

# **Emerging Alternatives for Reasonable Redistricting Reform**

*A White Paper developed by the  
League of Women Voters of North Carolina*

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## Executive summary

Practitioners and researchers agree that the best method to manage redistricting is through an independent commission. Such a commission not only draws the maps in a citizen-led, highly participatory process, but also approves them, making them final without a vote in the legislature. By contrast, an advisory commission draws maps for approval by the legislature.

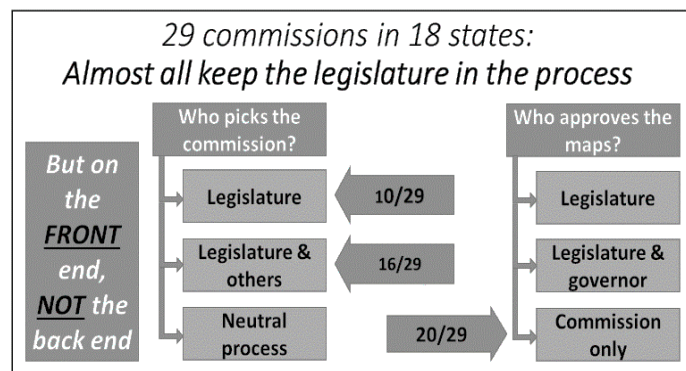
This report sheds new light on the choices that state legislatures and others face in designing independent and advisory commissions and setting the rules governing redistricting. It presents findings from a review of 50 redistricting reform bills introduced in 15 state legislatures and the US Congress last year (2017), as well as a review of the 29 independent and advisory commissions in place as of 2017. We looked only at commission models because this system offers the best path to reliably ending gerrymandering. Legislatures in state after state have shown that they are willing to do whatever it takes to rig maps to unfairly benefit their party (whether Democratic or Republican), up to and including overlooking regulations, laws, and constitutional provisions, both state and federal.

This analysis focuses on bills from “gerrymandering trifecta states,” where the legislature draws both its own maps and Congressional maps, and citizens cannot introduce ballot initiatives by petition. Eleven of eighteen such states are in the South, including North Carolina. We selected 15 states, mostly in the south, and analyzed every redistricting reform bill introduced in 2017 that set out a plan for a commission. We did not assess the bills’ support or chances for passage—we studied them all.

One question emerges from the study as the key to commission design: how to define the role of the legislature in redistricting. We found that elimination of the legislature’s role entirely is effectively off the table. All current independent and advisory commissions involve the legislature (or, rarely, other elected officials or party leaders) in picking commissioners. Most commonly, the legislative leadership<sup>1</sup> simply selects commission members. There are many alternative roles for legislators in assembling a commission,, however, such as selecting candidates from a pool created by others, cutting candidates from pool, or naming a committee to select commissioners.

Our study identified an important tradeoff in the legislature’s role. Current commissions overwhelmingly give legislative leaders a role in picking commission members, but only a minority require legislative approval of the maps (see Box 1). The draft bills showed more variation: 8 out of 10 involved legislative leaders in choosing commissioners, but just under half required a vote in the legislature to make the maps final.

### Box 1. How do the current commissions handle the tradeoff on legislative involvement?



In other words, most plans give the legislature a role in the “front end” of the commission process—picking commissioners—but not the “back end”—approving the maps.

<sup>1</sup> The president pro tem of the senate, the speaker of the house, and the minority leaders in each chamber, sometimes referred to as the “four corners” of the legislature

Commission plans that require legislative approval for the maps have an inherent structural weakness. Elections must move ahead on schedule and that requires an approved map. If the legislature refuses to approve the commission’s maps as drawn, voting down map after map proposed by the commission, most such plans then permit legislator to draw their own map, negating the commission’s work.

In our view, this could well lead to an outcome indistinguishable from not having a commission at all. One can imagine the legislature giving rapid pro forma consideration to the commission’s maps, voting them down in quick succession, then whipping out the leadership’s secret maps and voting them in.

Some study bills propose workarounds to this Achilles’ heel, such as requiring the legislature to choose between the two commission maps getting the most votes or turning the process over to a court-supervised special master. Such limits on the process are essential if an advisory commission model is to end gerrymandering.

This study examines a wide range of commission design issues beyond this key choice. We identified 12 important but unsettled questions that define a commission design, shown at right. For each choice, we developed 2-3 basic options, then coded and analyzed the 50 commission designs. We did not analyze other issues that, while important, are broadly agreed to, such as whether hearings should be held or whether districts should be contiguous (yes and yes).

**Box 2. 12 factors define a commission design**

<b>“Who” questions</b>	<b>“How” Questions</b>	
Member selection	Use of political data	Adoption of a political aim
Partisan makeup	Incumbent protection	Commission voting rule
Role for judges	Legislative approval	Legislative voting rule
Number of members	Failsafe procedures	Constitutional amendment

Based on our analysis, we formulated **five principles for designing a “Reasonable Redistricting Reform” commission**, shown below. We believe that a commission design based on these principles can control extreme gerrymandering and pass the legislature, the twin tests for any redistricting reform.

**Box 3. The Five Principles**

**5** principles for designing a “reasonable redistricting reform” commission:

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**

extreme gerrymandering and pass the legislature, the twin tests for any redistricting reform.

We have not recommended a particular model, however. Our aim is to encourage a broad discussion inside and outside the legislature, leading to a commission design that will work for North Carolina. Legislators must make the final choices on how best to do this. As a League colleague in another non-referendum state

that adopted redistricting reform said, we will support a plan that is “as good as we can get and better than what we have.” To prevent another decade of rigged maps, we must move forward in 2019 to win approval for a practical plan that accords with these principles, put a ballot measure before the voters in 2020, and adopt a good, workable system in time for the 2021 redistricting.

### ***Introduction: the challenge of redistricting reform for states without citizen-initiated referendum***

The League of Women Voters has long advocated for independent redistricting commissions (IRCs) as the preferred approach to redistricting (see Annex B for the state and national redistricting policy statements), rather than having the legislature draw the maps for Congress or the legislature itself. IRCs, unlike advisory commissions, draw maps that become law without further legislative action.

To date, only seven states have adopted an IRC for Congressional maps and 13 for legislative maps. The legislature votes to approve maps drawn by an advisory commission in four states for Congressional maps and 5 for legislative maps.

In most states, however, the legislature draws the Congressional maps and usually its own maps as well. A number of additional states have a “back-up commission” that kicks in if the legislature cannot agree on the maps; some of these are structured as IRCs.

