

# **A Proposal for Redistricting Reform: A Model State Constitutional Amendment<sup>1</sup>**

**Sam Hirsch**  
**shirsch@jenner.com**  
**Jenner & Block LLP**  
**Washington, D.C.**

**Abstract:** Calls for judicial intervention to cure the evils of gerrymandering are legion. But surprisingly little attention has been paid to institutional design: Who should redraw districts, and under what rules? This Paper rejects the notion that redistricting reform should aim to depoliticize the process by denying redistricters access to political data. Instead, states should require redistricting commissions to engage in an iterative process that forces each major political party to compete by presenting a plan with more geographic integrity, more competitive districts, and less partisan bias than the plan last proposed by the other party.

Given the amount of money and energy expended in recent years in redistricting-reform battles in California, Ohio, Florida, and elsewhere in the United States, remarkably little effort and systematic thinking have been devoted to drafting creative and effective reform proposals. That failure to engage in questions of institutional design is unfortunate, as it undermines both the prospects for actually adopting reforms and the utility of whatever reforms do get adopted. This Paper is an attempt to put the horse back in front of the cart, by encouraging critics of current redistricting practices to think carefully about how best to reform those practices.

---

<sup>1</sup> This Paper is to be presented at the American Mathematical Society's Special Session on "The Redistricting Problem," to be held in Washington, D.C., on January 8, 2009, sponsored by the Russell Sage Foundation and Scientists and Engineers for America.

## *Comparative Redistricting Reform — Sources for Inspiration*

Fortunately, there is no shortage of real-world material to draw from when crafting a redistricting reform proposal. More than a third of all state constitutions in the United States authorize redistricting commissions or boards to draw districts, either initially or as a backup in cases of legislative deadlock. About a dozen states vest commissions with the primary authority to redraw state-legislative districts in the first instance, and about half of those states have done likewise for congressional districts. (As will be discussed below, New Jersey’s state-legislative and congressional redistricting commissions provide particularly useful case studies.) Even those states that lack commissions and have kept the power to redistrict in the hands of their legislatures vary widely in the processes they use and the substantive criteria they apply when drawing maps.

Furthermore, redistricting efforts have not been confined to state legislatures and commissions. In the nearly half a century since the U.S. Supreme Court launched the “Reapportionment Revolution,” scores of federal and state courts have been forced to adopt new, lawful maps when state legislatures have failed to do so in a timely manner. Those experiences also have taught us useful lessons about how to draw and assess competing maps. And finally, further data helpful to reformers in the United States can be gleaned from the experiences of redistricters abroad — especially in those nations, such as the United Kingdom, Canada, and Australia, that also use winner-take-all (or “first past the post”) elections to choose representatives from single-member districts.

After studying all these sources, I have attempted to craft a model state constitutional amendment for redistricting reform, the full text of which can be found at

the end of this Paper. But the bulk of the Paper will be devoted to laying out half a dozen basic goals of redistricting reform, a couple of caveats about the particular proposal here, several broad principles undergirding the proposal, and an overview of the model amendment's genesis and structure. With that background, the text of the model state constitutional amendment should be largely self-explanatory.

### ***The Key Goals of Redistricting Reform***

Because the literature critiquing American redistricting practices — both in law reviews and in political-science and political-geography journals and books — dwarfs the literature on positive, programmatic reform, this Paper will not engage in a lengthy review of the ills of modern American redistricting. Suffice it to say that the model state constitutional amendment presented here is designed to accomplish six goals, none of which is being adequately served by the status quo:

- enhancing electoral competition;
- reducing biases that favor either major political party over the other;
- ensuring fair representation for racial and ethnic minority groups;
- guaranteeing at least a minimal level of territorial integrity to electoral districts;
- restoring some degree of public faith in congressional and legislative elections;
- and
- reducing wasteful litigation over district lines.

