

Redistricting Analysis

Justin Levitt

UTAH
(status quo)

KEY POINTS:

The state legislature currently draws both congressional and state legislative districts, subject only to federal constitutional and statutory limitations.

In the 2001 cycle, the process was subject to unified Republican control for both congressional and state legislative districts.

PROCESS:

Congressional and state legislative districts are currently drawn by the state legislature, subject to gubernatorial veto.

- **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 (for congressional districts) the governor will be of a different party than a united legislature, but it is also possible that (as in the 2001 cycle) there will be unified party control.
- **Minority Participation:** The process will feature as much diversity as the legislature itself; the body's substantial size makes such diversity relatively more feasible than alternatives dependent on significantly smaller institutions.
- **Public Input:** There are no specific provisions for the public to present or comment on plans.
- **Timing:** It is ambiguous whether Utah law prohibits the legislature from redrawing congressional or state legislative districts more than once per decade.

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CRITERIA:

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

- **Population Equality:** The current criteria allow substantial population disparity; some residents' votes may be more valuable than others. Utah law is ambiguous on whether the count conducted by the federal census (which counts incarcerated persons where they are incarcerated) must be used for state legislative apportionment purposes; the legislature has in past years expressly adopted the federal census count.
- **Minority Rights:** There are no provisions for minority rights other than federal law.
- **Compactness:** There is no provision encouraging or discouraging district compactness.
- **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:** There is no provision encouraging or discouraging preservation of political boundaries.
- **Communities of Interest:** There is no provision encouraging or discouraging preservation of 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 consideration of 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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UTAH
(Utah Redistricting Standards Commission)

KEY POINTS:

The initiative would reform the way Utah congressional, state legislative, and school board districts are drawn. The proposal would establish a bipartisan eleven-person commission to draw districts, without favoring or disfavoring any person or party; the commission would also be responsible for prioritizing and further defining further constraints based on compactness, political and geographic regions, and the preservation of communities of interest. The initiative, itself a statute, satisfies the state's constitutional requirement that the legislature conduct redistricting by allowing the legislature to accept a commission's plan wholesale or derive a plan using the same priorities and definitions binding the commission.

PROCESS:

The proposed initiative would create an 11-person commission of state residents to propose congressional, state legislative, and school board districts for approval or rejection by the legislature. None of the commissioners may be public officials or lobbyists at the time of appointment, and each must forswear public office apportioned based on the districts drawn by the commission, for the proximate election.

The President of the Utah Association of Counties and the President of the Utah League of Cities and Towns each select three commissioners from different political parties and counties, and the chair of the Utah State Board of Education selects one commissioner; those seven commissioners select four others from a citizen pool, no three of whom may be from the same party or county. In total, no more than 4 of the 11 may be registered with the same political party; no more than 3 of the 11 may be unaffiliated with a political party; and no more than 4 of the 11 may be from the same large county. If party is prominent in the selection process, the commission will likely include 4 registered Republicans, 4 registered Democrats, and 3 unaffiliated voters. Final plans must be adopted by eight commissioners.

The legislature may adopt or reject commission plans in their entirety; if a commission plan is rejected, the legislature must prepare a plan under the same criteria used (and defined) by the commission.

- **Independence from Legislators:** Commissioners may not be legislators and are not selected by legislators; though it is possible that commissioners will be beholden to particular legislators, it is not clear whether those selecting the commissioners have any incentive to choose such individuals. Ultimately, the legislature will have final control over the redistricting process, but may be constrained by the commission's initial choices.
- **Partisan Balance:** The process is designed to ensure that the commission will have a partisan balance, with at most four members of the same party serving on the commission. The eight-vote supermajority should also ensure that a final plan represents rough bipartisan consensus. It may be possible, however, for the commission to define criteria and priorities with a partisan quorum of a bare majority. And, of course, the legislature has final control over the redistricting process.
- **Minority Participation:** There are no provisions to foster racial diversity, but the commission is designed to promote geographic diversity, with at most four members from the same county serving on the commission. The final plan is approved by the legislature, with the diversity of the legislature.
- **Public Input:** All deliberations must be conducted in public hearings subject to Utah open meetings provisions. After the commission arrives at a preliminary plan, it must hold no less than seven geographically dispersed public hearings, accepting comments and plans from the public.
- **Timing:** The proposal would prohibit the legislature from redrawing congressional and state legislative districts more than once per decade.

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UTAH
(Utah Redistricting Standards Commission)

CRITERIA:

The proposal would impose several new criteria on Utah’s congressional, state legislative, and school board districts. The initiative creates moderate equal population and compactness constraints, and demands that district lines follow political and natural boundaries, while preserving communities of interest. The proposal does not identify express priorities among the constraints, but gives the commission (by bare majority vote) the authority to establish priorities and further define the criteria established. Because the commission must create a plan for “scoring” proposed maps, and must submit the highest scoring plan to the legislature, it is possible that criteria more susceptible to mathematical analysis will be preferred.

The proposal also forbids any district drawn to unduly favor or disfavor a person or political party, and prohibits the use of party affiliation data. It is not clear whether the initiative language would similarly prohibit the use of precinct voting results, or how the proscription on “unduly” favoring a person or party will be further defined.

- **Population Equality:** The proposal limits deviations from the average population to 0.5% for congressional districts and 4% for state legislative and school board districts. These amount to minor constraints on the population disparities permissible today. The proposal does not correct the federal census’s practice of counting incarcerated persons where they are incarcerated.
- **Minority Rights:** The proposal expressly mentions the racial and ethnic minority rights in existing federal law, but does not provide an independent state backstop.
- **Compactness:** The proposal creates a general requirement that districts be reasonably compact, measured by a formula “involving” district perimeter. Depending on how this is further defined by the commission, it may provide a loose or tight constraint.
- **District Competition:** The proposal prohibits districts “drawn to unduly” favor or disfavor a particular person or political party. Depending on how this is further defined by the commission (particularly with respect to the degree of favoritism permitted and the degree to which intent to favor or disfavor is central to the definition), this may discourage blatant attempts to gerrymander districts in order to avoid competition.
- **Statewide Partisan Balance:** The proposal prohibits districts “drawn to unduly” favor or disfavor a particular person or political party. This may discourage blatant attempts to create an artificially imbalanced statewide plan, subject to the caveats on definition above.
- **Preservation of Political Boundaries:** The proposal would minimize divisions of city and county boundaries, as well as natural and geographic boundaries.
- **Communities of Interest:** The proposal would require the preservation of communities of common interest, but it is difficult to know how such a requirement would be further defined, particularly with the requirement to convert plans to “mathematical” scores.
- **Nesting:** There is no provision requiring that House districts be nested in Senate districts.
- **Incumbent Residence:** The proposal prohibits commissioners from considering the residences of incumbents, reducing the ability to intentionally harm (or benefit) individual legislators. This may also result in unintentional incumbent pairing.