

A Better Way to Draw Districts

How to Design Independent, Inclusive, and Transparent Redistricting Commissions

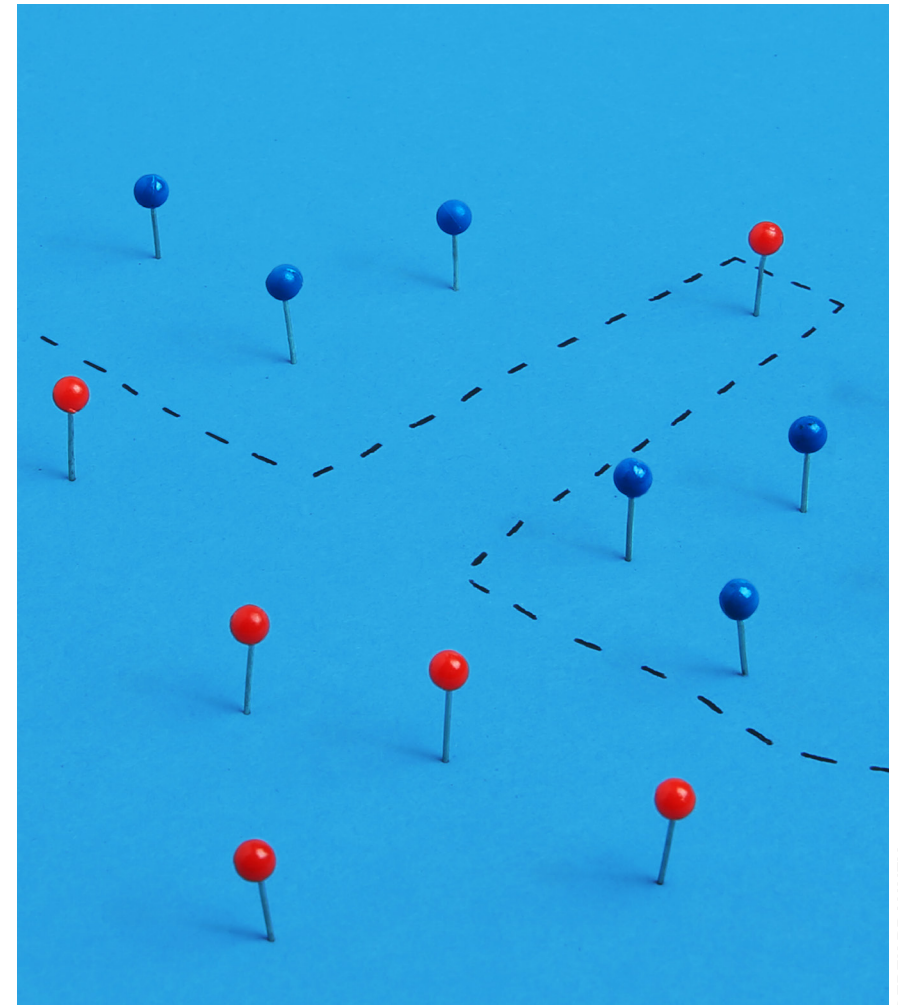
By Yuri Rudensky and Annie Lo PUBLISHED DECEMBER 12, 2019

After the census every 10 years, states redraw legislative and congressional district boundaries. This is often a fraught process, with massive potential for abuse. Most states currently draw districts through their ordinary legislative process, though there are a number of variations. Typically, each chamber of the state legislature passes maps by a simple majority vote, and the governor can veto the result.

Problems arise when state government is controlled by a single party. Even if the advantage is slim, the redistricting process can then be subverted for partisan gain or to discriminate against racial and ethnic minorities, with maps drawn behind closed doors and with little or no public input.

Independent redistricting commissions are an effective solution against such abuses. But some work better than others. The success of a commission depends largely on its structure and its internal system of checks and balances. Carefully designing a commission to promote core values like independence, inclusivity, good-faith negotiation, and transparency is critical to fair redistricting that protects community interests and guards against partisan and racial gerrymandering.

