); *Legis. Res. Comm'n v. Fischer*, 366 S.W.3d 905 (2012)

LOUISIANA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts state legislative and congressional districts as a regular statute subject to gubernatorial approval. Vetoes may be overridden by a 2/3 supermajority vote in each chamber.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Louisiana has strong open meetings laws, but no further requirements for public access or participation in the redistricting context.
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Threat 3: Can election maps be rigged for partisan gain?

MODERATE RISK	Louisiana is under divided political control. The Republican-controlled Legislature has a veto-proof majority in the Senate, but is still a handful of seats away from supermajority control of the House, with two independents serving in the chamber. In this environment, Democratic Gov. John Bel Edwards may retain his veto power over redistricting plans. Should the political landscape change in the future, it is not clear there would be any structural constraints on partisan redistricting.
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Threat 4: Are the legal standards weak?

HIGH RISK	Louisiana has discretionary criteria in the state constitution which requires state legislative districts to be apportioned on the basis of population "as equally as practicable". There's no similar criteria in the State Constitution or in statute related to Congressional districts. Like all states, Louisiana must comply with constitutional equal population requirements, the Voting Rights Act, and constitutional rules on race. Note: Keeping whole "communities of interest" is not an express criterion. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> . The absence of a preclearance requirement may change the redistricting calculus.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	The Supreme Court retains the explicit right to redraw state legislative lines, upon petition from a voter, if the legislature is unable to reapprove a plan, though that authority does not explicitly extend to congressional redistricting. In the last two cycles, no lawsuits successfully proceeded to challenge maps.
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LOUISIANA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Louisiana Const. Article III, §6(A).
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts: districts must be "as equally as practicable" on the basis of population There are no criteria for congressional districts
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed in court. Citizens may ask the state Supreme Court to draw state legislative lines if the legislature fails to do so.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State Leg.: December 31, 2021	United/Divided Government?	Divided - Republican Legislature with Democratic Governor
Hearings start:	Potentially spring 2021	Governor:	John Bel Edwards (D)
Required # of Hearings:	None (but past practice)	State House:	66R - 35D -21 - 2V (R: 63%)
Public Comment:	Not Required (but past practice)	State Senate:	27R - 12D (R: 69%)
Likely Committees:	House and Gov Com. Sen. Redistricting Com.	Veto-Proof Leg. Supermajority?	Senate, yes House, no (2/3 supermajority required)
		Supreme Court:	Gubernatorial appointment: 7R - 0D

Timing note: While state law imposes no deadline for congressional districts, state legislative maps must be adopted in 2022, the year after the year in which the state will presumably receive Census population data. Hearings may begin in the spring; last cycle they were held between February and May 2011.

Citations and references: Louisiana Const. Art. III, §6(A-B); Louisiana Rev. Stat. §§42.4.1-13; Louisiana Op. Atty. Gen. No. 99-54 (1999).

Relevant recent cases: N/A

MAINE

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>MODERATE RISK</p>	<p>A bipartisan advisory commission is responsible for drafting state legislative and congressional district maps to send to the legislature for approval. The commission is made up of 15 members: The state senate majority and minority leaders each choose two commissioners; state house majority and minority leaders each choose three; and the chair of the state's two major parties each choose one. Those twelve commissioners then choose two more from the public, with each party's representatives coordinating to choose one commissioner, and those one commissioners select a third and final member. The Legislature may adopt, modify, or reject the commission's plans with a 2/3 vote in both chambers, and plans are then subject to gubernatorial approval. If the legislature fails to adopt maps, the Maine Supreme Court is responsible for adopting a plan.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>Maine has strong open meeting laws. At least one public hearing is constitutionally required before the advisory commission sends its plans to the legislature. Last cycle, at least one public hearing was held in August, 2011 to gather public input. There were also hearings before the Maine Supreme Judicial Court eventually drew the congressional districts after the legislature failed to do so.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>Democrats have tripartite control of the redistricting process, but their narrow margins in both legislative houses hinder them from passing redistricting plans without the Republican support required for the 2/3 approval threshold. In the 2000 cycle, the legislature failed to enact a congressional redistricting plan due to partisan gridlock, and the Maine Supreme Court ultimately drew and adopted maps. Should the political landscape change in the future, these safeguards may no longer hold.</p>
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Threat 4: Are the legal standards weak?

<p>STATE LEGISLATIVE: MODERATE RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>Maine has unranked constitutional criteria for state legislative and congressional redistricting. Congressional districts must be contiguous, compact, and follow political boundaries when possible while preserving similar population numbers. In addition to these criteria, a state statute requires that the commission must "give weight to the interests of local communities when making district boundary decisions" for state legislative redistricting. There are no state criteria prohibiting partisan, pro/anti-incumbent, and racially-discriminatory gerrymandering. Keeping whole "communities of interest" is not an express criterion for congressional districts.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>MODERATE RISK</p>	<p>Maps are not automatically reviewed by the Maine Supreme Court, but the court has original jurisdiction over redistricting cases and the court is responsible for drawing districts in the event that the legislature fails to adopt a plan. Citizens have the ability to challenge unfair plans in court. In a collection of cases following the 2001 cycle, the court upheld most of the state legislative districts it drew but did alter some to produce districts with more equal populations. In the 2011 cycle, an independent voter challenged the congressional plans in court and they were held up.</p>
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MAINE REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature (aided by a bipartisan advisory commission)	Source:	Maine Const. Art. IV, pt. 3, § 1-3; Maine Const. Art. IX, § 24; Maine Rev. Stat. tit. 21-A, § 1206-A
Supermajority Vote Needed?	Yes	Requires:	Constitutional criteria for both state legislative and congressional districts (unranked): compact, contiguous, follow political subdivisions as much as possible Statutory criteria for state legislative districts: weight to communities of interest
Governor Signs/Veto?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	June 11, 2021	United/Divided Government?	United - Democratic
Hearings start:	Likely mid-2021	Governor:	Janet Mills (D)
Required # of Hearings:	1	State House:	80D - 66R - 4I - 1L (D: 52%)
Public Comment:	Required	State Senate:	21D - 13R (D: 60%)
Likely Committees:	Advisory redistricting commission	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Gubernatorial appointment, confirmed by senate: 5D - 2R

Timing note: State legislative and congressional maps drawn by the redistricting advisory commission must be sent to the legislature by June 1, 2021. A public hearing must be held before the plan is submitted to the legislature. The legislature must adopt the advisory commission's plan or its own maps by June 11, 2021. If the legislature fails to adopt new districts, the Maine Supreme Court is responsible for implementing a reapportionment plan 60 days after the legislative deadline. All of the deadlines are constitutionally mandated; extensions will require formal legislative or legal action to temporarily delay the process.

Citations and resources: Maine Const. Art. IV, Pt. 3, §1-3, Art. IX, §24; Maine Rev. Stat. Tit. 21-A, §1206-A

Relevant recent cases: Per Justin Levitt's All About Redistricting: In re 2003 Apportionment of the State Senate and United States Congressional Districts, 827 A.2d 844 (2003); In re 2003 Legislative Apportionment of the House of Representatives, 827 A.2d 810 (2003)

MARYLAND

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>HIGH RISK</p>	<p>The legislature enacts a congressional redistricting plan by simple statute, subject to a gubernatorial veto, which can be overridden with a 3/5 supermajority in each chamber. For state legislative lines, The governor first presents their own plan to the legislature which they can either adopt, modify, or reject. If the legislature fails to pass maps by joint resolution with a majority vote (not subject to the governor's veto) by February 27, 2022, the governor's maps are automatically implemented. On January 12, 2021, Gov. Larry Hogan signed an executive order creating a nine-member advisory citizen redistricting commission. Three members are appointed by the governor: one Republican, one Democrat, and one independent. These three then appoint the other six commissioners with two other commissioners in each group. The commission maps also follow different, stronger criteria than those of the legislature. It is unclear if the governor can overrule the commission's maps or if their submissions to the legislature are final.</p>
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Threat 2: Can election maps be drawn in secret?

<p>MODERATE RISK</p>	<p>Maryland's constitution requires public hearings before the Governor submits a proposed state legislative plan to the legislature. There is no such requirement for the legislature's congressional plan. The new advisory commission, created by executive order, is also required to hold public meetings in line with Maryland's Open Meetings Act. They must also allow regional summits to allow citizens to comment on the maps, and provide an electronic portal for citizens to review data and submit comments. There do not seem to be any similar public access requirements for the legislative portion of the process.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>HIGH RISK</p>	<p>Maryland's government is divided, with Democratic supermajorities in the legislature and a Republican governor. Supermajorities would allow Democrats in the legislature to overturn a gubernatorial veto and push through partisan congressional maps. Partisan abuse is somewhat limited by the advisory commission balanced between Democrats, Republicans, and independents. Advisory commission maps are prohibited from considering the past behavior of voters and incumbency advantage. While this is encouraging, legislative maps are not under the same constraints, and there are few safeguards on their bias.</p>
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Threat 4: Are the legal standards weak?

<p>HIGH RISK</p>	<p>Maryland has mandatory criteria in the State Constitution for state legislative districts, including criteria requiring districts to be contiguous, compact, and give "due regard" for political boundaries and natural features. Congressional maps do not face the same requirements. The advisory commission is under different, stronger criteria than the legislature, including prohibition of diluting minority votes, considering past voting behavior, and considering incumbency advantage.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>HIGH RISK</p>	<p>The Maryland Supreme Court retains original jurisdiction over state legislative redistricting plans, though not over congressional plans. Legal challenges to maps in the last cycle were heard in state and federal court. A panel of 3 judges in the 4th US Circuit Court of Appeals dismissed a civil rights and partisan gerrymander challenge to the congressional plan in the last cycle, causing opponents of the maps to put the issue before voters as a referendum petition which advanced to the ballot and was defeated by voters in November of 2012, keeping the plan in place.</p>
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MARYLAND REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Governor and advisory commission draft maps, legislature modifies/passes	Source:	Maryland Const. Art. III, § 5
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative maps passed by the legislature: contiguity, compactness, and “due regard” for political boundaries and natural features. Executive order criteria for both sets of advisory commission maps: Both sets of maps are under the same criteria required for state maps by the constitution along with other prohibitions.
Governor Signs/ Vetoes?	Congressional: yes State leg.: no	Prohibits:	Executive order criteria for both sets of advisory commission maps prohibits: diluting minority votes, considering past voting behavior, and considering incumbency advantage
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge state legislative maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: no deadline State leg.: Feb. 27, 2022	United/Divided Government?	Divided - Republican governor , Democratic legislature
Hearings start:	Before a plan is submitted	Governor:	Larry Hogan (R)
Required # of Hearings:	No specific number, but public hearings are required	State House:	98D - 42R (70% D)
Public Comment:	Required	State Senate:	32D - 15R (68% D)
Likely Committees:	Advisory Commission	Veto-Proof Leg. Supermajority?	Yes
		Supreme Court:	(Court of Appeals) Assisted appointment and senate confirmation: 3R - 3D

Timing note: There’s no deadline for congressional maps, but candidates must file for congressional primary elections by Feb. 22, 2022. State legislative maps must be adopted by the 45th day of the start of session two years after the federal Census, or the governor’s proposal becomes law. For this cycle, that deadline falls on February 27, 2022.

Citations and references: Maryland Const. Art. III, §5; Maryland Code, Election Law, §5-303(a); “Democratic Lawsuit Challenges GOP Petition Success,” Southern Maryland Online (2012).

Relevant recent cases: Per Justin Levitt’s All About Redistricting: Lamone v. Benisek, 139 S. Ct. 2484 (2019); Bouchat v. Maryland, No. 1:15-cv-02417, 2016 WL 4699415 (D. Md. Sept. 7, 2016); Parrott v. Lamone, No. 1:15-cv-01849, 2016 WL 4445319 (D. Md. Aug. 24, 2016), dismissed on jurisdiction, 137 S. Ct. 654 (2017); Bouchat v. Maryland, No. 06C15068061 (Md. Cir. Ct., Carroll Cnty. May 1, 2015); In the Matter of 2012 Legislative Districting of the State, 80 A.3d 1073 (Md. 2013); Olson v. O’Malley, No. 1:12-cv-0240, 2012 WL 764421 (D. Md. Mar. 6, 2012); Olson v. O’Malley, Misc. No. 13 (Md. Ct. Appeals Jan. 10, 2012); Gorrell v. O’Malley, 1:11-cv-02975, 2012 WL 226919 (D. Md. Jan. 19, 2012); Fletcher v. Lamone, 831 F. Supp. 2d 887 (D. Md. 2011), aff’d, 133 S. Ct. 29 (2012); Martin v. Maryland, No. 1:11-cv-00904, 2011 WL 5151755 (D. Md. Oct. 27, 2011).

MASSACHUSETTS

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The General Court adopts state legislative and congressional districts as regular statute by majority vote, subject to gubernatorial veto. The legislature can override a veto with a 2/3 vote in each legislative chamber.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	The General Court is not legally required to hold public hearings or take public comment, though it has done so extensively in prior cycles. Massachusetts has relatively strong open meeting laws related to redistricting and has had opportunities for participation in the past.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	While Democrats do not technically have tripartite control of the redistricting process, their very large margins in both legislative chambers guarantee a veto-proof majority and effective control of the process, with limited constraints on redistricting for partisan gain.
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Threat 4: Are the legal standards weak?

HIGH RISK	Massachusetts has limited mandatory unranked criteria in the state constitution for state legislative districts but no state criteria for congressional districts. State legislative districts must be contiguous, of nearly equal population, and follow political boundaries when possible. There are no criteria prohibiting partisan, pro/anti-incumbent, and racially-discriminatory gerrymandering. Keeping whole "communities of interest" is not an express criterion.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	State legislative and congressional maps are not automatically reviewed by the Massachusetts Supreme Court, but the court has original jurisdiction over all redistricting cases and will review state legislative maps if any registered voter petitions within 30 days of the plan's approval. After the 2001 cycle, the state house plan was challenged in federal court over claims that it violated the equal protection clause, and state court over claims that it divided several towns into multiple districts unnecessarily and diluted Republican representation. The federal court ruled that the state house maps violated equal protection, and they were redrawn. The Massachusetts Supreme Court dismissed accusations of gerrymandering and upheld the newly drawn state house maps.
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MASSACHUSETTS REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Mass. Const. amend. Art. Cl, § 1-3; Mass. Const. amend. Art. CXIX, § 1 & 2
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): contiguity, nearly equal pop, follow political boundaries when possible There are no criteria for congressional districts
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge state legislative maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: end of first session after census (December, 2021)	United/Divided Government?	Divided - Republican governor , Democratic legislature
Hearings start:	Likely Mid-2021	Governor:	Charlie Baker (R)
Required # of Hearings:	None required (but ~13 in 2011)	State House:	128D - 30R - 10 (D: 80%)
Public Comment:	Not Required (but past practice of website and citizen map submission)	State Senate:	37D - 3R (D: 92%)
Likely Committees:	Special Joint Committee on Redistricting, Committee on House Rules, Committee on House Steering, Policy and Scheduling	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Gubernatorial appointment (aided by bipartisan council): 7R - 0D

Timing note: Under the Massachusetts constitution, state legislative maps must be adopted in the year after the Census is taken. There is no deadline for congressional maps, but candidates must file by June 7, 2022. It is unlikely that the Census delay will significantly impact the redistricting process in Massachusetts since the General Court, the state's legislature, meets year-round, though the delay could condense the process considering constitutional constraints to adopt maps the year after the Census is taken.

Citations and references: Massachusetts Const. Amend. Art. Cl, §1-3, Art. CXIX, §1-2; Massachusetts Gen. Laws Ch. 56 & 57; Massachusetts Open Meeting Law, G.L. c. 30A, §§18-25; Princeton Gerrymandering Project

Relevant recent cases: Per Justin Levitt's All About Redistricting: Mayor of Cambridge v. Secretary, 436 Mass. 476 (2002); McClure v. Secretary, 436 Mass. 614 (2002).

MICHIGAN

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>An independent commission, established in 2018, is in charge of drawing and adopting state legislative and congressional districts. The commission consists of 13 members: four Democrats, four Republicans, and five unaffiliated. Commissioners are selected at random from a pool of qualified applicants after the two party leaders in each legislative house have each stricken five qualified candidates from the pool. 8/13 votes are required to approve a plan, with support from at least two members from each party and two unaffiliated commissioners. If there is no majority vote, commissioners rank each proposed plan and adopt the highest-ranked plan that is also ranked among the top half of plans by at least two commissioners not affiliated with the party of the commissioner who submitted the plan. If there is a tie, the Secretary of State randomly selects a proposed plan.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>The redistricting process in Michigan provides ample opportunities for public participation. The redistricting commission is subject to open meeting laws and is constitutionally required to hold 10 public hearings throughout the state before plans are drafted and five hearings after plans are proposed. The commission must advertise and provide a 45-day comment period before they vote on final maps, and must accept written comment and public maps submissions throughout the process.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>LOW RISK</p>	<p>This cycle will be the first in which Michigan uses an independent commission in place of the legislature. The new process is untested, but the independent commissions have been deliberately constructed to decrease partisan influence, with strong cross-partisan approval requirements, and the final plans must be accompanied by reports explaining how the plan meets all the established criteria, including competitiveness.</p>
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Threat 4: Are the legal standards weak?

<p>LOW RISK</p>	<p>Michigan has mandatory ranked criteria in the state constitution in this order: contiguity, reflection of the state's diversity and respecting communities of interest, prohibition of drawing partisan maps, prohibition of favoring candidates or incumbents, reflection of county, city, and township boundaries, and lastly, compactness. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i>. The absence of a preclearance requirement may change the redistricting calculus.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>MODERATE RISK</p>	<p>State legislative and congressional maps are not automatically reviewed by the Michigan Supreme Court, but under statute, the state court has original jurisdiction over both congressional and state legislative redistricting cases. Last cycle, congressional maps drawn by the Republican legislature were upheld by the Michigan Supreme Court against challenges from the League of Women Voters and other labor and civil rights groups in <i>League of Women Voters v. Benson</i> (2019). In 2012, these same groups were denied a challenge to state House plans in federal court. In the 2001 cycle, the Michigan Supreme Court also upheld the congressional maps against legal challenges.</p>
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MICHIGAN REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Independent commission	Source:	Michigan Const. Art. IV, § 6
Supermajority Vote Needed?	Yes	Requires:	Constitutional criteria for both state legislative and congressional districts (ranked): 1. contiguity; 2. "reflect the state's diversity and respect communities of interest;" 3. cannot draw districts to disproportionately favor one party; 4. cannot draw districts to favor or disfavor one candidate; 5. reflect political boundaries; 6. compactness
Governor Signs/ Vetoes?	No	Prohibits:	Constitutional criteria for both state legislative and congressional districts: Cannot draw districts to favor or disfavor one party or one candidate
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Nov. 1, 2021	United/Divided Government?	Divided - Democratic governor, Republican legislature
Hearings start:	Before plans are drafted	Governor:	Gretchen Whitmer (D)
Required # of Hearings:	10 before drafting, 5 for comments on drafts	State House:	58R - 52D (R: 52%)
Public Comment:	Required	State Senate:	20R - 16D (R: 55%)
Likely Committees:	Independent commission	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Nonpartisan elections with party endorsements (Gov. appoints vacancies): 4D - 3R

Timing note: State legislative and congressional maps must be adopted by the independent commission by November 1, 2021, per the state constitution. Under the established timeline, draft plans must be done by September 17, 2021 to accommodate the required 45 day public comment period. This is the first year Michigan will use the independent commission, so there is no past schedule for comparison. It is likely that the census delay will impact the constitutionally mandated timeline; formal action may be required to shift deadlines

Citations and references: Michigan Const. Art. IV, §6; Michigan Comp. L. §§3.71, 4.262; Princeton Gerrymandering Project

Relevant recent cases: Per Justin Levitt's All About Redistricting: League of Women Voters v. Benson (2019)

MINNESOTA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The legislature drafts and passes maps with a simple majority in each house. All maps are subjected to the governor's approval. If the governor vetoes the maps, it takes a 2/3 majority in each legislative body to override the veto. In past cycles, the legislature's failure to pass a plan or override a veto has led the Minnesota Supreme Court to intervene and appoint a judicial panel to redraw the lines.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Public hearings are not required throughout the process, though they are past practice. The judicial panel tasked with conducting redistricting held public hearings from October 2011 to January 2012, and accepted map proposals from the public.
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Threat 3: Can election maps be rigged for partisan gain?

MODERATE RISK	The process is mainly carried out by the legislature, of which control is split: the Senate is controlled by Republicans and the House by Democrats. This dynamic should limit the risk of partisan abuse. Should the political landscape change in the future, however, there are no apparent constraints on a dominant party's ability to redistrict for partisan advantage.
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Threat 4: Are the legal standards weak?

HIGH RISK	The redistricting criteria in the Minnesota Constitution only require contiguous state senate districts and that house districts be nested within state senate districts. Beyond that, statutory provisions require congressional districts to be contiguous, and that redistricting plans create districts that are substantially equal in population and that avoid dividing political subdivisions more than necessary.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	Maps passed by the legislature are not automatically reviewed by any court, though the Minnesota Supreme Court has delegated judicial panels to redraw maps if the legislature has failed in the past two redistricting cycles. It is unclear if citizens are able to challenge unfair maps.
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MINNESOTA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Minnesota Constitution, Art 4, § 3 and 23
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): contiguous districts for state senate districts and that state house districts be nested within state senate districts. Statutory criteria for congressional districts requires contiguity.
Governor Signs/ Vetoes?	Yes	Prohibits:	Statutory criteria for both state legislative and congressional districts prohibits: dividing political subdivisions more than necessary
Special Legal Process?	Maps are not automatically reviewed. It's unclear if citizens can challenge maps in court.	Allows:	N/A

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Either first legislative session after the census has been taken (Currently scheduled to end on May 21, 2021), or after census data is released. Final deadline could be read to be Feb. 15, 2022.	United/Divided Government?	Divided - Democratic governor, Democratic house, Republican senate
Hearings start:	Unclear	Governor:	Tim Walz (D)
Required # of Hearings:	None	State House:	70D - 64R (D: 52%)
Public Comment:	Not required	State Senate:	34R - 31D - 2I (R: 51%)
Likely Committees:	State House Redistricting Committee State Senate Redistricting Committee	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Appointment by governor and nonpartisan election: Based on appointments, 5D - 2R

Timing note: The Minnesota Constitution authorizes the legislature to enact redistricting plans the first session after the Census, though it is unclear whether the provision will be interpreted to mean the first session after the taking of the Census—currently scheduled to end on May 21, 2021—or the first session after the Census data have been delivered to the state. Further statute requires the legislature to finish redistricting activities no later than 25 weeks before the 2022 state primary election, which would be February 15, 2022.

Citations and references: Minnesota Const., Art 4, §3, 23; Minnesota Stat. §204B.14(1a); Minnesota Stat. §2.91(2)

Relevant recent cases: N/A

MISSISSIPPI

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The legislature adopts state legislative districts as a joint resolution by majority vote, which does not require gubernatorial approval, while congressional districts are adopted as a regular statute by majority vote, requiring gubernatorial approval. A veto to a congressional redistricting plan could be overridden with a 2/3 supermajority vote in each chamber. Both plans are drafted in a Joint Committee on Reapportionment before moving to the floor, but the entire legislature can adopt its own plan. If the legislature fails to adopt a state legislative plan, redistricting falls to a backup commission composed of the Chief Justice of the state Supreme Court, the Attorney General, the Secretary of State, and the majority leaders of the House and Senate. If the legislature fails to adopt a congressional plan, the United States District Court, Jackson Division, draws the maps.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	The Joint Committee on Reapportionment is subject to Mississippi's open meeting laws. There are no requirements for public access to the process in statute, though the Committee passed a public access policy last cycle allowing citizens to submit written comments and maps. Maps proposed by legislators and the committee itself only become public upon introduction to the legislature.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite control of the state legislative and congressional redistricting processes, with large margins in both legislative houses, though they fall just short of a 2/3 majority in the state house. The Joint Legislative Reapportionment Committee where the plans are drafted is dominated by legislators chosen by leadership of the legislative majority, and the backup commission is also designed to shut out the minority party. Last cycle, partisan disputes resulted in a federal court drawing congressional maps after the legislature failed to do so.
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Threat 4: Are the legal standards weak?

HIGH RISK	Mississippi has statutory criteria for state legislative districts only. Criteria include contiguity, compactness, and the following of political boundaries with emphasis on counties. There are no criteria prohibiting partisan, pro/anti-incumbent, and racially-discriminatory gerrymandering, and keeping whole "communities of interest" is not an express criterion. There are no state criteria for congressional districts. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> . The absence of a preclearance requirement may change the redistricting calculus.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	State legislative and congressional maps are not automatically reviewed by the Mississippi Supreme Court. In <i>Mauldin v Branch</i> (2003), the Mississippi Supreme Court determined that Mississippi state courts have no jurisdiction over congressional maps under state statute. In the 2011 cycle, congressional maps were drawn by a federal court and faced no challenges. State Senate District 22 was found by a federal district court to violate the Voting Rights Act on the basis of diluting the voting power of Black citizens; it was redrawn by the legislature in 2019.
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MISSISSIPPI REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Congressional: Legislature or federal district court State leg: Legislature or backup commission	Source:	Miss. Code Ann. § 5-3: 81-129, Miss. Const. Art. 13, § 254
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts: contiguity Statutory criteria for state legislative districts: must follow political boundaries There are no criteria for congressional districts
Governor Signs/ Vetoes?	Congressional: Yes State Leg.: No	Prohibits:	Constitutional criteria for state legislative districts prohibits: county splits
Special Legal Process?	Maps are not automatically reviewed. Federal maps can't be redrawn in state court.	Allows:	Overlapping districts may be allowed under state law

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: April 2022	United/Divided Government?	United - Republican
Hearings start:	Not specified	Governor:	Tate Reeves (R)
Required # of Hearings:	None (but past practice)	State House:	75R - 46D - 1I (R: 61%)
Public Comment:	Not Required (but committee adopted public comment policy last cycle)	State Senate:	36R - 16D (R: 69%)
Likely Committees:	Standing Joint Leg. Comm. on Reapportionment, Standing Joint Congressional Redistricting Comm.	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Nonpartisan elections (vacancies filled through gubernatorial appointment): 8R - 1D

Timing note: The first deadline for state legislative maps is April 3, 2022, the end of the regular session in the second year following the census. If the legislature fails to enact a plan, it will be called into a special session lasting 30 additional days. If that session also ends without a plan, the backup commission will be convened and must approve a plan within 180 days. There is no deadline for congressional maps; last cycle the legislature was unable to agree on a plan so they were drawn by a federal court and adopted on December 30, 2011. The House redistricting manager, Rep. Jim Beckett, has signaled that he would like to try to pass congressional maps this fall.