Two well-known IRCs created for the 2011 redistricting—Arizona’s and California’s – provide for commissioners to be selected from a pool of citizens who apply for this role, but this is not the norm. In every IRC but California’s, at least some commission members are chosen by the legislative leadership, the so-called “four corners”: the Speaker of the House, President Pro Tem of the Senate, and minority leaders in each house. A variety of rules restrict who may be selected and how they are chosen. In Arizona, the four corners select the commission from the citizen pool, but it is far more common for the legislative leaders to simply pick them.

Where legislative leaders don’t pick the whole commission, the only commission member not selected by the them is usually the chair, often non-voting or a tie-breaker only. Four corner selection of some or all of the commissioners is also the case in most advisory commissions (where the legislature has to vote to approve the maps).

This study does not question the proposition that IRCs, despite their flaws, are the best method to draw fair maps. A fully independent commission—one where the legislature plays no role in selecting the commissioners nor voting on the maps – is almost certainly out of reach for North Carolina and most other states, however.<sup>2</sup> Only one state—California—has such a system and it was adopted by citizen-initiated referendum, a mechanism that excludes the legislature from the process.

In other words, no legislature with the power to draw the maps has ever voted to give away this precious power altogether. And why would they?

The League believes it is time for those advocating redistricting reform to recognize this fundamental political reality. If we are going to succeed in North Carolina and other non-referendum states, we need proposals that do not exclude the legislature from the redistricting process, at least not entirely.

Based on this proposition, this study has been designed to answer one question:

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<sup>2</sup> Commissions that have final map approval are referred to as ***independent commissions***, while those that draw maps for the legislature’s approval are ***advisory commissions***. The term “independent commission” is often used informally to mean that the commission members are independent from the politicians and the political process, but this usage creates confusion. In fact, no state has a process for selecting commissioners in which the legislative leadership and other politicians play no role at all.

*What can we learn from redistricting reforms considered in other non-referendum states that can inform design of a redistricting process for NC that is capable of controlling extreme gerrymandering and can pass the legislature?*

Redistricting reform is difficult—doubly so in states where any reform has to go through the legislature—but it can be done. Several states – New York, Colorado, Ohio, Michigan, Missouri, and Utah – have adopted reforms in the 2012-2021 round to date, but New York is the only one of these that lacks citizen-initiated referenda. Its plan is broadly in line with the Five Principles for Reasonable Redistricting Reform, with the exception that the legislature must vote on the maps.

Four of the 2018 reforms – those in Colorado, Michigan, Missouri, and Utah – are also reasonable redistricting reform models. Utah’s plan, adopted by citizen-initiated legislation rather than a constitutional amendment, requires legislative approval of the maps, but Colorado’s, Missouri’s, and Michigan’s commission maps become final on the commission’s vote. Missouri’s maps are drawn by a newly-created nonpartisan state demographer selected with the participation of the legislative leaders, but approved by a super-majority vote of the commission.

Ohio’s new process begins in the legislature with a non-commission stage, but if the legislature cannot adopt maps with a bipartisan super-majority, the commission appointed by the legislative leaders steps in to draw them. Ohio’s plan was adopted through negotiation with the legislature by the League and other reform organizations and had broad bipartisan support.

***Why did we focus only on commission models?*** We limited our work to commission models for one simple reason: *No reform leaving the power to draw the maps entirely in the hands of the legislature can effectively control gerrymandering – the conflicts of interest are too strong for both parties and individuals.*

#### **Box 4. Essential Elements of a Commission Design**

**Commission structure:** number of members; partisan composition of the commission including role of unaffiliated voters (Us, also referred to as independents); other membership categories (e.g., legal or demographic experts, former judges)

**Member selection:** who selects the members, including role of legislators in selection; how members are recruited and screened; criteria for member selection; the process for selecting among screened members, single-stage vs. multi-stage processes; member removal/replacement; limitations on member activities before, during, and after service

**Criteria used to draw maps:** traditional criteria; political data and criteria; and how criteria are weighed

**Public participation and transparency:** open meetings, hearings, external communications

**Operational support:** legislative support staff and/or hired staff; budget; contracting authority and procedures

**Rules for commission approval of maps:** voting rule (simple majority, super-majority, etc.); number of map rounds (if first map not approved) and process for subsequent rounds

**Role of the legislature in approving maps:** whether the legislature must approve maps; legislative voting rule (if so); rules for legislative action (e.g., whether amendment is permitted)

**Failsafe procedures:** what happens if the commission and/or the legislature fails to perform its role at any stage in the process; method of resolving map challenges; role of the judiciary

**Adoption of the proposed commission structure and process:** by standard legislation or as a constitutional amendment

**What goes into a redistricting model?** Any redistricting commission design, good or bad, must address the elements shown in the box on the following page. A commission design is more than just the sum of its parts. The various elements in a commission design interact to produce the final result, good or bad. Like a cake, a commission may have several high-quality ingredients, but be spoiled by one that is rotten to the core or missing altogether. Even if every ingredient is top quality, the recipe itself may be flawed or the cooks may ignore it. Flaws in design or implementation may not become fully evident until the unsavory final product emerges. Oversight by the management – the citizens of the state – is essential to achieve a good outcome, whatever the design, and is therefore an essential part of the design.

**What has happened to all these bills?** None of the bills studied has become law, to our knowledge. Given that most state legislatures have concluded their 2018 sessions, it is unlikely that they will move forward. Reforms have already been adopted or are moving toward citizen ratification only in referendum states (Ohio, Colorado, Michigan, and Missouri). In other words, most of the study bills are in the same boat as North Carolina’s own proposed redistricting reform bills, all of which repose in the Rules Committee. At the end of May 2018, one Pennsylvania bill made it out of legislative purgatory, winning unanimous approval in committee after being recast from a model with no legislative involvement to an RRR model. This bill ultimately did not win passage in the legislature, however.

We know that not all of these bills were introduced by their sponsors with intent to win passage. Legislators, like football players, have a “passing game” and a “running game”: some bills are introduced with a sincere hope that they will pass and become law; others are intended only to fuel a successful run for reelection, appealing to the legislator’s base. The quality of the ideas in a bill is not necessarily related to its chances for passage, however; we simply studied them all.