This annotated guide and accompanying model bill lay out the internal design and logic of a redistricting commission that promotes these values. This sample language can, with minimal adjustment, be adapted to account for state-specific needs and political realities.



DEREK BRAHNEY

Convening a Commission

Commission Composition

A core principle of good redistricting reform is that all stakeholders should be at the table when maps are drawn. No one political party, or even the two major parties acting in tandem, should be able to hijack the redistricting process.

To put this into practice, a commission should have an equal number of Republicans, Democrats, and third-party or independent voters. This will make sure that all sides are meaningfully represented in the process.

This composition is unlikely to mirror a state's actual partisan split. But that is not the goal of a redistricting commission. Rather, giving equal representation to the three categories of voters helps create a power balance where no individual or caucus can dictate outcomes and where the views of all interest groups can be considered.

The Commission shall consist of fifteen commissioners:¹

Five commissioners who are [affiliated] with the largest political party in the State,

Five commissioners who are [affiliated] with the second-largest political party² in the State, and

Five commissioners who are [affiliated] with neither the largest nor second-largest party in the State.³

The Commission as a whole shall reflect the State's geographic and demographic diversity to the greatest extent practicable.

1. A larger commission size helps ensure geographic, political, and racial diversity. Fifteen members seems to be something of a sweet spot. It is large enough to avoid deadlock and giving any individual too much power and small enough to allow for nimble decision-making.

2. In many states, a voter's party registration correlates closely with party identity and can be used as a proxy to develop a balance. Where this is not the case, or in states that do not have party registration, it is important to come up with a stand-in.

3. These would include independents and those affiliated with minor parties.

Qualifications

The difference between a truly independent redistricting commission and a political commission comes down to who puts pen to paper and how they are selected.

For a commission to be independent, map drawers must be at arms' length from the politicians and political parties that stand to gain from redistricting decisions. Limits on who is eligible to serve as a commissioner are important safeguards for making sure maps are drawn fairly.

Close family, business, or professional ties to elected officials, campaigns, political parties, or certain arms of state government can create, at least, the appearance of impropriety and provide backdoor mechanisms for interested parties to improperly influence the redistricting process.

A person shall be eligible to serve¹ if, during the [six years] prior, the person:

Has continuously resided in the State;

Has voted in [two of the last three] statewide general elections in even-numbered years; and

Has been continuously [affiliated] with the largest or second-largest political party or with neither of these parties.

A person shall not be eligible to serve² if, during the [six years] prior, the person:

Has been a candidate for or has been elected to any federal, state, or [local] office;

Has served as an elected or appointed member of the committee of a political party;

Has served as an officer, employee, or paid consultant of a political party, political action committee, campaign committee of a candidate for federal or state office, current statewide officeholder, member of the [legislature], or member of Congress; or

Has been registered as a state or federal [lobbyist].

No person with [an immediate family relationship] with a current statewide officeholder, member of the [legislature], member of Congress, or member of the [independent agency]³ is eligible to serve as commissioner.

1. These qualifications ensure that whomever is selected has been a resident of the state for a meaningful stretch of time and has been consistently engaged in elections with the same partisan preferences.

2. These disqualifications target the conflicts of interest that individuals with a personal stake in electoral outcomes may have. Commissioners should be motivated by community-centered concerns and not political aims. These requirements are important, but they should not be so onerous that they exclude otherwise qualified people.

3. These disqualifications should also cover people who have familial ties with current officials, because they too may be inclined to promote private interests over the public good.

Commissioner Selection

Commissioner selection that best promotes independence has safeguards to buffer the process from political actors.

But how a particular state accomplishes this can differ to account for state-specific dynamics. This is particularly true in states with no ballot initiative process. In those states, where reform must go through legislators, lawmakers may insist on retaining a bigger role in the commissioner selection process.