Of these six goals, the first three are the most important. In the last few decades, the United States has already made great (though still incomplete) progress on the third goal — moving toward fair representation for minorities, especially African-Americans and Latinos. But especially in recent years, the United States has performed abysmally on the first two goals: enhancing competition and reducing partisan bias. The “bipartisan gerrymander,” which typically protects incumbents of both parties by making Democratic districts more Democratic and Republican districts more Republican, has generated far too many “super-safe” seats and thus severely undercut electoral competition, insulating ineffective lawmakers from serious challengers. And the “partisan gerrymander,” which typically can be put into effect only when one political party controls both state-legislative chambers and the governorship, has produced significant partisan bias in American districting maps and at times has altered party control of state-legislative chambers and even the U.S. House of Representatives. An effective partisan gerrymander can consistently deliver at least two-thirds of a state’s seats to the party that drew the map, even if its candidates no longer capture a plurality of the vote statewide. The “out” party is given a small number of “super-safe” districts while the “in” party is given at least twice as many “safe” districts.

Maximizing partisan bias and minimizing competitiveness have serious implications for the other three goals listed above. To create the “safe” and “super-safe” districts that partisan and bipartisan gerrymanders require, redistricters frequently slash through local political subdivision boundaries (such as county and municipal lines) and create bizarrely misshapen districts that frustrate grassroots campaigners and send a

message to voters that they have been painstakingly sifted by demographics and partisan identification. That sort of manipulation in turn undermines voters' confidence in the political system's ability to faithfully translate public opinion into governmental power. And it encourages political actors disgruntled with the resulting maps to bring lawsuits. In the United States, redistricting litigation can be particularly pernicious because partisan grievances often are recast as racial ones in order to bolster their chance of success in court. (Often, partisan mapmakers could accomplish their ends nearly as well without sacrificing compactness or respect for political subdivisions; but political greed drives them to take needlessly extreme positions.)

The model state-constitutional amendment proposed here should be judged on the basis of whether it is likely to achieve these six goals — or, more accurately, whether it is likely to do so better than the status quo and better than some competing reform proposal.

### ***Two Caveats About This Redistricting Reform Proposal***

Before describing the principles and structure of this reform proposal and then setting forth its details, two caveats are in order.

*First*, I have no illusion that any state will adopt this model wholesale. But at a minimum, the model amendment should serve as a useful checklist of issues that all redistricting reformers should consider when drafting their own proposals. Although this model amendment was drafted to form one coherent whole, most of its parts are severable and could be adapted piecemeal to any particular state's needs. For example, the model amendment would establish an independent redistricting commission and then

set out substantive criteria constraining how the commission draws district lines. But many of those same substantive criteria could be applied even in states that wish to keep redistricting authority in the legislature's hands. Similarly, the model amendment assumes that each chamber of the state legislature uses single-member districts, that state-representative districts are not "nested" in state-senate districts, and that all legislative offices are filled in the first election after redistricting (which avoids some thorny issues about the relationship between redistricting and staggered state-senate terms). But any or all of these assumptions could be relaxed. In short, this so-called "model state constitutional amendment" is one part legal proposal, one part checklist, and one part thought experiment.

*Second*, readers more familiar with the United States Constitution may find the model amendment peculiarly specific. But American state constitutions generally are far longer and more detailed than their federal counterpart. Indeed, this model amendment is a good bit shorter than some states' current redistricting laws. In certain states, some of the model's provisions might more appropriately be located in a statute or a regulation than in the constitution. But in the interests of simplicity, the model presents all its provisions as a single article to a state constitution.

### ***Basic Principles for Redistricting Reform***

The model state constitutional amendment presented in this Paper is founded on a half dozen basic principles.

*First*, bad reform may be worse than no reform at all. Americans have an old saying: “If it ain’t broke, don’t fix it.” But the corollary — “If it is broke, any fix will do” — surely is wrong when it comes to redistricting. This point leads to the next principle, which suggests that one of the two leading “schools” of redistricting reform in the United States is based on assumptions that are dead wrong.

*Second*, redistricting reform should not attempt to “take politics out of redistricting.” Redistricting is inherently and unavoidably political. Even if districts somehow could be drawn with no political intent, they always will have significant political effects. Redistricting can turn winning candidates into losers and vice versa, and therefore always has the potential to empower some voters and disempower others. The school of redistricting reform, prominent among some “good government” activists in the United States, that seeks to “blindfold” redistricting authorities from any political information is misguided. Empowering some “nonpartisan” body to redraw districts absent any knowledge of voter-registration data, the locations of candidates’ residences, and recent election returns is a cure that may prove to be worse than the disease.

