

LINES THAT DON'T DIVIDE

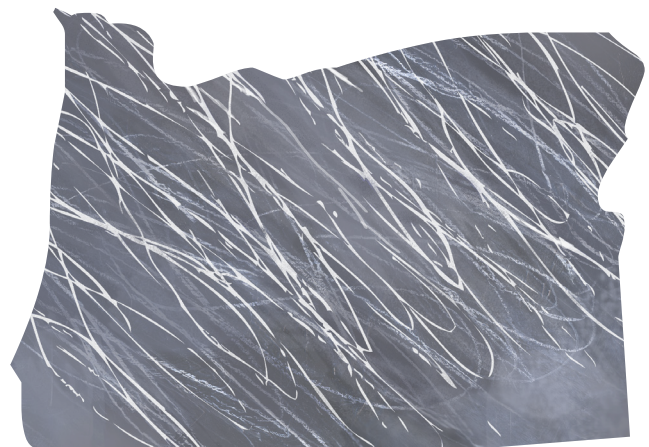
A City Club of Portland report on improving Oregon's redistricting process

EXECUTIVE SUMMARY

In 2011, the Oregon Legislature completed plans for redrawing the lines of legislative and congressional districts for the first time in a century without the help of the secretary of state or changes ordered by the courts. Legislative observers attribute this achievement to the close balance between Republicans and Democrats in both chambers and the personalities of the leaders who chaired the redistricting committees. Both factors contributed to a bipartisan and cooperative redistricting process.

The recent success of Senate and House members in Salem, however, masks what has been one of the most contentious and partisan activities of Oregon's elected lawmakers. While legislators exhibited bipartisan cooperation and openness during the 2011 redistricting process, more typically, charges of bias, unfairness and gridlock characterize redistricting efforts. Many see redistricting as exacerbating excessive partisanship in Salem.

Oregon has not experienced political polarization to the degree seen in Congress and some other state legislatures. Though the next round of redistricting is a decade away, the time to improve the process – by establishing an independent redistricting commission – is now. As 2021 approaches, it becomes more likely that partisans who see opportunity for political gain in the Legislature and congressional delegation will block efforts to establish an independent redistricting commission. Oregon may have a brief window to adopt a nonpartisan redistricting process while the Legislature is still controlled by lawmakers who put the state's interest before partisan politics.



STUDY PROCESS

In February 2011, City Club of Portland formed a study committee to examine Oregon's redistricting process and to suggest possible improvements. The study committee, composed of 13 members screened for conflict of interest, met nearly every week for twelve months. The committee reviewed the history of redistricting nationally and in Oregon; studied redistricting processes in other states; examined redistricting guidelines in Oregon and other states; heard testimony on redistricting from 17 witnesses, including the current and three former secretaries of state, the current and a former president of the Oregon Senate, a senior political reporter and House and Senate leaders of the 2011 redistricting effort; attended redistricting committee meetings of the Oregon Legislature; and reviewed academic literature and news articles.

CONCLUSIONS

After a year of study and deliberation, City Club's all-volunteer study committee reached the following conclusions:

1. Lawmakers have the best, most detailed knowledge of the people and characteristics of their districts, and thus their input should be considered in the redistricting process.
2. Manipulation of the redistricting process for partisan advantage has been chronic throughout U.S. history, though in Oregon the problem has not been severe.

Most alarming is the possibility that a single party controlling both legislative houses and the governorship could pass a redistricting plan ignoring the concerns of the minority.

3. Redistricting under the control of the Legislature is inherently partisan, and the results are frequently attacked as biased, whether true or not.

4. Legislative control of redistricting opens lawmakers to charges of conflict of interest, since they shape the lines of the districts in which they run for office.

5. The Legislature's successful 2011 redistricting effort was due to an unusual set of circumstances, including close cooperation between Republican and Democratic leaders, and a desire to keep the process out of the hands of the secretary of state.
6. Having a single, partisan-elected secretary of state conduct redistricting, when the legislature and governor fail to approve a plan, may lead to charges of gerrymandering from opponents, even if the secretary of state's redistricting plan is upheld in court.