**Focus on the Legislature.** A central tenet of Reasonable Redistricting Reform is that a commission can be designed that performs well while also preserving a substantial role for the legislature. In our state

**Box 5. Recent Reforms: New York (2014) and Ohio (2015)**

New York’s constitutional amendment to create a redistricting commission passed both houses of the legislature in 2013 and was approved by the voters in 2014. The four corners each appoint 2 members, then these appointees choose 2 independents by a bipartisan vote; all 10 must be non-politicians. Their plan must be approved by the legislature, but if one party holds both houses, a 2/3 vote is required. If two IRC plans are rejected, the legislature must start from the IRC plan and cannot shift more than 2% of voters between districts. The League led a coalition to win passage of the amendment on the 2014 ballot.

Ohio’s 2015 legislative reform and New York’s 2014 reforms created IRCs that give the four corners the power to name some or all of the commissioners. Ohio’s 2015 reform provides for a 7-member commission with 3 state-wide office-holders and 4 members appointed by the four corners. Maps approved with at least two votes from each major party last for 10 years; otherwise they expire after 4 years and are redrawn. Commission rules forbid maps that favor or disfavor either political party.

This year, Ohio adopted a reform that gives the legislature the first crack at approving Congressional maps, which must receive majority support from each major party and 60% overall. If this process fails, the commission created in 2015 draws the maps. The League played a major role in negotiating this compromise plan and led the coalition that won 75% voter approval in May 2018.



and many others, no redistricting reform can move forward except through the legislature. We cannot expect the legislators to simply turn over this very powerful process to someone else. Real reform will require collaboration with the legislature, and that is likely to mean preserving a role for legislators in the process. But *effective* reform must overcome the conflict of interest inherent in legislative involvement, circumscribing their role through procedures and controls to prevent the worst extremes of gerrymandering. We believe that North Carolinians, working together, can get this done.

**Are there areas of consensus within the study bills?** While the 50 study bills take different approaches to commission design, broad consensus is evident in many areas and sub-areas. Overall, a broad approach emerges from the bills, which we have summarized in the five principles for reasonable redistricting, shown above. There is not consensus on the many specifics of how to apply these principles to reach a specific design. Each state must make these decisions for itself.

This white paper addresses each of the elements above, focusing on the areas where there is not a settled consensus, which are where the real battles over redistricting design will be fought.

The ideas in the study bills show that legislators are trying to bridge the gap between independent, nonpartisan approaches—unacceptable to many legislative leaders—and unfettered politician control of the map-drawing process—unacceptable to opponents of gerrymandering. As shown in the box below, the latter category includes a substantial majority of the voters.

**Areas of broad consensus** include: 1) **basic criteria**—contiguity, equal population, protection of communities of interest, adherence to the Voting Rights Act (VRA) and state/national constitutional provisions; and compactness; 2) **public participation** through hearings and often consideration of citizen-submitted maps; 3) extensive transparency through **commission documentation online**; and 4) **operational and financial support** for commission operations. Because we found little new ground in these areas, we have put the discussion of these issues in an annex.

Box 6. Voter Views on Changing Law to Ensure Nonpartisan Drawing of Districts				
Support / Oppose				
	Base	Dem	Rep	Ind
Support	57%	60%	47%	65%
Oppose	8%	5%	14%	6%
Not sure	35%	35%	39%	29%
	100%	100%	100%	100%
Support/oppose	7.1	12.0	3.4	10.8

Source: Public Policy Polling, July 2018

**Areas of divergent approaches and innovation** include: 1) **composition of the commission**, including partisan makeup and size; 2) **criteria and methods for choosing commissioners**; 3) **limitations on political criteria and data**, including use of voter registration and prior election data, protection of incumbents, and partisan objectives; 4) the **voting rule for commission approval** of maps; 5) the **legislature’s role in approving maps and (if it approves the maps) the voting rule**; 6) **failsafe mechanisms** to prevent the process from breaking down; and 7) whether the reform is structured as a **constitutional amendment** to require its approval by popular vote and to insulate it from change.

**Alternative roles for the legislature in current redistricting processes.** Our study identified an important tradeoff: if the legislature is going to be involved, is it better to have them involved in the front end of the process—naming commissioners—or in the back end of the process—approving maps?

North Carolina is among the many states where the legislature has sole control over the map-drawing (29 for Congressional maps and 24 for legislative maps). In many cases, including North Carolina, maps are officially drawn by legislative committees in each chamber, but in practice only a handful of

members—all from the majority party—manage and control the process. Legislative map-drawing is not broadly participatory, inside or outside the legislature.

In the 29 commissions currently in place, legislators are almost always involved in one of three ways:

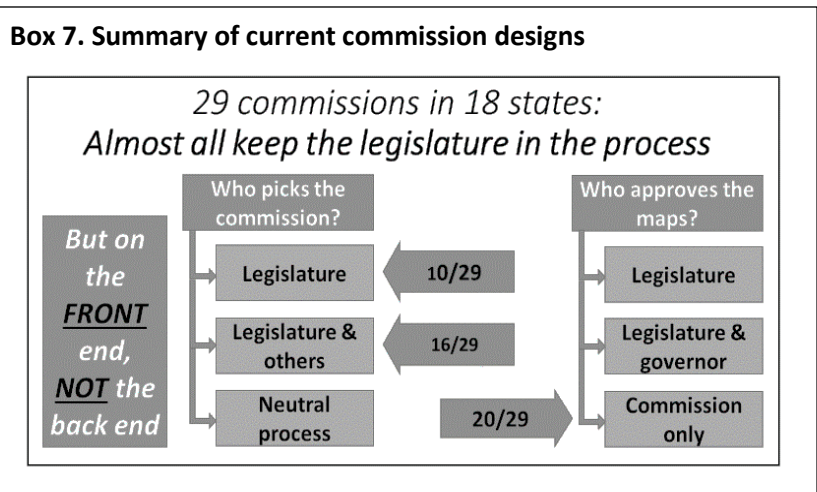
1. At the **front end** of the process, selecting some or all of the commissioners
2. At the **back end** of the process, approving the maps drawn by the commission
3. In **both the front and back end**

Legislative involvement at the back end of the process is the exception.<sup>3</sup> As the box below shows, more than 2/3 of the map-drawing commissions are independent rather than advisory: the maps become final without a vote in the legislature.

All 20 of the current independent commissions are locked in place by constitutional provisions. Almost 3/4 were adopted by legislative referral, meaning the legislature adopted a constitutional amendment that was then referred to the voters for ratification at the ballot box (the only path to adoption of a constitutional amendment in North Carolina). All but a handful were adopted in the 1980s or later, a hopeful sign for reform in North Carolina.