Despite the importance of commissioner selection, it is not the be-all and end-all. Perceived weaknesses in appointment processes with more political involvement can largely be mitigated by establishing strong commissioner qualifications and clear, prioritized redistricting criteria.

The **[independent agency]¹** shall select 120 applicants who meet all qualifications and fairly represent the **[number of]** geographic regions of the State. In making selections, the **[independent agency]** shall give due consideration to maintaining racial, ethnic, and gender diversity.

1. A trusted agency or set of officials should be designated to administer the commission application and selection process. It is best if this entity is apolitical and is seen as an honest broker.

The 120 persons shall be divided into three pools:² **40 persons** who are **[affiliated with]** the largest political party, **40 persons** who are **[affiliated with]** the second-largest political party, and **40 persons** who are **[affiliated]** with neither of the two largest political parties.

2. Pooling commissioners is necessary to facilitate partisan balance. The pools should be sufficiently large to make it difficult to game the applicant pool and to allow for geographic and ethnic diversity.

The **[independent agency]** shall interview the **120 persons³** screening for applicants who are **compromise-oriented, able to be impartial, and have respect for the State's diversity.** The three pools shall then be reduced by 10 persons each. The majority and minority leaders in each chamber of the **[legislature]** shall review the 90 applicants for up to two weeks and may each strike up to two applicants from each pool.

3. Redistricting requires people who are fair-minded and have the necessary skills to undertake in the complicated process of drawing maps. Interviews help ensure these values are promoted as the pools are winnowed down.

From the applicants remaining, the **[independent agency]** shall **randomly appoint three commissioners from each pool.** These nine commissioners shall then by majority vote, including the vote of at least one commissioner from each pool, **appoint the final six commissioners from the persons remaining,⁴** two from each pool. These final six commissioners shall be appointed to ensure that the Commission is as representative of the State's geographic and demographic diversity as possible.

4. Random selection ensures that commissioners do not owe their appointment to elected officials. But random selection also can produce odd results. A hybrid system that includes some targeted selection makes sure that the commission is representative of the state.

Commissioner Diversity

The demographics of the commission should be representative of the state. Racial, geographic, and gender diversity is crucial for public confidence in the process, improves the breadth of commission knowledge, and produces better decisions.

In practice, this means commissioner selection should not be entirely random. Even with a balanced pool of applicants, a random draw can produce a commission where one part of the state, racial group, or gender is grossly overrepresented. Instead, some commissioners should be selected intentionally, with an eye toward representativeness.

But quotas on the basis of race or gender are legally impermissible. That is why a holistic assessment of applicants that considers various relevant skills and characteristics is the preferred way to select commissioners.

The [independent agency] shall select 120 applicants who meet all qualifications and fairly represent the [number of] geographic regions of the State. In making selections, the [independent agency] shall give due consideration to maintaining racial, ethnic, and gender diversity.¹

The 120 persons shall be divided into three pools: 40 persons who are [affiliated] with the largest political party, 40 persons who are [affiliated] with the second-largest political party, and 40 persons who are [affiliated] with neither of the two largest political parties.

The [independent agency] shall interview the 120 persons screening for applicants who are compromise-oriented, able to be impartial, and have respect for the State's diversity.² The three pools shall then be reduced by 10 persons each. The majority and minority leaders in each chamber of the [legislature] shall review the 90 applicants for up to two weeks and may each strike up to two applicants from each pool.

From the applicants remaining, the [independent agency] shall randomly appoint three commissioners from each pool. These nine commissioners shall then by majority vote, including the vote of at least one commissioner from each pool, appoint the final six commissioners from the persons remaining, two from each pool. These final six commissioners shall be appointed to ensure that the Commission is as representative of the State's geographic and demographic diversity as possible.³

1. Promoting diversity starts with having a diverse pool of applicants. The independent agency should work to make the initial pool closely mirror the demographic and geographic distribution and makeup of the population as a whole.