As an initial matter, any state with sizeable racial or language minority groups must have access to political data in order to comply with the Voting Rights Act. Moreover, for some interested parties, the temptation to corrupt the process by illegally subjecting decision-makers to key pieces of political data will prove irresistible. And even if the “politics-blind” process is not actually corrupted, allegations of corruption, and litigation based on those allegations, will run rampant. Moreover, a redistricting process devoid of electoral data might stumble into a fair result now and then, but more

often it will unintentionally create maps that favor one political party over the other, or that are entirely lacking in competitive districts and thus unresponsive to shifts in public opinion. That is because, in most states, the geographic distribution of Democratic voters and Republican voters is neither random nor symmetrical. Huge swaths of urban America are overwhelmingly Democratic, often by margins exceeding three-to-one; there are no equivalently large and lopsided Republican areas. Thus, reliance on purely formal districting criteria, such as geometric compactness and respect for county and municipal boundaries, is likely to produce severe partisan asymmetry in translating votes into seats. Today, no one familiar with American political geography seriously contends that minority vote dilution can be cured by “colorblind” redistricting; likewise, partisan vote dilution cannot be cured by “politics-blind” redistricting.

*Third*, the history of state-level redistricting reform efforts in the United States, dating back many decades, shows that reforms are almost always defeated if at least one major political party expends significant resources to oppose the reform. With few exceptions, the reforms that have been successfully adopted were at least acquiesced in, if not actually supported, by both major political parties. This is yet another reason why proposals for “politics-blind” redistricting are not worth pursuing. A reform that expressly demands partisan symmetry is much more reassuring than a reform that assumes partisan fairness will flow naturally from formal criteria such as population equality, compactness, and respect for political subdivisions. When faced with a reform measure that relies solely on these formal criteria, at least one party will fear that its ox will be gored. A reform proposal will have a far better prospect of being adopted if it



makes partisan fairness an express criterion for the new redistricting authorities, and then sets up a mechanism to eliminate the risk of adopting a seriously biased map.

*Fourth*, although the “who” of redistricting is important, the “how” is even more important. Shifting the authority to redraw congressional and state-legislative districts away from the state legislature and the governor and giving it to a bipartisan commission has one important advantage: If the decennial redistricting just happens to take place when one political party has unilateral control of the governorship and both state-legislative chambers, using an evenhanded bipartisan commission can prevent the enactment of an extreme partisan gerrymander. But in most instances, what matters even more than the composition of the redistricting authority is the set of rules binding that authority. Redistricting conducted by a legislature bound by *well-crafted rules* might well be preferable to redistricting conducted by a bipartisan commission with virtually unfettered discretion.

*Fifth*, these “well-crafted rules” must actually be well crafted. American state constitutions and statute books are loaded with long lists of redistricting principles that inevitably conflict in actual practice, yet there typically is no established mechanism for assessing tradeoffs among those conflicting principles. Moreover, most of the principles are written in language that is at best vague and at worst entirely hortatory. Requiring “due consideration” of “communities of interest” “to the extent practicable,” for example, is tantamount to providing no guidance at all. Generally, it is best to craft redistricting rules as formally realizable legal directives that can be clearly understood by redistricters and consistently enforced by courts. Otherwise, they may be too easily ignored.

*Sixth*, expectations for redistricting reform must be realistic. The very thesis of this Paper is that the model state constitutional amendment presented here would significantly advance each of the six goals laid out above. But even the best imaginable redistricting reform will not revolutionize all of American politics. Well-designed redistricting institutions and criteria could significantly increase the number of close contests, but could not eliminate the advantages of incumbency or transform American legislative elections into a hotbed of competition. Minority representation could be further improved, but redistricting reform is unlikely to end racial unfairness in our political system. Public confidence could be increased, but widespread cynicism about electoral politics will of course remain. And even if every state adopted this proposed constitutional amendment verbatim, redistricting litigation would not become obsolete. The goal of this proposal, then, is to substantially improve both the process and the end product of redistricting, not to create a panacea for every ailment in American politics.

### ***The Genesis and Structure of the Model State Constitutional Amendment***

At first glance, the model state constitutional amendment presented here may resemble other redistricting reform proposals. Sections 1 through 5 establish an 11-member bipartisan commission and define its tasks. Sections 6 and 7 list the substantive criteria for the commission to apply when drawing or assessing districting plans. And Sections 8 and 9 establish procedures for challenging a redistricting plan in court and for winding down the commission's work.