**What other roles does the legislature play in the map-drawing?** Picking commissioners and approving the maps are the all-important bookends of the commission redistricting

process, but a lot happens between them. The box below shows the range of functions that legislators play, which offers a broad menu for those designing a reform.



**If the four corners don't pick the commissioners, how are they selected?** Excluding the option of having the governor or other executive officeholders pick commissioners, there are two ways to select commissioners other than assigning this role to the legislature:

- The "citizen pool" method. Any citizen may apply to a designated agency, such as the auditor, which then screens them itself or oversees screening by another group, such as a panel of retired judges. Commission members are then selected from the pool in a second stage, either by lot, by an expert panel, or by the four corners. Legislative leaders may also have the option to strike members from the pool before the selection. California uses a two-stage process, with one group of commissioners selected by lot from the pool and then the remaining commissioners selected

<sup>3</sup> The following discussion includes a few cases where party leaders rather than legislative leaders (the four corners), pick commissioners. We counted these cases with those where the four corners pick, because it appears very unlikely that party leaders would make these selections without consulting their respective legislative leadership.

by the first group from the same pool. In Arizona, the four corners make the picks. In some models, legislative leaders can strike a certain number of candidates from the pool.

- Nonpartisan experts, such as civil rights or demographic professionals or retired judges, may apply to join the pool or be nominated by a designated group of other nonpartisan professionals, such as serving or retired judges or the leaders of state universities. The procedure is similar to that for citizen pools and, again, the four corners may be involved in striking from the expert pool or may make the selection.

Pool methods (and indeed all methods) divide candidates into partisan sub-pools, either Democratic and Republican or D, R, and unaffiliated/other.<sup>4</sup>

The attention given to structuring the four corners’ roles suggests that advocates for redistricting reform see the four corners’ role as critical to their success – both in winning the reform’s adoption and in creating a process that will work.

Would-be reformers show much less consensus on what options are the most promising, however: the white paper team counted 22 different roles assigned to the four corners in the study bills, sometimes two or more in a single bill. Broadly speaking, **the four corners may name members of their choice to the commission, nominate members for selection by others, select members from a citizen or expert pool, strike names from a pool, approve choices made by others, or even serve themselves.** The four

**Box 8. The many options for legislative roles in redistricting**

<u>Prior to map-drawing</u>	<u>During map-drawing</u>
<ul style="list-style-type: none"> <li>• set criteria for map-drawing</li> </ul>	<ul style="list-style-type: none"> <li>• name replacement commissioners to fill vacancies</li> </ul>
<ul style="list-style-type: none"> <li>• determine how criteria are to be prioritized, measured, and assessed</li> </ul>	<ul style="list-style-type: none"> <li>• interact with commissioners to press for specific map features</li> </ul>
<ul style="list-style-type: none"> <li>• specify procedures for map-drawing (e.g., timing/location of hearings, contracting for experts)</li> </ul>	<ul style="list-style-type: none"> <li>• participate in hearings, directly or indirectly (e.g., by sending staff or supporters)</li> </ul>
<ul style="list-style-type: none"> <li>• set the timetable for redistricting</li> </ul>	<ul style="list-style-type: none"> <li>• draw and submit maps for the commission's consideration</li> </ul>
<ul style="list-style-type: none"> <li>• allocate funding and legislative staff resources</li> </ul>	<b><u>Map approval</u></b>
<ul style="list-style-type: none"> <li>• order legislative staff to produce reports related to redistricting</li> </ul>	<ul style="list-style-type: none"> <li>• amend the maps before approving them, including substituting wholly different maps</li> </ul>
<ul style="list-style-type: none"> <li>• hold legislative hearings on the redistricting process at any point in the procedure</li> </ul>	<ul style="list-style-type: none"> <li>• disapprove the maps and ask the commission to submit alternative maps</li> </ul>
<ul style="list-style-type: none"> <li>• name commissioners (some or all)</li> </ul>	<ul style="list-style-type: none"> <li>• approve the maps (amended or not)</li> </ul>
<ul style="list-style-type: none"> <li>• serve as commissioners</li> </ul>	<b><u>Disputing the maps or the process</u></b>
<ul style="list-style-type: none"> <li>• name commission candidates to a pool for consideration by another body</li> </ul>	<ul style="list-style-type: none"> <li>• bring suit to overturn a map adopted by another entity, including a commission</li> </ul>
<ul style="list-style-type: none"> <li>• select commissioners from a pool created by another entity</li> </ul>	<ul style="list-style-type: none"> <li>• bring suit over commission proceedings or decisions</li> </ul>
<ul style="list-style-type: none"> <li>• strike commissioners from a pool of candidates created by another entity</li> </ul>	<ul style="list-style-type: none"> <li>• appeal court rulings on redistricting</li> </ul>

have used “unaffiliated/other” (U/O) for this third category (shortened to U in tables, U/Os in the plural).

corners may have sole responsibility for naming the members and even picking the chair or they may name some while others are chosen in a different manner.

**What options are there for reform other than creating a commission?** Driving a commission design through the legislative and approval process is not easy. A handful of states have therefore attempted reform through other methods, particularly the adoption of models that limit reform to the consensus areas identified above (transparency, basic criteria, public hearings, etc.).

Experience indicates that **reforms limited to process and criteria are not a promising approach**; in other words, they don't work. Two reform strategies rely on such non-commission approaches, however: 1) the Iowa model and 2) reforms limited to criteria, transparency and public engagement.

**The Iowa model.** The Iowa legislative services division draws the maps for the approval of the legislature. An advisory commission organizes hearings after the maps are prepared and must produce a report within two weeks of the draft map being issued. It also advises the legislative services division on technical issues as needed. If the first three maps drawn by the legislative staff are rejected by the legislature, the legislature may then amend the third map without limitation. While this system has generally performed well in Iowa, there are some indications that it has **performed poorly on racial equity grounds**, even though Iowa's voting age population is over 92% white. **No other state has adopted Iowa's model and only a couple of the study bills proposed an Iowa-type model, suggesting that reformers in the legislature and outside it have doubts that it would perform well in more complex situations.** It also relies heavily on having a truly nonpartisan legislative services staff, which cannot be counted on in our increasingly politicized and polarized partisan environment.

