

# A Legislator's Guide to Reasonable Redistricting Reform

Findings from the League of Women Voters White Paper on Emerging Alternatives for Redistricting Reform – November 2018

The next redistricting cycle will start in early 2021, when the 2020 census data is delivered. Our state must be ready to carry out a redistricting process that is transparent and participatory, as well as fully compliant with the state and federal constitutions. Our citizens deserve a redistricting process that will deliver maps that respect our communities and fully reflect our diversity.

## What's the objective of the white paper?

- Lay out the **options**
- Give **pros and cons** on the choices in each area
- **Provide examples** from bills studied to aid drafting
- Does NOT recommend a specific design or draft bill  
*We feel the legislators must be the ones to do that!*
- We aim to:
  - move the debate to more fertile ground
  - build consensus on a workable solution that can get passed
  - Our main aim is to get it done for '21!

**Main conclusion:** *If what we really want is to CONTROL EXTREME GERRYMANDERING, we don't need EXTREME REFORM*

*Reasonable Redistricting Reform could offer a better approach for our state*

### Most study bills:

- **DO:** propose an OPEN AND WELL-STRUCTURED PROCESS to improve how the maps are drawn
- **DON'T:** propose to ELIMINATE THE LEGISLATURE'S ROLE in drawing the maps altogether

This guide summarizes the results of a League White Paper Study that analyzed 50 redistricting reform bills introduced in 2017. The study bills included all bills filed in 15 state legislatures (mostly in the South) and in the US Congress that included a redistricting commission. We did not consider the party of the bill sponsors or the quality of the bills – we studied them all.

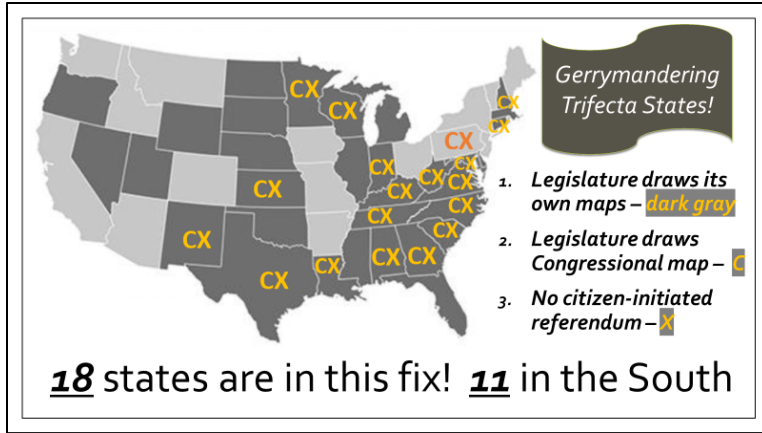
The guide does not put forward a particular model. It aims instead to provide information that we hope will assist the NC General Assembly in developing a truly North Carolinian model, one that will meet the needs of our state and all its citizens.

Like North Carolina, all 15 study states (and Congress) lack the ability to adopt reform through citizen-initiated referendum. Their only path to reform, and ours, is through legislation. We are not asking here what would be best in theory, but like the 50 bills' sponsors, what could work reasonably well and pass the legislature.