But on closer inspection, this proposal is quite distinctive. To understand why, it may be helpful to explain its roots, which are found in New Jersey's state-legislative and congressional redistricting commissions. Each of those commissions provides for an equal number of Democratic and Republican commissioners and thereby eliminates the risk of one-party dominance that infects the traditional system of redistricting by legislatures. That step alone, however, would be a recipe for deadlock, and thus an invitation to court-drawn redistricting. So the commissions also include tie-breaking chairs; in New Jersey, these posts recently have gone to well-respected political scientists.

The chairs, in turn, have informally established an iterative process, where the commission's Democratic and Republican delegations alternately present competing maps, each one trying to improve on the last. To receive serious consideration from the chair, a proposed redistricting plan must meet certain minimum hard-and-fast requirements, such as compliance with federal law (including the Voting Rights Act) and particular degrees of population equality and (for state-legislative districts) respect for municipal boundaries. But beyond those absolute requirements, the two partisan delegations compete with regard to certain additional criteria established by the chairs (but not actually set forth in state law). For example, the chair of the state-legislative commission has forced the Democratic and Republican members of his commission to compete with each other over three criteria: (1) creating additional competitive districts; (2) minimizing partisan bias in the plan as a whole; and (3) keeping voters in the same districts as their current representatives, so they can continue supporting incumbents who

are serving them well and can punish incumbents who are serving them poorly. At least on the margins, each of these three criteria conflicts with the others. But forcing the commission's two partisan delegations to compete for the chair's approval based on these criteria tends to drive both sides toward a compromise solution that presumably is in the best interests of the public at large. In New Jersey, much of this process takes place behind closed doors, unobserved by the public or the media.

In recent decades, this basic structure has largely succeeded at the state-legislative level in New Jersey, because each party's delegation to the commission has an incentive to fight to maximize its chance of controlling the median district (and thus controlling the legislature). So the Democrats' mission and the Republicans' are always in tension and ultimately are mutually exclusive. The two partisan delegations are unlikely ever to reach agreement. Each delegation's only hope of success is to win the chair's support. And the chair insists on moderation.

At the congressional level, however, the chair is much more likely to be rendered powerless. "Controlling" a state's congressional delegation is, by itself, nearly meaningless. What matters is controlling the median congressional seat nationally, for the entire U.S. House of Representatives, not the median congressional seat in any one state. Therefore, if both political parties are reasonably content with their current shares of the state's congressional delegation, there is a great incentive for them to draw a sweetheart, incumbent-protecting bipartisan gerrymander. And if necessary, the two partisan delegations can collude to do so, even over the chair's objection. Under that

scenario, the goals of competitiveness, minority representation, territorial integrity, and public confidence all get short shrift.

One way to cure this defect would be to give the chair a veto, perhaps by literally giving him more votes than all the Democratic and Republican commissioners combined. But that would put an extraordinary amount of power in the hands of one person. If the chair turns out to be a closet partisan, or simply inept, the result could be a wildly imbalanced and unfair map.

The solution embodied in this Paper's model state constitutional amendment is twofold. *First*, detailed and precise substantive rules tightly constrain the chair's discretion to choose one map over another. *Second*, taking full advantage of the Internet, the entire process is opened up to the public. Anyone who can draw a superior map (with "superior" being tightly defined by the detailed, precise substantive rules) can submit her proposal to the chair and thereby preempt any further consideration of inferior maps. Together, these two mechanisms eliminate most of the risk that might come from granting veto power to the chair. The transparency of the process not only will generate better maps, but also will boost public confidence and reduce the likelihood of litigation.

### ***The Model State Constitutional Amendment***

With this understanding of the model state constitutional amendment's principles, genesis, and structure, the text of the amendment should be largely self-explanatory. The key to the text is the set of detailed substantive rules that constrain the chair's discretion.

The model amendment contains six binary “threshold criteria” and three continuous “optimizing criteria.”

A redistricting plan must satisfy all six “threshold criteria”: compliance with federal law generally (as mandated by the United States Constitution’s Supremacy Clause); compliance with current interpretations of the Voting Rights Act, to foster racial and ethnic fairness; a precise degree of population equality; a precise definition of district contiguity; respect for neighborhoods, again precisely defined (using official Census Bureau geography); and a precise degree of compactness, using a specific quantitative measure familiar to American legislators and judges. A plan that fails to satisfy any of these six criteria will get no consideration from the commission.

