

Redistricting in the MDN States

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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**ILLINOIS
(status quo)**

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.

Redistricting in the MDN States

Justin Levitt

**MICHIGAN
(status quo)**



KEY POINTS:

The state legislature currently draws both congressional and state legislative districts, subject to a few self-imposed constraints comporting with Michigan’s “constitutional history,” and subject to federal constitutional and statutory limitations.

Article IV of the Michigan Constitution governed redistricting until the pertinent provisions were struck down by the courts; now, sections 3.61-64 and 4.261-263 of the Michigan Statutes control, subject to the courts’ commands to abide by Michigan’s “constitutional history.” In the 2001 cycle, redistricting was subject to unified Republican control.

PROCESS:

Congressional and state legislative districts are currently drawn by the state legislature. Plans must be adopted by November 1, 2011.

- **Independence from Legislators:** None.
- **Partisan Balance:** The process has only as much partisan balance as the legislature itself. It is possible each house will be controlled by a different party, or that the governor will be of a different party than a united legislature, but it is also possible that there will be unified party control.
- **Minority Participation:** The process will feature as much diversity as the legislature itself, but the body’s substantial size makes such diversity relatively more feasible.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** There is no binding prohibition on redrawing either state legislative or congressional districts more than once per decade.

Redistricting in the MDN States

Justin Levitt



MICHIGAN
(status quo)

CRITERIA:

Because all of Michigan’s redistricting criteria are set by statute, they may also be adjusted by the legislature, subject to the courts’ concern that districts be drawn in keeping with Michigan’s “constitutional history.”

Congressional and state legislative districts must be contiguous, and follow the federal standard of equal population. At present, the Michigan legislature has determined that state legislative districts must also fall within 5% above or below the mean population.

The legislature has determined that both congressional and state legislative districts should also preserve whole political units -- counties, cities, and townships, in that order – where feasible. If there is more than one district within a city or township, those districts must be maximally compact, measured by drawing a circle around the district, and taking the area within the circle but outside the district lines. (For state legislative districts, the legislature requires districts to be populated within 2% above or below the mean population, to keep population pockets of equal size together even if the districts are less compact as a result.)

- **Population Equality:** The current criteria allow substantial population disparity, with tighter bounds for multiple districts within a city or township. As a result, some residents’ votes may be more valuable than others. On the other hand, the tighter bounds for city districts may limit flexibility to create minority opportunity districts pursuant to the Voting Rights Act. 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:** There are no provisions for minority rights other than federal law. Two Michigan townships (Clyde and Buena Vista) must “preclear” changes to election rules, including district lines within those townships, to ensure that minority rights are not diluted under the Voting Rights Act.
- **Compactness:** The legislature has required that districts be reasonably compact, and sets a particular formula of compactness for multiple districts within a city or township. To the extent that real communities of common interest are represented within cities or townships in less compact geographic patterns, the compactness threshold might limit the opportunity to represent those communities.
- **District Competition:** There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance:** If there exists unified partisan control of the legislature and governor’s mansion, that party will have the ability to drive statewide results favorable to itself. There is no provision otherwise encouraging or discouraging statewide partisan balance.
- **Preservation of Political Boundaries:** The legislature has emphasized the preservation of political units, and particularly the minimal division of counties, cities, and townships. To the extent that communities of 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:** There is no provision requiring that House districts be nested in Senate districts.
- **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.

Redistricting in the MDN States

Justin Levitt

**MINNESOTA
(status quo)**



KEY POINTS:

The state legislature currently draws both congressional and state legislative districts, subject to a few self-imposed constraints, and subject to federal constitutional and statutory limitations.

Article IV of the Minnesota Constitution governs redistricting, with few constraints; the legislature has adopted concurrent resolutions – nonbinding and without the force of law – to express the redistricting priorities they have selected. In the 2001 cycle, control was divided, with a Governor from the Independence Party, a Senate controlled by Democrats, and a House controlled by Republicans. The redistricting process for both Congressional and state legislative districts deadlocked, and control fell to the courts.

PROCESS:

Congressional and state legislative districts are currently drawn by the state legislature. Plans must be adopted 25 weeks before the primary elections in 2012, which are currently scheduled for September 7.

- **Independence from Legislators:** None.
- **Partisan Balance:** The process has only as much partisan balance as the legislature itself. It is possible each house will be controlled by a different party, or that the governor will be of a different party than a united legislature, but it is also possible that there will be unified party control.
- **Minority Participation:** The process will feature as much diversity as the legislature itself, but the body's substantial size makes such diversity relatively more feasible.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** It is ambiguous whether Minnesota law prohibits the legislature from redrawing either state legislative or congressional districts more than once per decade.