2. All commissioners should have respect for those different than themselves. Bias against any communities should not be tolerated among potential commissioners.

3. The randomly selected commissioners should keep an eye toward geographic, gender, and racial diversity as they appoint the remainder.

Commissioner Removal

Commissioners must conduct themselves with integrity and fairness. If a commissioner fails to do so or is unable to continue in the position, there should be a mechanism to remove that commissioner.

But the removal process itself must also be insulated from politics. We recommend making the removal process subject to the same voting rules as other commission decisions (i.e., requiring support from commissioners from all three pools). A nonpartisan ethics board could oversee the process. This would ensure that a commissioner is not being removed with partisan or discriminatory motives.

If a commissioner is guilty of substantial neglect of duty or gross misconduct, or is otherwise unable to discharge the office's duties,¹ the Commission may act to remove that commissioner² after notice and an opportunity for public hearing.³ The Commission shall fill any vacancy whether the result of removal, resignation, or death by acting to select a qualified person who is willing to serve from the same pool as that of the former commissioner.

1. Those in charge of redistricting must maintain public confidence, and a mechanism must exist to remove those who break trust. The requirements for removal should be demanding so they are not abused by those looking to undermine the commission's work.

2. This could be the commission itself or some other nonpartisan or bipartisan entity that has experience handling disciplinary matters.

3. The process should respect a commissioner's due process rights. At a minimum, this would include notice, an opportunity to be heard, and the ability to examine all evidence presented in support of removal.

Commission Internal Governance

Financial Independence and Commissioner Compensation

Without adequate funding, key benefits of independent redistricting, such as public engagement and transparency, cannot be fully realized. Setting up a website, advertising hearings, and having the tools and staff necessary to take the public's input into account all take money.

Maintaining commission independence also requires closing off backdoor channels that lawmakers could use to improperly influence redistricting. Influential legislators often use the power of the purse as both a carrot and a stick to get concessions. To protect redistricting from such indirect control, adequate and guaranteed commission funding should be baked into any reform effort.

The success of a redistricting commission should not depend on legislators' whims or be part of political bargaining. A clearly stated funding mandate will help ensure that the redistricting process runs smoothly.

Commissioners shall be compensated¹ at the rate of [\$300] for each day the person is engaged in Commission business. [Adjustment for inflation provision.] Members of the [independent agency] and commissioners are eligible for reimbursement of reasonable personal expenses incurred in connection with the duties performed pursuant to this act in accordance to guidelines applicable to general state employees.

The Commission shall have ample funding to perform all duties and implement an independent redistricting system. In the year before each federal decennial census,² the [legislature] shall allocate sufficient funding for the Commission to meet its estimated expenses for a three-year period,³ including, but not limited to, commissioner selection, hiring staff, and a statewide public education and outreach program. The [relevant state facilities manager] shall also make adequate office space available for the operation of the Commission.

1. Commissioners should be compensated so that financial barriers do not discourage people with lesser means from serving.

2. Commission work should be funded ahead of the decennial census because the website, the commissioner application process, and other outreach efforts will need to begin well in advance of redistricting.

3. Three years should be enough for the commission to be selected and to complete its task.

Commission Staff

Along with taking public input into consideration, a commission will need to hire legal and technical experts. The hiring process for all of these roles must be fair, nonpartisan, and transparent.

The Commission shall act to hire a website manager, technical staff, legal counsel, and other consultants as needed through a public bid process.¹ Any person submitting a bid to serve the Commission shall file a disclosure statement under penalty of perjury setting forth the disqualifications and disclosure requirements applicable to commissioners and all other paid work as consultant to a political party, a political action committee, or a campaign committee of a candidate for elected office. The Commission shall act to hire administrative staff as necessary.²

The duty of any person employed or retained by the Commission is to act in the utmost public interest of the people of the State and not any party, individual, or special interest.³

1. Consultants, legal counsel, and other staff play an incredibly important role in guiding redistricting. A public bid process helps maintain trust and allows citizen watchdogs to flag overtly partisan experts.

