

Redistricting in Illinois

Justin Levitt



**ILLINOIS
(status quo)**

KEY POINTS:

The state legislature draws congressional districts, subject only to federal constitutional and statutory limitations. The legislature also has the first opportunity to draw state legislative districts, but if it cannot agree on a plan, a backup commission with a random tiebreaking vote will draw the lines.

Article IV of the Illinois Constitution governs redistricting. In the 2001 cycle, control was divided, with a Republican Governor, a Senate controlled by Republicans, and a House controlled by Democrats. The state legislative redistricting process deadlocked, and control fell to the backup commission, controlled by Democrats after the random draw of a Democratic tiebreaking commissioner.

PROCESS:

Congressional districts are currently drawn by the state legislature, subject only to federal constitutional and statutory limitations.

For state legislative districts, the state legislature is responsible for producing a plan, but if it cannot do so by June 30, 2011, control will fall to an eight-member commission. The House and Senate majority and minority leaders each choose one legislator and one non-legislator to serve on the commission. If those eight cannot agree on a plan (by majority vote) by August 10, 2011, the Supreme Court submits two individuals from different political parties to the Secretary of State, and the Secretary of State will randomly choose one of the two to serve as a tiebreaker on the commission. The commission's plan must be adopted by October 5, 2011. The Illinois Supreme Court may review adopted plans, but will not issue plans of its own; in the event that a plan is declared invalid, the commission must make another attempt.

- **Independence from Legislators:** Even if the backup commission assumes control, eight of the commissioners are directly selected by legislators (indeed, four are themselves legislators). The tiebreaking commissioner is independent in that he or she is chosen by a non-legislative body, but the Supreme Court may nominate legislators for that position, or those beholden to legislators.
- **Partisan Balance:** The backup commission begins with a balanced partisan composition. If it deadlocks, the tiebreaking commissioner is likely to be affiliated with one of the two major parties, which allows one party a majority, and therefore control of the redistricting process. This theoretically has the potential to foster decisionmaking with a partisan balance, to avoid the random selection of an adverse tiebreaker; in practice, both parties have preferred to take a chance on the random draw.
- **Minority Participation:** There are no specific provisions for reflecting diversity in the commission's membership, and the commission's relatively small size makes such diversity difficult to ensure.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** State legislative districts may not be drawn more than once per decade; there is no similar prohibition on redrawing congressional districts.

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CRITERIA:

Congressional districts are currently drawn by the state legislature, subject only to federal constitutional and statutory limitations.

State legislative districts must be contiguous and reasonably compact, and follow the federal standard of “substantially equal” population (which in any event must be within a 10% spread from largest district to smallest). Otherwise, there are no restrictions on the way in which districts may be drawn.

- **Population Equality:** The current criteria allow substantial population disparity; some residents’ votes may be more valuable than others. There is also no express provision to determine whether the state must rely on the count conducted by the federal census (which counts incarcerated persons where they are incarcerated).
- **Minority Rights:** Courts have suggested that the provision of the Illinois Constitution requiring free and equal elections may prohibit vote dilution on the basis of race, independent from the protections of federal law, but the suggestion has not been further explained.
- **Compactness:** There is a general requirement that districts be reasonably compact. Courts have suggested that obvious deviations from a reasonably compact standard should be justified by some neutral principle, but have not further enforced this suggestion.
- **District Competition:** There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance:** The partisan structure of the backup commission theoretically has the potential to foster decisionmaking with a partisan balance, to avoid the random selection of an adverse tiebreaker. In practice, both parties have preferred to take a chance on the random draw, and the winners have generally drawn districts favorable to the party controlling the commission.
- **Preservation of Political Boundaries:** There is no provision encouraging or discouraging preservation of political boundaries.
- **Communities of Interest:** There is no provision expressly concerning communities of interest.
- **Nesting:** Each state Senate district must comprise two House of Representatives districts, tying each house’s districts to the other.
- **Incumbent Residence:** The current criteria do not prohibit those drawing the lines from considering the residences of incumbents, allowing intentional harm (or benefit) to individual legislators, but also reducing the likelihood of unintentional impact on incumbents.

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**ILLINOIS
(HC 16: 2009)**

KEY POINTS:

The proposed constitutional amendment would not affect congressional districts. For the state legislature, the amendment would create separate tracks for Senate and House districts. Each house would have the first opportunity to pass a plan, by three-fifths supermajority; if no plan is agreed upon, control would pass to a four-member bipartisan commission selected by the leadership of that house; and if a plan were still not produced, Supreme Court judges from opposing parties would select a Special Master to produce a map. The criteria to be used in drawing state legislative districts would remain much as in present law, with some additional protection for minority citizens and additional consideration for political boundaries.

PROCESS:

The proposal would retain the current structure for congressional districts: drawn by the state legislature, and subject only to federal constitutional and statutory limitations.