The heart of the model constitutional amendment, however, is its three “optimizing criteria.” These are the criteria that Democratic commissioners, Republican commissioners, and members of the public will compete over. The three optimizing criteria are: county integrity (because counties usually are the most important political subdivisions that “tile” the entire state); partisan fairness (or partisan symmetry); and competitiveness. Once a map has been presented that satisfies all six threshold criteria and has particular scores for each of these three optimizing criteria, only maps that meet or exceed each of those three scores can even be considered by the commission’s chair. So the process contains a one-way ratchet that prevents backsliding. A map that is inferior to a competing map on *any* optimizing criterion will be immediately tossed aside. In other words, the process is essentially a tournament that seeks Pareto efficiency among the three optimizing criteria.

Defining “county integrity” is simple: Keeping counties whole is always better than dividing them, and dividing them into fewer parts is always better than dividing them into more parts. Defining “partisan fairness” and “competitiveness” in a manner that is precise and lends itself to the sort of tournament established in this model constitutional amendment is a bit tricky. I have chosen a very simple measure of partisan fairness that is intuitively sensible and that, based on my experience litigating cases on these issues, is eminently manageable. The basic notion is that in a fair map roughly half the districts should be more Democratic than the state as a whole and roughly half should be more Republican. If that were true, then in a highly competitive state (a so-called “purple” state that tilts neither Republican “red” nor Democratic “blue”), where the voters are split right down the middle, one would expect each political party to capture about half the seats, all other things being equal. That is a solidly intuitive notion of partisan fairness.

So we begin by identifying, for the last five years, all statewide general elections (for Governor, Lieutenant Governor, U.S. Senator, President, and so forth), eliminating any blow-outs. Then, for any proposed plan, and for each of those statewide elections, we determine how many districts were more favorable to the Democratic candidate (when compared with the statewide result) and how many were more favorable to the Republican candidate (again, when compared with the statewide result). We repeat this simple calculation for every reasonably close statewide general election from the last five years. In a perfectly fair map, the totals should be the same for each party. So, for example, if there have been seven reasonably close statewide contests in the last five

years, and the commission is redistricting a 100-member state house of representatives, then ideally we would want to have 350 instances where a proposed district was more Democratic than the state as a whole and 350 instances where a proposed district was more Republican than the state as a whole. If a commissioner or member of the public submitted such a map (and it also scored well on the other two optimizing criteria and satisfied all six threshold criteria), then the one-way ratchet would bar the commission from adopting any map unless it also had this 350-to-350 partisan parity.

Competitiveness is measured in a similar manner. But with competitiveness, the goal is to maximize the number of elections, by district, where neither candidate prevailed by more than seven percentage points. (That figure is a bit arbitrary, but it reasonably approximates what American political consultants today view as a truly “competitive” election.) So, returning to our hypothetical: If we were comparing two maps that both exhibited the 350-to-350 partisan parity, we would prefer a map in which 200 of those 700 results were close (that is, within seven points) over a map in which only 199 results were close, assuming all other things (such as “county integrity” scores) were equal.

Because there are a finite number of maps that would meet all six threshold criteria, one might think that a computer could readily solve for the “best” solution, based on the three optimizing criteria. But that probably is not the case. As Harvard University political scientist Micah Altman has shown, the finite number of potential statewide maps here would be so large as to render the problem intractable not only for current-day computers but probably for any computer ever. Even if “perfect” solutions to



redistricting problems are impossible, however, future improvements in computer technology will make it easier for commissioners and members of the public to draw districting plans with ever-better (though still imperfect) optimizing-criteria scores. And that in turn will make redistricting maps more competitive, more symmetrical in their treatment of Democratic and Republican voters, and more respectful of county lines. Given the United States' long history of severe gerrymandering, those gains alone should be reason enough to give this reform proposal serious consideration.

## **THE MODEL STATE CONSTITUTIONAL AMENDMENT TO REFORM REDISTRICTING**

### **SECTION 1. THE CITIZENS' INDEPENDENT REDISTRICTING COMMISSION**

The power to establish electoral districts for Representatives in Congress, electoral districts for State Senators, and electoral districts for State Representatives is vested in a Citizens' Independent Redistricting Commission.