Citations and references: Mississippi Code Ann. § 5-3: 81-129, Mississippi Const. Art. XIII, §254; Joint Committee on Reapportionment Website; "The issue closest to hearts of lawmakers is coming: legislative redistricting," Sun Herald (Feb. 15, 2021)

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Branch v. Clark*, No. G-2001-1777 (Miss. Chancery Ct. Dec. 21, 2001); *Smith v. Clark*, 189 F. Supp. 2d 512 (S.D. Miss. 2002); *Smith v. Clark*, 189 F. Supp. 2d 548 (S.D. Miss. 2002), *aff'd sub nom. Branch v. Smith*, 538 U.S. 254 (2003); *Mauldin v. Branch*, 866 So.2d 429 (Miss. 2003).

MISSOURI

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>STATE LEGISLATIVE: LOW RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>The state legislature enacts congressional maps via normal statute, subject to gubernatorial veto, which can be overridden with a 2/3 supermajority vote in each chamber. Separate balanced commissions are appointed to draw state house and senate maps after state and congressional district committees for the two largest political parties nominate members to the governor, who shall select from the pools a total of 10 members per party. The commissions have five months to draft tentative plans, and a further month to approve plans with the support of 70% of the members. Should a commission deadlock, the state supreme court shall select a six-member panel of appellate judges to draw the lines.</p>
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Threat 2: Can election maps be drawn in secret?

<p>STATE LEGISLATIVE: LOW RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>The state legislative redistricting commissions must hold at least three hearings (though executive sessions are allowed) and the commissions must hold hearings after tentative plans are released. Both the commissions and the backup appellate judge panels must make public the demographic and partisan data used to create the maps. There are no public hearing requirements through the judicial portion of the process. There are also no public hearing requirements in the congressional redistricting process.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>STATE LEGISLATIVE: MODERATE RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>The balanced commissions, bipartisan approval requirements, and judicial backstop in the state legislative redistricting process limit the risk of partisan abuse, which remains high in the congressional redistricting process, with a Republican supermajority in both chambers of the legislature and a Republican governor. However, the state legislative process remains open to partisanship, considering criteria explicitly allow for extreme partisanship, including an allowable 15% efficiency gap, which could enable extremely partisan maps. Beyond that, state legislative maps are allowed to use citizen voting-age population, rather than the total population, to draw maps, disproportionately hurting communities of color and potentially leading to heightened partisan bias.</p>
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Threat 4: Are the legal standards weak?

<p>HIGH RISK</p>	<p>Congressional: Congressional maps are only required to be compact, contiguous, and nearly equal in population.</p> <p>State legislative: Missouri's Constitution provides for mandatory legislative redistricting criteria, ranked by priority: 1. equal population (up to 3% divergence); 2. federal constitutional and statutory compliance; 3. contiguity and compactness; 4. preservation of counties and municipalities, with distinct procedures for subdivisions; 4. partisan fairness, then competitiveness, as determined by an electoral performance index calculated by assessing wasted votes in the three preceding elections for governor, US senate, and president. There is a 15% cap on wasted votes statewide, which, under the guise of ensuring competition, allows for extremely partisan maps. Additionally, legislative districts are to be drawn on the basis of "one person, one vote," which may be interpreted to require division based on the citizen voting-age, rather than total, population. This phrase has yet to be litigated by courts and could potentially be used to deny immigrants, children, or even people who have lost the right to vote from inclusion in population totals. The Constitution also requires congressional districts be contiguous and as compact and nearly equal in population as is possible.</p>
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MISSOURI REDISTRICTING SUMMARY

Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	For challenges to state legislative districts, standing is now limited to eligible voters who can show individual injury and potential remedy under a differently drawn district. Remedy is limited only to the challenged district, and may not allow for revision of the map in its entirety. Challenges must be filed in the Circuit Court of Cole County, with direct appeal to the Missouri Supreme Court. In the 2010 cycle, both congressional and state House plans were challenged in state court unsuccessfully.
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	State leg.: political appointee commissions Congressional: legislature	Source:	Mo. Const. Art. III, §3(b); Art. III, §7(c)
Supermajority Vote Needed?	Congressional: No State leg.: Yes	Requires:	Constitutional criteria for congressional districts (unranked): contiguity, compactness, nearly equal pop. Constitutional criteria for state legislative districts (ranked): 1: equal pop. (up to 3%); 2: federal const. and stat. compliance.; 3. contiguity & compactness; 4. county/ municipal lines; 5. partisan fairness, then competitiveness
Governor Signs/ Vetoes?	Congressional: Yes State leg.: No	Prohibits:	Constitutional criteria for state legislative districts prohibits racial gerrymandering
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge specific districts only if they can show specific injury.	Allows:	State leg.: Electoral performance index calculated by assessing wasted votes in the three preceding elections for governor, US senate, and president. 15% cap on wasted votes statewide. State legislative districts are to be drawn on the basis of "one person, one vote," which may be interpreted to require the use of the citizen voting-age population, excluding non-citizens, felons, and children.

MISSOURI REDISTRICTING SUMMARY

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: none State leg.: within 9 months of pop. data release	United/Divided Government?	United - Republican
Hearings start:	8 months post data release	Governor:	Mike Parson (R)
Required # of Hearings:	3 per commission	State House:	113R - 48D (R: 69%)
Public Comment:	Required	State Senate:	23R - 8D (R: 68%)
Likely Committees:	Likely special standing committees in each chamber	Veto-Proof Leg. Supermajority?	Congressional: Yes (2/3) State leg.: N/A
		Supreme Court:	Gubernatorial appointment: 4D - 3R

Timing note: There are no deadlines around the approval of a congressional map, and the candidate filing deadline is March 29, 2022. State legislative map timelines are pegged to the receipt of Census population data; the members of the committees that draw House and Senate maps are nominated within 60 days of population data being released, and the governor appoints members within 30 days thereafter. Tentative maps are due within five months after the panels have been appointed, and final maps within six months. Should the committee(s) deadlock or fail, a panel of six appellate judges will draw lines within the next 90 days.

Citations and references: Missouri Const. Art. III, §3(b)-(j), Art. III, §7(b)-(i), Art. III, §45; V.A.M.S. 127.030

Relevant recent cases: Per Justin Levitt's All About Redistricting: Pearson v. Koster, 367 S.W.3d 36 (Mo. 2012); Johnson v. Missouri, 366 S.W.3d 11 (Mo. 2012).

MONTANA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>A bipartisan political appointee commission adopts state legislative and congressional districts by majority vote. The Commission consists of five members: four appointed by legislative leadership of each party and a chair selected by the four political appointees. If the political appointees cannot agree on a chair, the Montana Supreme Court chooses one. All commissioners must be citizens, not elected officials. Draft maps must be sent to the legislature for recommendations, but the approval of final plans is solely the responsibility of the independent commission. Maps need a simple majority of commissioners to pass, and maps drawn by the commission are not subject to gubernatorial approval.</p>
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Threat 2: Can election maps be drawn in secret?

<p>MODERATE RISK</p>	<p>In 2014 the Montana Supreme Court ruled in <i>Willems v. State of Montana</i> that the redistricting commission is functionally a part of the Legislature and is not subject to Montana's open meeting laws. The commission is required to hold at least one public hearing before the plans are proposed to the legislature; last cycle, 15 hearings were held across the state. Citizens can submit written comments and access meeting recordings on the commission's website.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>The makeup of the commission is designed to decrease the risk of partisan abuse, though the power to choose a tie breaking chair has fallen to the Montana Supreme Court for the past several cycles. The legislature has no input on the maps other than recommendations, which does limit the risk of partisan abuse. However, there are no criteria on the partisan leanings of the chair. This could lead to a partisan selection, especially if chosen by the Montana Supreme Court rather than the bipartisan commissioners collectively.</p>
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Threat 4: Are the legal standards weak?

<p>MODERATE RISK</p>	<p>Montana has mandatory ranked criteria in the State Constitution, including nearly equal population, the following of political boundaries, compactness and contiguity, and nesting state house districts in state senate districts. Under statute, maps cannot favor a political party or incumbent, and the use of partisan data is prohibited. Last cycle, the commission passed guidelines that kept communities of interest intact as a discretionary criterion. It is unclear if they will do so again this cycle.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>LOW RISK</p>	<p>There is no special legal recourse for redistricting challenges in Montana; maps are not automatically reviewed by the Supreme Court, and previous cases have originated in state district judicial courts and have been appealed to the Montana Supreme Court. Citizens are able to challenge unfair maps in court. In the 2000 cycle, the First District Judicial Court ruled against the legislature and Secretary of State interfering in the redistricting process in <i>Brown v. Mont. Districting and Apportionment Commission</i> (2003).</p>
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MONTANA REDISTRICTING SUMMARY

REDISTRICTING PROCESS	
Redistricting Body:	Balanced political appointee citizen commission
Supermajority Vote Needed?	No
Governor Signs/Vetoes?	No
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge maps in court.

REDISTRICTING CRITERIA	
Source:	Montana Const. Art. V, § 14; Montana Code Ann § 5-1-108-115
Requires:	Congressional and statutory criteria for state legislative districts (ranked): 1. as nearly equal in population as possible; 2. follow political boundaries; 3. contiguous; 4. compact; 4. state house districts nested in senate districts Statutory criteria for congressional districts requires districts be as nearly equal in population as possible
Prohibits:	Statutory criteria for both state legislative and congressional districts prohibits: Favoring a political party or incumbent (use of incumbent addresses or partisan data is also prohibited)
Allows:	None

DEADLINE/PUBLIC PARTICIPATION	
Redistricting Deadline:	State leg: mid-March, 2023 Congressional (potential for 2 districts this cycle): 90 days after census data released
Hearings start:	State leg.: late 2022 Congressional: mid-late 2021
Required # of Hearings:	1 before plans are submitted to the legislature
Public Comment:	Required
Likely Committees:	None

POLITICAL CONTROL	
United/Divided Government?	United - Republican
Governor:	Greg Gianforte (R)
State House:	67R - 33D (R: 67%)
State Senate:	31R - 19D (R: 62%)
Veto-Proof Leg. Supermajority?	N/A
Supreme Court:	Nonpartisan elections (Gov. appoints vacancies): 4 nonpartisan, 2 appointed by Steve Bullock (D), 1 appointed by Judy Martz (R)

Timing note: State legislative maps must be proposed by the redistricting commission to the legislature for recommendations by the 10th day in the legislative session starting in early January 2023. The legislature then has 30 days to return the maps, and the commission has an additional 30 days to finalize and adopt the plans. The deadline will likely fall in mid-March 2023. Montana is estimated to gain a second congressional seat after the 2020 Census. Congressional district maps are due 90 days after Census data becomes available, and hearings will likely take place in mid-late 2021. It is unlikely that the Census delay will impact redistricting deadlines in Montana.

Citations and references: Montana Const. Art. V, §14; Montana Code Ann. §5-1-108-115, §5-1-109-11, §5-1-108-11; "Tribal law expert is new chair of Montana's redistricting commission," Missoula Current (Dec. 18, 2020); Montana Districting and Apportionment Commission.

Relevant recent cases: Per Justin Levitt's All About Redistricting: Brown v. Mont. Districting & Apportionment Comm'n, No. ADV 2003-72, 2003 ML 1896 (Mont. Dist. Ct. July 2, 2003); Willems v. Montana, 325 P.3d 1204 (Mont. 2014).

NEBRASKA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	After the Special Redistricting Committee votes by simple majority to adopt legislative and congressional districts and proposes them to the legislature, the districts are approved by a simple majority-vote regular statute, subject to gubernatorial approval or veto. Nebraska has a unicameral legislature so maps only have to pass through the one chamber. If a plan is vetoed, the legislature can override it with a 3/5 vote.
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Threat 2: Can election maps be drawn in secret?

LOW RISK	At least one public hearing must be held in each congressional district before maps are finalized, and drafts and data must be made publically available throughout the process. In 2011, public hearings were held in May. This timeline will probably be pushed back this cycle due to Census delays.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans control the unicameral legislature and are one vote short of a veto-proof majority. Nebraska also has a Republican governor. The Special Redistricting Committee within the legislature is composed of nine Senators; no more than five of its members may be from the same party. Committee members are chosen by the legislature's Executive Board (President of the Senate, Chair and Vice Chair elected at large by the legislature, and two members selected from each of the three geographical "caucuses.") Functionally, the Committee is guaranteed to be Republican controlled, as is the rest of the process, with few apparent constraints on partisan redistricting.
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Threat 4: Are the legal standards weak?

HIGH RISK	Nebraska's criteria in the State Constitution for state legislative and congressional districts include compactness, contiguity, and the following of county boundaries when practicable. There are no formal prohibitions on partisan, pro-incumbent, or racially-discriminatory gerrymandering, however, in 2011, the redistricting committee adopted its own additional set of criteria for drafting districts that cycle, including preserving the cores of prior districts, prohibiting the use of partisan data, and forbidding the intentional favoring or disfavoring of a party, group, or person. This is likely, but not guaranteed for the current cycle.
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Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK	There is no automatic judicial review of new district maps following the redistricting process in Nebraska, but citizens are able to challenge maps. In both the 2001 and 2011 cycles, maps were not challenged in court. Earlier legal challenges to state legislative redistricting have been brought first to county district courts and have on occasion advanced to the Nebraska Supreme Court through appeal. Challenges to congressional maps in Nebraska have been brought to the US District Court of the District of Nebraska.
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NEBRASKA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature (Special Redistricting committee tasked with drafting)	Source:	Nebraska Const. Art. III, § 5
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): compactness, contiguity, follow county boundaries when practicable There are no criteria for congressional districts
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge maps in court.	Allows:	In 2011, additional guidelines adopted by the redistricting committee included preserving the cores of prior districts, prohibiting the use of partisan data, and forbidding the intentional favoring or disfavoring of a party, group, or person.

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	No deadline	United/Divided Government?	United - Republican
Hearings start:	Not specified	Governor:	Pete Ricketts (R)
Required # of Hearings:	At least 1 in each congressional district	State Senate (unicameral):	32R - 17D (65% R)
Likely Committees:	Special Redistricting Committee	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Assisted appointment: 6R, 1D

Timing note: There is no set deadline for adopting congressional or state legislative lines. Once formed, the Special Redistricting Committee may introduce their proposal to the entire legislature at any point during their session. The current legislative session runs through June 10, 2021, but there is no requirement maps have to be completed at this time. Last cycle, congressional and state maps were adopted on May 26, 2011, but due to Census delays, the whole process will most likely be pushed back.

Citations and references: Nebraska Const. Art. III, §5; LR102; Rules of the Neb. Unicameral Legis., Rule 3, § 6

Relevant recent cases: Per Justin Levitt's All About Redistricting: Day v. Nelson, 240 Neb. 997, 485 N.W.2d 583 (1992), Exon v. Tiemann, 279 F.Supp. 603 (D. Neb. 1967).

NEVADA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The legislature adopts state legislative and congressional districts as a regular statute by a majority vote, which does require gubernatorial approval. If the legislature cannot pass a plan, the task goes to a state trial court to draw the maps.
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Threat 2: Can election maps be drawn in secret?

MODERATE RISK	Committee hearings are available for public testimony, but there are no specific requirements around the number of public hearings or the specifics of public input in the restricting process.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Democrats have tripartite control of the redistricting process, with narrow margins in both legislative houses. There are also no criteria relating to partisanship or fairness, and no clear constraints on redistricting for partisan advantage.
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Threat 4: Are the legal standards weak?

HIGH RISK	Nevada has no express redistricting criteria outside of constitutional requirements that all states are subject to (equal population, Voting Rights Act). While not redistricting criteria, state statute does require census data to be adjusted in order to count incarcerated individuals at their last known residence before incarceration. Note: keeping whole "communities of interest" is not an express criterion.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	There is no automatic judicial review or clear citizen right to request review. Last cycle, three special masters appointed by a Nevada district court in Carson City were responsible for drawing new district lines after the Governor vetoed the legislature's plans after their session had adjourned. The special masters issued a report with district map plans, which were slightly modified by the trial court. Those maps were not further challenged in court.
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NEVADA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Nev. Const. art. IV, § 5
Supermajority Vote Needed?	No	Requires:	There are no criteria for state legislative and congressional maps
Governor Signs/Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically challenged	Allows:	Census data to be adjusted for state legislative and congressional districts to count incarcerated individuals at their last known residence before incarceration.

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: July 1, 2021	United/Divided Government?	United - Democratic
Hearings start:	With start of session	Governor:	Steve Sisolak (D)
Required # of Hearings:	None	State House:	25D - 16R - 1V (60% D)
Public Comment:	Not required (but past practice)	State Senate:	11D - 9R - 1V (52% D)
Likely Committees:	None	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Elected (with Gov. filling vacancies by appointment): 6 elected, 1 appointed (R)

Timing note: While there is no deadline in statute for congressional maps, candidates must file by March 18, 2022. State legislative maps must be adopted by the end of session on July 1, 2021. If the legislature fails to pass maps, the task goes to a Nevada trial court to draw the lines. It is not clear how the Census delay will influence the redistricting timeline.

Citations and references: Nevada Const. Art. IV, § 5; Nevada Rev. Stat. §§ 218B.105, 304.065, 360.288

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Guy v. Miller*, No. 11 OC 00042 1B (Nev. Dist. Ct., Carson City Oct. 27, 2011).

NEW HAMPSHIRE

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The General Court, New Hampshire's legislature, adopts state legislative and congressional districts by majority vote as a normal statute, subject to gubernatorial approval or veto, which can be overridden with a 2/3 supermajority vote in each chamber.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	Avenues for public participation are not required by law. The General Court held 10 public hearings during the 2011 cycle.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite control of the New Hampshire government, with narrow margins in both legislative houses and control of the governorship. There are no apparent constraints on the majority's ability to redraw the lines for partisan advantage.
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Threat 4: Are the legal standards weak?

HIGH RISK	New Hampshire has limited mandatory unranked criteria in the state constitution and statute for state legislative districts, including requirements that districts are drawn to be contiguous and follow political boundaries of towns and wards except when a municipality requests division by referendum or if necessary to decrease severely uneven population distribution. There are no criteria prohibiting partisan, pro/anti-incumbent, and racially discriminatory gerrymandering, and keeping whole "communities of interest" is not an express criterion. There are no state-level criteria for congressional redistricting plans. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in Shelby County v. Holder.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	There is no special legal recourse for redistricting in New Hampshire; maps are not automatically reviewed by the state Supreme Court. In the 2011 and in 2001 cycles, legal challenges were brought against the state house maps related to the redistricting process, and every time the maps were upheld.
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NEW HAMPSHIRE REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	New Hampshire Const. pt. II, Art. 9, 11 & 26; New Hampshire Rev. Stat. Ann. § 662
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): contiguity; follow town, ward, and place boundaries, except when town or ward requests division by referendum.
Governor Signs/Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge maps in court.	Allows:	Town and wards can be divided if necessary to decrease severe population deviation

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: June 28, 2021 (though potentially 2022)	United/Divided Government?	United - Republican
Hearings start:	Unclear	Governor:	Chris Sununu (R)
Required # of Hearings:	None (but past practice)	State House:	212R - 186D - 2V (R: 53%)
Public Comment:	Not required (but past practice)	State Senate:	14R - 10D (R: 58%)
Likely Committees:	House Special Committee on Redistricting, Sen. Internal Affairs Committee	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Gubernatorial appointment (with advisory council): 3R - 2D

Timing note: State legislative maps must be adopted in the 2021 regular session, which is scheduled to conclude June 28, although last cycle plans were adopted the year following the post-Census year. It is unclear how the Census delay will change the timeline. There is no deadline for the approval of congressional maps.

Citations and references: New Hampshire Const. Pt. II, Art. 9, 11, 26, 44; New Hampshire Rev. Stat. Ann. §662; Princeton Gerrymandering Project; "New Hampshire Supreme Court Vacancy, 2019," Ballotpedia (2019)

Relevant recent cases: Per Justin Levitt's All About Redistricting: In re Below, 855 A.2d 459 (N.H. 2004); City of Manchester v. Sec'y of State, 48 A.3d 864 (N.H. 2012).

NEW JERSEY

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>LOW RISK</p>	<p>Two separate appointed commissions adopt legislative and congressional districts by majority vote. The Commission for US Congressional lines consists of 13 members: the chairs of both major political parties and the four legislative leaders each choose two commissioners, selected to represent the state's demographic and geographic diversity. Those 12 choose a 13th member to serve as Chair. Should the commissioners fail to select a chair, they are to provide the New Jersey Supreme Court with two names, one of whom the court will select. If that Commission fails to pass maps, it must submit two plans to New Jersey Supreme Court and the justices select a map.</p> <p>The Commission for State Legislative consists of 10 or 11 members: the chairs of both major political parties each choose five members who represent the various parts of the state. If the members fail to pass maps, the Chief Justice of the New Jersey Supreme Court appoints an 11th member to serve as tiebreaker.</p>
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Threat 2: Can election maps be drawn in secret?

<p>STATE LEGISLATIVE: HIGH RISK</p> <p>CONGRESSIONAL: LOW RISK</p>	<p>New Jersey's constitution requires that the congressional redistricting commission holds at least 3 public hearings around the state. This requirement does not apply to the state legislative redistricting commission, but the commission has held hearings on a similar schedule in past cycles.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>LOW RISK</p>	<p>The balanced commissions help to gird against partisan abuse, with the tie-breaking vote to be cast by a chair chosen by the whole commission or, for congressional redistricting, the Supreme Court. If the commission for state legislative redistricting fails to pass maps, the Chief Justice of the Supreme Court appoints another member to serve as a tiebreaker.</p>
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Threat 4: Are the legal standards weak?

<p>STATE LEGISLATIVE: MODERATE RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>There are no state-level criteria for congressional districts. New Jersey has mandatory criteria in the State Constitution and in statute pertaining to state legislative lines including compactness, contiguity, protection of political boundaries, and having districts be of equal population to the extent practicable. Note: Census data is adjusted to count incarcerated individuals at their last known residence. Keeping whole "communities of interest" is not an express criterion.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>MODERATE RISK</p>	<p>The New Jersey Supreme Court has exclusive jurisdiction over legal challenges to congressional districts; state legislative challenges are not similarly defined. In the last two cycles, state legislative plans were challenged in state court and upheld.</p>
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NEW JERSEY REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Two redistricting commissions	Source:	New Jersey Const. Art. IV, § II
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): contiguous, compactness, "as equally populated as possible" There are no criteria for congressional districts
Governor Signs/ Vetoes?	No	Prohibits:	Constitutional criteria for state legislative districts prohibits division of municipalities, except where otherwise required by law. Also prohibits prison gerrymandering.
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge congressional maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: Jan. 18, 2022 State leg.: Mar. 1, 2022	United/Divided Government?	United - Democratic
Hearings start:	Unclear	Governor:	Phil Murphy (D)
Required # of Hearings:	Congressional: 3 State legislative: 0 (but past practice)	State House:	52D - 28R (D: 65%)
Public Comment:	Not required (but past practice)	State Senate:	25D - 14R - 1V (D: 63%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Gubernatorial appointment: 4R - 3D

Timing note: Congressional maps must be adopted by Jan. 18, 2022 and state legislative maps must be adopted by Mar. 1, 2022. Hearings for congressional maps will likely begin after the commission is finalized; by July 15, 2021. Hearings for state legislative maps will likely begin when the commission begins convening; no later than one month after receiving Census data. Note: Since Census data will be released after Feb. 15, 2021, the 2021 elections will be held using existing districts.

Citations and references: New Jersey Const. Art II, §II, Art. IV, §II-III; New Jersey Stat. §§52:4-1.1 – 1.5.

Relevant recent cases: Per Justin Levitt's All About Redistricting: Gonzalez v. N.J. Apportionment Comm'n, 53 A.3d 1230 (N.J. Super. Ct., App. Div. 2012); Page v. Bartels, 144 F. Supp. 2d 346 (D.N.J. 2001); Robertson v. Bartels, 148 F. Supp. 2d 443 (D.N.J. 2001), aff'd 534 U.S. 1110 (2002); McNeil v. Legis. Apportionment Comm'n, 828 A.2d 840 (N.J. 2003).

NEW MEXICO

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts state legislative and congressional districts as a regular statute subject to gubernatorial approval or veto, which can be overridden with a 2/3 supermajority vote in both chambers.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	There are no mandatory public hearings and apparently little opportunity for meaningful public participation. Even though the Interim Redistricting Committee has a habit of setting up public hearings all over the state, this process is apparently largely symbolic as most of the decision-making is done behind closed doors between legislators.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Democrats enjoy tripartite control in New Mexico and comfortable majorities in both chambers, though they lack a veto-proof supermajority. There appear to be no structural constraints on redistricting to entrench partisan advantage.
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Threat 4: Are the legal standards weak?

HIGH RISK	Like all states, New Mexico must follow national standards in the Voting Rights Act, but its state constitution does not provide for other requirements. Beyond those standards, New Mexico statutes require compact and contiguous districts, and there were guidelines implemented in 2011 to preserve communities of interest, respect political subdivisions, preserve the core of existing districts, and to consider the residence of incumbents.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	There have not been any recent court cases challenging redistricting maps. Citizens have limited access to the maps before they are voted on so a court challenge to unfair maps may be especially difficult. It is not clear citizens enjoy a specific right to request review of redistricting plans.
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NEW MEXICO REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	N.M. Stat. § 2-8D-2, 2-7C-3
Supermajority Vote Needed?	No	Requires:	Statutory criteria for state legislative districts (unranked): compactness and contiguity There are no criteria for congressional districts
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. It's unclear if citizens can challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: July 1, 2021	United/Divided Government?	United - Democratic
Hearings start:	Not clear	Governor:	Michelle Lujan Grisham (D)
Required # of Hearings:	15	State House:	45D - 24R - 1I (D: 64%)
Public Comment:	Required	State Senate:	27D - 15R D: 64%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Assisted appointment and partisan election: 5D - 0R

Timing note: There is no redistricting deadline for either state legislative or congressional maps, but in years past an interim redistricting committee met throughout the summer from May-August, taking public testimony from different parts of the state. In September 2011, the legislature then attempted to draw the maps in a special session closed to the public.