For state legislative districts, the proposal would decouple the process of drawing House and Senate districts. Each legislative house would have primary responsibility for drawing its own lines, by a supermajority vote of three-fifths of the members (and without the prospect of gubernatorial veto). If either house fails to produce a plan by June 30, 2011, control for that house's districts would fall to a four-member commission, with the majority and minority leadership each choosing two commissioners. If that four-member commission fails to produce a plan by July 31, 2011, the proposal contemplates a backup to the backup: the Chief Justice of the Supreme Court and one supreme Court judge of the opposing party appoint a Special Master to draw the district lines.

- **Independence from Legislators:** Even if the backup commission assumes control, all of the commissioners are directly selected by legislators. Only if the process proceeds to a Special Master is there any prospect of independence from the legislative leadership.
- **Partisan Balance:** If the legislature is relatively balanced, the supermajority requirement, the structure of the backup commission, and the choice mechanism for the Special Master should all foster a balance among the major political parties in the composition of the line-drawing entity. However, it is important to note that the state Senate is presently 63% Democratic, and the state House is presently 59% Democratic. If either party controls either house by 60%, the proposal would allow that party to control the redistricting process entirely. In the fifty state legislatures, one party currently controls 60% or more of 28 lower houses and 28 upper houses.
- **Minority Participation:** If the process falls to the backup commission, there are no specific provisions for reflecting diversity in the commission's membership, and the commission's small size makes such diversity difficult to achieve.
- **Public Input:** The proposal gives the backup commission power to hold public hearings, but does not require any such hearings.
- **Timing:** The existing state constitution has been construed to prohibit drawing state legislative districts more than once per decade. The proposal would retain some of the same language, but in different context; it is likely, but not certain, that the proposal would be construed to prohibit drawing both state legislative and congressional districts more than once per decade.

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**ILLINOIS
(HC 16: 2009)**

CRITERIA:

Under the proposal, congressional districts would continue to be subject only to federal constitutional and statutory limitations.

The proposal would continue the existing requirement that state legislative districts be compact, contiguous, and “substantially equal” in population. It would also add a requirement that districts “reflect minority strengths,” and require that political boundaries be “consider[ed].”

- **Population Equality**: The proposal would continue to allow substantial population disparity; some residents’ votes may be more valuable than others. There is also no express provision to determine whether the state must rely on the count conducted by the federal census (which counts incarcerated persons where they are incarcerated).
- **Minority Rights**: Courts have suggested that the provision of the Illinois Constitution requiring free and equal elections may prohibit vote dilution on the basis of race, independent from the protections of federal law, but the suggestion has not been further explained. The proposal creates additional protection of minority rights, independent from federal law, in the requirement to “reflect minority strengths”; it is unclear precisely how this provision would be interpreted, or whether it would reflect different protections than the “free and equal elections” provision above.
- **Compactness**: The proposal maintains the general mandate that districts be reasonably compact. Courts have suggested that obvious deviations from a reasonably compact standard should be justified by some neutral principle, but have not further enforced this suggestion.
- **District Competition**: There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance**: Other than the supermajority voting rules discussed earlier, the composition of the commission, and the selection process for the Special Master, there is no provision expressly encouraging or discouraging statewide partisan balance.
- **Preservation of Political Boundaries**: The proposal requires consideration of political boundaries, without specifying which boundaries (wards, municipalities, counties, or some combination thereof) are to be considered. It is not clear how this requirement would be enforced.
- **Communities of Interest**: There is no provision expressly concerning communities of interest.
- **Nesting**: The proposal would eliminate the existing nesting requirement that ties each house’s districts to the other. Eliminating the nesting requirement permits more flexibility in designing districts.
- **Incumbent Residence**: The proposal would not prohibit those drawing the lines from considering the residences of incumbents, allowing intentional harm (or benefit) to individual legislators, but also reducing the likelihood of unintentional impact on incumbents.

Redistricting in Illinois

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**ILLINOIS
(SC 69: 2009)**

KEY POINTS:

The proposed constitutional amendment would establish a five-person advisory commission selected by the legislative leadership, to draw drafts of both congressional and state legislative districts. These plans would then be submitted to the legislature, which would have two opportunities to vote plans up-or-down, by a supermajority, without modification; on the third pass, a supermajority of the legislature may modify the draft plan as it pleases, and if this plan also fails to pass, the Illinois Supreme Court engages in responsive rounds with the commission until a plan passes muster. The plan itself is heavily weighted to the preservation of whole political units, with a ban on using political data in the redistricting process.

PROCESS:

Draft district lines for both state legislative and congressional districts would be prepared by a five-member commission, none of whom may hold partisan political office or be the immediate family member of a legislator. The House and Senate majority and minority leaders would each choose one member, and those four would, by majority vote, choose their fifth colleague.