**Criteria only bills.** With support from the League and others, Florida adopted a constitutional amendment prior to the 2010 cycle that listed and ranked criteria for redistricting. Reformers had been forced by legal limitations in Florida's amendment process to choose between a commission without criteria and criteria without a commission and chose the latter, which was then adopted in a referendum. The legislature refused to comply with the new procedure, however. Five years of court battles were required to force them to comply with the constitution. The legislature then deadlocked, unable to agree on a set of maps. **Thus, this reform did not perform well in practice.** The court ultimately adopted maps proposed by civil society groups. Not surprisingly, Florida is among the states now considering further reform, with two bills included among the study bills. In 2018, Virginia's legislature adopted a criteria-only reform, but the governor vetoed it on the basis that the proposed reform "does not go far enough."

## Emerging commission elements: innovation in search of a consensus

The study bills show interesting and innovative ideas in all seven of the comparatively contentious topics identified earlier (shown in the box at right). Before turning to discuss each of them, it may be useful to step back and look at the overall framework for innovation.

### Innovation principles—what do these models seek to achieve and how do they hope to get there?

The fundamental challenge to adoption of redistricting reform in non-referendum states is to find a “Goldilocks model” that can achieve sufficient reform to control extreme gerrymandering while leaving enough legislative involvement in place to win reform passage. If a reform takes away too much power from the legislature, it has little chance of passing the legislature, but if it leaves too much power in the legislature, it is unlikely to succeed in limiting gerrymanders, given the significant benefits they bring for legislators as well as their parties. Legislators in many states are hunting for “just right” solutions. Such designs may well not be perfect, but could provide real improvement over the current system, in which only the majority party’s legislative leaders have a real voice.

Many of the study bills rely on the combined effect of several modest Goldilocks reforms to reshape the redistricting system, rather than one or two big changes. For example, the study bills may:

- give the legislature ***a role in naming the commission*** but make the ***maps final on the vote of the commission alone***
- put legislative leaders in charge of ***some appointments*** to the commission, ***but not all***
- protect both parties’ voices, and those of independents, by requiring ***more than a simple majority vote*** to make decisions on the commission and, if there is a vote in the legislature, requiring more than a simple majority there as well

These approaches suggest a realistic recognition that it will not be possible to build a wall so high and solid that partisan considerations can be kept out of the process altogether. A better analogy than a wall would be a fence that will keep extreme gerrymanders out but still allow a little politics to slip through.

More ambitious approaches also add one or both of the following measures to keep the basic tools of gerrymandering out of the hands of the map-drawers:

A few bills are beginning to appear that take these measures a step further by:

- requiring as many ***competitive districts*** as possible
- mandating that the overall map normally yield a ***“fair result,”*** i.e., one that broadly aligns with the ***overall partisan makeup*** of the state’s voters

### **Box 9. Seven unresolved areas**

1. Commission structure: Size and partisan composition
2. Member selection: how members are chosen and by whom
3. Criteria used to draw maps: political criteria; upper/lower limits; weighting
4. Rules for commission approval of maps: voting rules, process for subsequent rounds, if needed; commission reports
5. Role of the legislature in approving maps: whether the legislature must approve maps; voting rule; ability to amend
6. Failsafe procedures: procedures to prevent failure of the process at any point prior to final map approval
7. Legal form: standard legislation or constitutional amendment?

- forbid the use of party registration data, past election returns, or incumbent/candidate addresses<sup>5</sup> (except as necessary to comply with the Voting Rights Act or state and federal constitutions)
- forbid the intentional pursuit of a partisan objective

The selection of the basic commission model emerges as an area where legislators and reformers have not reached consensus. Reformers outside the legislature often call for a fully independent commission, citing California’s IRC, where the legislature’s role is limited to striking applicants from the R, D, and U/O pools, as the best model, or advocate Iowa’s model, which has only an advisory commission named by the legislature to answer questions posed by the legislature’s nonpartisan services staff, who draw maps for the legislature’s approval. **Legislators, particularly in non-referendum states, do not show a lot of interest in either the California or the Iowa model, however. Only seven of the 50 bills reviewed proposed something approximating the California IRC model and just two bills put forward models similar to Iowa’s.**

Both citizens and courts demonstrate growing concern over gerrymanders that entrench one party in control, posing a serious danger to our democracy. There is a potential conflict between forbidding map-drawers from using partisan data and requiring them to draw competitive districts and/or “fair” maps, which generally would require the use of such data. Annex C discusses possible ways around this conflict.

The following discussion addresses each of the eight commission design factors in turn, beginning with what the issue is and why it matters and then proceeding to identify and compare the main options, look at how the study bills came out, and draw implications for North Carolina.

Before turning to this discussion, it is useful to ask, where does the governor fit into the commission process? Although several bills define a role for the state’s governor, the study team felt this would not attract sufficient legislative support to merit discussion in North Carolina. In any case, the addition of executive or judicial actors’ choices to the commission structure would in many cases undermine the commission’s partisan balance, since the governor, unlike the legislature’s four corners, would of course belong to one party only. The governor’s party would therefore have an advantage, an undesirable outcome.

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<sup>5</sup> Protection of incumbents emerged as a major topic of discussion in the NC General Assembly redistricting committee convened for the court-mandated redrawing of legislative districts in 2017. Not only were the majority party’s representatives keen to reassure both majority and minority members that they had worked hard to avoid putting two of them into the same district (double-bunking) or drawing sitting legislators out of their districts altogether, but they expressed considerable pride in having drawn safe (i.e., uncompetitive) seats for the minority members as well as those from their own party — nor were members of the minority party shy in asking for map refinements to secure even more favorable positions for themselves (not all of which were granted, however). This conversation, conducted in the full view of members of the public in attendance, demonstrates how thoroughly gerrymandering has undermined commitment to basic principles of democracy.

## 1. Structuring the commission: composition and size

*What is the issue and why does it matter?* The partisan composition of the commission and the number of members each have a major impact on how the commission operates. Almost all of the bills call for balance between the two major parties, but substantial differences arise in the role assigned to unaffiliated members (independents). Among current commissions, the most common approach is to provide for an independent to be selected as chair, often non-voting except to break ties. Commissions designed more recently give a larger role to independents, recognizing their growing share in the electorate. New York's commission has 2 independents out of 10 members and California's has 4 out of 14.

The importance of having partisan balance on the commission is self-evident. Current commissions do not necessarily provide for equal representation by the parties, however, because many of them include commissioners appointed by other elected officials, such as the governor or supreme court chief justice, potentially upsetting the balance.

The number of members on a commission may seem an unimportant factor, but in practice has a very real impact on the representativeness and diversity of the commission, the degree of transparency and public engagement, and the commission's decision-making processes. Size and composition are related, as a practical matter, because a larger commission has more scope for diverse membership. We will discuss these two issues separately, however.