Citations and references: New Mexico Stat. §2-8D-2, 2-7C-3; New Mexico Const. Art. 4, §3C

Relevant recent cases: N/A

NEW YORK

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>MODERATE RISK</p>	<p>State legislative and congressional maps are drawn by a balanced political appointee commission and approved by the state legislature. The legislative leaders of each party appoint two members each to the 10-member advisory commission tasked with drawing the maps. The other two members are chosen by those eight initial members. When the Senate and Assembly are controlled by a single party, redistricting plans must receive seven votes, including a vote from a member appointed by each legislative leader, to be advanced, unless no maps reach that threshold, at which point the most popular map will be transmitted to the legislature.</p> <p>After the commission submits maps for legislative approval, the legislature either votes up or down the maps. There are three different thresholds required to pass maps depending on the makeup of the two legislative bodies. If one party controls both chambers, maps need 2/3 support in each chamber to pass. If the two bodies are under the control of different parties and the commission passed its plan without seven votes, maps need 60% support to pass. If the two bodies are under the control of different parties and the commission passed its plan with seven votes (including support from members appointed by the speaker and president pro tempore), maps need a simple majority to pass. In all cases, the governor can veto the plans, and the veto can be overridden. If the Legislature rejects the maps, the commission has either 15 days or until February 28 of the year ending in 2 to draft new maps. If the legislature or governor rejects the second round of maps, the legislature then gets to amend maps themselves, though the legislature may modify a commission map by just 2% of the population of any district.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>There are at least 12 public advisory commission hearings required across the state, though not limited to that. Beyond public access to meetings, data and commission plans must be released to the public at least 30 days before their first official hearing so people can develop and discuss their own plans at hearings. Citizens are also allowed to challenge maps in court after plans are finalized.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>There are constraints on partisan bias in the redistricting process in the balance of the advisory commission, commission map submission thresholds, and legislative map approval requirements. However, if commission plans are rejected twice, the legislature may be able to amend and approve maps by 2/3 supermajority vote. And while allowing the legislature to amend the maps is a red flag, the 2% population constraint certainly helps limit partisan abuse.</p>
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Threat 4: Are the legal standards weak?

<p>LOW RISK</p>	<p>The redistricting criteria are strong and embedded within the Constitution, prohibiting intentionally favoring incumbents, parties, and candidates for office while also promoting competitiveness. Beyond that, maps must also be compact and contiguous, preserve political subdivisions, protect communities of interest, and preserve the cores of prior districts. The only criteria established through statute is the prohibition of prison gerrymandering. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i>. The absence of a preclearance requirement may change the redistricting calculus.</p>
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NEW YORK REDISTRICTING SUMMARY

Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	While maps are not automatically reviewed by any court, citizens are allowed to challenge maps in an unspecified trial court. That court then has 60 days to make a decision. It is hard to assess the legal recourse in practice of this process considering the redistricting process was overhauled in 2014, making this the first cycle after its implementation. In the past, there have been citizen challenges to maps, though no maps were altered due to challenges in court.
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	10-member advisory commission, legislative approval	Source:	New York Constitution Art. III § 3, 4
Supermajority Vote Needed?	Yes, at varying thresholds	Requires:	Constitutional criteria requires both state legislative and congressional districts to (unranked): 1. be compact and contiguous 2. preserve political subdivisions 3. preserve communities of interest 4. preserve the cores of prior districts 5. promote competitiveness
Governor Signs/ Vetoes?	Yes	Prohibits:	<ul style="list-style-type: none"> Constitutional criteria for both state legislative and congressional districts prohibits: intentionally favoring or disfavoring an incumbent, party, or candidate for office Constitutional criteria for legislative amendments prohibits amending commission maps more than 2% of a district's population Statutory criteria for both sets of maps prohibits prison gerrymandering
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge maps in state trial court.	Allows:	None

NEW YORK REDISTRICTING SUMMARY

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Commission draft maps: Sept. 15, 2021; Submission to leg.: Jan. 15, 2022; Final approval: Feb. 28, 2022	United/Divided Government?	United - Democratic
Hearings start:	No required date	Governor:	Andrew Cuomo (D)
Required # of Hearings:	12	State House:	106D - 43R - 10 (71%)
Public Comment:	Required	State Senate:	43D - 20R (68%)
Likely Committees:	Advisory commission	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Court of Appeals (highest in NY) judges selected through assisted appointment: All technically nonpartisan, but all 7 appointed by Democratic governor.

Timing note: The 10-member advisory commission has until either 30 days before their first hearing or September 15 of the year ending in 1 to release their drafted plans and data to the public. After a series of at least 10 public meetings around the state, they must then submit their plans to the legislature by January 15 of the year ending in 2. If the plans are voted down, the commission has either another 15 days or by February 28 of the year ending in 2 to submit a different plan. While there is no deadline, it is assumed the maps will be completed by April 7, 2022, the filing deadline for congressional and state legislative candidates. It is not clear how the Census delay will affect the redistricting process.

Citations and references: New York Const. Art. III §3, 4; 2012 N.Y. Sess. L. ch. 17 (S6736), § 3;

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Favors v. Cuomo*, No. 1:11-cv-05632, 2014 WL 2154871 (E.D.N.Y. May 22, 2014); *Cohen v. Cuomo*, 969 N.E.2d 754 (N.Y. 2012); *Little v. N.Y. State Task Force on Demographic Research and Apportionment*, No. 2310-2011 (N.Y. Sup. Ct., Albany Cnty. Dec. 1, 2011)

★ SPOTLIGHT: NORTH CAROLINA

THIS REPORT HIGHLIGHTS SEVERAL BATTLEGROUND STATES WHERE THE REDISTRICTING PROCESS IS LIKELY TO BE ESPECIALLY CONTENTIOUS.



Timing note: Legislative maps must be adopted in the 2021 regular session, which begins 1/13/21 but has no set end date. Sessions generally end in July. Congressional maps have no deadline. Note: State and federal candidates must file for office by 12/17/21.

Threat 1: Can politicians control how election maps are drawn?

HIGH RISK

The Legislature adopts legislative and congressional districts by majority-vote bill, which does not require Governor approval.

Threat 2: Can election maps be drawn in secret?

HIGH RISK

There are no redistricting-specific laws requiring public hearings or providing opportunities for public engagement. Generally, the Legislature allows members of the public to provide comment in committees; however, there is no requirement that they do so. (In 2011 and in 2019, the public could speak at redistricting hearings. For 2019, an online comment portal was also set up.)

Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK

Republicans have united control of the legislature. Although the governor is a Democrat, the governor does not have a role in approving/vetoing redistricting plans. As such, there appear to be no meaningful structural safeguards around redistricting for partisan advantage.

Threat 4: Are the legal standards weak?

MODERATE RISK

The state constitution has mandatory redistricting criteria for legislative redistricting, but not congressional redistricting. They are: equal population, contiguity, and whole counties. The legislature may also consider other traditional redistricting criteria, like compactness and communities of interest. In 2019, a superior court held that North Carolina's general civil rights provisions prohibit extreme partisan gerrymandering of both legislative and congressional districts. The Supreme Court has not reviewed that holding. In prior cycles, the legislature has also adopted its own criteria by resolution.

Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK

Challenges to redistricting maps are heard by a three-judge panel of the Wayne County Superior Court. The three-judge panel includes the senior most judge of Wayne County. There is a long history of maps being struck down for racially-discriminatory and partisan gerrymandering in North Carolina.

SPOTLIGHT: NORTH CAROLINA

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	N.C. Const. Art. II, §3, 5, 22
Supermajority Vote Needed?	No	Requires:	Congressional: None. State legislative: Nearly equal population; contiguity; respect county boundaries.
Governor Signs/ Vetoes?	No	Prohibits:	Partisan gerrymandering (non-precedential case law)
Special Legal Process?	Three-judge superior court hears all redistricting cases	Allows:	Traditional redistricting criteria (case law)

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State Leg. Seats: end of 2021 session. Cong. Seats: None	United/Divided Government?	Divided - Democratic Governor; Republican Legislature
Hearings start:	2021	Governor:	Roy Cooper (D)
Required # of Hearings:	None (but dozens in 2011)	State House:	69R - 51D (R: 58%)
Public Comment:	Not Required (but past practice)	State Senate:	28R - 22D (R: 56%)
Likely Committees:	House Redistricting Senate Redistricting	Veto-Proof Leg. Supermajority?	N/A
		Supreme Court:	Partisan elections: 4D - 3R

SPOTLIGHT: NORTH CAROLINA

THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

In North Carolina, the legislature ("General Assembly") controls both the state and congressional redistricting process.¹ Unlike most bills, redistricting bills become law after being passed by both houses and are not presented to the governor for signature or veto.² Each redistricting bill must be "read three times in each house before it becomes law and shall be signed by the presiding officers of both houses."³

If a redistricting map is successfully challenged in court, state law (statute) provides that the Court must give the legislature two weeks to remedy any legal defect before it may impose its own interim maps.⁴ (If the legislature is in recess when the Court issues its order invalidating a map, but is scheduled to reconvene within 45 of the Court's order, the legislature has two weeks from the date it reconvenes to adopt new maps.⁵)

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

Hearings: There are no redistricting-specific laws requiring public hearings prior to adopting new legislative or congressional maps.⁶ In the 2011 cycle, the State House and State Senate Redistricting Committees held dozens of public hearings in different locations across the state, from April 13 through July 18, 2011.⁷ In 2019, the legislature set up a written public comment portal.

Open Meetings: Under state law, all hearings by standing committees are required to be open to the public.⁸

Public Comment: Generally the public may speak at legislative committee meetings; however, this is not required and sometimes chairs will not allow public comment.⁹ Committees may also call witnesses.¹⁰ In 2011, legislative committees received public comment on redistricting plans.

Records: North Carolina law provides that "all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting ... are no longer confidential and become public records upon the act establishing the relevant district plan becoming law."¹¹

Other Transparency: In 2019, after invalidating the legislature's legislative maps, the superior court ordered the legislature to draw remedial maps following a more transparent process, which required disclosing the "identity of all participants involved in the process of drawing and enacting the Remedial Maps," every alternative map that was considered, and the extent to which incumbency-protection or partisan considerations were used in drawing a map.¹² Those requirements are not in effect for 2021.

1 N.C. Const. Art. II, §3; 5; 22 (d).

2 N.C. Const. Art. II, §22 (5)(b) - (d).

3 N.C. Const. Art. II, §22 (5)(b) - (d).

4 N.C. G.S. § 120-2.4 (a).

5 N.C. G.S. § 120-2.4 (a).

6 See Brennan Center, "50 State Guide to Redistricting: North Carolina" (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, "North Carolina," <https://gerrymander.princeton.edu/reforms/NC> (accessed Jan. 3, 2020).

7 North Carolina General Assembly, "North Carolina Redistricting - 2011 Public Hearing Information," www.ncleg.gov/Legislation/SupplementalDocs/2011/publichearings/redistricting (accessed Jan. 3, 2021).

8 N.C. G.S. § 143-318.14A. See also Senate Rule 36 (no secret meetings).

9 Phone call with North Carolina Legislative Librarian (Jan. 4, 2021).

10 N.C. G.S. § 120-19.1.

11 N.C. G.S. § 120-133.

12 *Common Cause v. Lewis*, No. 18-CVS-014001, (N.C. Super. Ct., Wake Cnty. Sept. 13, 2019).

SPOTLIGHT: NORTH CAROLINA

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

Republicans control both houses of the North Carolina legislature by substantial margins. While the governor, Roy Cooper, is a Democrat, the governor does not have the power to sign or veto redistricting plans. As a result, Republicans fully control both the state and congressional redistricting process in 2021 and are not required to negotiate with Democrats.

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

The North Carolina Constitution provides mandatory criteria for state legislative **but not** congressional redistricting.¹³ For state redistricting, the constitution requires the legislature to draw districts that have nearly equal population, that are contiguous, and that respect county boundaries.¹⁴ The constitution has no express prohibition on partisan or incumbency protection gerrymandering.

However, in 2019 a three-judge panel of the superior court with original jurisdiction on redistricting suits found that several general provisions of the state constitution – including the free elections, equal protection, freedom of speech, and freedom of assembly clauses – prohibit partisan gerrymandering in both state and congressional redistricting.¹⁵ Because these were trial court opinions, they may have persuasive value but are not binding precedent for any future case that may be appealed to the State Supreme

Court.¹⁶ (It is also unlikely that these trial court opinions are binding precedents on any future three-judge panel.¹⁷)

Finally, like all states, North Carolina must comply with federal legal restrictions on redistricting, which include the Fourteenth Amendment's Equal Protection Clause (which addresses equal population standards and the use of race as a redistricting criterion) and Section 2 of the Voting Rights Act (which prohibits discrimination against racial and language minorities).¹⁸ Formerly, 40 North Carolina counties were covered by Section 5 of the Voting Rights Act (VRA) and required preclearance; however, in *Shelby County v. Holder*, the U.S. Supreme Court struck down the formula for which jurisdictions were subject to preclearance.¹⁹ Therefore, for this cycle, no North Carolina counties are subject to federal preclearance.

Equal Population: The state constitution requires that legislative districts be “as nearly as may be” equal in population.²⁰ The State Supreme Court has interpreted this to require districts to be within +/- 5% of the average district population; the same standard under federal constitutional law.

Contiguous Territory: The state constitution requires that legislative districts “consist of contiguous territory.”²¹ The Supreme Court has not addressed how strictly this traditional redistricting criterion is applied. However, the Supreme Court did quote then affirm a lower court finding that a 2002 legislative redistricting plan failed to meet the State Constitution's contiguity requirement.²² The trial court took a strict

13 Compare N.C. Const. Art. II, §3; 5 with *id.* §22 (d). See also Brennan Center, “50 State Guide to Redistricting: North Carolina” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting.

14 N.C. Const. Art. II, §3; 5.

15 *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct., Wake Cnty. Oct. 28, 2019); *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 WL 4569584 (N.C. Super. Ct., Wake Cnty. Sept. 3, 2019).

16 See *Stephenson v. Bartlett*, 595 S.E.2d 112, 118 (N.C. 2004) (upholding three-judge panel and identifying it as a superior court); *State v. Williams*, 686 S.E.2d 493, 505 n.1 (N.C. 2009) (Supreme Court not bound by superior court decisions).

17 See *Estate of Browne v. Thompson*, 727 S.E.2d 573, 576 (N.C. App. 2012) (opinions of special superior courts, like other superior courts, have “no precedential value”). But see *Harper v. Lewis*, No. 19-CVS-012667 (N.C. Super. Ct., Wake Cnty. Oct. 28, 2019) (citing *Common Cause* for proposition that “[e]xtreme partisan gerrymandering violates ... the North Carolina Constitution” without explaining decision's precedential value).

18 U.S. Const. amend. XIV, § 1; 52 U.S.C. § 10101 et seq.

19 570 U.S. 529 (2013).

20 N.C. Const. Art. II, §3(1); 5(1).

21 N.C. Const. Art. II, §3(1); 5(2).

22 *Stephenson v. Bartlett*, 82 S.E.2d 247 (N.C. 2003).

SPOTLIGHT: NORTH CAROLINA

view of contiguity: “the term ‘contiguity’ ... means that two districts must share a common boundary that touches for a non-trivial distance,” which prohibits “point” contiguity (where a district is split into two parts connected at a single point) and “crisscrosses” (where two districts can cross through each other at a single point).²³

The Supreme Court has not addressed water contiguity. However, in the 2017 redistricting cycle, the Legislature adopted rules specifying that it considered water contiguity to be sufficient.²⁴

Whole County Provisions (WCP): The state constitution provides that “[n]o county shall be divided in the formation of a [legislative] district.”²⁵ The State Supreme Court has interpreted this provision to generally require “that each State House and Senate District be confined to a single county or minimum grouping of contiguous counties.”²⁶ The “whole county provisions” (WCP) will sometimes inevitably conflict with federal equal population and VRA requirements, in which case, under the supremacy clause to the U.S. Constitution, federal requirements must prevail over conflicting state law requirements. However, the North Carolina Supreme Court has held that the legislature must still draw equal population and VRA-compliant districts that follow the WCP to the “maximum extent practicable.”²⁷

The Supreme Court has developed an extensive nine-point framework for complying with the WCP.²⁸ In condensed form, the WCP requires that:

- The Legislature first draw VRA districts, which must comply with the WPC to the extent possible;

- Districts vary by as much as +/-5% of the ideal district population so that as many counties may be kept whole as possible;
- Each county with a population within +/- 5% of the ideal be its own district;
- Each large county be divided, where possible, into two or more whole districts that are compact and do not traverse county lines;
- For small counties with insufficient residents to be a single district, or for large counties that cannot be divided into whole districts because at least one district would fail the equal population standard, multi-county groupings must be created with one or more compact districts that do not traverse the exterior border of the grouping. The grouping’s interior district lines can cross county lines but only to the extent necessary to comply with equal population requirements. Finally, the smallest number of counties necessary to comply with the equal population standard shall be combined; and
- “Communities of interest should be considered in the formation of compact and contiguous electoral districts.”²⁹

Anti-Gerrymandering Protections: Although partisan gerrymandering claims are not justiciable under the U.S. Constitution, they may be under the North Carolina Constitution as to both state and congressional redistricting. In *Stephenson I*, a seminal 2002 case on North Carolina’s enumerated redistricting criteria, the Supreme Court allowed that the legislature “may consider partisan advantage and incumbency protection in the application of its discretionary redistricting decisions ... but it must do so in conformity with the

23 *Stephenson v. Bartlett*, 82 S.E.2d 247, 254 (N.C. 2003) (citations omitted) (quoting trial court).

24 *Common Cause v. Lewis*, No. 18 CV5 014001, 2019 N.C. Super. LEXIS 56, *25 (Wake Cnty Sup. Ct., Sep. 3, 2019).

25 N.C. Const. Art. II, §3(3); 5(3).

26 *Dickson v. Rucho*, 781 S.E.2d 404, 412 (N.C. 2015).

27 *Stephenson v. Bartlett*, 562 S.E.2d 377, 397 (N.C. 2002).

28 *Dickson v. Rucho*, 766 SE 2d 238, 269-270 (N.C. 2014) (brackets, ellipses, and quotation marks in original).

29 *Dickson v. Rucho*, 766 SE 2d 238, 269-270 (N.C. 2014).

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State Constitution.”³⁰ This phrase, potentially dictum, would seem to authorize partisan gerrymandering. However, in 2019, the three-judge superior court with original jurisdiction over redistricting claims twice held (unanimously) that extreme partisan gerrymanders are unconstitutional under several general civil rights provisions of the North Carolina Constitution.³¹

Neither Harper nor Common Cause, the two superior court decisions, directly address the “partisan considerations” passage in *Stephenson I*. The cases may be distinguishable, because a finding that constrained partisan redistricting is permissible under North Carolina’s Constitution’s enumerated criteria (*Stephenson I*) does not preclude a holding that partisan redistricting is prohibited under the Constitution’s general civil rights provisions (Harper and Common Cause). In Common Cause, the Superior Court did differentiate between permissible and impermissible partisan considerations in redistricting under its state equal protection analysis, which may reconcile its decision with the Supreme Court’s earlier opinion. According to the superior court, legitimate partisan consideration may include avoiding “the pairing of incumbents” or creating a “districting plan that would achieve a rough approximation of the statewide political strengths” of the two major parties, versus impermissible redistricting which is “intended to apply partisan classifications or deprive citizens of the right to vote on equal terms in an invidious manner.”³²

Superior court decisions are non-precedential and not binding on the Supreme Court. Although the Supreme Court could repudiate the superior court’s holding

that partisan gerrymandering claims are justiciable, it seems more likely that the Court, presently with a 4-3 Democratic majority, would embrace it. For example, the Court had an opportunity, in 2019, to hear an appeal in the Common Cause litigation where it could have closed the door on gerrymandering claims, but declined to review the case.³³

The Superior Court found that “extreme partisan gerrymandering” can be struck down under three different legal theories:

Free Elections: The North Carolina Constitution declares that “[a]ll elections shall be free.”³⁴ Consistent with this principal, the State Supreme Court has long held that “all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will.”³⁵ In Harper, the Superior Court extrapolated from these principles that:

“extreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others—is contrary to the fundamental right of North Carolina citizens to have elections conducted freely and honestly to ascertain, fairly and truthfully, the will of the people.”³⁶

Equal Protection: The North Carolina Constitution guarantees to all North Carolinians that “[n]o person shall be denied the equal protection of the laws.”³⁷ The State Supreme Court has interpreted

30 *Stephenson v. Bartlett*, 562 S.E.2d 377, 390 (N.C. 2002).

31 In a case involving North Carolina’s congressional maps, the U.S. Supreme Court held that constitutional claims against partisan gerrymandering were not justiciable in federal court. However, the Court noted the possibility that such claims were justiciable in state court. *Common Cause v. Rucho*, 139 S.Ct. 2484, 2507 (2019).

32 *Common Cause v. Lewis*, No. 18-CVS-014001, 2019 N.C. Super. LEXIS 56, *350-351 (N.C. Super. Ct., Wake Cnty. Sept. 3, 2019).

33 Brennan Center, “Court Case Tracker: Common Cause v. Lewis” (Apr. 16, 2020),

www.brennancenter.org/our-work/court-cases/common-cause-v-lewis.

34 N.C. Const. Art. I, § 10.

35 *State ex rel. Quinn v. Lattimore*, 26 S.E. 638, 638 (1897) (citations omitted).

36 *Harper v. Lewis*, No. 19-CVS-012667, 2019 N.C. Super. LEXIS 122, *9 (N.C. Super. Ct., Wake Cnty. Oct. 28, 2019).

37 N.C. Const. Art. I, § 19.

SPOTLIGHT: NORTH CAROLINA

this provision to protect “the fundamental right of each North Carolinian to substantially equal voting power.”³⁸ In *Harper*, the Superior Court applied a three-part test – for “(1) intent, (2) effects, and (3) causation” – to find a partisan gerrymandering violation:

“First, the plaintiffs challenging a districting plan must prove that state officials’ predominant purpose in drawing district lines was to entrench [their party] in power by diluting the votes of citizens favoring their rival. Second, the plaintiffs must establish that the lines drawn in fact have the intended effect by substantially diluting their votes. Finally, if the plaintiffs make those showings, the State must provide a legitimate, non-partisan justification (i.e., that the impermissible intent did not cause the effect) to preserve its map.”³⁹

Free Speech & Free Assembly: The North Carolina Constitution provides that the “[f]reedom of speech ... shall never be restrained” and that “[t]he people have a right to assemble together to consult for their common good.”⁴⁰ Under the U.S. Constitution, the First Amendment’s free speech and assembly protections have generally been held to prohibit the government from engaging in viewpoint discrimination.⁴¹ In *Harper*, the Superior Court concluded that extreme partisan gerrymandering is an unconstitutional form of viewpoint discrimination under the State Constitution’s free speech and association provisions:

“When a legislature engages in extreme partisan gerrymandering, it identifies certain preferred speakers (e.g. Republican voters) while targeting certain disfavored speakers (e.g.

Democratic voters) because of disagreement with the views they express when they vote. Then, disfavored speakers are packed and cracked into legislative districts with the aim of diluting their votes and, in cracked districts, ensuring that these voters are significantly less likely, in comparison to favored voters, to be able to elect a candidate who shares their views. Moreover, a legislature that engages in extreme partisan gerrymandering burdens the associational rights of disfavored voters to instruct their representatives, and to apply to the General Assembly for redress of grievances.”⁴²

Non-Enumerated Criteria: The legislature may also consider other traditional redistricting criteria when deciding which whole counties to combine or in deciding where to split counties that must be divided to meet federal law.⁴³ The Supreme Court has provided six examples of traditional criteria that the Legislature may consider. In *Stephenson I* (2002), the Court said that the Legislature “may also utilize nonmandatory criteria acknowledged by the federal courts as acceptable—i.e., community of interest, incumbent protection, and partisan considerations—so long as such use does not result in a violation of the mandatory criteria.”⁴⁴ In *Dickson* (2015) the Court enumerated three additional criteria: “the General Assembly may consider permissible and traditional redistricting principles such as compactness, contiguity, and respect for political subdivisions and communities of interest.”⁴⁵

38 *Stephenson v. Bartlett*, 562 S.E.2d 377, 394 (2002).

39 *Harper v. Lewis*, No. 19-CVS-012667, 2019 N.C. Super. LEXIS 122, *10 (N.C. Super. Ct., Wake Cnty. Oct. 28, 2019) (citations and quotation marks omitted).

40 N.C. Const. Art. I, § 14; 12.

41 See, e.g., *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

42 *Harper v. Lewis*, No. 19-CVS-012667, 2019 N.C. Super. LEXIS 122, *13 (N.C. Super. Ct., Wake Cnty. Oct. 28, 2019) (citations and quotation marks omitted).

43 *Stephenson v. Bartlett*, 562 S.E.2d 377, 397 (N.C. 2002).

44 *Stephenson v. Bartlett*, 562 S.E.2d 377, 407 (N.C. 2002).

45 *Dickson v. Rucho*, 781 S.E.2d 404, 414 (N.C. 2015).

SPOTLIGHT: NORTH CAROLINA

Within the context of the whole county rule, the Court has also instructed the legislature to consider compactness and communities of interest.⁴⁶

Legislatively-Adopted Criteria: In prior redistrictings, the legislature has also adopted its own criteria, consistent with the enumerated constitutional criteria for legislative redistricting. In 2017, the legislature adopted the following criteria for legislative redistricting: equal population, contiguity, county groupings, compactness, fewer split precincts, municipal boundaries, incumbency protection, political considerations, and no consideration of racial data.⁴⁷

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

Legal Standard: As with any act of the legislature, there is a “strong presumption” that redistricting plans are constitutional, although courts retain the power to declare any act unconstitutional.⁴⁸ Under North Carolina state law, a court holding that one or more redistricting maps is invalid must issue specific “findings of fact and conclusions of law” that “identify every defect found by the court, both as to the plan as a whole and as to individual districts.”⁴⁹

The legislature then has two weeks to remedy the defect.⁵⁰ If the legislature fails to, the Court “may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the legislature only to the extent necessary to remedy

any defects identified by the court.”⁵¹ State law also declares that illegal provisions of redistricting bills are severable, meaning a court should attempt to give legal effect to the remaining legal provisions of the bill.⁵²

Superior Court: North Carolina provides special procedures for challenging redistricting maps in state court. State law requires redistricting challenges to be filed in Wake County Superior Court, where the case will be heard by a special three-judge panel.⁵³ The panel consists of the senior resident superior court judge of Wake County and two other members. Those two judges are chosen by the Chief Justice of the Supreme Court, after reviewing a list recommended by the North Carolina Conference of Superior Court Judges.

Supreme Court: The North Carolina Supreme Court remains the final arbiter of the legality under state law of any redistricting plan adopted by the legislature. The North Carolina Supreme Court is selected by partisan judicial elections.⁵⁴

Prior History: North Carolina has a long history of redistricting litigation and maps being struck down in state and federal court, including several cases that went to both the State and U.S. Supreme Courts.⁵⁵ The current maps were adopted in 2019, with superior court approval, after a prior set of remedial maps were struck down for partisan gerrymandering.