**The big question for these states is NOT what would be the IDEAL, but what could:**

1. work reasonably well
- AND
2. pass the legislature



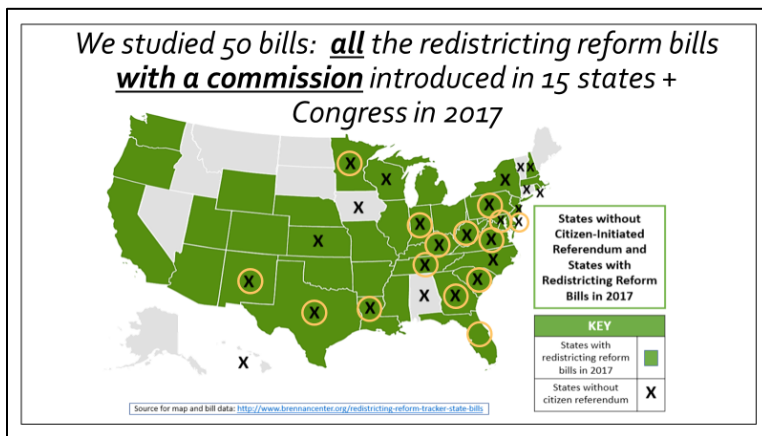


Eighteen states across the country can be considered “gerrymandering trifecta states.” In all of these states (most of which are in the South), the legislature draws its own maps and the Congressional maps as well. All of the legislative study bills were drawn from this group, with the exception of Pennsylvania (a gerrymandering perfecta state!).

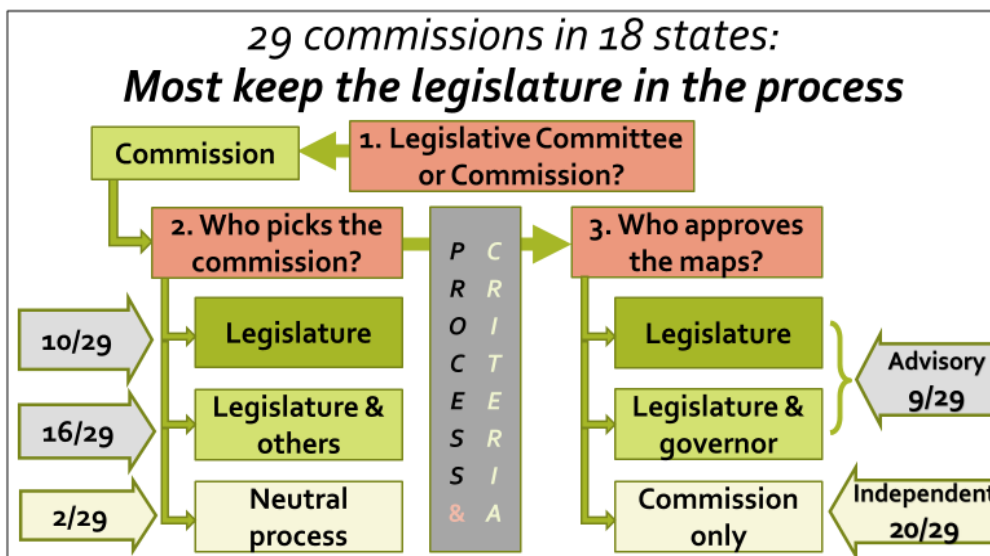
We included Florida because it is in the South and Pennsylvania because it is a hotbed of reform action – a reform bill recently passed in committee with **unanimous** support. We did not include North Carolina itself.

Legislatures in all of the states shaded in green in the second map introduced redistricting reform bills in 2017.

This outpouring of reform activity and ideas demonstrates the momentum for redistricting reform, but also shows how hard it is to accomplish. Many other states are working to get redistricting reform in place for 2018, but we do not minimize the difficulty of reform.



Eighteen states have adopted commissions, 11 for both Congress and the legislature and 7 for the legislature alone. Nine of the commissions are “advisory,” meaning the legislature must vote to approve the maps. Most commissions – 20 of 29 – are “independent” commissions: their maps become final without a vote.



**Redistricting by commission does not mean that the legislature has no say in the process! In all but three states, legislators have a role in picking the commissioners.\***

\*California’s two commissions use the citizen-pool method; Missouri’s commission, not shown in the figure, is made up of the governor, attorney general and Secretary of State.

The chart below summarizes the options for designing a redistricting commission, as identified by the study team. Each of these 12 elements is important and interacts with the others to shape how the commission operates and performs. Most are self-explanatory, but a short discussion is offered below for some that may not be clear.