2. Many commission tasks, such as maintaining the website and scheduling public hearings, require significant administrative support. This can be provided by existing civil servants, or the commission can be authorized to hire its own assistants.

3. Gerrymandering usually involves political operatives carrying out the will of whoever hired them. To prevent this, it is important to explicitly commit all technical experts and staff to serving the people as a whole.

Transparency

To maintain public faith in the process, all communications about commission activities and all decision-making should take place in public settings, such as open hearings and the commission website.

This means the commission should be structured as a public body subject to open meetings laws, which would give the public an opportunity to seek redress should the commission or individual members engage in a secret process.

Open records and communications will make sure commissioner activity and map drawing are aboveboard.

The Commission shall be considered a public body subject to [relevant open meetings laws].¹

No documents or communications created or received by commissioners, staff, or consultants as part of official duties shall be exempt from disclosure² for any privilege other than attorney-client privilege.

All records pertaining to Commission action on preliminary maps and/or analyses of the maps shall be available for public inspection on the commission website before the adoption of final maps.³

Commissioners, staff, and consultants shall not communicate with any outside persons attempting to influence the map-drawing process outside of public meetings and public comment periods.⁴ To the extent that commissioners, staff, or consultants receive such communications, they must be promptly publicly disclosed on the commission website. Failure to disclose such communications shall constitute substantial neglect of duty.

1. Most states have freedom of information laws, and it is important to explicitly put the commission within their purview.

2. All commission records should be discoverable by the public to encourage good behavior.

3. The need for transparency extends beyond litigation. Access to commission records allows the public to play an important oversight role during the redistricting process.

4. Outside actors used to having an outside influence on redistricting may attempt to sway a commission. This behind-the-curtain lobbying must be prohibited by requiring that any such communications get treated as public comment.

Commission Website

It is important that the public be able to easily participate in the map-drawing process. The commission will need to create a website for public access to the redistricting process. Creating an online venue for public notices and public input will help the commission reach as many people around the state as possible.

The [independent agency] shall **create an official website¹** no later than [relevant deadline]. Once **commissioners have been selected and staff and consultants have been hired, the Commission shall assume responsibility for managing and updating the website.**

The commission website shall provide, at a minimum, **a description of the role of the Commission; timely information about the application process and public bidding process; timely information about the time, place, and purpose of Commission meetings; a portal for the submission of proposed maps; all maps drawn by the Commission or submitted by the public; the underlying data used to create or evaluate maps in a format easily usable for analysis; precinct-level shapefiles and census block equivalency; precinct-level results from statewide primary and general elections for the past 10 years; all reports analyzing the maps; transcripts and a video archive of all meetings of the Commission; and all other disclosures.²**

All data related to redistricting shall be published on the commission website at the same time it is made available to the Commission and shall be considered public records.

1. An independent commission is only successful if it adequately engages the public. Practically speaking, this means having a user-friendly website that serves as a portal between the public and the commission throughout all stages of the process.

2. Spelling out the various functions that the website should serve helps avoid underfunding and provides clear guidance to ensure that the public has access to all necessary information.

Commission Action

Cooperation among commissioners from different pools depends in large part on rules that set voting thresholds for commission decision-making.

Commissions would, in an ideal world, reach decisions unanimously. But requiring unanimity would give every commissioner, even ones operating in bad faith, veto power over key decisions.

A simple majority threshold, on the other hand, threatens to split the commission into warring factions vying for the favor of a tiebreaker.

Instead, commissioners should know in advance that they will need at least some support from members of the other two caucuses. When the voting rules require support from a broad array of commissioners, it's clear from the start that some measure of good-faith negotiation and compromise will be essential parts of the map-drawing process.

All acts of the Commission shall be in public meeting¹ by the affirmative vote of at least nine commissioners,² including at least two commissioners who are [affiliated] with each of the two largest political parties in the State and two who are [affiliated] with neither of the two largest political parties in the State.³

1. Votes should not take place behind closed doors. The public should know in advance when the commission will be making decisions.