46 *Dickson v. Rucho*, 766 SE 2d 238, 269-270 (N.C. 2014).

47 North Carolina General Assembly, “2017 House and Senate Plans Criteria” (Aug. 2017), <https://www.nccourts.gov/assets/inline-files/LDTX007.pdf?AWycoM7DqSN6eFcPDV9CezABNe7RmFFS>.

48 *Stephenson v. Bartlett*, 562 SE 2d 377, 384 (N.C. 2002).

49 N.C. G.S. § 120-2.3.

50 N.C. G.S. § 120-2.4 (a).

51 N.C. G.S. § 120-2.4 (b).

52 N.C. G.S. § 120-2.1.

53 N.C. G.S. § 1-267.1 (a).

54 Alicia Bannon, “Choosing State Judges: A Plan for Reform,” Brennan Center, 3 (Oct. 10, 2018),

<https://www.brennancenter.org/our-work/policy-solutions/choosing-state-judges-plan-reform>.

55 For a detailed history of this litigation, see National Conference of State Legislatures, “Redistricting Case Summaries | 2010-Present: North Carolina” (Updated Dec. 1, 2020), www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx.

NORTH DAKOTA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK

The Legislative Assembly adopts state legislative districts as a regular statute by a majority vote, subject to the governor's approval or veto, which may be overridden with a 2/3 supermajority in both chambers.

North Dakota has a single at-large congressional district, and is not expected to gain any additional seats after the 2020 Census.

Threat 2: Can election maps be drawn in secret?

HIGH RISK

North Dakota has strong "sunshine" laws, or open meeting laws. However, apart from making redistricting hearings available to the public, there is relatively little opportunity for public input in the redistricting process that is clearly specified.

Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK

Republicans have tripartite (House-Senate-Governor) control of the redistricting process, with veto-proof supermajorities in both chambers of the Legislative Assembly. There are no apparent checks on the Legislative Assembly's authority to effect partisan bias in redistricting.

Threat 4: Are the legal standards weak?

HIGH RISK

North Dakota has mandatory criteria in the state constitution requiring districts to be drawn contiguous and compact. There's also discretionary criteria in statute, requiring state legislative districts be drawn so populations are as equal "as is practicable" with any necessary deviations "kept at a minimum." Note: There's no criteria keeping whole "communities of interest" together or prohibiting partisan, pro/anti-incumbent, or racially-discriminatory gerrymandering.

Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK

There is neither automatic judicial review of state legislative maps, nor clear opportunity for citizen-initiated legal challenges. In the past two redistricting cycles, state legislative maps were not challenged in court.

NORTH DAKOTA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	N.D. Const. Art. IV, § 2; N.D. Code § 54-03-01.5
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): contiguity, compactness, nested (one senator and two representatives from each district) Statutory criteria for state legislative districts require districts to be populated nearly equally "as practicable" with minimal deviations.
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. Citizens may not challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional None State leg.: April 28, 2021	United/Divided Government?	United - Republican
Hearings start:	Start of legislative session	Governor:	Doug Burgum (R)
Required # of Hearings:	None	State House:	79R - 14D - 1V (R: 84%)
Public Comment:	Not required	State Senate:	40R - 7D (R: 85%)
Likely Committees:	Joint Legislative Redistricting Committee	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Gubernatorial appointment or nonpartisan election: 3R - 1D - 1 non-partisan elected

Timing note: State legislative maps are to be adopted by the end of the first regular session after the census, which is scheduled to end on Apr. 28, 2021, though the North Dakota Constitution and past practice provide for implementation later thereafter.

Citations and references: North Dakota Const. Art. IV, §2; North Dakota Code § 54-03-01.5; North Dakota Statute 44-04-17.1.13

Relevant recent cases: N/A

OHIO

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>STATE LEGISLATIVE: LOW RISK</p> <p>CONGRESSIONAL: MODERATE RISK</p>	<p>The Ohio Redistricting Commission, which is comprised of the governor, auditor, secretary of state, and the appointees of the four legislative leaders of the two major parties, is to adopt a state legislative redistricting plan. If a majority of members and at least two members representing each of the largest parties approve a map, it takes effect until the next year ending in 1 (10 years). If the commission fails, and passes a map with a simple majority, it is to take effect for two general elections (4 years). The map is not subject to gubernatorial veto.</p> <p>The General Assembly is to pass a congressional district map. If passed with a 60% supermajority, including half of the legislative caucus of each of the two largest parties in each chamber, it takes effect until the next year ending in 1 (10 years). If the General Assembly fails to attain that threshold, the Redistricting Commission is to adopt a map with four affirmative votes, including votes from at least two members representing each of the largest parties, which takes effect for 10 years. Should the commission fail, the General Assembly again is empowered to adopt a map, and if approved by 60%, with at least 1/3 support from each of the two largest parties, it shall take effect for 10 years. If the General Assembly still fails to attain those standards, it may pass a plan with a simple majority that will take effect for two general elections (4 years). The governor may veto a plan approved by the General Assembly.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>The Ohio Redistricting Commission is required to hold at least three hearings for public input after releasing a proposed state legislative redistricting plan. Should the commission fail to adopt a plan with bipartisan support, the commission is to hold another public hearing and allow public comment after releasing another proposed plan. Prior to adopting a congressional district plan, both the General Assembly and the redistricting commission (depending on the stage of the process) are required to hold at least two hearings, and the authorities are required to facilitate public map submissions.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>There are some constitutional restrictions against redistricting plans that serve to favor or disfavor a political party, and, as described above, Ohio's staged congressional and state legislative redistricting procedures require plans to receive bipartisan support to take effect for the full, 10-year cycle. Plans that receive the support of a simple majority may only take effect for 4 years, a procedure that serves as a check against partisan abuse, though one still ripe for partisan manipulation.</p>
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OHIO REDISTRICTING SUMMARY

Threat 4: Are the legal standards weak?

<p>LOW RISK</p>	<p>Ohio's Constitution provides for a number of unranked redistricting criteria, incorporating some partisan fairness requirements. State legislative districts are to be nearly equal in population (with a five percent buffer in either direction), federally compliant, contiguous, respectful of county and municipal boundaries—there are clear procedures and requirements around splitting jurisdictions—and compact. Plans are not to be drawn to favor or disfavor a political party, and the statewide proportion of districts that favor each party is to closely correspond with statewide party preferences in elections over the preceding 10 years. State senate districts are to comprise three contiguous state House districts, and if the lines are changed while the incumbent has more than two years left in their term, the senator serves in the new district that contains the majority of their previous district. Similarly, congressional districts are to be roughly equal in population, federally compliant, compact, contiguous, respectful of county and municipal boundaries—there are clear procedures and requirements around splitting jurisdictions—and, if adopted without bipartisan support, not to unduly favor a political party or its incumbents. It does not appear Ohio's redistricting plans take communities of interest into consideration outside of federal Voting Rights Act requirements.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>HIGH RISK</p>	<p>The Ohio Supreme Court retains original, exclusive jurisdiction over challenges brought to state legislative maps, though invalidated maps or districts may only be redrawn by the redistricting commission. Similarly, the Ohio Supreme Court has original, exclusive jurisdiction over challenges to congressional redistricting plans, and invalidated maps or districts are to be redrawn by the legislature, with the redistricting commission again serving as a backstop. In the 2010 cycle, both the congressional and state legislative plans were challenged, in federal and state court, respectively. Following the US Supreme Court's decision in <i>Rucho v. Common Cause</i>, the congressional challenge faltered, and in 2012, the Ohio Supreme Court denied relief in the challenge to the legislative lines, carving substantial deference to the then-prescribed redistricting authority (the apportionment board) and noting the challengers had failed to establish unconstitutionality beyond a reasonable doubt.</p>
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	State leg.: appointee commission Congressional: legislature with appointee backup commission	Source:	Ohio Const. Art. XI; Ohio Const. Art. XIX
Supermajority Vote Needed?	Yes for full cycle plans. No for 4-year plans.	Requires:	Constitutional criteria for congressional districts (unranked): contiguity, compactness, county boundaries (specific rules for subdivision) Constitutional criteria for state legislative districts (unranked): equal pop (5% variance in either dir.), contiguity, county/municipal subdivision (by spec. procedure), compactness, close correspondence between district and statewide partisanship

OHIO REDISTRICTING SUMMARY

Governor Signs/ Vetoes?	Congressional: Yes if passed by the legislature State leg.: No	Prohibits:	Constitutional criteria for congressional districts prohibits: favoring or disfavoring a political party or incumbent (if adopted w/o bipartisan support) Constitutional criteria for state legislative districts prohibits primarily favoring or disfavoring a political party
Special Legal Process?	Maps aren't automatically reviewed in court. Citizens may challenge maps in the state Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Nov. 15, 2021 (commission maps); 30 additional days for leg. amendment; April 30, 2022 (Supreme Court maps, if needed)	United/Divided Government?	United - Republican
Hearings start:	No set date, but sometime between the release of Census data and Nov. 15, 2021	Governor:	Mike DeWine (R)
Required # of Hearings:	No required number	State House:	64R - 35D (R: 65%)
Public Comment:	Not clearly required	State Senate:	25R - 8D (R: 76%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	Congressional: Yes State legislative: N/A
		Supreme Court:	Nonpartisan elections (partisan primaries): 4R - 3D

Timing note: The Ohio Redistricting Commission is constitutionally required to adopt a final state legislative redistricting plan by September 1, 2021, unless a plan fails to pass with the bipartisan support required for adoption, in which case the commission will introduce another plan, hold a public hearing, and adopt a final plan by September 15, 2021. The General Assembly is tasked with passing a congressional district plan by September 30, 2021 with bipartisan support. If the General Assembly fails to do so, the Ohio Redistricting Commission is to pass a plan by October 31, 2021, and if unable to do so, the General Assembly must pass a plan by November 30, 2021. It is unclear how a delay in the transmission of Census data will affect the state legislative redistricting timeline, in particular; federal lines may be redrawn using population data as determined by the Census, or "if the federal decennial census is unavailable, another basis as directed by the general assembly."

Citations and references: Ohio Const. Art. XI; Ohio Const. Art. XIX

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Wilson v. Kasich*, 134 Ohio St.3d 221 (2012); *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978 (S.D. Ohio 2019), vacated by 140 S. Ct. 101 (2019).

OKLAHOMA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts legislative and congressional districts by a simple majority-vote regular statute, subject to gubernatorial approval or veto, which may be overridden by 2/3 supermajority vote in each chamber. Should the legislature fail to pass a state legislative redistricting plan within the allotted time-frame, the authority moves to a backup commission chaired by the Lieutenant Governor, serving as a non-voting member, and composed of three Democrats and three Republicans chosen by the Governor, Senate majority leader, and House majority leader. At least four of these members must approve a plan for it to be filed with the Secretary of State.
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Threat 2: Can election maps be drawn in secret?

MODERATE RISK	Oklahoma has strong open meetings laws, but there are no requirements around public participation and input in the redistricting process. Public hearings have been held in previous cycles; the state House has already scheduled several public hearings for 2021, and the state Senate redistricting committee has also promised public hearings with public comment and mapmaking opportunity.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite control of the redistricting process, with a veto-proof supermajority in each chamber. Should state legislative redistricting authority fall to the backup commission, the risk of partisan abuse becomes slightly diluted, although the mechanism allowing the governor and state legislative leaders to appoint members outside their party may raise concerns.
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Threat 4: Are the legal standards weak?

MODERATE RISK	Oklahoma has mandatory criteria in the State Constitution, including requirements that state senate lines be drawn to give consideration to "population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible." There are no prohibitions on partisan, pro-incumbent, or racially-discriminatory gerrymandering. Note: keeping whole "communities of interest" is not an express criterion. The House and Senate committees have set guidelines for the 2021 process, with House guidelines explicitly seeking to preserve long-standing communities of interest behind compactness and protection of some political subdivision boundaries, and specifically noting the committee may "seek to preserve the core of existing districts, and may consider the residence of incumbents."
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	Challenges to legislative maps are automatically reviewed by the Oklahoma Supreme Court, though it is not clear the same applies to congressional maps. Last cycle, the state senate plan was challenged in state court and upheld.
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OKLAHOMA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature (Backup for state leg.: bipartisan commission)	Source:	Okla. Const. Art. V, §§ 9A, 11A
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): for state senate lines, "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible." There are no criteria for congressional maps.
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed. Citizens may challenge maps in the state Supreme Court.	Other General:	House and Senate redistricting committees have adopted guidelines for the process this cycle.

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: none State leg.: 90 days after the start of session	United/Divided Government?	United - Republican
Hearings start:	December 2020	Governor:	Kevin Stitt (R)
Required # of Hearings:	None	State House:	82R - 19D (81% R)
Public Comment:	Not required (but past practice)	State Senate:	38R - 8D - 1V (79% R)
Likely Committees:	Senate Select Committee on Redistricting House State and Federal Redistricting Committee	Veto-Proof Leg. Supermajority?	Yes. (2/3 supermajority required)
		Supreme Court:	Appointed by governor through nominating commission 4D - 4R

Timing note: There is no deadline for adopting federal congressional lines. For state legislative lines, maps must be adopted 90 days after the start of the first session following the Census, though it is not clear whether the provision should be interpreted to mean the taking of the Census or the transmission of Census data. Should the legislature fail to pass a plan in time, a backup commission will be convened. Hearings in the House have already begun, there are several scheduled for December 2020 and January 2021. The Senate redistricting committee has also promised to hold public hearings. It is not clear exactly how the Census delay will influence the redistricting process.

Citations and references: Oklahoma Const. Art. V, §§9A, 11A; 25 O.S. Sections 301–314

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Wilson v. Oklahoma ex rel. State Election Bd.*, 270 P.3d 155 (Okla. 2012); *Wilson v. Fallin*, 262 P.3d 741 (Okla. 2011).

OREGON

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The legislature adopts congressional and legislative districts as a regular statute, subject to gubernatorial veto, which may be overridden with a 2/3 supermajority vote in each chamber. For state legislative lines, if the legislature fails to draw a plan by July 1, 2021, the duty passes to the Secretary of State, which retains that authority until August 15. Plans drafted by the Secretary of State must be reviewed and approved by the Supreme Court.
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Threat 2: Can election maps be drawn in secret?

LOW RISK	Oregon state law provides that the legislature must hold 10 public hearings, and at least one in each congressional district, before proposing a congressional and legislative plan. After a plan is proposed, there must be 5 more meetings (if practicable by deadline) in different congressional districts or by video. Additionally, for “areas that have experienced the largest shifts in population” in the last decade, the legislature is required to hold at least one hearing before releasing a map and one afterward.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Democrats have tripartite control of the redistricting process, with relatively large margins in both legislative houses. Additionally, Democrats control the office of Secretary of State, and potentially the state Supreme Court, the backstop authorities for state legislative redistricting. There are no clear constraints on redistricting for partisan advantage.
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Threat 4: Are the legal standards weak?

MODERATE RISK	Oregon has mandatory redistricting criteria in the State Constitution requiring that state legislative districts be contiguous, contain roughly equal populations, and protect political boundaries. Additionally, statutory criteria prohibit partisan or pro/anti-incumbent gerrymandering, and restrict the division of communities of interest in state legislative and congressional redistricting plans.
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Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK	The state Supreme Court has original jurisdiction to oversee legal challenges in state court to state legislative maps, and to consider and approve state legislative maps drawn by the Secretary of State. For challenges to congressional lines, Marion County Circuit Court has original jurisdiction, with appeal to the state Supreme Court, to convene a special panel of one judge from each congressional district to decide the outcome of a case. These courts did not hear any legal challenges to maps from the last cycle.
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OREGON REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature (Backup for state leg.: Sec. of State)	Source:	Oregon Const. Art. IV, § 7; Or. Rev. Stat. § 188.010
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative maps (unranked): contiguous, equal pop., protect county boundaries Statutory criteria for both congressional and state legislative maps (unranked): contiguous, utilize existing geographic/political boundaries, be connected by transportation links
Governor Signs/Vetoes?	Yes	Prohibits:	Statutory criteria for both congressional and state legislative maps prohibits: dividing communities of interest, favoring one party/incumbent/person
Special Legal Process?	Maps aren't automatically reviewed. Citizens can challenge congressional maps in Marion County Circuit Court and state legislative maps in the state Supreme Court.	Allows:	N/A

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Congressional: None State leg.: July 1, 2021	United/Divided Government?	United - Democratic
Hearings start:	Not clear	Governor:	Kate Brown (D)
Required # of Hearings:	15	State House:	37 D - 23 R (62% D)
Public Comment:	Required	State Senate:	18 D - 11 R - 1 I (60% D)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Gubernatorial appointment: 7D - 0R

Timing note: There is no deadline for adopting congressional lines in Oregon state law, but state legislative maps must be adopted by July 1, 2021 or else the process falls to the Secretary of State, who would have until August 15 to draw the lines for approval by the Oregon Supreme Court. It is not clear how the Census delay will influence the redistricting process.

Citations and references: Oregon Const. art. IV, §7; Oregon Rev. Stat. §188.010, §188.016, §188.125, §§ 249.037, 254.056

Relevant recent cases: N/A

★ SPOTLIGHT: PENNSYLVANIA

THIS REPORT HIGHLIGHTS SEVERAL BATTLEGROUND STATES WHERE THE REDISTRICTING PROCESS IS LIKELY TO BE ESPECIALLY CONTENTIOUS.



Timing note: There are no legal deadlines for adopting congressional maps. The 2021 regular session began 1/5/21 with session days scheduled through December 15. State maps must be proposed within 90 days (and adopted within 150 days) after census data is available or a redistricting Commission is created, whichever is later. In 2011, state/congressional maps were adopted in December. Note: The state/federal candidate filing deadline is 3/8/22.

Threat 1: Can politicians control how election maps are drawn?

<p>STATE LEGISLATIVE: MODERATE RISK</p> <p>CONGRESSIONAL: HIGH RISK</p>	<p>The legislature adopts congressional districts by majority-vote bill, which may be signed or vetoed by the Governor. Vetoes may be overridden by 2/3 vote. State legislative districts are adopted by majority vote of a five-member Commission, consisting of the majority and minority leaders of both legislative houses and a fifth member they pick. The Governor cannot veto Commission maps. State maps are directly appealed to the Supreme Court.</p>
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Threat 2: Can election maps be drawn in secret?

<p>MODERATE RISK</p>	<p>There are no redistricting-specific laws requiring public hearings or providing opportunities for public engagement for congressional redistricting. For state legislative redistricting, the Reapportionment Commission must post its draft plan and receive objections for 30 days before finalizing its map. In 2011, the Commission held over a dozen public meetings before adopting state maps.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>In Pennsylvania, the legislature redraws congressional districts by bill, which must be presented to the Governor. Pennsylvania has divided government. The governor is a Democrat. Republicans control both houses of the legislature but do not have the supermajorities needed to overturn a gubernatorial veto. Because of this, the legislature and governor are likely to either adopt a compromise map or deadlock on congressional redistricting, in which case a court will draw the lines. Should the political landscape shift in the future, there appear few meaningful constraints on the legislature's ability to redistricting congressional lines for partisan advantage. For state legislative redistricting, the Legislative Reapportionment Commission redistricts. The Commission consists of the majority and minority leaders of both houses of the Legislature, or their appointed deputies, and a fifth member appointed by the other four commissioners (or the Supreme Court if the four members deadlock). The balance of the commission helps to constrain partisan bias, though vesting backstop appointment power with the Supreme Court may vest that body with the meaningful decision around partisan control.</p>
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Threat 4: Are the legal standards weak?

<p>MODERATE RISK</p>	<p>The state constitution enumerates five mandatory criteria for state legislative redistricting: single-member districts, compactness, contiguity, equal population, and preservation of political subdivisions. There are no enumerated criteria for congressional redistricting in the constitution or in the state code. However, congressional maps that subordinate the state redistricting standards (compactness, contiguity, equal population, respect for political subdivisions) to other considerations, like gerrymandering to gain an unfair partisan advantage, violate the state constitution's Free Elections Clause.</p>
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SPOTLIGHT: PENNSYLVANIA

Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	There are no special legal procedures for bringing congressional redistricting cases in state court. By contrast, state redistricting cases may be filed directly with the Supreme Court, if brought within 30 days of the maps being adopted. There is a history of gerrymandering in Pennsylvania: both state and congressional maps were struck down in the 2010 cycle. In 2011, Republicans had united government and drew congressional maps to maximize their party's advantage. They were struck down in 2018 by the State Supreme Court for impermissible partisan gerrymandering under the state constitution. Because the legislature failed to submit a remedial plan by the Court's deadline, the Court adopted new maps. The Legislative Reapportionment Commission's legislative maps were also struck down in 2011 for violating state constitutional redistricting criteria; new maps were adopted by the Commission in 2012.
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REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	State legislative: Political Commission Congressional: Legislature	Source:	Pa. Const. Art. II, IV
Supermajority Vote Needed?	No	Requires:	State legislative: compactness, contiguity, equal population, political subdivisions. There are no criteria for congressional maps.
Governor Signs/ Vetoes?	State Leg: No Cong.: Yes	Prohibits:	Partisan gerrymandering (under the Free Elections Clause)
Special Legal Process?	State leg.: Commission maps directly appealed to Supreme Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State legislative: +90 days after commission formed or census published; Congressional: None	United/Divided Government?	Divided - Democratic Governor ; Republican Legislature
Hearings start:	Likely mid-2021	Governor:	Tom Wolf (D)
Required # of Hearings:	None	State House:	112R - 90D - 2V (R: 55%)
Public Comment:	State legislative: Commission must receive comment on draft maps Congressional: None	State Senate:	27R + 1I - 20D - 2V (R: 56%)
Likely Committees:	House State Govt. Cmte. Senate State Govt. Cmte	Veto-Proof Leg. Supermajority?	State Leg.: N/A Congressional: No (2/3 supermajority needed)
		Supreme Court:	Partisan elections: 5D - 2R

SPOTLIGHT: PENNSYLVANIA

THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

Congressional: In Pennsylvania, the legislature (“General Assembly”) controls the congressional redistricting (“apportionment”) process.¹ There are no special procedural considerations for congressional redistricting plans.² Like other bills, redistricting bills are presented to the governor for signature or veto.³ All bills must be signed or vetoed within ten days or they become law, unless the legislature has adjourned, in which case the governor has 30 days after the date of adjournment.⁴

State Legislative: The Pennsylvania Constitution assigns the responsibility for state redistricting to the “Legislative Reapportionment Commission,” which must be constituted in the year following each census, or 2021.⁵ The five-member commission consists of “the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman” which those initial four members select.⁶ If the four initial members deadlock on selecting a fifth member, as happened in 2011, the State Supreme Court appoints the fifth member by majority vote.⁷

Commission decisions, including the adoption of legislative maps, are made by majority vote.⁸ Before

adopting a final map, the commission must release a preliminary plan for 30 days, during which time any “aggrieved person” may file exceptions to the plan with the commission.⁹ The Supreme Court has defined aggrieved person to only include a person “authorized by law to exercise the right to vote in this commonwealth.”¹⁰ After the commission finalizes its plan, an aggrieved person may file suit directly with the State Supreme Court to challenge the maps.¹¹ If no one challenges the maps or the Court upholds them, they go into effect for the next election. If the Court strikes down the maps, the Court will remand the maps to the commission to redraw them, which occurred in the 2010 cycle.¹²

If the Commission misses its deadlines for filing a “preliminary, revised or final reapportionment plan” and those deadlines are not “extended by the Supreme Court for cause shown,” the Supreme Court shall “immediately proceed” to redistrict legislative districts on its own.¹³

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

Pennsylvania has no redistricting-specific requirement for public hearings, public comment, or open meeting and transparency requirements for congressional redistricting.¹⁴ For state redistricting, the state

1 The Constitution does not provide special procedures for congressional redistricting, so Pa. Const. art. IV, § 1 (bills require bicameral passage and presentment) applies. See *League of Women Voters v. Commonwealth of Pennsylvania*, 178 A.3d 737, 742 (Pa. 2018) (“Pennsylvania’s congressional districts are drawn by the state legislature as a regular statute, subject to veto by the Governor.”). See also U.S. Const. art. I, §4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . .”).

2 See Brennan Center, “50 State Guide to Redistricting: Pennsylvania” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, “Pennsylvania,” <https://gerrymander.princeton.edu/reforms/PA> (accessed Jan. 3, 2021); Justin Levitt, “Pennsylvania,” All About Redistricting, <https://redistricting.ils.edu/state/pennsylvania> (accessed Jan. 4, 2021).

3 Pa. Const. art. IV, § 15.

4 Pa. Const. art. IV, § 15.

5 Pa. Const. art. II, § 17(a).

6 Pa. Const. art. II, § 17(b).

7 Pa. Const. art. II, § 17(b).

8 Pa. Const. art. II, § 17(a).

9 Pa. Const. art. II, § 17(c).

10 *Albert v. Leg. Reapportionment Comm’n*, 790 A.2d 989, 995 (Pa. 2002).

11 Pa. Const. art. II, § 17(d).

12 Pa. Const. art. II, § 17(d).

13 Pa. Const. art. II, § 17(h).

14 National Conference of State Legislatures, “Public Input and Redistricting: Pennsylvania” (Upd. Sep. 9, 2019) <https://www.ncsl.org/research/redistricting/public-input-and-redistricting.aspx>.

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constitution does require the Legislative Reapportionment Commission to publish a draft redistricting plan and receive “exceptions” from aggrieved persons. The Commission’s plans must also be published in a newspaper in each district.¹⁵

Hearings: There are no redistricting-specific laws requiring public hearings prior to adopting new legislative or congressional maps.¹⁶ However, in the 2011 cycle, the Legislative Reapportionment Commission held 14 public hearings or meetings, from May through December, 2011.¹⁷ In the legislature, the congressional redistricting bill was heard by the House and Senate State Government Committees in December before being adopted.¹⁸ The two committees also held 3 joint public hearings in different locations across the state.¹⁹

Open Meetings: Under the state constitution, the “sessions of each House and of committees of the whole shall be open, unless when the business is such as ought to be kept secret.”²⁰

Records: In 2018, a trial court held that legislative records were protected from disclosure in redistricting litigation under the State Constitution’s Speech and Debate Clause. Without deciding the issue, the State Supreme Court strongly implied this may not be correct.²¹

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

Congressional districts are redistricted by a bill passed by the legislature and signed by the Governor (or, if vetoed by the Governor, by a 2/3 vote of both houses overriding that veto). Presently, Pennsylvania has divided government. The Governor of Pennsylvania, Tom Wolf, is a Democrat. Republicans control both houses of the Pennsylvania Legislature (“General Assembly”) by substantial margins, but less than the supermajorities required to overturn a veto. As a result, Republicans will likely have to negotiate with Democrats to adopt congressional redistricting maps or, if there is a deadlock, the courts may be required to adopt maps, as has happened last cycle with divided government.