### **SECTION 2. THE COMMISSIONERS AND THE CHAIR**

The Commission consists of one Chair and ten Commissioners — five chosen by each of the two major parties. The “two major parties” are the two political parties whose candidates for all federal and state offices have received the greatest number and the second-greatest number of votes in the State in all regularly scheduled general elections in the last ten years.

**A. APPOINTING THE COMMISSIONERS.** By January 5 of the year following the taking of each federal decennial census of population, each of the two major parties shall appoint five Commissioners who reflect the geographic, racial, ethnic, gender, and socioeconomic diversity of the party's officeholders and voters. One of the five Commissioners must be selected by the party's top leader in the State Senate, one of the five Commissioners must be selected by the party's top leader in the State House of Representatives, and the other three Commissioners must be selected by the party's state chair.

**B. QUALIFICATIONS FOR THE COMMISSIONERS.** Any person may serve as a Commissioner, regardless of past, current, or intended future employment.

**C. APPOINTING THE CHAIR.** By January 15 of the year following the taking of each federal decennial census of population, the State Supreme Court shall appoint the Commission's Chair, either by unanimously selecting one Chair or by nominating three potential Chairs and then allowing each major party's Commissioners to veto one potential Chair.

**D. QUALIFICATIONS FOR THE CHAIR.** Neither the Chair nor any member of the Chair's immediate family can have served anytime in the previous five years as an elected public officeholder; a candidate for elected public office; a paid lobbyist; or an officer, employee, or contractor of a political party, a partisan candidate's campaign committee, a partisan candidate, the State Legislature, or the United States Congress. The Chair must pledge in writing, under oath, not to serve in any of these positions for the next five years and not to participate in or contribute to any political campaign while serving as Chair.

**E. FILLING VACANCIES.** Any vacancy in the Commission must be filled within five days, in the same manner as the original appointment.

### **SECTION 3. COMMISSION DECISION-MAKING**

**A. VOTING.** Each Commissioner has one vote, and the Chair has eleven votes. As set forth in Sections 6 and 7 of this Article, some specific Commission actions require a supermajority of nineteen affirmative votes. All other Commission actions require a simple majority of eleven affirmative votes.

**B. RECORD KEEPING.** All Commission votes must be taken by roll call and published on the Commission's public Internet site, along with meeting transcripts or minutes explaining the votes.

**C. PUBLIC NOTICE.** The Commission shall provide the public at least forty-eight hours' notice for all public meetings and hearings.

### **SECTION 4. GENERAL DUTIES**

**A. BEFORE THE CENSUS DATA ARE RELEASED.** After the Commissioners and Chair are appointed and before the United States Bureau of the Census releases the State's new redistricting data, the Commission shall:

- (1) publicize and hold regional field hearings across the State to seek public input on the totality of circumstances relevant to redistricting;
- (2) gather precinct-level data on voter registration and election returns;
- (3) disaggregate and re-aggregate the electoral data to correspond to the "building blocks" that will be used to assemble districts, as that term is defined in Subsection 6(E);
- (4) begin analyzing census data and election returns from recent primary and general elections, to help ensure that the Commission's redistricting plans will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group; and
- (5) develop and maintain an Internet site that will allow members of the public (a) to monitor and comment on the Commission's work; (b) to draw proposed plans and to determine whether the proposed plans satisfy the six "threshold criteria" listed in Section 6 and how they score on the three "optimizing criteria" listed in Section 7; and (c) to submit proposed plans and their scores to the Chair.

**B. AFTER THE CENSUS DATA ARE RELEASED.** After the United States Bureau of the Census releases the State's new redistricting data, the Commission shall:

- (1) update the analysis begun under Subsection 4(a)(4);
- (2) for each of the three redistricting plans — congressional, senatorial, and representative — use the process set forth in Section 5 to maximize the scores on the three optimizing criteria listed in Section 7 while satisfying all six threshold criteria listed in Section 6;

(3) promptly post on the Commission’s public Internet site detailed maps, census data, electoral data, and optimizing-criteria scores for each “leading plan,” as defined in Section 5; and

(4) timely adopt new redistricting plans for Representatives in Congress, for State Senators, and for State Representatives.

