

Creating Strong Rules for Drawing Maps

By Yurij Rudensky and Annie Lo UPDATED JANUARY 2020

Introduction

Discussions about reforming the redistricting process often focus on the question of who draws the maps. But just as important, if not more so, are the rules that map drawers have to follow — regardless of whether it is a commission or lawmakers drawing them.

Right now, in most states, there are relatively few rules governing how lines are drawn. This is especially the case for congressional districts. Worse, what rules there are often conflict with one another. Good-intentioned map drawers are left without guidance, and those who want to manipulate the process for political gain face few constraints blocking them from doing so.

Providing clear rules in order of priority can go a long way in ensuring that maps reflect community input and preferences, protect minority communities, and are free from political manipulation.

The good news for Americans interested in reforming the process in their states is that successful reforms around the country offer models and lessons from which to build. This annotated guide offers model language for building strong reforms.



Model-Ranked Criteria

Redistricting involves making choices among competing interests. What happens, for instance, when a distinct community lives on either side of a county line? Should the map drawers keep that community whole or follow the political boundary?

Such trade-offs may have significant implications for both racial and partisan fairness. Conflicting rules also can make map drawers' task harder and, worse, open the door for people who want to manipulate maps. To minimize the chances that such choices are used as covers for redistricting abuses, it is important to have clear criteria and for the criteria to be ranked in order of priority. This is true regardless of whether lines are being drawn by a commission or by a legislature.

We recommend that all states adopt the following criteria. While there is room to adjust the wording to account for state-specific concerns, these rules reflect broadly applicable best practices and consensus among a broad range of good government and civil rights groups.

The [map-drawing entity] shall establish single-member districts for [state house, state senate, and Congress] using the following criteria as set forth in the following order of priority:

Districts shall comply with the United States Constitution, the Voting Rights Act of 1965, and all applicable federal laws;

Districts shall be drawn on the basis of inhabitants;

Districts shall be geographically contiguous;

Districts shall provide racial and language minorities with an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice, whether alone or in coalition with others;

Districts shall respect the integrity of communities of interest to the extent practicable.¹ A community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities. Communities of interest shall not include common relationships with political parties or political candidates; and

Districts shall not split precincts and shall respect the geographic integrity of political subdivision boundaries to the extent that preceding criteria have been satisfied.

The redistricting plan shall not, when considered on a statewide basis, unduly favor or disfavor any political party.

1. Requiring the commission to preserve communities of interest gives the public an opportunity to provide meaningful input. Because communities of interest cannot be defined using data alone, their members have an integral role to play and can raise issues that the commission might otherwise overlook.

Strengthening Protections for Communities of Color

Communities of color often are on the front lines of gerrymandering. Sometimes communities of color are targeted because of racial resentment. Other times they are targeted because disadvantaging minority groups can be a convenient way to draw a map that is biased in favor of one party or the other. This has been the case throughout history and remains true today. North Carolina's extreme partisan gerrymander, for example, started as a racial gerrymander.

Unfortunately, protections for communities of color under federal law are limited — and could become more so in the years to come. Therefore, adding a racial fairness provision in state law and giving it priority not only would protect the political power of communities of color, but also would deprive would-be partisan gerrymanderers of a key tool.

Here's how our suggested language would work:

Districts shall provide racial and language minorities with an equal opportunity to participate in the political process¹ and shall not dilute² or diminish³ their ability to elect candidates of choice,⁴ whether alone or in coalition with others.⁵

1. Racial minorities have a right to equal representation where minority communities are politically cohesive and where voting is racially polarized.

2. Racial minorities cannot be unreasonably cracked (split up) among districts if doing so would dilute their political power and favor white-preferred candidates.

3. Racial minorities cannot be unreasonably crammed (packed) into districts to make surrounding districts safer for white-preferred candidates. Also, map drawers must make reasonable efforts to preserve the current political power of minority communities.

4. *Candidates of choice* means the candidates favored by the minority community in primary and general elections.

5. This allows politically cohesive racial groups to argue for coalition districts.

Protecting Communities of Interest

A common tactic in gerrymandering is to slice up communities to engineer a political advantage for a party or candidate. Voters across the political spectrum consistently agree that it is a major problem with how maps are currently drawn. Unfortunately, in most states, map drawers are not required to keep communities whole. Changing this will help ensure that communities bound by common concerns get the type of representation that makes sense for them.

But there are other benefits. Drawing districts around communities of interest also produces maps that allow organic political competition on both the primary and general election levels. For example, keeping communities in Orange County, California, together was key to allowing shifts in voter preference to result in the flip of seats from one party to another in 2018.

Good government and civil rights groups recommend that protection of communities of interest comes second only to protections for communities of color.

Here's how our suggested language would work:

Districts shall respect the integrity of communities of interest to the extent practicable.¹ A community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities.² Communities of interest shall not include common relationships with political parties, officeholders, or political candidates.³

In some states, people strongly identify with their town, city, or county. Such states could enact language that puts political subdivisions on par with other definitions of communities of interest.

Here's what that would look like:

Districts shall respect the integrity of communities of interest, including neighborhoods and political subdivisions, to the extent practicable. A community of interest is defined as an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities. Communities of interest may, in certain circumstances, include political subdivisions such as counties, municipalities, or school districts⁴ but shall not include common relationships with political parties, officeholders, or political candidates.