State redistricting is performed by the five-member Legislative Reapportionment Commission, which consists of the majority and minority leaders of the State House and Senate (or their appointed deputies) and a fifth commissioner, chosen either by those four commissioners or by the State Supreme Court if the four commissioners are unable to select someone. In 2011, the four legislative leaders did not agree on a fifth commissioner, and the Supreme Court selected a retired judge for the role.²² The current Supreme Court is majority-Democrat, but Republicans in the Legislature are seeking to place a constitutional

15 Pa. Const. Art. II, §17(c) & (i).

16 See Brennan Center, “50 State Guide to Redistricting: Pennsylvania” (Upd. Jun. 7, 2019),

www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, “Pennsylvania,” <https://gerrymander.princeton.edu/reforms/GA> (accessed Jan. 3, 2020); Justin Levitt, “Pennsylvania,” All About Redistricting, <https://redistricting.ils.edu/state/Pennsylvania> (accessed Jan. 4, 2021).

17 Legislative Reapportionment Commission, “Meetings and Updates,” www.redistricting.state.pa.us/Commission/Commission.cfm (accessed Jan. 24, 2021).

18 See Pennsylvania General Assembly, “Senate Bill 1249” (2011-2012 reg. sess.) (final passage: Dec. 20, 2011; approved by Governor: Dec. 22, 2011), <https://www.legis.state.pa.us/cfdocs/billinfo/BillInfo.cfm?year=2011&sind=0&body=S&type=B&bn=1249>.

19 Representative Daryl Metcalfe, Press Release: McIlhinney & Metcalfe to Convene Unprecedented, Joint Public State Government Committee Congressional Redistricting Hearings (Apr. 27, 2011), <https://web.archive.org/web/20111107065519/http://www.repmetcalfe.com/NewsItem.aspx?NewsID=11187>.

20 Pa. Const. art. II, § 13.

21 *League of Women Voters v. Commonwealth*, 178 A. 3d 737, 767 n. 38 (Pa. 2018) (“we caution against reliance on the Commonwealth Court’s ruling. This Court has never interpreted our Speech and Debate Clause as providing anything more than immunity from suit, in certain circumstances, for individual members of the General Assembly”).

22 Legislative Reapportionment Commission, “Meetings and Updates,” www.redistricting.state.pa.us/Commission/Commission.cfm (accessed Jan. 24, 2021).

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amendment on the May 2021 ballot which would reconstitute the Court to be elected by district.

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

The Pennsylvania Constitution provides five mandatory criteria for state redistricting: single-member districts, compactness, contiguity, equal population, and preservation of political subdivisions.²³ By contrast, the state constitution provides no criteria at all for congressional redistricting.²⁴ Nonetheless, a recent anti-gerrymandering decision by the State Supreme Court, discussed further below, essentially applies the state criteria to congressional redistricting.

Unlike some states, the Pennsylvania Constitution has no express prohibition on partisan gerrymandering. However, the State Supreme Court recently held the Constitution's Free and Equal Elections Clause prohibits partisan gerrymandering.²⁵ The Court also left open the possibility that some of the Constitution's other general civil rights protections, including the rights of free expression and equal protection, may also prohibit partisan gerrymandering, potentially using a different legal test.²⁶

Finally, like all states, Pennsylvania must comply with federal legal restrictions on redistricting, which include the Fourteenth Amendment's Equal Protection Clause (which addresses equal population standards and the use of race as a redistricting criterion) and Section 2 of the Voting Rights Act (which prohibits discrimination against racial and language minorities).²⁷ Pennsylvania was never required to

preclear its district lines with the federal Department of Justice under Section 5 of the Voting Rights Act (VRA). As such, the *Shelby County v. Holder* decision, which struck down the list of states requiring pre-clearance, did not impact it.²⁸

Compactness: Under the state constitution, legislative districts must be "composed of compact ... territory."²⁹ While the Supreme Court has not further defined compactness, case law makes clear that this criterion looks at the geographic shape and dispersion of districts. The Court has criticized as non-compact districts that look like a "wish bone" or "crooked finger," as well as "oddly shaped, sprawling districts which wander seemingly arbitrarily across Pennsylvania."³⁰ At the same time, the Court has acknowledged that there will be "a certain degree of unavoidable non-compactness in any reapportionment scheme" and a map as a whole should not fail simply because "the shape of a particular district is not aesthetically pleasing."³¹

Instead, in recent decades, the Supreme Court has looked for both examples of oddly shaped districts and mathematical measurements of map compactness to find violations of this criterion. In particular, the Court has supported comparing the adopted maps to computer-generated maps that follow state criteria, which can confirm that some "anomalous shapes are neither necessary to, nor within the ordinary range of, plans generated with solicitude toward applying traditional redistricting considerations."³² Tests the Court has used to measure compactness include the "Reock, Schwartzberg, Polsby-Popper,

23 Pa. Const. art. II, §16.

24 Brennan Center, "50 State Guide to Redistricting: Pennsylvania" (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting.

25 *League of Women Voters v. Commonwealth*, 178 A. 3d 737 (Pa. 2018).

26 *League of Women Voters v. Commonwealth*, 178 A. 3d 737, 802 n. 63 (Pa. 2018).

27 U.S. Const. amend. XIV, § 1; 52 U.S.C. § 10101 et seq.

28 570 U.S. 529 (2013).

29 Pa. Const. art. II, §16.

30 *Holt v. 2011 Legislative Reapportionment Comm'n*, 614 Pa. 364, 440 (2012); *League of Women Voters v. Commonwealth*, 645 Pa. 1, 125 (2018).

31 *Commonwealth ex rel. Specter v. Levin*, 448 Pa. 1, 19, 25 (1972).

32 *League of Women Voters v. Commonwealth*, 645 Pa. 1, 126 (2018).

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Population Polygon, and Minimum Convex Polygon measures.”³³ However, the Court has been careful not to endorse any one measure as being definitive or superior to another.³⁴

Contiguity: Under the state constitution, legislative districts must be “composed of ... contiguous territory.”³⁵ The Supreme Court has defined a contiguous district as “one in which a person can go from any point within the district to any other point within the district without leaving the district, or one in which no part of the district is wholly physically separate from any other part.”³⁶

The Supreme Court has not directly discussed whether other common forms of contiguity abuse, such as a liberal definition of water contiguity (allowing contiguity across bodies of water even where there is no bridge or ferry access) or point contiguity (where two parts of a district touch only at a single point), are permissible. However, in a recent case the Court expressed skepticism at a district “which is contiguous in two locations only by virtue of a medical facility and a seafood/steakhouse,” which suggests the Court is leaning towards a stricter standard of contiguity, at least as to the acceptability of point contiguity.³⁷

Equal Population: Under the state constitution, legislative districts must be “composed of ... territory as nearly equal in population as practicable.”³⁸ This criterion sounds similar to the judicial construction of the U.S. Constitution’s equal population requirement. Under the federal standard, population deviations between state legislative districts of up to 10 percent are generally permissible if done to

achieve a legitimate redistricting objective. However, the Pennsylvania Supreme Court has refused to hold that the state’s equal population standard is identical to the federal one: “Section 16 of Article II of the Pennsylvania Constitution does not speak of a 10% deviation range; it requires districts ‘as nearly equal in population as practicable.’”³⁹

While the Court has not provided a bright-line rule for population equality similar to federal case law, it has indicated that there “obviously is discretion vested in the [Commission] to determine what [population equality] is most practicable.”⁴⁰ The Constitution does not require that state redistricting plans “pursue the narrowest possible [population] deviation” between districts “at the expense of other, legitimate state objectives” like compactness.⁴¹ In 2012, the Commission adopted remedial plans with a maximum population deviation of 8 percent between the largest and smallest district; that deviation was not challenged, which the Court deemed “not surprising.”⁴²

No Dividing Political Subdivisions: The state constitution prohibits, “[u]nless absolutely necessary,” the division of a “county, city, incorporated town, borough, township or ward” in forming either a senatorial or representative district.⁴³ Although framed as an absolute, the Supreme Court has upheld district lines that split political subdivisions, which are often necessary to meet federal equal population standards or to create majority-minority districts under the Voting Rights Act. In 2012, the Court upheld a map that split “only 25 out of 67 counties, only two out of 2563 municipalities, and only ten out of 4462 wards” in the Senate and “50 out of 67 counties (many of those splits being inevitable based

33 *League of Women Voters v. Commonwealth*, 181 A.3d 1083, 1087 (2018).

34 *Holt v. 2011 Legislative Reapportionment Comm’n*, 620 Pa. 373, 423 (2013).

35 Pa. Const. art. II, §16.

36 *Commonwealth ex rel. Specter v. Levin*, 448 Pa. 1, 17-18 (1972) (brackets, quotation marks, and citations omitted).

37 *League of Women Voters v. Commonwealth*, 645 Pa. 1, 125 (2018).

38 Pa. Const. art. II, §16.

39 *Holt v. 2011 Legislative Reapportionment Comm’n*, 620 Pa. 373, 418 (2013).

40 *Holt v. 2011 Legislative Reapportionment Comm’n*, 620 Pa. 373, 418 (2013).

41 *Holt v. 2011 Legislative Reapportionment Comm’n*, 614 Pa. 364, 445 (2012).

42 *Holt v. 2011 Legislative Reapportionment Comm’n*, 620 Pa. 373, 419 (2013).

43 Pa. Const. art. II, §16.

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on population alone), 68 out of 2563 municipalities, and 103 out of 4462 wards” in the State House; the Court described these numbers of splits as “remarkably small.”⁴⁴

In evaluating subdivision splits, the Court explained the “focus necessarily must be on the plan as a whole rather than on individual splits and districts” since “a certain amount of subdivision fragmentation is inevitable since most political subdivisions will not have the ‘ideal’ population for a House or Senate district.”⁴⁵ Focusing on the map as a whole, plaintiffs can attempt to prove a violation of this criterion by submitting alternative maps, consistent with State constitutional requirements, that have a dramatically lower number of subdivision splits than was adopted by the Commission.

Free and Equal Elections Clause: Although claims of illegal partisan gerrymandering are not justiciable under the U.S. Constitution, the Pennsylvania Supreme Court has held that they are under the state constitution’s Free and Equal Elections Clause.⁴⁶ That Clause provides: “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”⁴⁷ The Supreme Court explained that the Clause guarantees “the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people’s power to do so.”⁴⁸ Thus far, the Court has only applied this provision in the context of congressional redistricting.

To state a claim against the congressional maps under the Free Elections Clause, a plaintiff must show that the state constitution’s “neutral criteria [for state legislative redistricting] have been

subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage.”⁴⁹ Although the constitution does not apply the state criteria to congressional redistricting, the Court justified nonetheless applying them to congressional redistricting as “neutral benchmarks,” “deeply rooted in the organic law” of Pennsylvania, and therefore “particularly suitable as a measure” of vote dilution.⁵⁰

In reviewing a Free Elections Clause claim, a court must look at “whether the congressional districts created under a redistricting plan are: composed of compact and contiguous territory; as nearly equal in population as practicable; and ... do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population.”⁵¹ This can be evaluated through “compelling expert statistical evidence,” for example comparing the adopted plan with hundreds of simulated plans that follow the state criteria to show “that the Plan cannot plausibly be directed at drawing equally populous, compact, and contiguous districts,” as well as a “lay examination of the Plan,” which may reveal violations of the state criteria like “tortuously drawn districts that cause plainly unnecessary political-subdivision splits.”⁵² Significantly, it is not necessary for plaintiffs to show that “the creators of congressional districts *intentionally* subordinated these traditional criteria to other considerations,” just that “these traditional criteria were subordinated to other factors.”⁵³

The Court stated that this new test “is not the exclusive means by which a violation of Article I, Section 5 may be established.” As redistricting software gets more sophisticated, which may enable extreme partisan gerrymandering that is still consistent with

44 Holt v. 2011 Legislative Reapportionment Comm’n, 620 Pa. 373, 421 (2013).

45 Holt v. 2011 Legislative Reapportionment Comm’n, 620 Pa. 373, 421 (2013).

46 League of Women Voters v. Commonwealth, 178 A. 3d 737 (Pa. 2018).

47 Pa. Const. art. I, §5.

48 League of Women Voters v. Commonwealth, 178 A. 3d 737, 814 (Pa. 2018).

49 League of Women Voters v. Commonwealth, 178 A. 3d 737, 817 (Pa. 2018).

50 League of Women Voters v. Commonwealth, 178 A. 3d 737, 816 (Pa. 2018).

51 League of Women Voters v. Commonwealth, 178 A. 3d 737, 817 (Pa. 2018).

52 League of Women Voters v. Commonwealth, 178 A. 3d 737, 818-819 (Pa. 2018).

53 League of Women Voters v. Commonwealth, 178 A. 3d 737, 817 (Pa. 2018) (emphasis added).

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the state redistricting criteria, other legal tests may be needed. However, because in the case at hand the Court was able to resolve the Free Elections Clause claim based on the legislature's subordination of neutral criteria to partisan ends, the Court declined to "address at this juncture the possibility of such future claims."⁵⁴

Other Criteria: The Supreme Court has also stated that the Commission or Legislature may pursue other redistricting objectives – including preserving communities of interest but also some political goals – beyond the state criteria enumerated in the constitution⁵⁵. In *Holt*, the Court explained, as to state redistricting:

"There is nothing at all to prevent a particular reapportionment commission from considering political factors, including the preservation of existing legislative districts, protection of incumbents, avoiding situations where incumbent legislators would be forced to compete for the same new seat, etc., in drawing new maps to reflect population changes. ... These 'political' factors can operate at will — so long as they do not do violence to the constitutional restraints regarding population equality, contiguity, compactness, and respect for the integrity of political subdivisions."⁵⁶

Similarly, as to congressional redistricting performed by the legislature, the Court recognized that "other factors have historically played a role in the drawing of legislative districts," but where "neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional

redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution."⁵⁷

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

Legal Standard: Like all statutes passed by the legislature, a congressional redistricting bill is "presumed to be valid, and will be declared unconstitutional only if the challenging parties carry the heavy burden of proof that the enactment clearly, palpably, and plainly violates the Constitution."⁵⁸ However, state redistricting maps passed by the Legislative Reapportionment Commission, a state agency, are not entitled to a similarly deferential presumption of constitutionality.⁵⁹ Even so, the burden is always on the party challenging an adopted map, not the party defending the map (like the commission), to prove a constitutional violation.⁶⁰

In proving a violation of the state redistricting criteria, the "focus" should "be on the plan as a whole and not on individual districts."⁶¹ A plaintiff may show the defects in an adopted plan by "proffering alternative plans not in the hope of having them accepted as 'better than' or 'preferable to' the Final Plan, but as evidence that the Final Plan was contrary to law."⁶²

If the Supreme Court invalidates state legislative lines, the state constitution requires that the Court remand the plan back to the Legislative Reapportionment Commission to remedy the defect.⁶³ Similarly, if a court strikes down the congressional maps, the legislature must first be given an "additional opportunity" to timely remedy the defect before a court will undertake to draw its own maps.⁶⁴

54 *League of Women Voters v. Commonwealth*, 178 A. 3d 737, 817 (Pa. 2018).

55 *Holt v. 2011 Legislative Reapportionment Comm'n*, 620 Pa. 373, 422 (2013).

56 *Holt v. 2011 Legislative Reapportionment Comm'n*, 620 Pa. 373, 412-413 (2013).

57 *League of Women Voters v. Commonwealth*, 645 Pa. 1, 122, 178 (2018).

58 *League of Women Voters v. Commonwealth*, 178 A. 3d 737, 801 (Pa. 2018).

59 *Holt v. 2011 Legislative Reapportionment Comm'n*, 614 Pa. 364, 402 (2012).

60 *Holt v. 2011 Legislative Reapportionment Comm'n*, 614 Pa. 364, 402 (2012).

61 *Holt v. 2011 Legislative Reapportionment Comm'n*, 614 Pa. 364, 429 (2012).

62 *Holt v. 2011 Legislative Reapportionment Comm'n*, 614 Pa. 364, 432 (2012).

63 Pa. Const. art. II, § 17(d).

64 *League of Women Voters v. Commonwealth*, 178 A. 3d 737, 821 (Pa. 2018).

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Supreme Court: The Pennsylvania Supreme Court remains the final arbiter of the legality under state law of any redistricting plan adopted by the legislature or the commission. The Supreme Court consists of seven members initially elected in statewide partisan elections, followed by an up-or-down statewide retention election every ten years. However, when there is a vacancy on the Court, the governor may appoint a replacement justice, with the advice and consent of 2/3 of the Senate, until a special election may be held for that seat.⁶⁵

Prior History: In 2011, Republicans had unified control of the legislature and governor's office and drew congressional maps to maximize Republicans' political advantage. In 2018, the State Supreme Court struck those maps down on the grounds that they impermissibly discriminated against Democratic voters in violation of the State Constitution's Free Elections Clause. After the legislature failed to submit a remedial plan by the Court's deadline, the Court adopted new maps. The Legislative Reapportionment Commission adopted state legislative maps in 2011 on a 4-1 vote. Democrats sued over those lines, which were struck down by the State Supreme Court in 2012 for failing to adhere to the state redistricting criteria. The Court sent the lines back to the Commission, which drew new district lines for 2014.⁶⁶

⁶⁵ Pa. Const. art. V, §§ 2(b), 13, 15, 16(b).

⁶⁶ National Conference of State Legislatures, "Redistricting Case Summaries" (Upd. Dec. 1, 2020), <https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx>.

RHODE ISLAND

REDISTRICTING SUMMARY



1. Can politicians control how the maps are drawn?

<p>HIGH RISK</p>	<p>The General Assembly adopts congressional and legislative districts as a regular statute, subject to gubernatorial veto, which may be overridden with a 3/5 supermajority vote. During the 2011 cycle, the legislature created the 18-member Redistricting Advisory Commission to advise on the redistricting process. Commissioners were chosen as follows: the state Senate and state House majority leaders each chose four commissioners who were members of the legislature and three who were not; the state Senate and state House minority leaders each chose two additional commissioners who are members of the legislature. The General Assembly faced no requirement to consider the commission's proposed congressional or state legislative plans.</p> <p>Rhode Island may lose a congressional district following the 2020 Census, which would give the state a single at-large district and negate the need for congressional redistricting.</p>
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2. Can the process be secretive?

<p>HIGH RISK</p>	<p>It is not clear that the public has a clear opportunity to participate in the redistricting process in Rhode Island. Should the Redistricting Advisory Commission be empowered for the current cycle, the state may retain stronger public input opportunities. The legislation that established the Redistricting Advisory Commission required the Commission to conduct public hearings before issuing their recommendations.</p>
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3. Can the maps be rigged for partisan gain?

<p>HIGH RISK</p>	<p>Democrats have tripartite control of the redistricting process, with relatively large margins in both chambers and a veto-proof supermajority. There appear to be few constraints on the General Assembly's power to redistrict for partisan gain.</p>
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4. Are the redistricting standards weak?

<p>HIGH RISK</p>	<p>Rhode Island has limited mandatory criteria in the State Constitution requiring compactness and equal population for state legislative districts. The 2011 advisory commission statute required additional state legislative and congressional redistricting criteria, including contiguity, fair representation, and consideration of existing cultural, historical, geographical, and political lines, to the extent practicable. State legislative and congressional districts should also coincide wherever possible. It is unclear whether those standards will apply this cycle.</p>
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5. Are bad maps hard to challenge in court?

<p>MODERATE RISK</p>	<p>It appears citizens have the power to challenge state legislative redistricting plans in state court, at least. Congressional challenge authority is less apparent. During the 2011 cycle, state House lines were challenged in state court and upheld. The cycle before saw new congressional lines drawn, and new state Senate lines redrawn by the Legislature due to pressure of a federal case brought under the Voting Rights Act.</p>
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RHODE ISLAND REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	General Assembly	Source:	Rhode Island Const. Art. VII, § 1; Art. VIII, § 1 2011 R.I. Laws ch. 106, § 2(d); 2011 R.I. Laws ch. 100, § 2(d);
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts (unranked): as compact in territory "as possible;" equal population Statutory criteria for both state legislative and congressional districts (unranked): as compact in territory "as possible", contiguous and reflect natural, historical, geographical, municipal and political lines "to the extent practicable", coincide to avoid creating voting precincts with distinct ballot options in a precinct with less than 100 people
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps aren't automatically reviewed. Citizens may challenge state legislative maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	None	United/Divided Government?	United - Democratic
Hearings start:	Not clear	Governor:	Daniel McKee (D)
Required # of Hearings:	None required	State House:	65 D - 10R (87% D)
Public Comment:	Not clear (but required for past advisory commission)	State Senate:	33 D - 5 R (87% D)
Likely Committees:	Senate Judiciary House Judiciary	Veto-Proof Leg. Supermajority?	Yes (3/5)
		Supreme Court:	Gubernatorial appointment through nominating commission: 3R - 2D

Timing note: There is no deadline for adopting congressional or legislative lines. Candidates must file for state and federal primary elections by June 29, 2022.

Citations and references: Rhode Island Const. Art. VII, §1; Art. VIII, §1; 2011 R.I. Laws ch. 106, §1-3; 2011 R.I. Laws ch. 100, §1-2(d); R.I. Gen. Laws § 17-14-1; Rhode Island Statute 42-46-2;

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Metts v. Murphy*, 363 F.3d 8 (1st Cir. 2004)

SOUTH CAROLINA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The Legislature adopts state legislative and congressional districts by majority vote as a normal statute, subject to Governor approval. 2/3 votes are required in each chamber to override a veto.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	South Carolina law does not require the legislature to hold public hearings on redistricting. Last cycle, the Senate subcommittee on redistricting held 10 public hearings around the state, and also provided a website for citizens to submit comments and maps.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans have tripartite control of the state legislative and congressional redistricting processes, with wide margins in both legislative houses. It is not clear there are any meaningful constraints on the legislature's ability to redistrict for partisan advantage.
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Threat 4: Are the legal standards weak?

HIGH RISK	Beyond federal requirements, South Carolina has no mandatory criteria in statute for either state legislative or congressional districts. In the past, legislative committees responsible for redistricting have adopted their own guidelines, including criteria requiring districts to be contiguous, compact, follow political boundaries, protect incumbents, and preserve communities of interest. Partisan and demographic data may be considered. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> . The absence of a preclearance requirement may change the redistricting calculus.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	There is no special legal recourse for redistricting in South Carolina; maps are not automatically reviewed by the state Supreme Court. In the 2011 cycle, both state legislative and US House maps were upheld in a federal district court against charges of racial gerrymandering in the case <i>Backus v. South Carolina</i> (2012).
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SOUTH CAROLINA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	S.C. CONST. art. III, §§ 3, 6; S.C. Const. art. VII, §13; S.C. CODE ANN. § 2; S.C. CODE ANN. § 7
Supermajority Vote Needed?	No	Requires:	There are no constitutional or statutory criteria for both state legislative and congressional maps
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed.	Allows:	Previous guidelines have allowed the use of political and demographic data

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	No deadline	United/Divided Government?	United - Republican
Hearings start:	Not specified	Governor:	Henry McMaster (R)
Required # of Hearings:	None (but past practice)	State House:	81R - 43D (R: 65%)
Public Comment:	Not required (but past practice)	State Senate:	30R - 16D (R: 65%)
Likely Committees:	House Judicial Committee, Election Laws Subcommittee; Sen. Judiciary Committee, Redistricting Subcommittee	Veto-Proof Leg. Supermajority?	No (2/3)
		Supreme Court:	Legislative election: All 5 technically nonpartisan, but elected by Republican-controlled legislature

Timing note: There is no statutory deadline for state legislative or congressional maps; drawing districts mid-decade is not prohibited, but changes do not take effect until after the next general election. Last cycle, state legislative districts were passed on June 22, 2011, and congressional districts were passed on July 26, 2011.

Citations and references: South Carolina Const. Art. III, §§3, 6, 13; South Carolina Const. Art. VII, §13; South Carolina Code Ann. § 2; South Carolina Code Ann. §7; South Carolina Senate Judiciary Committee Redistricting Subcommittee; 2011 Guidelines and Criteria For Congressional and Legislative Redistricting; Princeton Gerrymandering Project

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Backus v. South Carolina*, 857 F. Supp. 2d 553 (D.S.C. 2012), *aff'd*, 133 S. Ct. 156 (2012); *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618 (D.S.C. 2002)

SOUTH DAKOTA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	<p>The legislature retains complete control over the state legislative redistricting process, subject to gubernatorial veto, which may be overridden with a 2/3 supermajority vote in each chamber.</p> <p>South Dakota has a single at-large congressional district, and is not expected to gain any additional seats after the 2020 Census.</p>
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	<p>There are no apparent public comment requirements in South Dakota. In 2011, the Legislative Redistricting Committee scheduled five summer hearings, including on Native American reservations.</p>
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	<p>There is all but single-party control in the South Dakota legislature and more than enough votes to override a veto from a governor of the same party, suggesting there is very little stopping partisan actors from manipulating redistricting for political benefit.</p>
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Threat 4: Are the legal standards weak?

HIGH RISK	<p>Constitutional and statutory requirements constrain redistricting in South Dakota. Districts must be compact, contiguous, and of nearly equal population, per the South Dakota Constitution. As part of the 2011 redistricting process, the legislature asserted a number of principles of primary significance: adherence to standards of population deviance, protection of communities of interest through compact and contiguous districts, respect for geographical and political boundaries, and minority voting rights protections, as consistent with the state and US Constitutions and federal law, though these principles are subject to change. House districts are to be drawn wholly inside senate districts and are to elect one or two members each. There are no apparent restrictions on partisan bias. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i>. The absence of a preclearance requirement may change the redistricting calculus.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	<p>The South Dakota Supreme Court retains backstop authority if the legislature is unable to complete apportionment by December 1. Over the past two cycles, the only challenge to a redistricting plan was brought in federal court over Voting Rights Act compliance. It is not clear to what extent the South Dakota Supreme Court retains particular jurisdiction over redistricting challenges.</p>
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SOUTH DAKOTA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	State legislature	Source:	S.C. CONST. art. III, §§ 3, 6; S.C. Const. art. VII, §13; S.C. CODE ANN. § 2; S.C. CODE ANN. § 7
Supermajority Vote Needed?	No	Requires:	There are no constitutional or statutory criteria for both state legislative and congressional maps
Governor Signs/Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Maps are not automatically reviewed. It's unclear if citizens can challenge maps in court.	Allows:	Previous guidelines have allowed the use of political and demographic data

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	December 1, 2021	United/Divided Government?	United - Republican
Hearings start:	Potentially Summer 2021	Governor:	Kristi Noem (R)
Required # of Hearings:	None (but past practice)	State House:	62R - 8D (R: 89%)
Public Comment:	Not required (but past practice)	State Senate:	32R - 3D (R: 91%)
Likely Committees:	Legislative Redistricting Committee	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Gubernatorial appointment: 5R - 0D

Timing note: The South Dakota Constitution requires the legislature to complete apportionment by December 1, 2021. Should the legislature fail to enact a plan, the South Dakota Supreme Court has 90 days to draft a plan, putting the backstop deadline at March 1, 2022. Case law bans mid-cycle redistricting.