Redistricting in the MDN States

Justin Levitt

**MINNESOTA
(status quo)**



CRITERIA:

Because most of Minnesota's redistricting criteria are set by a concurrent resolution of the legislature, they may also be adjusted by the legislature.

Congressional and state legislative districts must be contiguous, and if possible, compact. They must also follow the federal standard of equal population; at present, the Minnesota legislature has set a stricter standard, determining that state legislative districts must also fall within 2% above or below the mean population.

The legislature has determined that both congressional and state legislative districts should also preserve whole political units -- counties, cities, and towns, in that order -- where feasible. Districts should attempt to preserve communities of interest where possible, and the districts must increase the voting strength of racial or language minority populations where possible.

- **Population Equality:** The current criteria restrict population disparity substantially. As a result, it is more likely that residents' votes will be of roughly equivalent weight around the state. However, the tight population limits may make it more difficult to preserve political boundaries, and may limit flexibility to create minority opportunity districts pursuant to the Voting Rights Act. 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:** The legislature has determined that districts should, where demographic trends make this possible, increase the probability that members of racial or language minorities are elected. It is not clear whether this is meant to provide protection beyond the federal Voting Rights Act. If so, such a rule may further limit flexibility to maintain political boundaries.
- **Compactness:** There is a general requirement that districts be reasonably compact. This requirement, however, is not further defined and may be difficult to enforce.
- **District Competition:** There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance:** If there exists unified partisan control of the legislature and governor's mansion, that party will have the ability to drive statewide results favorable to itself. There is no provision otherwise encouraging or discouraging statewide partisan balance.
- **Preservation of Political Boundaries:** The legislature has emphasized the preservation of political units, and particularly the minimal division of counties, cities, and towns. To the extent that communities of interest bridge political boundaries, this may limit the opportunity to accommodate such communities.
- **Communities of Interest:** The legislature has declared that it will attempt to preserve communities of interest where possible, but this is not further defined and may be difficult to enforce.
- **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.

Redistricting in the MDN States

Justin Levitt



OHIO
(status quo)

KEY POINTS:

The state legislature currently draws congressional districts, subject only to federal constitutional and statutory limitations. State legislative districts are drawn by a five-person partisan commission created in 1967, with few constraints other than an emphasis on preserving whole political units.

Article XI of the Ohio Constitution governs redistricting. In the 2001 cycle, the process was subject to Republican control for both congressional and state legislative districts, although delays in the congressional districting process forced the legislature to pass a plan with a 2/3 supermajority.

PROCESS:

Congressional districts are currently drawn by the state legislature, subject only to federal constitutional and statutory limitations. A six-person advisory commission advises the state legislature in this process; the House and Senate majority leaders each choose two legislators and one non-legislator to serve. No more than two of the three advisors chosen by each majority leader may be members of the same party.

For state legislative districts, redistricting authority is vested in a five-member commission. The Governor, Secretary of State, and State Auditor are members of the commission. The remaining two appointments are selected jointly: one by the speaker of the House in concert with his party's leader in the Senate; the other by the House minority leader along with his party's leader in the Senate. A majority vote is required to adopt a plan. Plans must be adopted by October 1, 2011. The Ohio Supreme Court may review adopted plans, but may not issue plans of its own; in the event that a plan is declared invalid, the commission must make another attempt.

- **Independence from Legislators:** Three commissioners are independent from legislators only in that they are separately elected, but may well accede to legislators' wishes. The other two commissioners are directly selected by legislators.
- **Partisan Balance:** With an odd number of commissioners, each with partisan affiliation, the process is designed to allow one party a majority, and therefore control of the redistricting process.
- **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:** 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.

Redistricting in the MDN States

Justin Levitt



OHIO
(status quo)

CRITERIA:

Congressional districts are subject only to federal constitutional and statutory limitations.

State legislative districts must be contiguous and compact, and follow the federal standard of “substantially equal” population (which in any event must be within 5% above or below the mean population).

Districts must preserve whole political units -- counties, townships, municipalities, and wards, in that order – where feasible. For counties sufficiently populous to contain entire districts, such districts must be created wholly within the county, and any remaining territory in the county must be contained in only one district. Where it is not possible to preserve political units whole, only one unit may be divided between two districts.