Any plan must be approved by affirmative vote of four of the five commissioners. Further approval of a plan proceeds much as in Iowa, with up to three submissions to the legislature; the principal departure from the Iowa model is the requirement of a supermajority. By April 25, 2011, the commission must adopt plans and submit them to the legislature for an up-or-down vote; districts for each state legislative house must be passed by a resolution of that house supported by a 2/3 vote, and congressional districts must be passed by a joint resolution supported by 2/3 of each state house. If a plan fails to pass, the commission must propose a substitute within two weeks, to be submitted for a similar up-or-down supermajority vote; if the legislature rejects this second plan, the commission must propose a final substitute within a week, which can be approved, rejected, or modified by a supermajority of the appropriate legislative house. If no legislative agreement can be reached, the final plan is reviewed by the Illinois Supreme Court; if 2/3 of the members of the Court approve the plan, it becomes law, and if not, the commission is to amend its plan in accord with the Court's findings until 2/3 of the Court can accept the plan.

- **Independence from Legislators:** Four of the five commissioners are chosen directly by legislators; though none of the commissioners may themselves be partisan public officials, the proposal does not appear to preclude those who may be beholden to the legislative leadership, including legislative staff. Moreover, the plan does not give a veto to the commissioner not chosen directly by legislators, which could foster a bipartisan but incumbent-protective map. Finally, the legislature has a structural incentive to “wait out” the commission, rejecting the first two proposals in order to enact their own plan; in Iowa, where the same structure exists, the legislature has not stalled in order to submit their own plan, but I do not know whether Illinois legislators would be inclined to take the same approach.
- **Partisan Balance:** The structure of the commission provides a partisan balance among the commissioners.
- **Minority Participation:** There are no specific provisions for reflecting diversity in the commission's membership, and the commission's small size makes such diversity difficult to ensure.
- **Public Input:** The proposal provides for at least five public hearings, but only after the commission has developed and approved its first plan. Though the proposal precludes the use of partisan political data, it does not require that the remaining underlying data used in composing maps be made available to the public.
- **Timing:** The existing state constitution has been construed to prohibit drawing state legislative districts more than once per decade. The proposal would retain some of the same language, but in different context; it is likely, but not certain, that the proposal would be construed to prohibit drawing both state legislative and congressional districts more than once per decade.

Redistricting in Illinois

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**ILLINOIS
(SC 69: 2009)**

CRITERIA:

Under the proposal, congressional districts would continue to be subject only to federal constitutional and statutory limitations. It is not clear whether the proposal's attempt to prohibit the consideration of political data would extend to congressional districts.

The proposal would continue the existing requirement that state legislative districts be compact, contiguous, and "substantially equal" in population. It would also attempt to preserve whole political units – counties and municipalities – in state legislative districts, by requiring that as few districts as possible cross county or municipal boundaries. The bill also prohibits considering the residence of incumbents or political data, at least in the drawing of state legislative districts.

- **Population Equality:** The proposal would continue to allow substantial population disparity; some residents' votes may be more valuable than others. There is also no express provision to determine whether the state must rely on the count conducted by the federal census (which counts incarcerated persons where they are incarcerated).
- **Minority Rights:** Courts have suggested that the provision of the Illinois Constitution requiring free and equal elections may prohibit vote dilution on the basis of race, independent from the protections of federal law, but the suggestion has not been further explained. There is no further independent protection of minority rights in the proposal. The proposal would prohibit the consideration of political data, which is likely to be superseded in some regions of the state by the need to consider political data for purposes of fulfilling state responsibilities under the Voting Rights Act.
- **Compactness:** Other than the requirement to minimize the number of districts crossing county or municipal lines, the proposal maintains the general mandate that districts be reasonably compact. Courts have suggested that obvious deviations from a reasonably compact standard should be justified by some neutral principle, but have not further enforced this suggestion.
- **District Competition:** There is no provision encouraging or discouraging competition within a district. The proposal would prohibit the consideration of political data entirely.
- **Statewide Partisan Balance:** Other than the composition of the commission, and the supermajority voting requirements in the legislature and on the Supreme Court, there is no provision expressly encouraging or discouraging statewide partisan balance. Although the proposal would prohibit the consideration of political data, research suggests that minimizing the division of counties may result in Illinois in a statewide partisan imbalance favoring Republicans, particularly in the State Senate.
- **Preservation of Political Boundaries:** The proposal would emphasize the preservation of political units, and particularly the minimal division of counties and municipalities. Research suggests that this emphasis may result in Illinois in a statewide partisan imbalance, particularly in the State Senate. Moreover, to the extent that communities of common interest bridge political boundaries, this may limit the opportunity to accommodate such communities.
- **Communities of Interest:** There is no provision expressly concerning communities of interest.
- **Nesting:** The proposal would eliminate the existing nesting requirement that ties each house's districts to the other. Eliminating the nesting requirement permits more flexibility in designing districts.
- **Incumbent Residence:** The proposal would prohibit those drawing the lines from considering the residences of incumbents, reducing the likelihood of intentional harm (or benefit) to individual legislators, but also posing the potential for unintentional impact on incumbents.