*What are the main options and how do they stack up?* With regard to size, there are disadvantages to both very small commissions and very large ones. With only a few members, it becomes very difficult to represent a state's diversity in terms of gender, ethnicity/race, and geography. A small size also limits the range of expertise on the commission itself, which then must fill these gaps by hiring consultants or do without.

A larger commission offers not more opportunities for diversity ways but more paths to a majority, decreasing the potential for any member to play spoiler or hold out for a particular outcome. On the other hand, a very large commission is more expensive and may prove unwieldy. It also makes oversight of individual members' behavior more difficult, potentially undermining security and confidentiality.

Commissions with an equal number of Rs and Ds and a single U/O serving as a non-voting chair may be prone to deadlock. In such cases, even a simple majority requires one member to cross over to vote with the other party. In this case, to compromise is to lose.

With regard to party composition, there are four options for a commission's partisan makeup: 1) Ds and Rs only, 2) Ds, Rs, and U/Os; 3) Ds, Rs, and experts (or others) of unspecified party; and 4) Ds, Rs, U/Os, and experts. Some bills call for members to be drawn from the ranks of professionals with a commitment to nonpartisanship, such as retired judges, but partisan background remains a consideration.

*Where did the study bills come out?* Commission size in the study bills ranges from 5 to 15 members, with an average of 8 members. Half of the bills proposed a size between 6 and 10 members, with the rest evenly split between 5-member commissions and larger-sized groups. A quarter of the bills adopted the traditional 5-member structure, though, typically two of each party and an unaffiliated chair chosen by these four.

With regard to party composition, all bills propose a model that will in all likelihood include a majority of Ds and Rs, evenly divided between the two.<sup>6</sup> Even retired judges may be grouped into pools by party. One bill calls for commissioners to be elected by Congressional district (a truly bad idea, especially when the Congressional map is gerrymandered).

Compared to current commissions, the study bills are much more likely to include unaffiliated members and/or experts of unidentified party affiliation. Only 8% provide for membership by Ds and Rs only. Some bills specify that candidates for the non-D/non-R category may be either members of a third party or unaffiliated.

While some of the designs call for commissions made up entirely of experts, the overwhelming favorite among drafters is a structure specifying an equal number of Ds and Rs and a slightly lower number of unaffiliated members (e.g., 4-4-3 or 5-5-4).

*What are the implications for designing a North Carolina commission?* As the number of unaffiliated voters has now passed the total number of Republicans statewide and has also surpassed Democratic registration in a number of counties, the commission should certainly include substantial representation from this group of voters. While this category on the commission could also include third party representatives, at present unaffiliated voters outnumber all third-party registrants combined by almost 60-1, so there is not a strong case for requiring such membership.

With regard to size, good practice strongly suggests an odd number of members to avoid ties. North Carolina's racial and geographic diversity may argue for a somewhat larger commission than the average in the study bills, perhaps in the range of 9-11.

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<sup>6</sup> In categorizing the bills, we have treated nominations by the four corners as equivalent to selecting equal numbers of Ds and Rs; that is, we assume that the two Democratic corners and the two Republican corners each pick commissioners from their respective parties. (Unsurprisingly, the drafters have not found it necessary to spell this out.)



## 2. Criteria and methods for choosing commissioners

*What is the issue and why does it matter?* There are few aspects of commission design more important than determining how commission members will be selected, both who is eligible and what procedures to follow in selecting them. How well the commission functions will be shaped by how the selection process addresses diversity by geography, race, and gender (and possibly other categories) and assessment of candidates' technical skills, personal qualities, and commitment to a fair and open process. Given that commissioners will be expected to work for several months, possibly without pay; to complete a difficult, intensely contentious process; and to operate effectively in a very high-pressure environment, careful vetting and screening of candidate commissioners is essential.

Map-drawing software now makes it easy for anyone with computer skills, including members of the general public, to draw a map. Indeed, recent advances in map-drawing permit an expert to draw literally tens of thousands of maps that meet any set of criteria that can be modeled (including partisan criteria, nonpartisan criteria, or both).

The challenge is to draw a *good* map, one that truly and fairly reflects the underlying political and geographic configuration of the state while balancing competing criteria (keeping districts equal in population but minimizing divisions of communities, for example). The role of the commissioners is to bring to bear their respect for the voice of the public, loyalty to the democratic process, technical expertise, communications skills, and commitment to a fair and open process to produce unbiased maps<sup>7</sup>, broadly seen as essential to fair elections.

The commissioners must also have the character, technical and managerial skill, and professionalism to carry out a complex process in a very limited timeframe, not only producing an unbiased outcome, but giving citizens and politicians alike confidence in the outcome. This requirement demands a transparent process for selecting commission members who are not only evenly matched in their political affiliations and reflective of the diversity of the state, but highly capable and trustworthy individuals. They will have to work together effectively, manage pressure from many sides, organize and attend multiple hearings, comply with complex legal and technical requirements, incorporate public comments, address challenges to the integrity of the process (whether internal or external), and produce multiple legally compliant maps, all within a few months. In this context, the development of a process that can assemble such an effective group emerges as an important consideration in commission design.

Both the method for selecting commissioners and the criteria used to select them therefore deserve careful consideration. In the following discussion, we will turn first to the overall method of selection and then proceed to the criteria for selecting among applicants.

*What are the main options for selecting commissioners and how do they stack up?* Who does the selecting and how are as important as who can or cannot be selected.

The first box below summarizes the main methods for choosing commissioners. These options are often combined, with the four corners picking some of the commissioners, for example, and the remainder being selected another way, such as selection from a citizen or expert pool. The chair is commonly




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<sup>7</sup> "Unbiased" is not necessarily the same as competitive. Every state has regions where one political party or another is dominant and districts drawn in such areas are unlikely to be competitive in the general election.

selected by the members and is usually one of the U/O members. California’s commissioners opted to rotate the chair among all 14 members, however.

The second box provides further detail on the choices for defining how each of these three main methods works.