**Why is a *commission* better than a *legislative committee*?**


- If legislators draw their own maps it creates a **conflict of interest**
- If one party controls both houses, there's **no incentive to compromise or involve the minority party**
- A legislature-run process *rarely* provides **sufficient room for public input and transparency**
- **Unaffiliated voters** deserve a voice



### 12 key elements make up a commission design

Element (Choices)	Options			Element (Choices)	Options		
<b>Who appoints (3)</b>	<i>Leg. only</i>   <i>Other</i>			<b>Party makeup (3)</b>	<i>D+R only</i>   <i>D+R+Ind</i>		
	<i>Legislature+Other</i>				<i>D+R+Experts</i>		
<b>Size of the commission (3)</b>	<i>3-5</i>	<i>6-10</i>	<i>11-15</i>	<b>Any role for judges (2)</b>	<i>Yes</i>	<i>No</i>	
<b>Political data excluded (2)</b>	<i>Yes</i>	<i>No</i>		<b>Political criteria excluded (3)</b>	<i>Yes</i>	<i>Partially</i>	<i>No</i>
<b>Incumbent protection (2)</b>	<i>Yes</i>	<i>No</i>		<b>Commission majority rule (4)</b>	<i>Simple</i>   <i>Super</i>		
					<i>+Bipartisan</i>   <i>+Bipartisan</i>		
<b>Legislative action required (2)</b>	<i>Yes</i>	<i>No</i>		<b>Legislative majority rule (2)</b>	<i>Simple</i>	<i>Super</i>	
<b>Failsafe procedure (2)</b>	<i>Yes</i>	<i>No</i>		<b>Constitutional Amendment (2)</b>	<i>Yes</i>	<i>No</i>	

**Settled territory: good practice for either a commission or a legislative committee, but details matter**



<p><b>Criteria</b></p> <ul style="list-style-type: none"> <li>• Basic criteria               <ul style="list-style-type: none"> <li>• Compact, contiguous</li> <li>• Preserve political units</li> <li>• Communities of interest</li> </ul> </li> <li>• <b><i>BUT no agreement on how to measure or minimum/maximum levels</i></b></li> </ul>	<p><b>Transparency/Participation</b></p> <ul style="list-style-type: none"> <li>• Public hearings</li> <li>• Information:               <ul style="list-style-type: none"> <li>• Maps distributed before hearings</li> <li>• All information on website</li> </ul> </li> <li>• Public input (2-way)</li> <li>• <b><i>BUT less agreement on open meetings, ex parte</i></b></li> </ul>
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Who picks members: options include the legislature, other entities, or both together.

Party makeup: may specify Ds and Rs only, or may also include Unaffiliateds and/or people of unspecified party, such as experts.

A multi-party-majority voting rule: requires that the majority (simple or super) include members of more than one party.

**"Legislature picks" really means the "4 corners" pick**

- *Speaker of the House*
- *Senate President Pro Tem*
- *House Minority Leader*
- *Senate Minority Leader*



The four corners of the legislature – the majority and minority leadership of the two chambers – play important roles throughout the commission design, launch, and operation. With the exception of voting, actions by the legislature are in practice taken by the four corners.

The two illustrations below demonstrate the breadth and range of potential action by the four corners in the redistricting process on behalf of the legislature.

They are especially likely to be involved in selecting commission members. Regardless of the selection method chosen, the study bills include models for how the four corners can be included in commission selection, sometimes through more than one mechanism in a single bill. The range of possible four corner involvement is particularly broad for **pool methods** of member selection, in which individuals

are recruited or volunteer to be considered for commission positions. Applicants are screened and then included in a "pool" from which commission members are chosen, either randomly or via designation by named individuals, such as the four corners, judges, other elected officials, and/or experts.

Pools make the selection of experts or ordinary citizens more transparent and open by making known who was considered for membership and giving anyone the chance to apply.