Citations and references: South Dakota Const. Art. III, §5; South Dakota Code §2-2-41; SB 1 (2001 Special Session); HB 1001 (2011 Special Session); South Dakota Code §2-2-41

Relevant recent cases: Per Justin Levitt's All About Redistricting: In re Certification of a Question of Law, 615 N.W.2d 590 (S.D. 2000); Bone Shirt v. Hazeltine, 461 F.3d 1011 (8th Cir. 2006).

TENNESSEE

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The General Assembly adopts state legislative and congressional redistricting plans through a regular statute subject to gubernatorial veto, which can be overridden by a simple majority.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	There are few meaningful avenues for public participation in the redistricting process, as most of the mapmaking is done behind closed doors in the General Assembly. No public hearings are required or held. While the maps are presented to the public before they are voted on, based on past practice, there may be about a week between when they are released and when they are passed. There is no evidence of public participation in the past during this short period leading to changes in the maps.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	Republicans enjoy tripartite control over the Tennessee government, and there are no apparent constraints on the General Assembly in the redistricting process.
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Threat 4: Are the legal standards weak?

HIGH RISK	Beyond federal requirements, the Tennessee Constitution limits the division of counties in forming multi-county districts. Tennessee statutes provide for state house maps with contiguous districts that subdivide no more than 30 counties. There are no additional criteria for congressional maps. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> .
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	There is no automatic judicial review of maps proposed and passed by the legislature. Tennessee citizens may have the authority to challenge redistricting plans in state court, based on past precedent. While past maps were challenged in court in 2001 (challenging 1990 maps) and 2014 (2011 maps), maps have not been altered as an outcome of the process.
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TENNESSEE REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Tennessee Constitution Art. 2, § 4-6
Supermajority Vote Needed?	No	Requires:	Statutory criteria for state legislative districts requires districts be contiguous There are no criteria for congressional districts
Governor Signs/ Vetoes?	Yes	Prohibits:	Constitutional criteria for state legislative districts prohibits counties from being divided unless they have more than one representative per county Statutory criteria for state legislative districts prohibits the subdivision of more than 30 counties to form multicounty districts
Special Legal Process?	Maps are not automatically reviewed. Citizens can challenge maps in court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	No deadline	United/Divided Government?	United - Republican
Hearings start:	Likely during the 2022 legislative session.	Governor:	Bill Lee (R)
Required # of Hearings:	None	State House:	73R - 26D (74%)
Public Comment:	Not required	State Senate:	27R - 6D (82%)
Likely Committees:	House Redistricting Committee Senate Redistricting Committee	Veto-Proof Leg. Supermajority?	Yes (1/2)
		Supreme Court:	Appointed by governor and confirmed by General Assembly: 3R-2D

Timing note: There is no deadline for either congressional or state legislative maps, but in the last two rounds of redistricting, the House and Senate Redistricting Committees held private hearings in mid-January 2002 and 2012. In both cases, the plans were passed in late January or early February of the same year.

Citations and references: Tennessee Constitution Art. 2, §4-6; Tennessee Code §§3-1-102, 103

Relevant recent cases: Per Justin Levitt's All About Redistricting: *Crone v. Darnell*, 176 F. Supp. 2d 814 (W.D. Tenn. 2001); *Moore v. Tennessee*, 436 S.W.3d 775 (Tenn. Ct. App. 2014)

★ SPOTLIGHT: TEXAS

THIS REPORT HIGHLIGHTS SEVERAL BATTLEGROUND STATES WHERE THE REDISTRICTING PROCESS IS LIKELY TO BE ESPECIALLY CONTENTIOUS.



Timing note: Legislative maps must be adopted during the 2021 regular session, which goes from 1/12 to 5/31. A Backup Commission may be seated from 6/1 to 8/30/21. There is no deadline for congressional maps. Note: The state/federal candidate filing deadline is 12/13/21.

Threat 1: Can politicians control how election maps are drawn?

HIGH RISK

The Legislature adopts legislative and congressional districts by majority-vote bill, which may be approved or vetoed by the Governor. Vetoes may be overridden by 2/3 vote. If the Legislature fails to draw legislative maps, a Backup Commission does so.

Threat 2: Can election maps be drawn in secret?

HIGH RISK

There are no redistricting-specific laws requiring public hearings or providing opportunities for public engagement. Generally, the Legislature allows members of the public to provide comment in committees. In 2010 through 2011, the Legislature held regional public hearings and allowed public comment in the legislative redistricting committees.

Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK

Republicans have united control of the legislature and governor's office and so can pass maps without Democratic support. There do not appear to be meaningful constraints on the legislature's ability to redistrict for partisan advantage.

Threat 4: Are the legal standards weak?

HIGH RISK

The state constitution has no mandatory criteria for congressional redistricting, and one criterion, contiguity, in state senate redistricting. On the state house side, the state constitution requires two criteria, contiguity and keeping counties whole.

Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK

The state Attorney General may, by petition to the Supreme Court, require that all redistricting suits be heard by a three-judge panel. Decisions by that panel are appealed directly to the Supreme Court. Before adopting a new map, state courts are asked to allow the legislature to remedy any defect in a redistricting plan. Court-adopted plans should attempt to give effect to the valid parts of a Legislature's maps. Texas's 2010 redistricting cycle was litigated for most of the decade over allegations of racially-discriminatory gerrymandering.

SPOTLIGHT: TEXAS

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Tex. Const. Art. III, §28
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state legislative districts requires districts be contiguous. State House districts must also be made up of whole counties. There are no criteria for congressional districts.
Governor Signs/ Vetoes?	State legislative: Yes (but not for backup commission maps) Congressional: Yes	Prohibits:	None
Special Legal Process?	State leg.: Backup commission redistricts if legislature deadlocks; Both: Attorney Gen. may require a 3-judge panel hear all cases	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State legislative: 2021 session Congressional: None	United/Divided Government?	United - Republican
Hearings start:	2021	Governor:	Greg Abbott (R)
Required # of Hearings:	None (but multiple held in 2011)	State House:	82R - 67D - 1V (R: 55%)
Public Comment:	Not Required (but past practice)	State Senate:	18R - 13D (R: 58%)
Likely Committees:	House Redistricting Cmte. Senate Special Cmte. on Redistricting	Veto-Proof Leg. Supermajority?	No (2/3 supermajority needed)
		Supreme Court:	Partisan elections: 9R - 0D

SPOTLIGHT: TEXAS

THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

In Texas, the legislature controls both the state and congressional redistricting (“apportionment”) process.¹ There are no special procedural requirements for approving redistricting plans.² Like other bills, redistricting bills are presented to the governor for signature or veto.³ All bills must be signed or vetoed within ten days (excepting Sundays) or they become law, unless the legislature has adjourned, in which case the governor has 20 days.⁴ Vetoes can be overridden by a two-thirds vote of both houses.⁵

If the legislature fails to redistrict *legislative* seats, the state constitution calls for the creation of a backup commission, the “Legislative Redistricting Board of Texas,” consisting of five elected officials: the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office.⁶ The board is required to meet within 90 days after the adjournment of the Legislature’s regular session and, upon meeting, has 60 days to adopt maps by majority vote.⁷ The board is created if the legislature deadlocks on a legislative plan, if the governor vetoes the plan and the legislature fails to

override it, or if the courts entirely invalidate the legislature’s maps during (but not beyond) the 90-day period after regular session when the Board must be convened.⁸ The backup commission has redistricted in the past.

No similar process is provided for congressional redistricting.⁹

In any redistricting lawsuit filed in state court over state or congressional maps, the state attorney general may petition the Supreme Court to convene a special three-judge district court to hear the matter.¹⁰ Upon receiving the petition, the chief justice of the Supreme Court must appoint a three-judge panel, which consists of the original district judge assigned to the case, an elected district judge from a different county than the original judge, and an elected appellate court judge from an appeals district that does not include the counties where the other two district judges sit.¹¹ All other suits in other district courts of the state may, by petition of a party to the original suit, be transferred and consolidated so that all redistricting suits are considered together by the three-judge panel.¹² Holdings of the three-judge panel are appealed directly to the Supreme Court.¹³

1 Tex. Const. art. III, §28 (legislative redistricting). The Constitution does not provide special procedures for congressional redistricting, so Tex. Const. art. III, §30 (laws require bicameral passage and presentment) applies.

2 See Brennan Center, “50 State Guide to Redistricting: Texas” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, “Texas,” <https://gerrymander.princeton.edu/reforms/TX> (accessed Jan. 3, 2021); Justin Levitt, “Texas,” All About Redistricting, <https://redistricting.ils.edu/state/georgia> (accessed Jan. 4, 2021).

3 Tex. Const. art. III, §14.

4 Tex. Const. art. III, §14.

5 Tex. Const. art. III, §14.

6 Tex. Const. art. III, §28.

7 Tex. Const. art. III, §28.

8 *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. 1971); *Terrazas v. Ramirez*, 829 SW 2d 712, 726 (1991).

9 See Brennan Center, “50 State Guide to Redistricting: Texas” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, “Texas,” <https://gerrymander.princeton.edu/reforms/TX> (accessed Jan. 3, 2021); Justin Levitt, “Texas,” All About Redistricting, <https://redistricting.ils.edu/state/georgia> (accessed Jan. 4, 2021).

10 Tex. Gov. Code §22A.001(a)(2).

11 Tex. Gov. Code §22A.002.

12 Tex. Gov. Code §22A.003.

13 Tex. Gov. Code §22A.006.

SPOTLIGHT: TEXAS

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

Texas has no redistricting-specific requirements for public hearings, public comment, open meetings, or other transparency protections.¹⁴

Hearings: There are no redistricting-specific laws requiring public hearings prior to adopting new legislative or congressional maps.¹⁵ However, in the 2011 cycle, the legislature held several public hearings, including regional hearings in the summer and fall of 2020 and focused hearings in the select redistricting committees beginning in February through the adoption deadline in May.¹⁶ The Texas legislature had scheduled regional hearings in March and April of 2020, but cancelled them due to COVID-19; no new schedule of redistricting public hearings has yet been announced.¹⁷ According to the Texas Legislative Council, “[p]ublic hearings on redistricting bills under consideration by legislative committees are also held once census data become available and redistricting proposals are being considered by the legislature.”¹⁸

Open Meetings: Under the state constitution, the “sessions of each House shall be open, except the Senate when in Executive session.”¹⁹ Neither the constitution nor the Senate Rules specify limitations on when an “executive session” (or, closed session) may be called.²⁰ Senate Rules provide that conference committee reports on redistricting must be provided to members 48 hours in advance (or 24 hours in advance in special sessions).²¹

Public Comment: Generally, the public may speak at legislative committee meetings; however, the rules

do not mandate this. In 2010, the Legislature held hearings across the state for the public to provide comment (and had planned to do so in 2020) and in 2011 at least some legislative committee meetings allowed public comment.

The Senate Special Committee on Redistricting has established an online portal where the public can submit electronic comments for 2021 redistricting [here](#). Submitted comments can be reviewed [here](#).

In the last cycle, the Legislature gave the public access to the State’s redistricting software (RedAppl) through workstations in the Capitol, and plans to do something similar this cycle.²²

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

Republicans control the governorship and both houses of the Texas legislature by substantial margins. As a result, Republicans fully control both the state and congressional redistricting process in 2021 and are not required to negotiate with Democrats.

The Governor of Texas is Republican Greg Abbott. The Lieutenant Governor is Republican Dan Patrick; unlike most states, the Lieutenant Governor is the actual leader of the State Senate, who presides over meetings and controls committee assignments.

Both the House and the Senate have redistricting committees. The Lieutenant Governor has announced the Senate Special Committee on Redistricting’s leadership and members; however, the House of Representatives has yet to release its committee assignments.

14 National Conference of State Legislatures, “Public Input and Redistricting: Texas” (Upd. Sep. 9, 2019) <https://www.ncsl.org/research/redistricting/public-input-and-redistricting.aspx>.

15 See Brennan Center, “50 State Guide to Redistricting: Texas” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, “Texas,” <https://gerrymander.princeton.edu/reforms/TX> (accessed Jan. 3, 2020); Justin Levitt, “Texas,” All About Redistricting, <https://redistricting.ils.edu/state/texas> (accessed Jan. 4, 2021).

16 See Princeton Gerrymandering Project, “Texas,” <https://gerrymander.princeton.edu/reforms/TX> (accessed Jan. 3, 2020).

17 Texas Redistricting, “Meetings,” <https://redistricting.capitol.texas.gov/2020s> (accessed Jan. 18, 2021).

18 Texas Legislative Council, Guide to Redistricting (Jan. 2021), https://redistricting.capitol.texas.gov/docs/guide_to_2021_redistricting.pdf.

19 Tex. Const. art. III, §16.

20 See Sen. Rules, art. XV.

21 Sen. Rule 12.09.

22 Justin Levitt, “Texas,” All About Redistricting, <https://redistricting.ils.edu/state/texas> (accessed Jan. 4, 2021).

SPOTLIGHT: TEXAS

Texas has a history of gerrymandering, including in 2011, when Republicans drew lines that were struck down for racial gerrymandering.²³

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

The Texas Constitution provides different redistricting criteria for the state house and state senate redistricting. State senate districts have only one mandatory criterion – contiguity – whereas state house districts must be contiguous and follow the whole county rule.²⁴ Unlike for state redistricting, the Texas Constitution has **no** mandatory criteria for congressional redistricting.²⁵

Unlike some states, the Texas Constitution has no express prohibition on partisan gerrymandering. However, Texas's constitution does include several general civil rights protections which have been held to prohibit partisan gerrymandering in other states.

Finally, like all states, Texas must comply with federal legal restrictions on redistricting, which include the Fourteenth Amendment's Equal Protection Clause (which addresses equal population standards and the use of race as a redistricting criterion) and Section 2 of the Voting Rights Act (which prohibits discrimination against racial and language minorities).²⁶ Formerly, Texas was covered by Section 5 of the Voting Rights Act (VRA) and required preclearance; however, in *Shelby County v. Holder*, the U.S. Supreme Court struck down the formula for which jurisdictions were subject to preclearance.²⁷ Therefore, for this cycle, Texas's redistricting is not subject to federal preclearance.

Contiguity: Both state house and state senate districts must be contiguous.²⁸ The state Supreme Court has not elaborated on the definition of contiguity.

Whole County Rule: State house districts must attempt to keep counties whole, to the extent practicable. This provision provides:

"whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties."²⁹

The Texas Supreme Court has elaborated on how this provision should be applied in conjunction with the federal constitutional requirement of equal population.³⁰ The Court has held that:

1. "a county must be formed into a separate district if it has sufficient population for one representative" and "a county [must] receive the member or members to which that county's own population is entitled when the ideal district population is substantially equalled or is exceeded;"
2. "when two or more counties are required to make up a district of proper population, the

23 Justin Levitt, "Texas," All About Redistricting, <https://redistricting.ils.edu/state/texas> (accessed Jan. 4, 2021).

24 Tex. Const. art. III, §25 (Senate) and §26 (House).

25 See Brennan Center, "50 State Guide to Redistricting: Texas" (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting.

26 U.S. Const. amend. XIV, § 1; 52 U.S.C. § 10101 et seq.

27 570 U.S. 529 (2013).

28 Tex. Const. art. III, §25, §26.

29 Tex. Const. art. III, §26.

30 *Smith v. Craddock*, 471 SW 2d 375, 377-378 (Tex. 1971).

SPOTLIGHT: TEXAS

district lines shall follow county boundaries and the counties shall be contiguous;"

3. a "county not entitled to its own representative must be joined to contiguous counties so as to achieve a district with the population total entitled to one representative;"
4. "a county may be divided if to do so is necessary in order to comply with the equal population requirement."

The final clause of the whole county rule, relating to surplus population, authorizes the use of "floterial" districts, which are districts that float over other districts to include "within its boundaries several separate districts ... which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular legislative body being apportioned."³¹ However, in 1971, the Texas Supreme Court nullified that clause of the state constitution under the assumption it violates the federal constitution.³² (The State Supreme Court noted, however, that neither the state nor federal constitutions prohibited multi-member districts;³³ however, Texas has not had multi-member house districts for at least several decades. By contrast, the Texas constitution requires that state senate districts be single-seat.³⁴)

The state Supreme Court has held that the legislature's State House maps can be attacked by providing alternative maps proving the legislature had options for redistricting that resulted in fewer

counties being divided, or showing that some county splits were not legally required to meet equal population standards.³⁵

Legislatively-Adopted Criteria: While there are no other mandated criteria under the State Constitution, Phil King, the chair of the House Redistricting Committee in 2020, pledged at a redistricting hearing that the Legislature would also follow traditional redistricting criteria, including communities of interest and compactness.³⁶

General Civil Rights Protections: Although partisan gerrymandering claims are not justiciable under the U.S. Constitution, they may be under general state civil rights protections. In North Carolina and Pennsylvania, general civil rights protections have been used to strike down partisan gerrymanders. Texas's constitution includes similar provisions, like guarantees of free speech, free assembly, due process, equal protection, and purity of elections.³⁷ However, these provisions have not yet been applied against partisan gerrymandering by a court.

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

Legal Standard: Redistricting bills, like other bills, enjoy a "presumption of validity," but can (and have been) invalidated for violating the state constitution.³⁸ However, the Supreme Court has also noted that "a court's duty to consider a party's constitutional challenge to a statute, never to be taken

31 Davis v. Mann, 377 U.S. 678, 686-87 n.2 (1964).

32 Smith v. Craddick, 471 SW 2d 375, 378-379 (1971).

33 Smith v. Craddick, 471 SW 2d 375, 377 (Tex. 1971).

34 Tex. Const. art. III, §25.

35 Clements v. Valles, 620 SW 2d 112 (Tex. 1981).

36 Erin Anderon, "Texas Lawmakers Promote Transparency in Redistricting," Texas Scorecard (Feb. 3, 2020), <https://texasscorecard.com/state/texas-lawmakers-promote-transparency-in-redistricting/>.

37 Tex. Const. art. I, §3a, §8, §13, §19, §27; art. VI §2, §4.

38 Clements v. Valles, 620 SW 2d 112, 115 (Tex. 1981). See also Terrazas v. Ramirez, 829 SW 2d 712, 717 (Tex. 1991) ("A judicial determination that an apportionment statute violates a constitutional provision is no more an encroachment on the prerogative of the Legislature than the same determination with respect to some other statute").

SPOTLIGHT: TEXAS

lightly, and the deference owed a coordinate branch of government, are rarely more sensitive of serious matters than when the statute attacked involves the highly politically charged subject of apportionment.”³⁹

Because of this, while courts may order the adoption of new maps when the legislature’s are invalidated, “that power ought to be used only after investigation and careful consideration of the many, diverse interests affected, after due deference to the legislature to rectify its own statutes, and after due regard for the effect of the court’s order on the election process.”⁴⁰ Before a court adopts a new plan it must first give the legislature (unless its authority to act has expired) an opportunity to remedy the deficient maps.⁴¹ If a district court does adopt a new map, it must first hold a hearing which will “provide sufficient evidence, adduced by testimony, documents, stipulations or some other manner, to permit the district court to make an informed ruling.”⁴² The court should consider “the interests of all persons who appear before it, the interests of the State as a whole, and the decisions of the Legislature” in its redistricting plan.⁴³ Finally, the court should use the valid parts of the legislature’s maps as the “beginning point” for its substitute map and “must attempt to give effect to as many of the legislature’s redistricting decisions as are not invalid.”⁴⁴

Supreme Court: The Texas Supreme Court is the final arbiter of the legality under state law of any redistricting plan adopted by the legislature. The Supreme Court consists of nine members elected to six-year terms in partisan elections.⁴⁵ However, when there is a vacancy on the Court, the governor may appoint the replacement justice with the advice and consent of the Senate.⁴⁶

Prior History: Texas’s 2010 redistricting cycle was tied up in claims of illegal racially-discriminatory gerrymandering under both the Voting Rights Act and Equal Protection Clause.⁴⁷ Many of these claims ultimately arrived before the U.S. Supreme Court, which mostly upheld the Legislature’s maps except as to one state house district, which was held to be an impermissible racial gerrymander.⁴⁸

39 Terrazas v. Ramirez, 829 SW 2d 712, 717 (Tex. 1991).

40 Terrazas v. Ramirez, 829 SW 2d 712, 718 (Tex. 1991).

41 Terrazas v. Ramirez, 829 SW 2d 712, 718, 720 (Tex. 1991).

42 Terrazas v. Ramirez, 829 SW 2d 712, 718, 720 (Tex. 1991).

43 Terrazas v. Ramirez, 829 SW 2d 712, 718, 726 (Tex. 1991).

44 Terrazas v. Ramirez, 829 SW 2d 712, 718, 720 (Tex. 1991).

45 Tex. Const. art. V, §2.

46 Tex. Const. art. V, §29. See also National Center for State Courts, “Methods of Judicial Selection: Texas,” http://www.judicialselection.us/judicial_selection/index.cfm?state=TX (accessed Jan. 5, 2021).

47 National Conference of State Legislatures, “Redistricting Case Summaries” (Upd. Dec. 1, 2020), <https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx>.

48 Abbott v. Perez, 138 S. Ct. 2305 (2018).

UTAH

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>HIGH RISK</p>	<p>The Utah Legislature is empowered to enact state legislative and congressional redistricting plans by normal statute, subject to a gubernatorial veto which can be overridden by a 2/3 supermajority in both chambers. Additionally, Utah statute creates a seven-member advisory commission to create redistricting plans. One member each is chosen by the governor, the four legislative leaders, and the leadership of the majority and minority parties in the Senate. This commission holds public hearings around the state, accepting public map proposals, and by August 21, 2021, approves three sets of legislative and congressional maps by 5/7 supermajority vote, including support from the member selected by Republican leadership and the member selected by Democratic leadership. Maps are promptly submitted to the legislature, which has until September 15 to consider the maps at a public hearing with public comment. The legislature bears no obligation to vote on these advisory maps, and may introduce maps of their own, beholden to the criteria guiding the commission.</p>
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Threat 2: Can election maps be drawn in secret?

<p>LOW RISK</p>	<p>Seven public hearings are required by the advisory commission along with strong public access and participation requirements. At each meeting, members of the public are allowed to submit their maps for required public consideration by the commission, and a commission website will live-stream hearings, allow for public comment and maps, and share information. While requirements and practices related to the commission are strong, those related to the legislative portion of the process are fairly insubstantial. Their only required public meeting is set anytime before September 15, 2021.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>HIGH RISK</p>	<p>Republicans enjoy tripartite control of the Utah government, and the legislature is ultimately unconstrained in the map approval process. On the advisory commission, four commissioners are appointed by the majority party if the governor and legislature are unilaterally controlled, leaving three for the minority party. Criteria prohibiting intentionally favoring or disfavoring an incumbent, party, or candidate for office only apply to the commission maps.</p>
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Threat 4: Are the legal standards weak?

<p>HIGH RISK</p>	<p>Advisory commission maps are held to fairly strong statutory redistricting criteria, including compactness and contiguity requirements, requirements to preserve communities of interest, preserve geographic and political subdivisions, preserve the cores of prior districts, and prohibit favoring or disfavoring an incumbent, party, or candidate for office. Beyond that, there is a strict 1% population deviation limit between congressional districts and a 10% deviation limit for state legislative districts. These requirements do not appear to apply to maps drafted by the legislature, which face few to no requirements based on the constitution alone.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>HIGH RISK</p>	<p>Maps are not automatically reviewed in any part of the process and it is unclear from the current or past rules whether citizens can challenge maps in court. There were no apparent challenges in the past two redistricting cycles.</p>
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UTAH REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature, with unbalanced commission advising	Source:	Utah Code § 20A-20-302
Supermajority Vote Needed?	No, legislature Yes, advisory commission	Requires:	Maps drafted by the commission: Statutory criteria for both state legislative and congressional districts (ranked): 1. minimize division of political boundaries 2. compactness 3. contiguity 4. preserve communities of interest 5. Follow natural and geographic boundaries There are no criteria for maps drafted by the legislature
Governor Signs/ Vetoes?	Yes	Prohibits:	Maps drafted by the commission: Statutory criteria for both state legislative and congressional districts prohibits: more than 1% deviation in population between congressional districts, more than 10% deviation for state legislative districts, intentionally favoring or disfavoring an incumbent, party, or candidate for office.
Special Legal Process?	Maps are not automatically reviewed. It is unclear if citizens can challenge plans in court.	Allows:	N/A

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Advisory commission maps due by August 31, 2021 Final approval, Mar. 12, 2022.	United/Divided Government?	United - Republican
Hearings start:	Spring/summer 2021 (commission). September (legislature).	Governor:	Spencer Cox (R)
Required # of Hearings:	7, across the state (commission) 1 (legislature).	State House:	58R - 17D (77%)
Public Comment:	Required	State Senate:	23R - 6D (79%)
Likely Committees:	Advisory independent commission Legislative redistricting committee	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Appointed by commission selection (all voting commission members appointed by governor) and then gubernatorial approval: 5R - 0D

Timing note: While the commission must present advisory maps to the legislature by August 31, 2021, redistricting plans must then be passed by the legislature during the first legislative session after the release of Census data. For this cycle, the next legislative session starts on January 24, 2022 and ends March 12, 2022, at the latest.

Citations and references: Utah Code §20A-20-408; Utah Const. Art. VI, §2, 16, Art. IX §1 **Relevant recent cases:** N/A

VERMONT

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

<p>HIGH RISK</p>	<p>The Vermont legislature retains the authority to approve redistricting plans by simple statute, subject to gubernatorial veto, which can be overridden with a 2/3 vote in each chamber. The reapportionment process is initiated by the Legislative Apportionment Board made up of seven members total; two from each party and one "special master." A significant enough portion of Vermont's legislature is part of the Progressive Party, giving it two seats on the Apportionment Board alongside Democrats and Republicans. The governor appoints one of the commissioners from each party and each political party appoints one commissioner themselves. The "special master" is appointed by the chief justice of the Vermont Supreme Court. Commissioners are also not allowed to be legislators or legislative staffers. After the maps go through the board, they can be reviewed by cities and towns before the final draft is presented to the legislature. The legislature can then approve, modify, or reject the maps.</p> <p>Vermont has a single at-large congressional district, and is not expected to gain any additional seats after the 2020 Census.</p>
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Threat 2: Can election maps be drawn in secret?