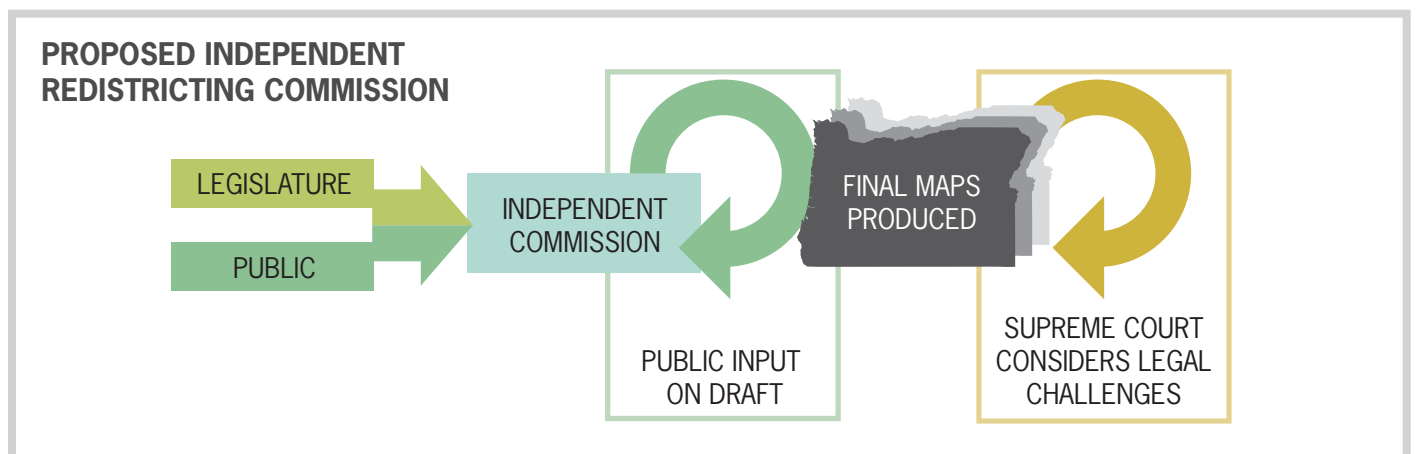
7. Some of Oregon's redistricting criteria are in tension with one another. That and the lack of specificity in the definition of the "community of interest" standard mean that partisans may be able to defend a redistricting plan on statutory grounds, even if it is in reality a partisan-inspired plan.
8. The fact that Oregon's statutory redistricting standards are not rank-ordered is a positive, allowing flexibility in drawing boundaries that must balance competing interests.
9. Although the criteria for redistricting set out in ORS 188.010 apply to congressional redistricting, the Oregon Constitution does not establish who is responsible for such redistricting, nor does it specify any deadlines for such redistricting. Neither has it specified a court of original jurisdiction for legal challenges to congressional redistricting. The last situation could lead to court-shopping for a favorable outcome to a legal challenge.
10. An independent, nonpartisan redistricting commission would help mitigate the perception and reality of excessive partisanship and conflict of interest.
11. Given the increasing polarization of national and state politics in the country, Oregon may have only a limited window to adopt a nonpartisan redistricting process while our Legislature is made up of lawmakers who put the state's interest ahead of partisan politics.

An independent, nonpartisan commission is the best and most effective way to improve Oregon's redistricting process because it would eliminate the conflict of interest inherent in the present system as well as the potential for partisan abuse.

RECOMMENDATIONS

An independent, nonpartisan commission is the best and most effective way to improve Oregon’s redistricting process because it would eliminate the conflict of interest inherent in the present system as well as the potential for partisan abuse. An independent commission would have the authority to create the original redistricting plan itself and go furthest in removing partisan politics from the process. That is the case particularly in the instance where a legislature and governorship are controlled by one party bent on achieving a highly partisan redistricting plan. The committee therefore recommends the following:

1. The Legislature should refer to the people a constitutional amendment that would establish a nonpartisan, independent redistricting commission in the Oregon Constitution, taking input from legislators and the public, but having the responsibility for redrawing legislative and congressional boundaries in the state once every ten years. The amendment should include provisions for the independent operation and funding of the commission.
2. The commission should consist of nine members: four appointed by House and Senate legislative leaders from the Republican and Democratic parties, and five appointed by the initial four members from a pool of qualified applicants. The commission membership must not be homogeneous in geographical location, gender, race, or political party membership.
3. Commission members may not run for or hold partisan elective office, or hold political party posts, or lobbying positions for five years before and after appointment to the commission, and while serving on the commission. They must disclose any conflicts of interest, party registration and relevant personal financial data. Their conduct must be in accordance with the Oregon Government Ethics Law.
4. All communications between legislators and commission members will be public; the commission will conduct itself in accordance with the Oregon Public Meetings Law and members will conduct themselves in accordance with the state ethics law.
5. The commission will have independent funding sufficient to carry out its work and is not subject to budget restrictions by the Legislature.
6. The Oregon Supreme Court shall be the court of original jurisdiction in legal challenges to congressional and legislative redistricting plans created by the commission, except in cases where challengers raise a federal legal question.
7. In order to preserve continuity of representation, an additional redistricting criterion should be added to the statutes (ORS 188.010): To the extent possible, lines should be drawn to minimize the number of persons moved from an existing district into a new district. All of Oregon’s redistricting criteria should be placed in the state constitution as part of an initiative or referral to create an independent redistricting commission.
8. Oregon law on redistricting should be amended to vest congressional redistricting in the commission, and to require that it be done in the year following the decennial U.S. Census, with completion deadlines identical to those in force for legislative redistricting.
9. For purposes of redistricting, inmates of prisons and jails in Oregon should be counted in the district in which they last resided before incarceration. The Legislature should revive and pass Senate Bill 720 of 2011, which establishes this procedure.



OREGON'S CURRENT REDISTRICTING PROCESS

Redistricting for the Oregon legislature is governed by the Oregon Constitution (Article IV, Section 6) and by statute (ORS 188.010). The constitution specifies that redistricting of the 60 seats in the Oregon House of Representatives and the 30 seats in the Oregon Senate shall occur in the odd year after the decennial census, and designates the Legislature as the body responsible.

As a practical matter, the Legislature also conducts redistricting for Oregon's five United States congressional representatives, even though there is no express provision in the Oregon or federal constitutions on how congressional redistricting should be done. By its terms the criteria of ORS 188.010 also apply to congressional redistricting.

The redistricting plans take the form of legislation which is forwarded to the governor for approval or veto. The constitution specifies that the Legislature must finish its work on Oregon legislative redistricting by July 1 of the year following the census. There are no time requirements set out in law for U.S. congressional redistricting.

Only once since 1911 has the Legislature completed a redistricting plan that has gone into effect without modifications by the secretary of state or the courts. That was in 2011.

If lawmakers fail to pass a redistricting plan or if the plan is vetoed by the governor and the veto is not overridden by the Legislature, the task falls to the secretary of state.

Legislative redistricting plans produced either by lawmakers or the secretary of state are subject to legal challenge.

Article IV, Section 6 of the Oregon Constitution expressly provides that original jurisdiction for review of legislative redistricting lies in the Oregon Supreme Court. There is no such express provision for congressional redistricting.

KEY TERMS

Redistricting: The process through which the district boundaries of elected officials of representative government – federal, state, regional and sometimes local – are redrawn to conform to changes in population.

Reapportionment: The decennial adjustment of the number of representatives from each state in the U.S. House of Representatives, according to national shifts in population.

Gerrymandering: Drawing political lines to favor incumbents or particular political parties.

Bipartisan gerrymandering: A practice by which political parties agree to draw lines favoring incumbents, thus discouraging newcomers and thwarting voters' desire for change.

Packing: A form of gerrymandering that occurs when lines are drawn to corral voters of one party substantially in one or more districts, thus diluting their power to affect the vote in other districts.

Cracking: A form of gerrymandering that dilutes partisan voters' strength by scattering them among several districts.

Though the next round of redistricting is a decade away, the time to improve the process is now.

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The mission of City Club is to inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship.

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