**Box 10. Common methods of selecting commissioners**

<b>Citizen Pools</b>	<b>4 Corners Pick</b>	<b>Expert Pools</b>
		
<p>Ordinary citizens (or retired judges, etc.) apply and are screened, then selected by a transparent process</p>	<ul style="list-style-type: none"> <li>• Speaker of the House</li> <li>• Senate President Pro Tem</li> <li>• House Minority Leader</li> <li>• Senate Minority Leader</li> </ul>	<p>Neutral process to pick legal experts, demographers, geographers, civil rights experts, etc.</p>

*(Methods may be combined)*

**Box 11. Features of various commission selection methods**

<b>Citizen Pools</b>	<b>4 Corners</b>	<b>Experts</b>
<p>Citizens apply to form partisan sub-pools (D-R-I)</p> <p>Nonpartisan agency screens for skills, diversity, commitment</p> <p><b>Options:</b></p> <ul style="list-style-type: none"> <li>Group 1 picked by random drawing, then picks Group 2</li> <li>Other commission members, Supreme Court, auditors, experts pick</li> </ul>	<p><i>(Legislative leaders)</i></p> <p><b>Options:</b></p> <ul style="list-style-type: none"> <li>Pick partisan members</li> <li>Pick expert members</li> <li>Name partisan members who pick additional members from expert or citizen pool</li> <li>Strike from pool</li> </ul>	<p>Retired judges, experts in civil rights, demography, law</p> <p><b>Options:</b></p> <ul style="list-style-type: none"> <li>Picked by officials, nonpartisan agency or other experts (judges, auditors)</li> <li>Experts named to pool, then other commission members pick from pool</li> </ul>
<p><b>Chair</b> — Usually picked by vote of other members; often must be independent; may be a judge, may be non-voting/tie-breaker only</p>		

Special considerations apply to selection of U/O members in view of their key role as an anti-gerrymandering device. Their effectiveness in protecting the process depends on having unaffiliated members who are truly independent, rather than “ringers,” that is, elephants or donkeys in sheep’s clothing. To prevent ringers, many plans incorporate extensive lists of requirements for U/O members, specify individuals with proven bipartisan credentials (typically retired judges), or turn to more complex selection methods designed to thwart packing the U/O cohort with ringers, such as allowing the four corners to strike a certain number of individuals from the pool.

Where did the study bills come out on selection methods? Unlike the current set of commissions, which are overwhelmingly made up of politicians or individuals chosen by them, the study bills proposed a wider variety of methods. Selection by the four corners still dominated: they had some role in selecting the commissioners in 82% of the bills. But far fewer bills – only 18% – gave them total control over the selection. The majority – 58% – opted for mixed methods, such as i) having the state auditors solicit and vet applicants to construct a pool and then having the four corners select from the pool or ii) having the four corners select some members but using another method to choose the rest. Four-fifths of the bills included independents or experts as members of the commission along with partisan members. Where the partisan appointees selected their fellow commissioners, they were often constrained by being required to pick from a pool or to approve members with a bipartisan majority or supermajority.

More than a third of the bills (18 of the 50) use a pool method for at least some of the members. This method is best known as the centerpiece of California’s fully independent commissions, where citizens apply and those making it into the pool are selected in two rounds: the first group is chosen by lot and they then choose the second group. Of the 18 bills using a pool method, 15 also assign a role to the four corners, often involving them or their designees in the pool selection process.

Another way to introduce greater neutrality or bipartisanship into the commission is indirect selection, usually by having the four corners’ chosen commissioners name one or more additional commissioners. These picks may require bipartisan participation in the decision. Among current commissions, an appointed chair accounts for two-thirds of all such non-politician appointments and is often the only unaffiliated member on the commission.

The four corners’ picks may be awarded the power to select the chair even if there are other members on the commission, ensuring that the chair has the approval of the legislative leadership. On larger commissions, the chair is often selected using a supermajority vote to reinforce bipartisanship.

Many bills provide a failsafe method to select the chair in the event that the commissioners cannot agree, such as assigning the state’s supreme court chief justice to name a chair.

Many of the study bills also weave a role for judges or retired judges into the selection process. Judges may name commissioners, the selection pool may be made up of retired judges, or judges may select from a pool. The involvement of the judiciary in the study bills is summarized in Annex E.

What are the options for setting criteria for selecting commissioners? Rather than options in this area, we are faced with a set of questions that each state must answer for itself. The criteria for screening or selecting commissioners are not self-evident. Should commissioners be sufficiently well-educated to understand the legal and governance issues raised by redistricting, or should the commission mirror the diversity of the state’s population, with commissioners from different walks of life as well as different races, genders, and ages? Do we want a broad range of technical skills, from demography to political geography and civil rights law, or will the commissioners draw this expertise from paid technical staff or consultants (and how will those consultants be chosen)?

**Box 12. The Bottom Line on Commissioner Selection Methods:**

Design a method where the legislature selects some but not all of the commissioners, such as the following: 1) the legislative leadership names the partisan members of the commission (limited to non-politicians), 2) a separate, open, and transparent open process is used to select unaffiliated or other-party members, 3) the number of Ds, Rs, and U/Os is equal or nearly so, and 4) a U/O chairs.

How important are character traits such as impartiality, a commitment to transparency and inclusion, ability to work well in a group, and grace under pressure? How would such traits be assessed? Do we want commissioners with a sophisticated understanding of the state and its politics or “naïve” commissioners who will not bring political baggage to the table and can stay above the fray? Do we want commissioners who represent the full range of political ideology in the electorate, from the far left to the far right, or commissioners who are clustered in the moderate middle ranges and may be more able to see both sides of an issue, take input from citizens across the political spectrum, and work as a team, rather than dividing into armed camps?

Given the time commitment required, should funding be provided to permit lower-income citizens to participate? Can the commission include citizens with full-time jobs, small business owners, or parents of young children, and what accommodations should be made so that they can serve?

Where did the study bills come out on selection criteria?

Understandably, the study bills did not address the broad menu of questions above. Despite the technical nature of map-drawing, few of the bills had much to say about the skills or experience required to serve as a commissioner. Most bills assume that the commission will have staff and technical support that will provide the needed technical expertise (and provide for the funding necessary to make this happen).

Instead the bills focus primarily on a simpler goal: keeping politicians off the commission. This is achieved not by describing who can or should serve but by articulating a long list of people with political connections who *cannot* serve, shown at right.

A handful of bills provide for specific experts to be included, such as civil rights lawyers, demographers, or experts in government and political science. Two Indiana bills take an interesting approach to this, calling on the presidents of three state universities and the state supreme court’s chief justice to each nominate three experts in specific fields to create a pool. Each of the commissioners named by the four corners then selects an expert and these experts then select the commission chair, who may or may not be from the expert pool.

