

MEMORANDUM TO Renée Steinhagen, Flavio Komuves

FROM: Mary Pat Gallagher

DATE: January 7, 2019

RE: Citizen Redistricting Commissions In Six States—California, Arizona, Colorado, Iowa, Michigan and Washington

California

California has a 14-member redistricting commission that draws the lines for both state legislative and Congressional districts. As required by the enabling law, five are from the largest political party (Democrats), five from the second largest political party (Republicans) and four are members of neither.

The public was invited to apply for membership on the commission in a process overseen by the State Auditor. Applicants had to be registered to vote in California with the same political party, or not registered with one, for at least five years and have voted in two of the last three statewide elections.

Other criteria were relevant analytical skills, ability to be impartial and appreciation for California's diverse demographics and geography.

Applicants were also screened for conflicts of interest. Neither they nor an immediate relative in the last 10 years could have been a candidate for state or federal public office, worked as a lobbyist or contributed more than \$2,000 in any given year to a political candidate.

Under a process established by the state auditor, nearly 30,000 people applied, of whom 25,000 were deemed tentatively eligible and invited to submit supplemental information along with three letters of recommendation. Almost 5,000 people did so.

An Applicant Review Panel narrowed the pool to 120—40 Democrats, 40 Republicans and 40 Unaffiliated and then again to 60 (20 of each). The Majority and Minority Leaders in the California Senate and Assembly were then allowed to strike two applicants from each of the 3 pools of 20, leaving only 12 in each. The law then required a random drawing to select eight commissioners, who were then charged with picking the other six.

The applications for the resulting commissioners are all posted online, along with their letters of recommendation, public comments submitted regarding them, a Form 700 Statement of Economic Interests and a Report on other info collected on each applicant. All of the information is available in six languages beside English: Spanish, Chinese, Korean, Japanese, Tagalog and Vietnamese.

The criteria for the commissioners is

- to create districts with reasonably equal population,;
- to comply with the federal Voting Rights Act;
- to minimize splitting of counties and cities;

to maintain communities of interest and neighborhoods;

to develop geographically compact districts;

to not favor or discriminate against political incumbents, candidates or parties; and

to the extent consistent with other criteria, to draw state Senate districts made up of two adjacent Assembly districts and Board of Equalization districts of 10 adjacent Senate districts.

The commission is required to accept public comment and to hold public hearings throughout the state to determine which communities share common interests and should share common representation. Hearings require 14 days' notice.

Approval of new district boundaries requires at least three votes from each of the three groups—Democrats, Republicans and Other. Final maps may be subject to a referendum. On petition of a registered voter, the state Supreme Court will review the redistricting plan.

The reform occurred in two steps. Proposition 11 of 2008, the Voters First Act, which passed by 51-49, created the commission but only for state districting. Two years later, Proposition 20 of 2010, the Voters First Act for Congress, passed 61-39, extending the law to Congressional redistricting.

Also in 2010, Proposition 27, a legislator-backed effort to repeal Proposition 11, failed. Garnering only 40.6 percent votes in favor.

A major impetus for the reform seems to have been the 2002 Congressional race in which not a single incumbent was defeated. An earlier failed attempt at reform took place in 2005 with Proposition 77, which would have created a panel of retired judges to draw the boundaries. Voters reject the idea, by a roughly 60-40 vote.

Common Cause was the leading force behind the effort which also had the support of the NAACP, AARP, ACLU and Chamber of Commerce, as well as Governor Schwarzenegger.

Arizona

The five-member Arizona Independent Redistricting Commission draws both state legislative and Congressional districts.

The Commission on Appellate Court Appointments nominates 25 people: 10 from each major party plus five who are neither Democrats nor Republicans. House and Senate majority and minority leaders each nominate one from the pool, no more than two of whom can be from the same county. Those four select the fifth “tiebreaker” who must be from a different party than any of them. If they fail to do so, the Appellate Court Commission picks the fifth member. Commissioners must be registered Arizona voters registered with the same political party or registered as unaffiliated for three or more years prior to appointment. They cannot have held or sought public office (other than school board) for three years prior to appointment, nor served as officers of a political party, paid registered lobbyists or officers of a candidate’s campaign committee within that time.