1. Communities of interest have priority over all other considerations after the requirements of federal law, contiguity, and racial fairness are met.

2. Map drawers can consider both quantitative data and public input when determining where communities of interest exist.

3. Map drawers cannot use this criterion as a proxy for party affiliation.

4. Political subdivisions do not automatically default to being communities of interest. There needs to be some factual basis for doing so.

Banning Partisan Gerrymandering

Partisan gerrymandering is not yet banned under federal law — and whether it will be in the future is uncertain. But a backstop against partisan gerrymandering in state law can be a powerful substitute.

Though drawing districts based on partisan outcome should not drive redistricting choices in the first instance, it is an important back-end safety check. In other words, once districts that satisfy the other criteria have been drawn, the map drawers must calculate whether it gives one party an advantage that the other is unable to overcome.

Here's how our suggested language would work:

The redistricting plan shall not, when considered on a statewide basis,¹ unduly favor or disfavor² any political party.

1. Extreme gerrymandering occurs when one party uses control of the redistricting process to give itself an unfair share of seats on a statewide basis. This makes it clear that the courts must consider the overall effect of a redistricting plan.

2. Maps must be measured for the degree of their partisan skew. This can be done using a variety of statistical metrics. If a map gives a large bonus of seats to one party over the other, then the advantage is considered undue. On the other hand, a map with a slight partisan imbalance for some legitimate reason, such as the geographic concentration of voters or because of the effect of keeping communities whole, would not be considered undue.

Other Possible Criteria

Keeping geographic subdivisions together can be a legitimate goal for map drawers as long as it does not interfere with keeping distinct communities whole.

Compactness and competition are two other criteria that states currently use or that have been suggested in proposed reforms, but they are very controversial.

For example, compactness often will require splitting apart communities of color in ways that make it hard for minority voters to have a meaningful impact on politics. Stressing competition, likewise, can mean requiring dividing up towns, cities, and neighborhoods in order to manufacture competition.

To the extent that these standards are used, the language should make it abundantly clear that they must not interfere with fulfilling the other community-focused standards.

Here's how our suggested language would work:

Districts shall not split precincts and shall respect the geographic integrity of political subdivision boundaries to the extent preceding criteria have been satisfied.¹

1. Following political boundaries is ranked lower than other criteria because political lines can be drawn in arbitrary and, in some cases, discriminatory ways. Also, to the extent a town, city, or other subdivisions is an organic community of interest, it will already be protected.

Districts shall be reasonably compact² to the extent preceding criteria have been satisfied.³

2. Compactness is not recommended as a standard because it is vague. Plus, the shape of a district should be dictated by how communities are arranged, not an arbitrary standard.

3. If compactness is included, it should be among the lowest-priority criteria.

Districts shall encourage competition⁴ to the extent preceding criteria have been satisfied.⁵

4. Competition is not recommended as a standard because it requires drawing districts in an outcome-focused way. Instead of reducing people to partisan labels, best practices would have map drawers focus on communities of interest. Also, in many communities, particularly communities of color, competition occurs at the primary stage, not in the general election.

5. If competition is included, it should be among the lowest-priority criteria.

A Reporting Requirement

Clear, prioritized rules can only prevent redistricting abuses to the extent that they are applied in good faith. Providing the public access to the map-drawers' rationale goes a long way toward promoting transparency and avoiding unnecessary litigation.

A reporting requirement should address racial and partisan fairness because these requirements can be measured. But it should also be used more generally to explain how the map drawers resolved competing interests.

Here's how our suggested language would work:

The Commission shall release with all proposed and final maps written evaluations that measure the maps against external metrics.¹ These metrics must cover all relevant criteria, including the impact of the maps on the ability of racial or language minorities to elect candidates of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to which the maps preserve or divide communities of interest.²

1. A commission should always show its work. These written evaluations can help the public meaningfully participate during the relevant comment periods.

2. Making the expected impact of a map public helps ensure that the commission did not just use a fair process to draw the map, but that the districts would also produce fair outcomes. Because political scientists and statisticians continually develop new tools to assess fairness, it is better not to tie these calculations to any particular methodology.

Other Reforms

Strong redistricting rules work best with an open and transparent process. For example, map drawers need significant public input to determine where communities of interest reside. Similarly, giving the public the opportunity to offer proposed maps can both help map drawers figure out ways to resolve hard choices and make it harder to gerrymander.

In Virginia, for example, a map drawn as part of a student competition was cited by a court as evidence that map drawers' justification for their biased map was just an excuse — the student map satisfied all the legitimate considerations that lawmakers said they were trying to address without any of the bias that the lawmakers' map had.

In addition to adopting the prioritized criteria in this guide, the Brennan Center recommends that states:

- 1. Require public hearings in assessable locations around the state both before and after maps are released. These hearings should be viewable remotely (on the internet or through public-access television) for those unable to attend in person.**
- 2. Make the demographic data and map drawers' software available to the public in a usable format.**
- 3. Allow the public to comment on all proposed maps and to submit proposed maps. All maps should be available online along with district-level demographic information.**
- 4. Eliminate any legislative privilege with respect to the map-drawing process to prevent lawmakers from refusing to produce documents or to testify about how maps came to be.**

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