<p>HIGH RISK</p>	<p>Public hearings are not required by law, though they are past practice, and state statute does require plans to be "available for public inspection." The long runway between map introduction and approval may provide more time for comment.</p>
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Threat 3: Can election maps be rigged for partisan gain?

<p>MODERATE RISK</p>	<p>While the legislature does pass the final plans for the governor's approval, the governor retains veto authority, and no party currently has the votes to override a veto in each chamber, though Progressives and Independents joining Democrats would give that coalition the strength. Additionally, the Legislative Apportionment Board is made up of multiple different parties and appointed by five different sources. It is also notable that the Progressive Party has an equal share of the seats on the board as Republicans and Democrats, potentially limiting partisan abuse. Should the political landscape change in the future, however, it is not clear how well these safeguards will hold.</p>
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Threat 4: Are the legal standards weak?

<p>MODERATE RISK</p>	<p>There are relatively few redistricting criteria beyond the federal standards, potentially allowing for unfair maps. The Vermont Constitution only requires compact, contiguous districts that preserve political subdivisions. Further statutes require the preservation of communities of interest and allow for the consideration of incumbency when drawing maps. These allowances, as well as a lack of prohibition of unfair practices, makes the reapportionment open to partisan or unfair plans. Protecting incumbents is explicitly allowed and played a significant factor in the 2011 cycle.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

<p>LOW RISK</p>	<p>Vermont does not have automatic judicial review, but any group of five citizens may petition the Vermont Supreme Court, which has exclusive jurisdiction, to review a redistricting plan within 30 days of the enactment. The last time maps were reviewed in court was in 2004, challenging 2002 maps. In this case, the Vermont Supreme Court held up the state's plan.</p>
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VERMONT REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Vermont Constitution Ch. II §§ 13, 18, 73
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for both congressional and state legislative maps: 1. compact, contiguous districts that preserve political subdivisions. Statutory criteria for both congressional and state legislative maps require the 2. preservation of communities of interest, defined as "patterns of geography, social interaction, trade, political ties, and common interests."
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Vermont Supreme Court retains exclusive jurisdiction. 5 or more citizens may petition.	Allows:	Considering incumbency, Multi-member districts

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	2022 legislative session. Advisory board's draft maps due July 1, 2021. Towns and cities may comment on internal divisions through Aug. 1. Final advisory maps due Aug. 15, 2021.	United/Divided Government?	Divided – Democratic legislature , Republican governor
Hearings start:	Started fall 2020; ongoing.	Governor:	Phil Scott (R)
Required # of Hearings:	No public hearings required (But past practice)	State House:	92D + 7P + 5I - 46R (61%)
Public Comment:	Not required.	State Senate:	21D + 2P - 7R (70%)
Likely Committees:	House Government Operations Committee and Legislative Apportionment Board	Veto-Proof Leg. Supermajority?	Potentially, with progressive and independent member votes (2/3 supermajority required)
		Supreme Court:	Assisted appointment and then legislative approval: All officially nonpartisan, though three were appointed by Republican governors and two by Democratic governors. (3R - 2D)

Timing note: While final maps must be approved during the legislature's regular 2022 session, the Legislative Apportionment Board has earlier deadlines throughout the drafting process. Maps must be initially drafted by July 1, 2021 and then open for suggestions by towns and cities until Aug. 1, 2021. The board must send final maps to the state legislature by Aug. 15, 2021. It is not clear how the Census delay will influence the redistricting process.

Citations and references: Vermont Const. Ch. II §§13, 18, 73; 17 Vermont Stat. §1903-1909, 2356; Princeton Gerrymandering Project

Relevant recent cases: Per Justin Levitt's All About Redistricting: Apportionment of Towns of Woodbury and Worcester, 861 A.2d 1117 (Vt. 2004)

VIRGINIA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

MODERATE RISK	The Virginia Constitution empowers a 16-member redistricting commission to redraw the state legislative and congressional lines. Eight of the commissioners are to be legislators (with two each chosen by majority and minority leaders in each chamber), and eight are citizens chosen by a selection panel of retired judges (two nominated from a list provided by each of the above legislative leaders). Maps must receive the support of 6 of the 8 legislative commissioners and 6 of the 8 citizen commissioners to be sent to the legislature (with 3 of 4 of the legislators from either chamber approving a redistricting plan for that chamber). The full General Assembly cannot amend and must vote commission plans up or down. Should the Assembly reject two commission plans, or the commission fail to transmit a plan, the Virginia Supreme Court retains backstop authority to redraw the lines.
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Threat 2: Can election maps be drawn in secret?

LOW RISK	Public input is required throughout the process, including three public commission meetings at various parts of the state before drafting or voting has taken place on any particular plan. The commission must also develop a website where data and current plans can be accessed by the public. The website must also have a portal for public comment and submissions.
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Threat 3: Can election maps be rigged for partisan gain?

LOW RISK	While the commission's appointment structure prevents real independence, supermajority approval requirements for all maps, including a supermajority of citizen commissioners, help to protect against partisan influence, and the inability of the General Assembly to amend suggested maps further girds against abuse. Vesting final decision-making in the Virginia Supreme Court if the legislature fails to pass a plan may not protect maps from partisan influence, as those justices are all elected by the legislature.
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Threat 4: Are the legal standards weak?

MODERATE RISK	Statutory redistricting criteria for state legislative and congressional maps are very strong, banning partisan and prison gerrymandering, while also protecting communities of interest. Maps must also have proportional population, protect a citizen's right to vote on the basis of race, provide language and racial minorities with equal opportunity, preserve communities of interest, and be contiguous and compact. Constitutional requirements are much slimmer, however, requiring equal population, contiguous and compact territory, and opportunities for racial and ethnic communities to elect candidates of their choice. This cycle represents the first since the protection of Section 5 of the Voting Rights Act was weakened in <i>Shelby County v. Holder</i> . The absence of a preclearance requirement may change the redistricting calculus.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	Statute authorizes the commission to remediate redistricting plans found unlawful or unconstitutional, but based on the process laid out in the constitution and statutes, there is not a clear path to citizen challenges of unfair maps in court. In 2018, a three-judge panel ruled that 11 of Virginia's districts violated the rights of Black voters to equal protection. This decision was later upheld by the Supreme Court.
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VIRGINIA REDISTRICTING SUMMARY

REDISTRICTING PROCESS	
Redistricting Body:	16-member balanced redistricting commission (half-legislative, half-citizen)
Supermajority Vote Needed?	Yes, for map transmission to legislature
Governor Signs/ Vetoes?	No
Special Legal Process?	Virginia Supreme Court retains backstop authority

REDISTRICTING CRITERIA	
Source:	Virginia Constitution, Art. II, 6
Requires:	The Virginia Constitution requires districts to be compact and contiguous. There are additional statutes implementing additional criteria (unranked): 1. Proportional population 2. Adhering to federal and state requirements (makes sure state maps are in compliance with Voting Rights Act) 3. No denial of citizens' right to vote on the basis of race 4. Provide language and racial minorities with equal opportunity 5. Preserve communities of interest 6. Contiguous territory 7. Compact territory
Prohibits:	Statutory criteria for both congressional and state legislative maps prohibits: partisan gerrymandering, prison gerrymandering
Allows:	None

DEADLINE/PUBLIC PARTICIPATION	
Redistricting Deadline:	2021. Commission submits legislative maps within 45 days of Census deadline, congressional maps within 60 days. 36 additional days for consideration, redrafting.
Hearings start:	No set date, but likely in the 60/45 days after Census data is released
Required # of Hearings:	At least 3
Public Comment:	Public authorized to submit maps and comment.
Likely Committees:	N/A

POLITICAL CONTROL	
United/Divided Government?	United - Democratic
Governor:	Ralph Northam (D)
State House:	55D - 45R (55%)
State Senate:	21D - 18R - 1V (54%)
Veto-Proof Leg. Supermajority?	N/A
Supreme Court:	Appointed by the legislature, appointed by the governor if leg. is not in session: 7 justices all officially nonpartisan

VIRGINIA REDISTRICTING SUMMARY

Timing note: The Virginia Constitution states reapportionment must be done in 2021, and, further, that the redistricting commission must submit state legislative redistricting plans to the General Assembly within 45 days of receiving Census data, and must submit a congressional redistricting plan within 60 days. After those initial deadlines to present maps to the legislature, the process moves swiftly with 15 days for the legislature to vote up or down on maps, and then 14 days for the commission to alter the maps if rejected. The legislature then has 7 days to vote on the altered plan. If the altered plan is rejected again, the maps are drawn by the Virginia Supreme Court. Because Virginia holds state legislative elections in 2021, it is possible these contests will have to be run using current maps, with newly drawn maps used for 2022 special elections and 2023 regular elections. It is not clear how the Census delay will influence the redistricting process.

Citations and references: Virginia Const, Art. II, §6; Va. Code §24.2-304.04, 30-400; “2020 Census Delays and the Impact on Redistricting,” NCSL (Mar. 19, 2021);

Relevant recent cases: Per Justin Levitt’s All About Redistricting: *Bethune-Hill v. Va. State Bd. of Elections*, 368 F. Supp. 3d 872 (E.D. Va. 2019), appeal dismissed for lack of standing sub nom. *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019); *Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128 (E.D. Va. 2018); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017); *Vesilind v. Va. State Bd. of Elections*, 813 S.E.2d 739 (Va. 2018).

WASHINGTON

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

LOW RISK	<p>The redistricting commission is made up of five members, with one each chosen by heads of each major party in each legislative body. These four commissioners then select a fifth, non-voting member to serve as chair. There is no apparent deadline for when members must be chosen, and commissioners have already been selected for the current cycle. Commissioners appointed by Democratic leadership can be found here and Republican leadership here.</p> <p>To approve the redistricting plans, 3/4 of the voting commissioners must vote in favor. The legislature then has 30 days to reconvene the commission to amend the maps or reconvene the commission with a 2/3 vote in each body. Statute dictates such amendments may not include more than 2 percent of the population of any district. If the commission doesn't pass maps by the November deadline, the Washington Supreme Court has the authority to redraw the lines.</p>
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Threat 2: Can election maps be drawn in secret?

MODERATE RISK	<p>Commission meetings must be open to the public, and are subject to Open Public Meetings laws. Additionally, plans must be published with an explanation of criteria. It is not clear the commission must hold a certain number of hearings around the state, and it is not apparent if public comment is considered.</p>
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Threat 3: Can election maps be rigged for partisan gain?

LOW RISK	<p>Supermajority approval requirements for commission maps and legislative amendments help to gird against partisan abuse—at present, neither party has the requisite 2/3 strength to pass amendments unilaterally. Additionally, the state constitution bars the commission from drawing a plan to purposely favor or disfavor a political party or group, and statute further requires the commission to draw districts that encourage electoral competition and provide fair and effective representation. However, if maps fail to make it out of commission, they're drawn by the Washington Supreme Court, a body, which, while officially nonpartisan, appears to favor the Democrats.</p>
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Threat 4: Are the legal standards weak?

LOW RISK	<p>The Washington Constitution requires state legislative and congressional redistricting plans be drawn with contiguous, compact, and convenient districts of equal population separated by natural geographic barriers, artificial barriers, or boundaries of political subdivisions, and not drawn to purposely favor or disfavor a political party or group. These criteria are unranked. Additionally, statute requires recognition of communities of interest, minimal county subdivision, and the commission to provide fair and effective representation and encourage electoral competition.</p>
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Threat 5: Are rigged election maps hard to challenge in court?

LOW RISK	<p>The process does not include automatic judicial review of maps. The Washington Supreme Court retains original jurisdiction over redistricting cases, and any registered voter may challenge the maps after passage or amendment. Maps from the 2010 cycle were challenged in court, but it appears those challenges were withdrawn. While citizens can challenge the maps, there are not any recent examples of maps changing due to a court challenge.</p>
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WASHINGTON REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	5-member balanced redistricting commission	Source:	Washington Constitution, Art 2, Sect. 43
Supermajority Vote Needed?	Yes, 3/4 needed to pass maps	Requires:	Constitutional criteria for both state legislative and congressional maps (unranked): contiguous, compact, and convenient, with equal population separated by natural geographic barriers, artificial barriers, or boundaries of political subdivisions. Statutory criteria for both state legislative and congressional maps (unranked): recognition of communities of interest, minimal county subdivision, and the commission to provide fair and effective representation and encourage electoral competition.
Governor Signs/ Vetoes?	No	Prohibits:	Partisan maps and prison gerrymandering
Special Legal Process?	The Washington Supreme Court has original jurisdiction in redistricting cases, and explicit backstop authority.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	Nov. 15, 2021 (commission maps); 30 additional days for leg. amendment; April 30, 2022 (Supreme Court maps, if needed)	United/Divided Government?	United - Democratic
Hearings start:	No set date, but sometime between the release of Census data and Nov. 15, 2021	Governor:	Jay Inslee (D)
Required # of Hearings:	No required number	State House:	57D - 41R (58%)
Public Comment:	Not clearly required	State Senate:	28D - 20R + 1D (57%)
Likely Committees:	N/A	Veto-Proof Leg. Supermajority?	No (2/3 supermajority needed)
		Supreme Court:	Nonpartisan election or appointment by governor in case of vacancy: 5 D appointments, 4 NP elected

Timing note: The redistricting commission has until November 15, 2021 to pass plans with 3/4 support (three members). The plans then go to the legislature for possible amendment with a deadline of 30 days after plans were received (December 15, 2021). A 2/3 vote in each chamber is required to reconvene the commission and/or amend plans. If the commission fails to send a plan to the legislature, the Washington Supreme Court then drafts the maps with a deadline of April 30, 2022.

Citations and references: Washington Const., Art II, §43; Washington Code §44.05.090, §§44.05.010 – .140, §§29A.24.050; 44.05.100, §44.05.080, §44.05.130

Relevant recent cases: Per Justin Levitt's All About Redistricting: 2012 Wash. State Redistricting Plan, No. 86976-6 (Wash. S. Ct. Nov. 2d, 2012).

WEST VIRGINIA

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	The West Virginia legislature has the authority to enact redistricting plans by simple statute, subject to gubernatorial veto, which may be overridden with another simple majority.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	There are no public hearings required, though the Senate committee did hold 9 informal meetings over the summer in the 2011 cycle, while the House committee did not.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	There are no real checks through the process that could prevent partisan maps. Republicans hold 77% of the state house and 68% of the state senate, as well as the governorship, and a 2012 court case found partisan gerrymandering permissible under the law.
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Threat 4: Are the legal standards weak?

HIGH RISK	Overall, redistricting criteria are weak, requiring only that districts are contiguous, contain equal population, and, in the case of congressional and state senate districts, preserve counties and be drawn to be compact. In 2011, the state legislature passed a further requirement to protect communities of interest through statute for that cycle's redistricting plan.
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Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK	While maps are not automatically reviewed, citizens are allowed to challenge maps after they're passed in state court for state maps and a federal court for congressional maps. In the past cycle, both congressional and state plans were challenged and both were held up by their respective courts. Additionally, a 2012 court case found partisan gerrymandering permissible under the law.
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WEST VIRGINIA REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	West Virginia Const Art. 1, Sect. 4 and Art. 6, Sect. 4
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for both state legislative and congressional districts (unranked): 1. compact (state senate and congressional districts only) 2. contiguous 3. preserve county lines (state senate and congressional districts only), and 4. be as equal as possible.
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	Citizens can challenge maps in a state court for state maps and federal court for congressional maps	Allows:	Multi-member districts (state level), partisan gerrymandering

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	No deadline	United/Divided Government?	United - Republican
Hearings start:	Not clear	Governor:	Jim Justice (R)
Required # of Hearings:	None required	State House:	77R - 23D (77%)
Public Comment:	None required (But past practice)	State Senate:	23R - 11D (68%)
Likely Committees:	Senate Redistricting Task Force House Redistricting Committee	Veto-Proof Leg. Supermajority?	Yes (simple majority)
		Supreme Court:	Appointment by governor and nonpartisan election: Technically 5 nonpartisan judges, but based on appointments, 4R-1D

Timing note: West Virginia does not have a set deadline on when state legislative or congressional maps must be drafted or passed. The only requirement is that state legislative maps may not be drafted mid-decade.

Citations and references: West Virginia Const. Art. I, §4, Art. VI, §4, 10, Art. VII, §14; West Virginia Code Chap. I, Art. II, §1; Princeton Gerrymandering Project

Relevant recent cases: Per Justin Levitt's All About Redistricting: West Virginia ex rel. Cooper v. Tennant, 730 S.E.2d 368, 390 (W. Va. 2012); Deem v. Manchin, 188 F. Supp. 2d 651 (N.D.W.Va. 2002), aff'd sub nom. Unger v. Manchin, 536 U.S. 935 (2002); Tennant v. Jefferson Cnty. Comm'n, 133 S. Ct. 3 (2012); West Virginia ex rel. Cooper v. Tennant, 730 S.E.2d 368 (W. Va. 2012).

★ SPOTLIGHT: WISCONSIN

THIS REPORT HIGHLIGHTS SEVERAL BATTLEGROUND STATES WHERE THE REDISTRICTING PROCESS IS LIKELY TO BE ESPECIALLY CONTENTIOUS.



Timing note: Legislative maps must be adopted in the first session after the census, currently scheduled to go from 1/5/21 to 3/10/22. There is no legal deadline for adopting congressional maps. In the 2010 cycle, both state and congressional maps were adopted on 7/20/11. Note: The state/federal candidate filing deadline is 6/1/22.

Threat 1: Can politicians control how election maps are drawn?

HIGH RISK

The Legislature adopts legislative and congressional districts by majority-vote bill, which the Governor may approve or veto. Vetoes may be overridden by 2/3 vote. Note: The GOP Legislature may argue the Governor has no role approving redistricting bills.

Threat 2: Can election maps be drawn in secret?

HIGH RISK

There are no redistricting-specific laws requiring public hearings or providing opportunities for public engagement. Democratic Governor Evers has, by executive order, created a nonpartisan Advisory Commission that is holding public hearings. However, Republican leadership in the Legislature have stated they will be ignoring this process. In 2011, the Legislature held only one public hearing in the Senate on the proposed state legislative and congressional maps and none in the Assembly.

Threat 3: Can election maps be rigged for partisan gain?

MODERATE RISK

Wisconsin has divided government. The Governor is a Democrat. Republicans control both houses of the Legislature but do not have the supermajorities needed to overturn a gubernatorial veto. Because of this, the Legislature and Governor are likely to either adopt a compromise map or deadlock on redistricting, in which case a court will draw the lines. Some Republicans have argued, contrary to prevailing legal precedent, that the Governor's signature is not required to adopt redistricting maps. In the future, should the political landscape shift, there appears to be very little to protect against a dominant party redistricting for partisan gain.

Threat 4: Are the legal standards weak?

HIGH RISK

The state constitution provides no redistricting criteria for congressional redistricting. For state redistricting, state assembly districts must be contiguous, compact, and follow the borders of political subdivisions. State senate districts must be composed of "convenient" contiguous territory and cannot divide assembly districts; thus, each senate district has three Assembly districts nested within it.

Threat 5: Are rigged election maps hard to challenge in court?

HIGH RISK

There are no special legal procedures for bringing redistricting cases in state court. Wisconsin's legislative and congressional redistricting plans from the 2010 cycle were challenged for racially-discriminatory and partisan gerrymandering, and as a result of the U.S. Supreme Court's decision in *Rucho v. Common Cause*, which held that partisan gerrymandering claims are not justiciable under the U.S. Constitution, a Wisconsin district court dismissed its partisan gerrymandering lawsuit.

SPOTLIGHT: WISCONSIN

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Constitution
Supermajority Vote Needed?	No	Requires:	Constitutional criteria for state Assembly maps (unranked): contiguity; compactness; use political subdivision boundaries Constitutional criteria for state Senate maps (unranked): nest 3 Assembly districts; convenient contiguity There are no criteria for congressional maps.
Governor Signs/ Vetoes?	Yes	Prohibits:	None
Special Legal Process?	No	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	State legislative: 2022 session Congressional: Note	United/Divided Government?	Divided - Democratic governor, Republican legislature
Hearings start:	Likely 2021	Governor:	Tony Evers (D)
Required # of Hearings:	None (only 1 held in 2011)	State House:	60R - 38D - 1V (R: 61%)
Public Comment:	All bills require 1 public hearing in Senate, unless waived	State Senate:	20R - 12D - 1V (R: 61%)
Likely Committees:	Assembly Cmte. on Campaigns & Elections; Sen Cmte. on Elections, Election Process Reform & Ethics	Veto-Proof Leg. Supermajority?	No (2/3 supermajority needed)
		Supreme Court:	Nonpartisan election: 4 conservative - 3 liberal

SPOTLIGHT: WISCONSIN

THREAT 1: CAN POLITICIANS CONTROL HOW ELECTION MAPS ARE DRAWN?

In Wisconsin, the legislature controls both the state and congressional redistricting (“apportionment”) process. The Constitution provides that “the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.”¹ Under longstanding legal precedent and historical practice, new districts are adopted through bills going through the ordinary legislative process, which includes presentment to the governor for his or her signature or veto. In 1964, the Wisconsin Supreme Court struck down an attempt by the legislature to redistrict by joint resolution (which do not go to the governor for approval), and instead held that redistricting plans could only be enacted through a bill that is either signed by the governor or passed over his or her veto by a supermajority vote of both legislative houses.² While this precedent is well-settled, there are nonetheless rumors that the Republican legislature may attempt to circumvent the Democratic governor by once more attempting to redistrict by joint resolution, in the hopes that the present conservative-majority Supreme Court will overturn this prior precedent from decades ago.³

Once a redistricting bill, like any bill, is presented to the governor, he or she has six days to sign or veto the bill or it becomes law, unless the legislature “by final adjournment, prevents the bill’s return, in which case it shall not be law.”⁴ Vetoed bills may be overridden by the legislature by a 2/3 vote of both houses.⁵

There are no statutes providing a special legal process for redistricting litigation in state courts, and particularly for addressing when the legislature fails to adopt maps due to some political deadlock, which has happened more often than not in Wisconsin’s history over the past half-century.⁶ However, a conservative organization, the Wisconsin Institute for Law & Liberty (WILL), has petitioned the State Supreme Court (which has a 4-3 conservative majority) to adopt a rule so that the Court will assume original jurisdiction (i.e. be the first court to hear a case, rather than a trial court) over redistricting litigation. WILL claims this will help ensure the State Supreme Court, and not a federal court, draws new maps should the legislature fail to do so. The petition is opposed by Democrats and good government reform organizations, among others, who argue that lower courts are better-equipped to do initial fact-finding than the Supreme Court.⁷

The conservative petition is following up on an aborted rulemaking by the Court from two decades ago. In the 2000 cycle, when the Republican assembly and Democratic senate deadlocked on adopting maps, Republican legislators petitioned the Wisconsin Supreme Court for leave to file an original action with the Court (instead of a trial court), asking it to adopt legislative maps.⁸ The Court agreed that, in the “absence of a timely legislative compromise, our participation in the resolution of these issues would ordinarily be highly appropriate,” but in this instance refused to accept original jurisdiction because the Court had too little time to adopt maps before the

1 Wis. Const. art. IV, §3.

2 *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 553-559 (1964).

3 Scott Bauer, “Rumors of GOP move to redistrict without Tony Evers’ approval spark controversy,” Wisconsin State Journal (Jul. 31, 2019), https://madison.com/wsj/news/local/govt-and-politics/rumors-of-gop-move-to-redistrict-without-tony-evers-approval-spark-controversy/article_a9d61773-5765-5f52-86b2-659dab84b023.html; Peter Cameron, “The Election is Over. Wisconsin Turns to Redistricting,” The Badger Project (Nov. 30, 2020), <https://thebadgerproject.org/2020/11/30/the-election-is-over-wisconsin-turns-to-redistricting/>.

4 Wis. Const. art. IV, §9(3).

5 Wis. Const. art. IV, §9(2)(a).

6 *Jensen v. Wisconsin Elections Bd.*, 249 Wis.2d 706, 710 (2002) (between 1962 and 2002 the Legislature only successfully adopted redistricting maps once in 1972).

7 Scott Bauer, “Wisconsin justices skeptical of GOP redistricting proposal,” APG Media (AP) (Jan. 18, 2020), www.apg-wi.com/news/state/wisconsin-justices-skeptical-of-gop-redistricting-proposal/article_9dbadd5e-45c4-5344-bb90-5c805b64da52.html.

8 In other words, the plaintiffs were asking the Supreme Court for permission to file a redistricting lawsuit directly with the Supreme Court, rather than the more traditional path of litigation, where suits begin with the trial court then can be appealed to higher courts.

SPOTLIGHT: WISCONSIN

upcoming election and there was already a more-advanced lawsuit pending in federal court.⁹ The Court was also concerned that it lacked the time to put in place procedures for redistricting, which would include opportunities for adversarial briefing and public comment, but pledged to “initiate rulemaking proceedings regarding procedures for original jurisdiction in [future] redistricting cases.”¹⁰ That Court studied the issue for six years, before ultimately deciding not to adopt a new procedural rule.¹¹

With the pending petition, WILL has asked the Court to amend its rules to allow plaintiffs to bring original actions relating to redistricting before the Court. The proposed rule would give the governor, the senate, the assembly, and the political parties the right to intervene in the action. If the Legislature has not adopted maps, the proposed rule would also set up steps for parties to submit draft maps, for the Court to collect evidence and to propose a draft map, for the public to provide comment on that proposal, and for the Court to adopt a final map.¹² The Court held a hearing on WILL’s petition on January 14, 2021. According to newspaper coverage, at the hearing both liberal and conservative justices seem skeptical of the proposal, in part because the Court already has authority without adopting rules to assume original jurisdiction over redistricting cases should it want to.¹³

THREAT 2: CAN ELECTION MAPS BE DRAWN IN SECRET?

Wisconsin has no redistricting-specific requirement for public hearings, public comment, or open meeting and transparency requirements.¹⁴

Hearings: There are no redistricting-specific laws requiring public hearings prior to adopting new legislative or congressional maps.¹⁵ Under the assembly rules, any committee chair may schedule a public hearing at their discretion.¹⁶ Under the senate rules, every bill must receive a public hearing, unless this requirement is waived by the Committee on Senate Organization.¹⁷ In 2011, the state and congressional redistricting bills received only one hearing in the Senate. In the 2011 cycle, the Senate Committee on Judiciary, Utilities, Commerce, and Government Operations held one public hearing on the state and congressional maps on July 13, 2011.¹⁸ This was the only committee to hear the redistricting bills.