**Four corners usually involved one way or another**

- Some role in the bill – 82%
- Pick some members – 33%
- Pick all the members – 14%

**OTHER ROLES:**

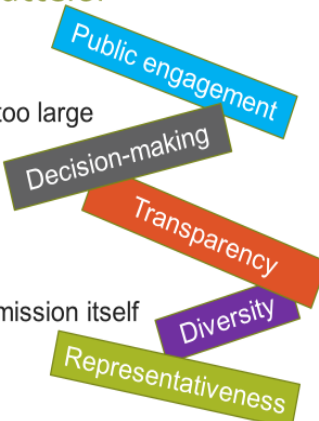
- Role in pool method – 38%
- Strike from pool
- Name team who pick from pool
- Pick expert members

**4 corners often pick from citizen or expert pools**

Citizen Pools	4 Corners	Expert Pools
<p>Ordinary citizens (or retired judges) apply and are screened and selected by a transparent process</p>	<p>We'll take those 3 Ds, 3 Rs, and a couple of Unaffiliateds</p> <p>And give us 2 of those guys.</p>	<p>Neutral process to pick legal experts, demographers, geographers, civil rights experts, etc.</p>

## Commission size matters!

- Commission size ranges from 5 to 18
- Average of current commissions is 10
- “Goldilocks” criteria: neither too small nor too large
  - Too small:
    - Hard to represent states’ diversity:
      - Gender
      - Ethnicity/race
      - Geography
    - Limits range of expertise on the commission itself
  - Too large:
    - May not develop good relationships
    - Greater confidentiality risk



The number of members on the commission turns out to have a surprisingly large effect on how the commission operates. In addition to the factors shown in the box to the left, commission size affects the ability of the commission to interact with the public by attending hearings across the state, engaging in public outreach, and responding to comments.

The larger the commission, the more commissioners in each delegation (DEM, GOP, and UNA, at present). Whether the voting rule is a simple majority, super-majority, or bipartisan majority (requiring participation from each party or delegation as well as a specific number of votes), a larger commission offers more possible combinations to reach the total, making it harder for 1 or 2 individuals to block consensus.

### Structuring the four corners’ picks to ensure an impartial commission



### Who *can’t* serve

- Legislators
  - Legislative staff
  - Lobbyists
  - Elected officials
  - Appointed officials
  - Party officials
  - Political consultants
  - Donors
  - Their family members...
- **Current or former** (past 5 years, +/-)
  - **Pledge not to run** for 5 years (+/-)

The table below show how the study bills came out on the four “who” questions. Membership models that included both commissioners named by the legislature and commissioners picked through some other method emerged as a strong favorite. Similarly, the party makeup of the commission almost always included either experts and/or independents as well as DEM and GOP members. Judges were involved as members, as the

## Where did the study bills come out?

<b>Who picks?</b>	<b>Leg.+others: 58%</b> <i>Legisl. only: 18%</i> <i>others only: 24%</i>	<b>Party makeup?</b>	<b>D+R+Expert: 48%</b> <b>D+R+Indep: 42%</b> <i>D+R only: just 10%</i>
<b>How many?</b>	<b>6-10 : 50%</b> <i>5 or fewer: 25%</i> <i>11-15: 25%</i>	<b>Role for judges?</b>	<b>Yes: 80%</b> <i>No: 20%</i> <i>Retired judge members: 16%</i>

3 out of 4 include members selected by the legislature’s four leaders

# WHO

9 out of 10 include independent members or experts, as well as Dem & GOP members

## Voting rules can require compromise

*Alternative commission voting rules  
(minimum required to approve maps or other decisions)*