At least 30 days must be allowed for public comment on draft maps and approval of final maps requires three affirmative votes. The Legislature can make suggestions but the Commission need not follow them and the maps adopted by the Commission cannot be altered by the Legislature.

The Commission is the result of Proposition 106, passed in 2000. It has survived constitutional challenges in two cases that made it to the U.S. Supreme Court, in 2015 and 2016.

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. ____ (2015), the Arizona Legislature challenged the use of an independent commission based on the U.S. Constitution’s Election Clause, Article I, § 4, which states “The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.” Justice Ruth Bader Ginsburg’s majority opinion in the 5-4 decision, which was joined by Justice Anthony Kennedy, said the term “legislature” could be read to mean “the power that makes laws,” as granted to the people in Arizona’s constitution, and not just the two legislative houses. Chief Justice John Roberts wrote a dissent, as did Justices Antonin Scalia and Clarence Thomas.

In 2016’s *Harris v. Arizona Independent Redistricting Commission*, 578 U.S. ____, the Supreme Court held, 8-0, that slight deviations in the size of districts drawn by the Commission were meant to achieve compliance with the Voting Rights Act rather than to unfairly advantage the Democratic party through partisan gerrymandering.

A legislative effort to undermine the Commission this past year fell short and failed to make it to the ballot. According to the Brennan Center, SCR 1034 would have increased the size of the commission from five to eight, altered commissioner membership to include two members unaffiliated with a political party, replaced the independent commissioner appointment process with a political one, amended redistricting criteria regarding population deviations, and allowed the legislature to refer an alternative redistricting plan to a popular vote.

In 2011, the Governor removed the Commission chair. The state Supreme Court declared that unconstitutional in *Arizona Independent Redistricting Commission v. Brewer*, 275 P.3d 1267 (2012).

Colorado

State Legislative Districts

The eleven-member Colorado Reapportionment Commission draws the lines, with automatic review by the state Supreme Court. The plan must be submitted to the Court at least 123 days before the start of precinct caucuses or other candidate selection process in the second year following the Census. If the Court disapproves, it must allow commission enough time to redraw the plan and submit it to the Secretary of State at least 55 days before caucuses.

Four commissioners are chosen by the majority and minority members in each house, three by the Governor and four by the Chief Justice. No more than six can be from the same party, and no more than four can be members of the Legislature. There must be at least one from each of the seven Congressional districts but no more than four from any of them. At least one must live west of the Continental Divide.

Criteria: compactness, contiguity, follow political boundaries, preserve communities of interest and no more than 5% variation in population.

Public hearings required within 45 days after publication of preliminary plan

Congressional Districts

Drawn by the Legislature as in the majority of states. Governor can veto. No stated criteria or deadline.

NOTE – In November 2018, Colorado overwhelming (71-29) passed Amendments Y and Z, which are expressly aimed at ending gerrymandering for Congressional and state legislative districts, respectively.

Both amendments create 12-member commissions, with four each from the state's two major parties (Ds and Rs) and four unaffiliated voters. Members must be registered voters who voted in the two previous general elections and must have been affiliated with that same party, or unaffiliated, for at least five years preceding appointment. During that period, they must also not have run for elective office or worked for a campaign and for three years prior, cannot have been a professional lobbyist, a political party employee or an elected political party official above precinct level. They also cannot be a member of the other redistricting commission,

A lottery system will be used alongside a panel of retired state Supreme Court or Court of Appeals judges to pick commission members. Applications for commissioner are public records and are to be posted promptly on the General Assembly website or somewhere comparable.

For revisions to pass, a super majority of eight commission members with at least two unaffiliated voters is needed.

Iowa

A five-member advisory commission draws both state legislative and Congressional districts. The Senate and House majority and minority leaders each pick one and those four select the fifth. Commissioners must be eligible Iowa voters who do not hold partisan public office or political party office. They cannot be relatives or employees of members of Legislature or Congress.

The commission draws the lines after holding three public hearings in different regions of the state and the Legislature approves. The Governor can veto them. On petition by a qualified voter, the Supreme Court will review them. The Court will draw the lines if the Legislature fails to approve a plan by September 15.

The criteria are: compactness; contiguity; following political boundaries; no favoritism toward any person, party or group; no augmenting or diluting minority group voting strength; and nest House districts in Senate districts.