**C. APPROPRIATIONS.** The Legislature shall appropriate the funds necessary for the Commission to perform its duties efficiently, but not to exceed the amount that the State spent on redistricting and related litigation in the ten years prior to this Article’s adoption, adjusted for inflation. The Commission may select and hire its own staff, contractors, and legal counsel. Upon the Commission’s request, state legislative and executive agencies shall cooperate with the Commission and furnish technical assistance, personnel, equipment, and facilities.

## **SECTION 5. THE PLAN-DRAWING PROCESS**

The Commission shall simultaneously conduct separate processes for drawing and scoring each redistricting plan — congressional, senatorial, and representative.

**A. THE INITIAL PLAN.** Within sixty days after receiving the new census data, the Chair shall propose a new redistricting plan that satisfies all six threshold criteria listed in Section 6 and, to the greatest extent reasonably practicable given that time constraint, maximizes all three optimizing criteria listed in Section 7. At this stage, the Chair shall resolve conflicts among the three optimizing criteria by maximizing “partisan fairness,” as defined in Subsection 7(B). The Chair shall designate the proposed plan as the initial “leading plan” and shall post it on the Commission’s public Internet site, along with a standardized scorecard indicating compliance with all six threshold criteria and stating the plan’s score for each of the three optimizing criteria.

**B. HOW THE LEADING PLAN IS DETERMINED.** If the Chair, any Commissioner, or any member of the public proposes a new redistricting plan, and the Chair determines that the newly proposed plan satisfies all threshold criteria, equals or exceeds the leading plan on each of the three optimizing criteria, and exceeds the leading plan on at least one of the three optimizing criteria, then the Chair immediately shall designate the newly proposed plan as the new “leading plan” and shall post both the plan and its standardized scorecard on the Commission’s public Internet site. The Commission shall give the previous leading plan no further consideration.

**C. TERMINATING THE PROCESS.** If a leading plan remains in place for seven days without being successfully challenged by a new proposal, the process terminates automatically. Otherwise, the process continues until the Chair announces its termination, with or without notice to the Commissioners or the public, at any time not earlier than thirty days nor later than forty-five days after posting the initial plan on the Commission’s public Internet site.

**D. ADOPTING THE FINAL PLAN.** Within seven days after the processes for all three redistricting plans (congressional, senatorial, and representative) have terminated, the Commission shall commence public hearings on the three plans and any proposed amendments to them. Within twenty days after the first such hearing, the Commission shall adopt as a final plan either the last leading plan or an amended version of the last leading plan that satisfies all six threshold criteria and that equals or exceeds the last leading plan on each of the three optimizing criteria. Within seven days after the Commission adopts any plan other than the last leading plan, the Chair shall publish on the Commission’s public Internet site a detailed report justifying the adopted amendments and explaining specifically how each change serves the public interest and this Article’s purposes. The Commission also shall publish on its public Internet site any dissenting views from Commissioners.

**E. FILING THE COMPLETE SET OF FINAL PLANS.** Immediately after the Chair posts on the Commission’s public Internet site the three final redistricting plans and any accompanying reports or dissents, the Commission shall file the three final plans with the Secretary of State. The final plans will become law and take effect immediately upon such filing; but any vacancy requiring a special election must be filled from the same district that elected the person whose seat is vacant.

**F. THE PLANS’ DURATION.** Each plan must remain in effect and unaltered until a court invalidates the plan or a new plan takes effect after the next federal decennial census of population. No plan can be amended, disapproved, or repealed by initiative, referendum, or legislative act.

## **SECTION 6. SIX THRESHOLD CRITERIA AND THEIR DEFAULT DEFINITIONS**

A redistricting plan must satisfy all six of the following “threshold criteria.” Any definition set forth in this Section may be amended if the Commission, by a supermajority of at least nineteen votes, determines that a different objective definition would better serve the public interest and this Article’s purposes.

**A. FEDERAL LAW.** The redistricting plan must comply with federal law.

**B. RACIAL AND ETHNIC FAIRNESS.** No redistricting plan can have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

**C. POPULATION EQUALITY.** Each district’s population must be roughly equal. For a congressional district, the term “roughly equal” means within one-half of one percent of the average congressional-district population. For a senatorial district or a representative district, the term “roughly equal” means within five percent of the average senatorial-district or representative-district population, respectively.

**D. CONTIGUITY.** Each district must be contiguous. The term “contiguous” means that the district is bounded by one unbroken line and is not divided into two or more discrete pieces. A district is not contiguous if pieces of the district touch at only a single point; nor is a district contiguous if it includes pieces of land entirely separated by a body of water but excludes all bridges, tunnels, and public ferries connecting those pieces of land.