Governor Evers, by executive order, has created a “nonpartisan advisory commission” to hold hearings and recommend legislative and congressional maps to the Legislature.¹⁹ The “People’s Maps Commission” has nine members, selected by three retired judges, who are required under the order to hold at least one public hearing in each of the state’s eight

9 *Jensen v. Wisconsin Elections Bd.*, 249 Wis.2d 706, 710 (2002).

10 *Jensen v. Wisconsin Elections Bd.*, 249 Wis.2d 706, 720 (2002).

11 Wisconsin Supreme Court, Order No. 02-03 (Jan. 30, 2009).

12 Wisconsin Supreme Court, “Pending Petitions: 20-03 Amendment to Wis. Stat. § 809.70 (Redistricting)” (Jun. 3, 2020), www.wicourts.gov/scrules/pending/2003.htm.

13 Scott Bauer, “Wisconsin justices skeptical of GOP redistricting proposal,” APG Media (AP) (Jan. 18, 2020), www.apg-wi.com/news/state/wisconsin-justices-skeptical-of-gop-redistricting-proposal/article_9dbadd5e-45c4-5344-bb90-5c805b64da52.html.

14 National Conference of State Legislatures, “Public Input and Redistricting: Wisconsin” (Upd. Sep. 9, 2019) <https://www.ncsl.org/research/redistricting/public-input-and-redistricting.aspx>.

15 See Brennan Center, “50 State Guide to Redistricting: Wisconsin” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting;

16 Wisconsin Legislature, “Senate Bill 149” (2011-12 Session) (congressional districts), <https://docs.legis.wisconsin.gov/2011/proposals/sb149>. See also Princeton Gerrymandering Project, “Wisconsin,” <https://gerrymander.princeton.edu/reforms/WI> (accessed Jan. 3, 2020); Justin Levitt, “Wisconsin,” All About Redistricting, <https://redistricting.ils.edu/state/wisconsin> (accessed Jan. 4, 2021).

16 Assembly Rule 14(1).

17 Senate Rule 18(1m).

18 See Wisconsin Legislature, “Senate Bill 148” (2011-12 Session) (legislative districts), <https://docs.legis.wisconsin.gov/2011/proposals/sb148>; Wisconsin Legislature, “Senate Bill 149” (2011-12 Session) (congressional districts), <https://docs.legis.wisconsin.gov/2011/proposals/sb149>. See also Princeton Gerrymandering Project, “Wisconsin,” <https://gerrymander.princeton.edu/reforms/WI> (accessed Jan. 3, 2020).

19 Governor Tony Evers, Executive Order No. 66 (Jan. 27, 2020), <https://evers.wi.gov/Documents/EO/E0066-PeoplesMapsCommission.pdf>.

SPOTLIGHT: WISCONSIN

congressional districts.²⁰ The Commission is also accepting electronic public comment on its website.

Open Meetings: Under the state constitution, the “doors of each house shall be kept open except when the public welfare shall require secrecy.”²¹ Wisconsin has additional statutory open meeting laws, and each house of the legislature has adopted rules which include notice requirements;²² however, the Supreme Court has held that, aside from constitutional mandates, “this court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments.”²³

THREAT 3: CAN ELECTION MAPS BE RIGGED FOR PARTISAN GAIN?

Wisconsin has divided government. The Governor of Wisconsin, Tony Evers, is a Democrat. Republicans control both houses of the Wisconsin legislature by substantial margins, but less than the supermajorities required to overturn a veto. As a result, Republicans will likely have to negotiate with Democrats to adopt redistricting maps or, if there is a deadlock, the courts may be required to adopt maps, as has happened in previous cycles with divided government. However, some Republicans are advancing a legal argument that the legislature may pass maps without the governor’s signature, which would be a break with prior historical practice.²⁴

THREAT 4: ARE THE LEGAL STANDARDS WEAK?

The Wisconsin Constitution establishes redistricting criteria for drawing assembly and senate districts, **but none for congressional redistricting.**²⁵ Assembly districts must be contiguous, compact, and follow the borders of political subdivisions. Senate districts must be composed of “convenient” contiguous territory and cannot divide assembly districts. Complying with these criteria generally means that assembly districts are drawn first, then sets of three contiguous assembly districts are packaged as a senate district.

Wisconsin’s state redistricting criteria were adopted at its constitutional convention “upon the express ground that they would prevent the legislature from *gerrymandering* the state. These restrictions were regarded by the very able members of the convention as absolutely necessary to secure to the people that sacred right of a free people,— of equal representation in the legislature.”²⁶ But, while preventing partisan gerrymandering may have motivated the adoption of the current criteria, unlike some states, the Wisconsin Constitution includes no direct prohibition on partisan gerrymandering. The state constitution, however, does include several general civil rights protections which have been held to prohibit partisan gerrymandering in other states.

Finally, like all states, Wisconsin must comply with federal legal restrictions on redistricting, which

20 Governor Tony Evers, Executive Order No. 66 (Jan. 27, 2020); Mitchell Schmidt, “Gov. Tony Evers appoints judges to select members of redistricting commission, application process opens,” Wisconsin State Journal (Jul. 10, 2020), https://madison.com/wsj/news/local/govt-and-politics/gov-tony-evers-appoints-judges-to-select-members-of-redistricting-commission-application-process-opens/article_e267b2c8-1db1-53c7-a554-6750dab064f7.html.

21 Wis. Const. art. IV, §10. See also Joint Rule 27 (committee hearings open to the public).

22 See, e.g., Sen. Rule 25(b) (requiring notice of committee meetings 24 hours in advance).

23 *State ex rel. Ozanne v. Fitzgerald*, 798 NW 2d 436, 440 (Wis. 2011) (citations omitted).

24 Peter Cameron, “The Election is Over. Wisconsin Turns to Redistricting,” The Badger Project (Nov. 30, 2020), <https://thebadgerproject.org/2020/11/30/the-election-is-over-wisconsin-turns-to-redistricting/>.

25 See Brennan Center, “50 State Guide to Redistricting: Wisconsin” (Upd. Jun. 7, 2019), www.brennancenter.org/our-work/research-reports/50-state-guide-redistricting; Princeton Gerrymandering Project, “Wisconsin,” <https://gerrymander.princeton.edu/reforms/WI> (accessed Jan. 3, 2020); Justin Levitt, “Wisconsin,” All About Redistricting, <https://redistricting.ils.edu/state/wisconsin> (accessed Jan. 4, 2021).

26 *State ex rel. Attorney Gen. v. Cunningham*, 81 Wis. 440, 485 (1892) (emphasis in original). Early cases suggested only “clear and obvious gerrymanders” may run afoul of the Constitutional criteria. See *State ex rel. Bowman v. Dammann*, 209 Wis. 21, 31 (1932). However, in later cases, the Supreme Court clarified that allegations of partisan gerrymandering are not required to find a violation of the Constitution’s redistricting criteria. See *State ex rel. Reynolds v. Zimmerman*, 22 Wis. 2d 544, 566-567 (1964).

SPOTLIGHT: WISCONSIN

include the Fourteenth Amendment's Equal Protection Clause (which addresses equal population standards and the use of race as a redistricting criterion) and Section 2 of the Voting Rights Act (which prohibits discrimination against racial and language minorities).²⁷ Wisconsin was never required to preclear its district lines with the federal Department of Justice under Section 5 of the Voting Rights Act (VRA). As such, the *Shelby County v. Holder* decision, which struck down the list of states requiring preclearance, does not impact Wisconsin.²⁸

Assembly - County, Precinct, Town or Ward Lines:

Assembly districts must be "bounded by county, precinct, town or ward lines."²⁹ While this criterion is often generally framed as requiring that the Legislature respect "political subdivisions," it does not in fact include all political subdivisions. Wisconsin has four types of legally-distinct, general-purpose local governments: counties, cities, villages, and towns.³⁰ Of these, the constitution only expressly protects counties and towns, notably leaving out cities and villages. This was done to prioritize the creation of districts that respected county boundaries: towns at the time were required to be located entirely in one county, and so respected county boundaries, whereas cities and villages sometimes split counties, so did not.³¹ Nonetheless, while not a constitutional criterion, the legislature and courts have often adopted a goal of not splitting Wisconsin's municipalities.³²

The term "ward" in Wisconsin has undergone some evolution since it was first used in the Constitution. According to Wisconsin's Legislative Reference Bureau, whereas "wards" had previously referred to council districts, in 1971 the legislature changed the terminology so that wards became "aldermanic districts" and "a new geographic subunit called ward" was created "to serve as sub-districts to be used by the Census Bureau to provide local population data and to facilitate the creation of equal population legislative districts in the future."³³ The creation of wards is left to local governments, regulated by state law, and function as voting precincts in Wisconsin.³⁴ (Further complicating matters, the term "precincts," also identified in the Constitution as a permissible Assembly boundary, is no longer used in Wisconsin State Code.³⁵) Under state code, "each ward shall, as far as practicable, be kept compact and observe the community of interest of existing neighborhoods and other settlements" and consist of "contiguous" territory.³⁶ However, while wards were traditionally an important redistricting building block in Wisconsin, in 2011 the legislature amended state code to require that wards boundaries be changed to conform to state and congressional boundaries adopted by the legislature during redistricting.³⁷

The requirement to preserve political subdivision boundaries, and particularly counties, used to be near-absolute. In 1953, the Supreme Court

27 U.S. Const. amend. XIV, § 1; 52 U.S.C. § 10101 et seq.

28 570 U.S. 529 (2013).

29 Wis. Const. art. IV, §4.

30 Curt Witynski, "A Citizen's Guide to Wisconsin Cities and Villages," League of Wisconsin Municipalities (Feb. 2017), <http://www.lwm-info.org/DocumentCenter/View/1032/17-2-Citizens-Guide-?bidId=>.

31 *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148 (1892) ("it is manifest that the framers of the constitution, even at that early day, contemplated that the necessity was likely to arise for dividing up cities by ward lines in the formation of assembly districts"). See also *State ex rel. Attorney Gen. v. Cunningham*, 81 Wis. 440, 521-522 (1892) (Lyon, C.J., concurring) (cities and villages sometimes split county lines); *State ex rel. Attorney Gen. v. Cunningham*, 81 Wis. 440, 513 (1892) (Pinney, J., concurring) (at the convention the "leading idea seems to have been that each county was regarded in the nature of 'a small republic'").

32 See, e.g., *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 635-636 (E.D. Wis. 1982).

33 Michael Keane, "Redistricting in Wisconsin," Wisconsin Legislative Reference Bureau, 12 (Apr. 1, 2016). See also Angelina Mosher Salazar, "Race, Representation & Redistricting: Why Milwaukee's Wards Became Districts," WUWM (Jan. 11, 2019), www.wuwm.com/post/race-representation-redistricting-why-milwaukee-s-wards-became-districts#stream/0.

34 Wis. Stat. § 5.15 et seq.

35 *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 635 n.2. (E.D. Wis. 1982) ("The Constitution also requires adherence to precinct lines, but Wisconsin no longer has precincts").

36 Wis. Stat. § 5.15(1)(b).

37 Wis. Stat. § 5.15(1)(c) (once adopted ward boundaries may not be changed for a decade "unless a division is required to effect an act of the legislature redistricting legislative districts under article IV, section 3, of the constitution or redistricting congressional districts"). See also Michael Keane, "Redistricting in Wisconsin," Wisconsin Legislative Reference Bureau, 12 (Apr. 1, 2016) (2011 plan was "notable for having abandoned the prevailing ward-based method of redistricting in favor of a block-based plan put forth before local governments had finished with their local lines").

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summarized the constitution as prohibiting “the creation of an assembly district which took in portions of more than one county unless it took in all of such counties.”³⁸ Later, in 1964, when the Supreme Court was forced to redistrict the state, “[c]ounty lines [were] held inviolable. Assembly districts consist of either a whole county, several whole counties or several assembly districts placed wholly within a single county.”³⁹ However, these strict applications of the whole county rule predated federal Supreme Court decisions requiring equal population between districts. In modern redistricting, the rule must frequently yield because it is not mathematically possible to respect all county boundaries while maintaining equipopulous districts. As a result, “[a]lthough avoiding the division of counties is no longer an inviolable principle, respect for the prerogatives of the Wisconsin Constitution dictate that wards and municipalities be kept whole where possible.”⁴⁰

When a county must be split to fashion two or more assembly districts, older case law suggests the legislature has broad discretion to “group towns as they may see fit, and to group wards as they may see fit, or to group towns and wards as they may see fit, provided that in doing so they do not violate any of the provisions of the constitution,” which might include compactness, for example.⁴¹ In the modern

era, this discretion would also certainly be limited by the Voting Rights Act, which may in some contexts require the grouping of certain wards and towns to create majority-minority districts.

Assembly – Compactness: Assembly districts must be “in as compact form as practicable.”⁴² The term “compactness,” as used in the State Constitution, has not been defined by the Wisconsin Supreme Court.⁴³ However, a federal district court has interpreted the provision “as meaning closely united in territory.”⁴⁴ Courts have interpreted the compactness criterion as referring to geographic shape, as opposed to the so-called “functional approach” to compactness, which looks at how communities relate to one another, used in some other states. For example, “hollow” districts shaped like a donut or districts that “wiggle and meander without any discernible reason” are non-contiguous.⁴⁵ Similarly, courts have justified legislative maps by looking at mathematical compactness scores of the districts.⁴⁶

However, because compactness must only be respected “as practicable,” courts have consistently held this criterion “is not absolute” and is of “secondary importance” to other criteria.⁴⁷ In addition, “[p]ractical factors such as natural or political subdivision boundaries may legitimately vary the shapes of

38 *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 656 (1953).

39 *State ex rel. Reynolds v. Zimmerman*, 23 Wis. 2d 606, 606 (Wis. 1964).

40 *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 U.S. Dist. LEXIS 29373, at *11-12 (E.D. Wis. May 30, 2002).

41 *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 150, 53 N.W. 35, 57 (1892).

42 Wis. Const. art. IV, §4.

43 *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (Supreme Court has not defined compactness). In a separate but related context – the incorporation of new villages which, under state statute, must have compact area, and whose boundaries must then be respected in state redistricting – the Court said: “In view of legislative concern over attenuated annexations and gerrymandered ‘shoestring’ shaped districts, we conceive that the requirement of ‘compactness’ is addressed primarily to the regularity of the shape of the proposed annexation.” *Scharping v. Johnson*, 32 Wis. 2d 383, 392 (Wis. 1966).

44 *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (citation omitted).

45 *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982). See also *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 151 (1892) (where the “smallest district is entirely surrounded by one of the other districts,” it “thus destroy[s] compactness in the outside district”).

46 See, e.g., *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 U.S. Dist. LEXIS 29373, at *23 (E.D. Wis. May 30, 2002) (“District compactness levels are also higher than those for the Jensen and Baumgart plans, using the smallest circle and perimeter to area measures”).

47 *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982). See also *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 151 (1892) (“Compactness, being of lesser importance, may to some extent yield in aid of securing a nearer approach to equality of representation”); *State ex rel. Attorney Gen. v. Cunningham*, 81 Wis. 440, 530 (1892) (Lyon, C.J., concurring) (compactness is “largely modified by other constitutional rules, especially the rule which prohibits the dismemberment of towns and wards. The mode of compliance therewith must necessarily rest largely in the discretion of the legislature.”).

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districts. In other words, districts should be reasonably, though not perfectly, compact.”⁴⁸

Assembly & Senate – Contiguity: State assembly and senate districts must be composed of “contiguous territory.”⁴⁹ In an early redistricting case, the Wisconsin Supreme Court defined “contiguous territory” to mean that a district “cannot be made up of two or more pieces of detached territory.”⁵⁰ However, at least one court has not treated this standard strictly. In the 1990s a federal district court approved of noncontiguous districts, to the degree that non-contiguity enabled keeping towns that were themselves non-contiguous in a single district.⁵¹

The Wisconsin Supreme Court has not discussed whether other common forms of redistricting abuse, such as a liberal definition of water contiguity (allowing contiguity across bodies of water even where there is no bridge or ferry access) or point contiguity (where two parts of a district touch only at a single point), are permissible. Within the context of city annexations, which are only permitted as to “contiguous” territory, Wisconsin state courts have generally found contiguity where there is “a significant degree of physical contact between the annexed territory and the municipality’s boundary, or when any separation between the two boundaries is de minimis.”⁵²

As contrasted with the assembly contiguity requirement, state senate districts must be composed of “convenient” contiguous territory.⁵³ The Wisconsin Supreme Court has provided little guidance as to how convenient contiguity differs from traditional contiguity. In one case the Court suggested, in dictum, that convenience was “in the discretion of the legislature.”⁵⁴ In Minnesota, which has an almost identical requirement for “convenient contiguity,” that state’s Supreme Court has interpreted the requirement to mean, in part, “that a district must be within easy reach; easily accessible.”⁵⁵ An example of a convenient contiguous district would be one whose communities are all connected by thoroughfares, such as highways.⁵⁶

Senate – Nesting: The state constitution prohibits an assembly district from being “divided in the formation of a senate district.”⁵⁷ Because Wisconsin has 33 Senate districts and 99 assembly districts, three assembly districts must be placed perfectly inside (or “nested”) within one senate district.⁵⁸ In 2011, Assembly districts were perfectly nested within senate districts; however, other states with nesting requirements have sometimes violated this provision when necessary to comply with other criteria or with federal law, particularly the Voting Rights Act.⁵⁹

48 *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982).

49 Wis. Const. art. IV, §4, §5.

50 *State ex rel. Lamb v. Cunningham*, 83 Wis. 90, 148, 53 N.W. 35, 57 (Wis. 1892). See also *Wis. State AFL-CIO v. Elections Bd.*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (quoting Lamb).

51 *Prosser v. Elections Bd.*, 793 F. Supp. 859, 866 (W.D. Wis. 1992). The district court explained: “Between Prosser IIIA and the legislative plan, the differences are few. Both districting plans create districts having a high degree of compactness and contiguity, with one exception. Towns in Wisconsin are permitted to annex noncontiguous areas, and this is sometimes done. The legislative plan treats these “islands,” as the noncontiguous annexed areas are called, as if they were contiguous, but the Prosser plans require literal contiguity and therefore always place the area between an island and the town that owns it in the same district with the town and the island. Since the distance between town and island is slight, we do not think the failure of the legislative plan to achieve literal contiguity a serious demerit; and we note that it has been the practice of the Wisconsin legislature to treat islands as contiguous with the cities or villages to which they belong. Wis.Stat. §§ 4.001(3), 5.15(1)(b). We are not persuaded by the plaintiffs’ argument that the Wisconsin constitution requires literal contiguity.” *Id.*

52 *Town of Lincoln v. City of Whitehall*, 912 NW 2d 403, 413 (Wis. Ct. App. 2018).

53 Wis. Const. art. IV, §5.

54 *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 654 (1953).

55 *Zachman v. Kiffmeyer*, No. CO-01-160, 2002 Minn. LEXIS 884, *9 (Minn. 2002) (Supreme Court acting as Special Redistricting Panel) (citations and brackets omitted). See also *Hippert v. Ritchie*, 813 NW 2d 391, 401 (Minn. 2012).

56 *Hippert v. Ritchie*, 813 NW 2d 391, 401 (Minn. 2012).

57 Wis. Const. art. IV, §5.

58 See Wis. Stat. § 4.001 (“This state is divided into 33 senate districts, each composed of 3 assembly districts.”).

59 See, e.g., Raphael J. Sonenshein, “When the People Draw the Lines,” *League of Women Voters of California*, 54 (2013) (few California Assembly districts nested in Senate districts due to state and federal requirements).

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Other Criteria: Courts and the legislature have also adopted other redistricting goals, not expressly provided in the constitution, for example preserving city boundaries and uniting communities of interest.⁶⁰

General Civil Rights Protections: Although partisan gerrymandering claims are not justiciable under the U.S. Constitution, they may be under general state civil rights protections.⁶¹ In North Carolina and Pennsylvania, general civil rights protections have been used to strike down partisan gerrymanders. Wisconsin's constitution includes similar provisions, like guarantees of free speech, free assembly, due process, and equal protection. However, these provisions have not been applied by a Wisconsin court in the redistricting context.

THREAT 5: ARE RIGGED ELECTION MAPS HARD TO CHALLENGE IN COURT?

There are no special legal procedures for redistricting cases. As discussed above, the Wisconsin Supreme Court is considering a petition asking that Court to assume original jurisdiction over all redistricting cases; however, the Court seems unlikely to adopt this rule.

Legal Standard: Redistricting bills, like “[a]ll legislative acts[,] are presumed constitutional” and courts should “indulge every presumption to sustain the law.”⁶² Wisconsin courts have also noted that “[b]ecause controversies over apportionment are ordinarily political in nature, courts should be hesitant

to intervene therein.”⁶³ An older line of cases also provides that, in “viewing the fairness of the apportionment, the whole scheme of the statute must be taken into account, and not isolated instances where the legislature has fallen short of a perfect result,” which might excuse some deviations from the state constitution’s redistricting criteria.⁶⁴

Supreme Court: The Wisconsin Supreme Court is the final arbiter of the legality under state law of any redistricting plan adopted by the legislature. The Supreme Court consists of seven members elected to ten-year terms in non-partisan elections.⁶⁵ However, when there is a vacancy on the Court, the governor may appoint the replacement justice.⁶⁶

Prior History: Wisconsin’s legislative and congressional redistricting plans from the 2010 cycle were challenged for racially-discriminatory and partisan gerrymandering. A federal district court ordered the redrawing of two assembly districts to comply with the Voting Rights Act. A separate district court held that the assembly maps were the product of partisan gerrymandering in violation of the federal Equal Protection Clause; however, the decision was appealed to the U.S. Supreme Court, which remanded for the Court to reconsider its test of partisan gerrymandering. In the interim, the Supreme Court decided *Rucho v. Common Cause*, which held that partisan gerrymandering claims are not justiciable under the U.S. Constitution. As a result, the Wisconsin district court dismissed the partisan gerrymandering lawsuit.⁶⁷

60 *Baumgart v. Wendelberger*, No. 01-C-0121, 2002 U.S. Dist. LEXIS 29373, at *20 (E.D. Wis. May 30, 2002).

61 Wis. Const. art. I §3, §4, §8, §9, §15.

62 *Madison Teachers, Inc. v. Walker*, 851 NW 2d 337, 349 (Wis. 2014). See also *State ex rel. Broughton v. Zimmerman*, 261 Wis. 398, 411 (1952); *State ex rel. Bowman v. Dammann*, 209 Wis. 21, 28 (1932).

63 *State ex rel. Broughton v. Zimmerman*, 261 Wis. 398, 412-413 (1952). Compare with *Jensen v. Wis. Elections Bd.*, 249 Wis. 2d 706, 713 (Wis. 2002) (“Despite the reality that redistricting is now almost always resolved through litigation rather than legislation, we are moved to emphasize the obvious: redistricting remains an inherently political and legislative—not judicial—task”).

64 *State ex rel. Thomson v. Zimmerman*, 264 Wis. 644, 648, 60 N.W.2d 416, 417 (1953).

65 Wis. Const. art. VII, §4(1).

66 Wis. Const. art. VII, §9.

67 National Conference of State Legislatures, “Redistricting Case Summaries” (Upd. Dec. 1, 2020), <https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx>.

WYOMING

REDISTRICTING SUMMARY



Threat 1: Can politicians control how election maps are drawn?

HIGH RISK	Maps are drawn solely by the state legislature to be passed by a simple majority and then signed or vetoed by the governor. To override the veto, it takes 2/3 support in each legislative body. Wyoming has a single at-large congressional district, and is not expected to gain any additional seats after the 2020 Census.
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Threat 2: Can election maps be drawn in secret?

HIGH RISK	While there are no required public hearings, they appear to be past practice. In the summer of 2011, the redistricting committee held public hearings across the state. Further, the committee also allowed people to leave comments on its website.
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Threat 3: Can election maps be rigged for partisan gain?

HIGH RISK	There is a high risk of partisan abuse as Republicans have strong majorities in both houses as well as control of the governorship. Maps only need a simple majority in each house to pass. Even if the Republican governor vetoes the maps, it would still be easy to overturn the veto with 2/3 support as Republicans make up 85% of the Senate and 93% of the House. There are no apparent constraints on the legislature's ability to redistrict for partisan benefit.
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Threat 4: Are the legal standards weak?

HIGH RISK	The criteria in the constitution are very limited, with no state-level constraints placed on state legislative districts. Constitutional language requires congressional districts be compact and contiguous and avoid county splits, though Wyoming has only one congressional district at this time. Beyond that, there were additional guidelines passed in 2011 to protect the voting power of minority communities, but similar guidelines have not been introduced for this cycle. There are no protections against partisan maps, prison gerrymandering, or non competitive districts in any of the criteria.
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Threat 5: Are rigged election maps hard to challenge in court?

MODERATE RISK	While maps are not automatically reviewed, citizens do have the right to challenge unfair maps in an unspecified court. In the past two cycles, there was only one challenge and it was heard in the WY District Court in Laramie County. Even though the challenge was heard, the maps were not altered.
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WYOMING REDISTRICTING SUMMARY

REDISTRICTING PROCESS		REDISTRICTING CRITERIA	
Redistricting Body:	Legislature	Source:	Wyoming Const. Art. III, Sect. 48
Supermajority Vote Needed?	No	Requires:	No state-level requirements for legislative lines. Constitution requires congressional districts to be compact, contiguous, and avoid county splits.
Governor Signs/Veto?	Yes	Prohibits:	None
Special Legal Process?	Citizens can challenge maps in WY District Court.	Allows:	None

DEADLINE/PUBLIC PARTICIPATION		POLITICAL CONTROL	
Redistricting Deadline:	No deadline	United/Divided Government?	United - Republican
Hearings start:	Not clear	Governor:	Mark Gordon (R)
Required # of Hearings:	None required	State House:	51R - 7D - 1I - 1L (R: 85%)
Public Comment:	None required (But past practice)	State Senate:	28R - 2D (R: 93%)
Likely Committees:	Senate Redistricting Task Force House Redistricting Committee	Veto-Proof Leg. Supermajority?	Yes (2/3)
		Supreme Court:	Appointment by Governor, assisted by the Wyoming Judicial Nominating Commission: 5 judges, officially nonpartisan. All appointed by Gov. Matt Mead (R)

Timing note: The only deadline on the redistricting process is that it must be completed at the first budget session following the Census. Next year, this session starts on February 14, 2022. In the last two redistricting cycles, maps were passed by March 1st of their respective years and signed by the governor just days later.

Citations and references: Wyoming Const Art. III, §48

Relevant recent cases: Hunzie v. Maxfield, No. 179-562 (Wyo. Dist. Ct., Laramie Cnty. Nov. 30, 2015).



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