Michigan

This past November, voters passed a constitutional amendment to create an Independent Citizen's Redistricting Commission to draw "geographically compact and contiguous districts of equal population." It will have 13 members, four each from the state's two major parties, i.e. Democrats and Republicans, and five Independents.

Any eligible registered voter in Michigan can apply to be a member and the Secretary of State is to mail out application forms to randomly selected registered voters. Not eligible are those who within the last six years have held or run for federal, state or local office; been an officer or member of the governing body of a political party; been a paid consultant of any elected official, political candidate, or political action committee; or worked for the state legislature or as a lobbyist. Nor can they be a parent, stepparent, child, stepchild, or spouse to any such persons. Commissioners are barred from holding elective office or five years following their service.

The Secretary of State will randomly select 60 Democrats, 60 Republicans and 80 Independents, using statistical weighting methods to "mirror the geographic and demographic makeup of the state." House and Senate leadership will review the applications and be allowed to collectively strike 20 applications from the pool of 200—five each for the Republican and Democratic leaders of both bodies. Then the Secretary of State is to randomly choose four Republicans, four Democrats and five independents from the remaining 180 applications to serve on the commission.

The line-drawing criteria are: equal population and compliance with Voting Rights Act; contiguity; compactness; reflect county city and township boundaries and also the state's diversity and "communities of interest"; no proportionate advantage to any party or favoring or disfavoring of an incumbent.

Approval requires the support of at least two Ds, two Rs and two Is, following a 45-day public comment period with five public hearings throughout the state.

Washington

A five-member commission draws both state and Congressional districts. The leaders of the two largest parties in the House and Senate each select one and those four select a non-voting chair. They must be registered Washington voters who have not worked as lobbyists within the past year or elected or party officials within the prior two years.

Three votes are needed to approve a final map. Failing that, the Supreme Court steps in and adopts a plan. By a two-thirds vote in each chamber, the Legislature can either amend the plan or reconvene the commission to modify it.

Criteria are: compactness and convenience; populations as equal as possible; contiguity; following county and municipal boundaries and geographical or artificial barriers; preserving communities of interest when practicable; no purposeful favoring or discrimination against any group or political party; nest House districts within Senate districts; provide “fair and effective representation” and encourage competition.

New Jersey

State districts (Article IV, section III of the NJ Constitution)

A 10-member Apportionment Commission whose members are appointed five each by the chairs of the two largest parties, draws the lines. A simple majority vote is needed but if deadlocked, the Chief Justice appoints a tiebreaker.

Criteria: compactness for Assembly; contiguity; follow political boundaries; nest Assembly districts within Senate ones; “due consideration” for geographical diversity.

There is no requirement for public hearings.

It was the state districting provisions that were the subject of the recent effort to amend the Constitution.

Congressional districts (Article II, section II of the NJ Constitution)

There is a 12-member Redistricting Commission, with two members each appointed by House and Assembly majority and minority leaders as well as by the state chairs of the two largest parties. Commissioners must be chosen with “due consideration to geographic, ethnic and racial diversity” and may not be a member or employee of the U.S. Congress.

The twelve vote for a thirteenth commissioner to serve as chair. If they cannot agree, the Supreme Court appoints the “more qualified” of the two top vote getters. The chair must have resided in NJ for at least the last five years and must not have held public or party office during those five years.

Approval of a final map requires a simple majority and if they cannot achieve one, the Supreme Court chooses between the two highest vote plans based on which best conforms to the NJ Constitution and federal laws. The NJ Supreme Court has exclusive jurisdiction over any redistricting litigation.

No criteria are specified but there must be at least three public hearings in different parts of the state. The final vote on the plan must be done by roll call at an open public meeting called on at least 24 hours’ notice.

Districts cannot be changed before the next census.

Here is a link to the commission’s website. <http://www.njredistrictingcommission.org/default.asp>

The current chair is John Farmer Jr., a Republican who is General Counsel at Rutgers University and before that was Dean of Rutgers Law School-Newark. He was NJ AG under Gov. Christie Todd Whitman. He had been her Deputy Counsel and then Assistant Counsel before that. He was also Senior Counsel to the 9/11Commission.