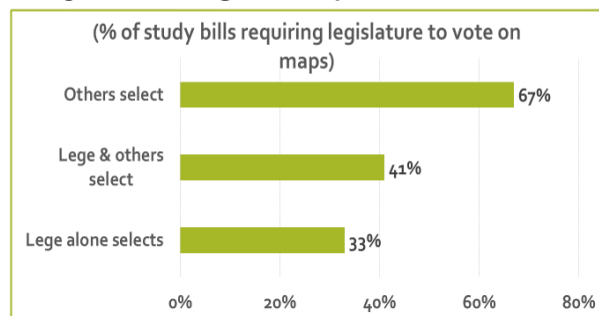
Partisan Composition	11-Member Commission										Vote	
	X	X	X	X	I	I	I	Y	Y	Y		Y
	X	X	X	X	I	I	I	Y	Y	Y	Y	4-3-4
Simple Majority	X	X	X	X	I	I	I	Y	Y	Y	Y	6-5
Bipartisan Simple Majority	X	X	X	X	I	I	I	Y	Y	Y	Y	6-5
Supermajority	X	X	X	X	I	I	I	Y	Y	Y	Y	7-4
Bipartisan Supermajority	X	X	X	X	I	I	I	Y	Y	Y	Y	7-4
Concurrent Majority	X	X	X	X	I	I	I	Y	Y	Y	Y	8-3

Note: Distribution of votes shown is one of several possible voting outcomes that would result in passage. For example, a simple bipartisan majority of 6 votes could be achieved with 3X-2IInd-1Y, 3X-3IInd, 2X-2IInd-2Y, etc. The supermajority rule shown here requires 60% for passage.

ones responsible for picking commissioners from a pool, as part of failsafe mechanisms (naming a chair or even drawing maps if the commission fails to act), and in accelerated dispute resolution mechanisms to forestall lawsuits and ensure compliant commission maps in the first place.

One of this study's most intriguing findings is that there may be a tradeoff between a) the legislature's role in naming the commission and b) whether the legislature must vote on the maps. As shown to the right, in nearly 6 out of 10 bills where the legislature picks at least some commission members, the commission's maps become final without a vote in the legislature. This point is reinforced in the box below: slightly over half the bills do not include legislative action.

### Bills are less likely to require a vote in the legislature if legislators pick the commission



There may be other, similar tradeoffs that we have not identified, a potentially fruitful area for discussion with legislators and others. The high share of bills calling for more than a simple majority in the commission (60%) suggests a desire to reach consensus there and not bring the decision forward to the legislature. The barring of political criteria and data received only lukewarm support.

### Where did the study bills come out?

# HOW

Political data	<i>Excluded: 54%</i>	Political criteria	<i>Excluded: 50-50</i>
Incumbent protection	<i>Excluded: 69%</i>	Commission majority rule	<i><u>MORE</u> than simple: 60%</i>
Legislative action	<i><u>NOT</u> required: 54%</i>	Legislative majority rule	<i>Simple: 91%</i>

**A failsafe mechanism is essential: here are some options**

If no commission formed or no chair selected	If the commission fails to approve maps	If the legislature fails to approve the maps
<ul style="list-style-type: none"> <li>Federal district court draws maps (Cong. only)</li> <li>State supreme court or chief justice selects chair</li> <li>Legislature selects chair by 2/3 vote</li> <li>State supreme court selects chair from top 2 vote-getters</li> <li>Board of elections selects chair</li> </ul>	<ul style="list-style-type: none"> <li>Federal district court draws maps (Cong.) for legislative approval</li> <li>Legislature can draw its own map</li> <li>Commission selects 2 or 3 maps, sends to legislature to approve one by 2/3</li> <li>Independent commissioners alone draw maps</li> </ul>	<ul style="list-style-type: none"> <li>State supreme court adopts one of the commission's maps</li> <li>State supreme court draws maps</li> <li>Governor draws map, submits to legislature</li> <li>New map drawn by commission becomes law</li> <li>Supreme Court appoints group to draw maps</li> </ul>

Failsafe mechanisms come into play when the process breaks down, keeping it moving forward despite the problem encountered. We found it surprising that only 60% of

the bills included failsafe mechanism at any stage in the process. Failsafes should be provided for all three of the failure points identified in the box above. The bill drafters have provided a broad menu of options to choose from (and there are undoubtedly others).