**E. RESPECT FOR NEIGHBORHOODS.** Each residence in the State must be included in one building block, each building block must be included in one district, and no building block can be divided between two or more districts. The term “building block” means a census tract used by the United States Bureau of the Census in the most recent federal decennial census of population.

**F. COMPACTNESS.** No district can be less compact than the least compact congressional, senatorial, or representative district that was in effect when this Article was adopted. The term “least compact” district means the district with the smallest ratio of the district’s area to the area of a circle whose perimeter is the same length as the district’s perimeter.

#### **SECTION 7. THREE OPTIMIZING CRITERIA AND THEIR DEFAULT DEFINITIONS**

To the greatest extent practicable within the constraints set forth in this Article, the Commission shall adopt a plan that maximizes each of the following three “optimizing criteria” (which are listed below in no order of importance). Any definition set forth in this Section may be amended if the Commission, by a supermajority of at least nineteen votes, determines that a different objective definition would better serve the public interest and this Article’s purposes.

**A. COUNTY INTEGRITY.** A plan’s “county integrity” is maximized when the number of county parts created by the plan is minimized. If a county is wholly contained in one district, it has one county part; if a county is divided between two districts, it has two county parts; if a county is divided among three districts, it has three county parts; and so on.

**B. PARTISAN FAIRNESS.** A plan’s “partisan fairness” is maximized when the number of districts leaning toward one major party equals the number of districts leaning toward the other major party. Analyzing a plan’s partisan fairness requires tallying how each district in the plan leaned in each relevant statewide election. A district “leaned” toward a major party in a relevant statewide election if that party’s candidate received a higher percentage of the major-party vote in the district than the candidate received statewide. The term “statewide election” means an election for President of the United States, United States Senator, Governor, or any other statewide constitutional office. A statewide election is “relevant” if it was a regularly scheduled general election held in the

last five years, in which each major party had a candidate who received more than a third of the total votes cast statewide. The “major-party vote” consists of all votes cast for the major-party candidates and excludes any votes cast for other candidates. The votes cast for each major-party candidate in a given district are computed by totaling the votes cast for that candidate in each of the district’s “building blocks,” as that term is defined in Subsection 6(E) and used in Subsection 4(A)(3).

**C. COMPETITIVENESS.** A plan’s “competitiveness” is maximized by maximizing the number of districts where neither major-party candidate in a relevant statewide election carried the district by more than seven percent of the major-party votes cast in that election in that district. The terms “relevant statewide election” and “major-party votes” have the same meanings as in Subsection 7(B). Analyzing a plan’s competitiveness requires tallying how each district in the plan performed in each relevant statewide election.

## **SECTION 8. JUDICIAL REVIEW**

**A. SUPREME COURT JURISDICTION.** The State Supreme Court has original and exclusive state-court jurisdiction to hear and decide all challenges to the Commission’s actions, including the Commission’s adoption of a final redistricting plan for Representatives in Congress, for State Senators, or for State Representatives.

**B. PETITIONS FOR REVIEW.** Within thirty days after a plan takes effect, any aggrieved resident of the State may petition the State Supreme Court to invalidate that plan. The Court shall consolidate all petitions challenging a plan, give the consolidated petitions precedence over other civil proceedings, conduct expedited hearings, and enter its judgment promptly.

**C. REMEDIAL PLANS.** If the State Supreme Court invalidates a plan, the Court shall give the Commission twenty days to adopt a remedial plan conforming to the Court’s judgment and to the criteria listed in Sections 6 and 7. If the Court then invalidates the Commission’s remedial plan, the Court shall promptly adopt its own remedial plan conforming to the criteria listed in Sections 6 and 7.

**D. LEGAL REPRESENTATION.** The Commission has standing in all legal proceedings concerning its actions and has sole authority to determine whether it will be represented by the State Attorney General or by legal counsel selected and hired by the Commission.

## **SECTION 9. CESSATION OF THE COMMISSION’S OPERATIONS**

Within sixty days after the plans have taken effect and all pending legal challenges to the plans and the Commission’s actions have concluded, the Commission must be dissolved, and any unexpended money from its appropriation must revert to the State’s general revenue fund.