2. Setting the map approval threshold above a simple majority helps avoid immediate division along party lines.

3. The best incentive for cooperation is requiring buy-in from all three partisan groups on the final map.

Criteria

Redistricting involves making choices among competing interests. What happens, for instance, when a distinct community lives on either side of a county line? Should the map drawers keep that community whole or follow the political boundary?

Such trade-offs may have significant implications for both racial and partisan fairness. Conflicting rules can also make map drawers' task harder and, worse, open the door for people who want to manipulate maps. To minimize the chances that such choices are used as covers for redistricting abuses, it is important to have clear criteria and for the criteria to be ranked in order of priority. This is true regardless of whether lines are being drawn by a commission or by a legislature.

We recommend that all states adopt the following criteria. While there is room to adjust the wording to account for state-specific concerns, these rules reflect broadly applicable best practices and consensus among a broad range of good government and civil rights groups.

For in-depth annotations of our recommended criteria, please consult our guide [Creating Strong Rules for Drawing Maps](#).

The Commission shall establish single-member districts for [state house, state senate, and Congress] using the following criteria as set forth in the following order of priority:

Districts shall comply with the United States Constitution, the Voting Rights Act of 1965, and all applicable federal laws;

Districts shall be drawn on the basis of inhabitants;

Districts shall be geographically contiguous;

Districts shall provide racial and language minorities with an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice, whether alone or in coalition with others;

Districts shall respect the integrity of communities of interest to the extent practicable.¹ A community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities. Communities of interest shall not include common relationships with political parties or political candidates; and

Districts shall not split precincts and shall respect the geographic integrity of political subdivision boundaries to the extent that preceding criteria have been satisfied.

The redistricting plan shall not, when considered on a statewide basis, unduly favor or disfavor any political party.

1. Requiring the commission to preserve communities of interest gives the public an opportunity to provide meaningful input. Because communities of interest cannot be defined using data alone, their members have an integral role to play and can raise issues that the commission might otherwise overlook.

Failure to Pass Map

Even a good-faith effort at redistricting may result in the commission failing to adopt a final plan by the deadline. In this case, there must be a fail-safe measure that produces a final map while keeping map drawing out of the political process.

Rather than return map-drawing power to the state legislature, we instead recommend that the state's highest court appoint a special master who, with public input, will be tasked with drawing a plan using the same data and criteria as was the commission. This map will then be reviewed and approved by the state's highest court.

If the Commission fails to adopt and file a final map for [state house, state senate, or congressional districts] by [relevant deadline], the [state supreme court] shall appoint, by [relevant deadline], a special master¹ to create map(s) in accordance with the relevant redistricting criteria.

The [state supreme court] shall make the special master's map(s) public and schedule one or more hearings where interested parties may present testimony and other evidence regarding the compliance of the map(s) with redistricting criteria.²

The [state supreme court] shall issue an opinion with reasoning explaining the decision to accept or modify the special master's map(s).

1. This is a nonpartisan redistricting expert hired by the state supreme court who will be held to the same standards as the commission.

2. Various civic organizations, good-government groups, and other sophisticated stakeholders should have an opportunity to weigh in before the court makes any final decisions.

Public Involvement

Public Meetings

Redistricting has traditionally been controlled by politicians, with most action taking place outside of the public's view.

A commission should bring sunshine to the entire process. All commission meetings — including those that are not public hearings — should be open for anyone to attend.

True transparency, however, goes beyond simply making each meeting public. Providing adequate notice before meetings, keeping meticulous records, and providing accommodations for language minorities and people with disabilities are all ways to keep public involvement at the center of commission activity.

To identify communities of interest and to obtain other relevant information, the Commission shall seek public input. Before any maps are drawn, the Commission shall hold no fewer than [10] public hearings across the State to solicit testimony from a representative cross section of the population.¹

All Commission meetings shall be open to the public, and there must be public notice at least seven days before a meeting.