A good failsafe should combine two features: 1) it should have a high probability of getting the job done – failsafes that fail are not very useful! 2) it should be an option that those in charge of the process would prefer to avoid.

The second requirement highlights the failsafe's role in promoting compromise. The aim is to encourage the commission (or legislature) to do its work, rather than having an unpleasant alternative method come into play. For this reason, bills that allow the legislature to turn down two maps and then draw any map it pleases are deeply flawed: they incentivize rejecting the commission's maps. Options that give the map-drawing to the court, conversely, encourage the legislature's representatives on the commission to compromise in order to avoid this outcome.

There is no single model that emerges from this study as "the best" (nor is it likely that any model can be the best option for every state). The box below presents a composite model that reflects some of the most common patterns seen in the bills. Such a model could offer a good starting point for discussions, but North Carolina's model could certainly end up quite different from this.

Two well-known models were not at all popular among the study bills' drafters: Only 7 bills adopted the California "independent citizens' commission model," despite the attention that it has attracted. Only 2 bills follow the Iowa model, in which the legislative services staff draw the maps.

Summary of redistricting models in reform bills studied		
<b>Commission structure</b> <ul style="list-style-type: none"> <li>Members from the two major parties plus unaffiliated members and/or experts (90%)</li> <li>Size: 6-10 members (50%), range 5-15</li> <li>4 corner appointees often pick chair (34%)</li> </ul>	<b>Commission membership</b> <ul style="list-style-type: none"> <li>Some or all chosen by 4 corners/parties (82%)</li> <li>Additional members—experts, citizens chosen from pool, etc. (88%)</li> <li>Current/former politicians often excluded</li> </ul>	<b>Political criteria</b> <ul style="list-style-type: none"> <li>Political objective prohibited (50-50)</li> <li>Political data prohibited (55%)</li> <li>Incumbent protection/data prohibited (69%)</li> <li>"Competitive" or "fair" (17%)</li> </ul>
<b>Voting rules</b> <ul style="list-style-type: none"> <li>Commission voting rule: more than a simple majority (55%)</li> <li>Legislative action not required (54%)</li> </ul>	<b>Other design elements</b> <ul style="list-style-type: none"> <li>Constitutional amendment (50-50)</li> <li>Failsafe process to prevent breakdown (60%)</li> <li>Role for judges (80%)</li> </ul>	<b>Less common models</b> <ul style="list-style-type: none"> <li>California model (14%)</li> <li>Iowa model (4%)</li> </ul> <p><i>Source: Study bills and team analysis</i></p>

# 5

## principles for reasonable redistricting reform

1. Include **the legislature** in the process, such as in naming some of the commissioners
2. Include **citizens and/or impartial experts** as commission members
3. Set **strict rules for the commission's work** that:
  - ✓ apply traditional redistricting standards (compact, contiguous, keep local government units and communities of interest whole)
  - ✓ do not allow the use of partisan data or partisan objectives
  - ✓ use voting rules that require bipartisan support for the maps
4. Provide for **extensive citizen participation and transparency**
5. Make the **maps final on the commission's vote**

The main message we wish to communicate is that creation of a redistricting commission and continuation of a real and substantial role for the legislature are NOT an either/or proposition. North Carolina can adopt “reasonable redistricting reform” that will:

- Promote a **redistricting process that is open & transparent**, with high citizen participation
- Produce **maps that accurately reflect the political diversity of our state**
- Provide the basis for **elections where North Carolina’s voters’ voices can be heard**
- **End the costly and disruptive cycle of lawsuits** over district maps

### AND AT THE SAME TIME

- **Ensure that the legislature continues to be substantively involved in redistricting**

We hope that this guide will be the start of a discussion among all those who care about our state and our democracy, leading to a workable plan that can win bipartisan support and pass the legislature! Other states have made this work, and so can we.