- **Population Equality:** The current criteria allow substantial population disparity; some residents’ votes may be more valuable than others. There is also a preference for the count conducted by the federal census (which counts incarcerated persons where they are incarcerated), though if census data is “unavailable,” the state legislature may choose another basis for determining the population.
- **Minority Rights:** There are no provisions for minority rights other than federal law.
- **Compactness:** Other than the requirement that districts be wholly contained within a single county where possible, there is a general requirement that districts be compact. This requirement, however, is not further defined and may be difficult to enforce.
- **District Competition:** There is no provision encouraging or discouraging competition within a district.
- **Statewide Partisan Balance:** The partisan structure creates an incentive to generate statewide results favorable to the party controlling the commission.
- **Preservation of Political Boundaries:** The current criteria emphasize the preservation of political units, and particularly the minimal division of counties. 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:** Each state Senate district must comprise three House of Representatives districts. This ties each house’s districts to the other, but may produce unintended consequences with respect to population disparities. For example, depending on the concentration of Ohio’s population, minimizing county divisions within a particular state senate district may lead to state house districts with fairly substantial population disparities.
- **Incumbent Residence:** The current criteria do not prohibit commissioners 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 the MDN States

Justin Levitt



**WISCONSIN
(status quo)**

KEY POINTS:

The state legislature currently draws both congressional and state legislative districts, subject to a few self-imposed constraints, and subject to federal constitutional and statutory limitations.

Article IV of the Wisconsin Constitution governs redistricting; the legislature has adopted additional principles by statute, which it would also be free to amend. In the 2001 cycle, control was divided, with a Republican Governor, a Senate controlled by Democrats, and an Assembly controlled by Republicans. The redistricting process for state legislative districts deadlocked, and control fell to the courts.

PROCESS:

Congressional and state legislative districts are currently drawn by the state legislature. Plans must be adopted by the end of the legislative session in 2011.

- **Independence from Legislators:** None.
- **Partisan Balance:** The process has only as much partisan balance as the legislature itself. It is possible that each house will be controlled by a different party, or that the governor will be of a different party than a united legislature, but it is also possible that there will be unified party control.
- **Minority Participation:** The process will feature as much diversity as the legislature itself, but the body's substantial size makes such diversity relatively more feasible.
- **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.

Redistricting in the MDN States

Justin Levitt



**WISCONSIN
(status quo)**

CRITERIA:

Congressional districts are subject only to federal constitutional and statutory limitations.

State legislative districts must be contiguous, and as compact as practicable. They must also follow the federal standard of equal population; at present, the Wisconsin legislature has set itself a stricter standard, striving to draw state legislative districts with as small a population spread from largest district to smallest district as possible.

State legislative districts must also use the boundaries of political units -- counties, precincts, towns, and wards – where feasible, and the legislature declared its own goal to preserve those political units whole where possible. The legislature also determined both to make a good faith effort to maintain the integrity of communities of interest, and to encourage competitive districts where possible.

- **Population Equality:** The current legislative aim is to remove population disparity where possible. As a result, it is more likely that residents' votes will be of equivalent weight around the state. However, the tight population limits may make it more difficult to preserve political boundaries, and may limit flexibility to create minority opportunity districts pursuant to the Voting Rights Act. 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:** There are no provisions for minority rights other than federal law.
- **Compactness:** There is a general requirement that districts be as compact as practicable. This requirement, however, is not further defined and may be difficult to enforce.
- **District Competition:** The legislature declared its intent to encourage competitive districts. This requirement, however, is not further defined and may be difficult to enforce.
- **Statewide Partisan Balance:** If there exists unified partisan control of the legislature and governor's mansion, that party will have the ability to drive statewide results favorable to itself. There is no provision otherwise encouraging or discouraging statewide partisan balance.
- **Preservation of Political Boundaries:** The legislature has emphasized its intent to preserve political units where possible, down to the ward level, but a ward-based standard allows substantial dividing of larger political entities.
- **Communities of Interest:** The legislature has declared that it will attempt to preserve communities of interest where possible, but this is not further defined and may be difficult to enforce. The definition of a "ward" in Wisconsin also requires the boundaries to "observe" existing neighborhood communities of interest.
- **Nesting:** Each state Senate district must comprise three House of Representatives districts. This ties each house's districts to the other, but with such small population disparities, may produce unintended consequences with respect to political boundaries or other communities. For example, depending on the concentration of Wisconsin's population, minimizing population deviation in state senate districts that roughly follow political boundaries may leave limited flexibility to follow political boundaries in state house districts as well.
- **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.