Commission meetings shall be adequately advertised and planned to encourage attendance. This includes scheduling meetings outside of regular work hours and using technology that allows for real-time virtual participation and feedback.² All meetings must be recorded and posted on the commission website.

The Commission must provide a meaningful opportunity for all persons to participate, including issuing notice in multiple languages, ensuring that adequate translation services are available, and complying with [relevant] protections for persons with disabilities.³

If initial public input does not appear to represent the diversity of the State, then the Commission shall take remedial steps, including conducting additional outreach, holding additional hearings, and identifying underrepresented communities.⁴

1. These meetings should be thought of as information-gathering sessions for commissioners to gain local knowledge across the state.

2. Public hearings should be scheduled thoughtfully, considering who will be able to attend meetings given the time and place they are held.

3. A commission should provide equitable opportunity for the public to participate, especially to garner feedback from groups that are often excluded from the democratic process.

4. There are often disparities in which communities participate in public hearings. A commission should be aware when certain voices are absent or when a particular group is overrepresented so that it can take corrective measures.

Inclusive Mapping

A transparent and inclusive redistricting process gives the public a chance to weigh in both before the commission produces any maps and then again once it releases maps. These two periods serve different purposes.

The initial public input helps commissioners understand the geographic confines of communities of interest. Such crowdsourcing allows factors that are not immediately apparent or visible in population data to inform the redistricting process. After all, no one knows a community better than the members of the community themselves.

The comment period following the release of maps helps community stakeholders give feedback on the representational consequences of a particular redistricting scheme. This is particularly important for communities of color whose ability to elect candidates of choice is protected by federal law.

During the map-drawing process, any member of the public may submit maps, portions of maps, or other comments for consideration by the Commission.¹ These submissions must be made publicly available on the commission website and open to comment.²

The Commission shall release proposed maps for [state house, state senate, and congressional districts] and shall display them for a minimum of [14] days for public comment³ in a manner designed to achieve the widest public access reasonably possible before acting to approve final maps.

The Commission shall hold no fewer than [10] public hearings across the State after the release of any proposed maps and, in addition, shall accept written comments on proposed maps both online and through paper submissions.

When releasing proposed maps, the Commission shall release population data, geographic data, election data, election data, and any other data used to create or evaluate the maps.⁴

No later than [timing provision], the Commission shall act to approve final maps for [state house, state senate, and Congress]. Upon approval, the Commission shall certify the final maps to the [secretary of state].

1. Publicly submitted maps are not only a vital part of identifying communities of interest but also an opportunity for communities of color and multiracial coalitions to propose whole redistricting plans.

2. For full transparency, everyone should be able to see what others are proposing.

3. The public should have enough time to substantively review and respond to the commission's work before maps are approved.

4. This data will help the public understand how the commission arrived at a proposed plan. Being transparent at this stage in the process will also help curb potential litigation over the commission's use of certain data.

Reporting

Submitting a report alongside the finished maps promotes transparency and helps the public connect the dots between their input and the final product.

The report should clearly lay out the decision-making process and explain how the final plans comply with the established criteria.

Beyond its importance for commission transparency, this step will also help the commission avoid unnecessary litigation over a plan's adherence to redistricting criteria.

The Commission shall release with all proposed and final maps **written evaluations that measure the maps against external metrics.¹ These metrics must cover all relevant criteria, including the impact of the maps on the ability of racial or language minorities to elect candidates of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to which the maps preserve or divide communities of interest.²**

1. A commission should always show its work. These written evaluations can help the public meaningfully participate during the relevant comment periods.

2. Making the expected impact of a map public helps ensure that the commission did not just use a fair process to draw the map, but that the districts would also produce fair outcomes. Because political scientists and statisticians continually develop new tools to assess fairness, it is better not to tie these calculations to any particular methodology.

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