Overall, the study bill drafters appear to be wrestling with how to balance the near-total predominance of R- and D-affiliated members in the legislature (and their own desire to control the map-drawing process) with the growing share of unaffiliated voters in the electorate. Young voters in particular are increasingly registering as unaffiliated. They may not regard a commission dominated by Ds and Rs as representing them. Although NC now has three smaller parties (Libertarians, Greens, and Constitutionals), their numbers remain too small to warrant inclusion on a commission, which represents the voters not the parties, but that could change in the future. None of the study bills really addresses the third party issue.

What are the implications for designing a North Carolina commission? Redistricting is an inherently political process. Even a commission made up of Martians and Venusians would inevitably produce a map that would draw angry criticism from someone. The methods and criteria used to select the Commission therefore constitute the most important elements of a commission design, because they

**Box 13. Who should be barred from serving on a redistricting commission?**

Many bills exclude people who hold any of the following roles or have held them in the past (within 2 or 5 years of joining the commission):

- Legislator
- Legislative staff member
- Registered lobbyist
- Other elected official
- Appointed official
- Party official
- Political consultant
- Donor (above a specified amount)
- Family members of any of the above (including spouses, siblings, children, parents, grandparents, in-laws, aunts and uncles, first cousins, etc.)

Some bills also require commissioners to pledge not to seek office for 2-5 years or to swear an oath of impartiality (similar to that used for judges in some states).

determine not only whether the commission is fair and balanced but whether it is *perceived* to be so. The other elements of a commission design – the criteria for the maps, the procedures to draw the map, etc. – matter little if the commissioners are not acting in good faith as representatives of the people, not the politicians or the parties.

There is no single design that can be said to be the best, much less to be failsafe. The best design for a commission is one that a) provides sufficient involvement for the legislature to win passage in the General Assembly and b) prevents the commission from drawing an extreme partisan (or bi-partisan) gerrymander.

### 3. Political data and criteria and how criteria are weighted

*What is the issue and why does it matter?* By definition, gerrymandering seeks a partisan objective. The entire point is to benefit one party by drawing maps that help its candidates capture a larger share of the seats than their share of votes won. Drawing a gerrymander requires three types of political data: i) information on voter registration by party (where each parties' voters live), ii) past election results (how they typically vote), and iii) the addresses of incumbents and challengers (so as to protect the former and frustrate the latter).

These data provide the tools for the mapmaker to crack and pack opposition party voters into districts that maximize the benefit for the party paying his salary. Of course, the mapmaker must also be instructed to use the data to rig future elections in one party's favor, that is, to pursue a partisan objective.

*What are the main options and how do they stack up?* The choices in the data area are straightforward: will the commission have access to the three types of data listed above, which are not needed for redistricting but are essential to a gerrymander? The only voter-related data needed for a redistricting is the total number of residents (not voters) in each precinct. The mapmaker also needs information on town and county boundaries and other information that might help identify communities of interest, such as geographic features (river, mountains), economic patterns, etc. If there are Voting Rights concerns, the mapmaker also needs the number of minority voters in each precinct to determine whether VRA districts are required. None of these is contentious (although the method for the communities of interest criterion would greatly benefit from further definition by social scientist and geographers).

The question of a political or partisan objective is highly contentious, however: should the map be drawn to produce competitive districts or, alternatively, districts that are likely to yield an overall result similar to the partisan division in the jurisdiction (state, county, etc.)? Or should the map be drawn without reference to any political objective—let the chips fall where they may? If partisan or political objectives are ruled out, how can we determine whether the map is unbiased? How much difference is permissible between the districts' partisan makeup and the expected partisan outcome? Answering these questions requires the use of partisan data, of course. Like the VRA analysis, it should be done after draft maps are produced, ideally by a separate team that has no communication with the mapmakers, other than to give a thumbs up/thumbs down or to indicate where on the map there are violations of these criteria.

A further difficulty is that the political representativeness and competitiveness criteria are potentially inconsistent with each other. In many areas, either Rs or Ds have a strong plurality of the voters, if not a majority. Engineering competitive districts in such areas is likely to lead to very strange and unnatural districts that violate other criteria.

*Where did the study bills come out?* Most bills cut off access to incumbents' addresses: more than 2/3 of the bills include this provision, effectively barring incumbent protection (which has been found to be constitutional). The study bills indicate that some of these issues remain contentious, however. Slightly more than half (54%) of the study bills explicitly ruled out use of partisan data and an even narrower majority forbid the use of political data (44% barred favoring one party over another and 8% discouraged such practices).

Only 1 in 7 of the bills explicitly called for "fairness" or "competitiveness" to be considered in drawing a map. This language is appearing more and more frequently in referendum proposals, however, and language excluding a bipartisan objective has been incorporated into the constitution in several states.

This idea seems to be gaining support as voters realize how gerrymandering robs their votes of meaning, but for now it remains on the frontier of redistricting reform.

None of the bills set clear limits for what is acceptable for such standard criteria as compactness. It is not enough to specify the technical measures to be used (Reock, Polsby-Popper, etc.); drafters must also set quantitative limits.<sup>8</sup>

*What are the implications for designing a North Carolina commission?* To eliminate gerrymandering, it is necessary to keep political data such as party registration or voting history off the table and to rule out partisan objectives. Legislators strongly favor incumbent protection, not only ensuring that no sitting legislator is drawn out of his/her district or no incumbents are double-bunked (drawn into the same district) but also providing as many as possible with safe (i.e., easily winnable) districts. Voters may readily accept the first two of these, but the third – safe districts – inherently contradicts both the logic of election (that voters should have a real choice) and the need to draw a line under past gerrymandering abuses. Finally, with regard to the VRA requirement, it has become urgent to complete the necessary analysis on racial voting patterns (a polarized voting analysis) to inform the next redistricting. This is a straightforward process that can be completed quickly by a data analysis expert using readily available precinct voting history data and census data on racial composition.

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<sup>8</sup> Some authors tried to set a qualitative standard, stating that no district boundary should stretch outward to encompass more distant areas when closer-in areas are available. This area is one of several standards-related areas needing assistance from mathematicians and/or demographers to define usable cut-offs and operationalizable standards. Other questions include which standard for compactness is best, whether several standards could be combined into a well-behaved index, and whether it is possible to use socioeconomic and economic-geographical data to define communities of interest in a more standardized and readily applicable manner.

4. Voting rules for commission approval of maps

*What is the issue and why does it matter?* A core function of emerging commission designs is to force Democratic and Republican members to compromise, even, if possible, to work together. They achieve this in part by ensuring that, even though a large share of commission members are partisan appointments, they are joined by unaffiliated voters and/or neutral experts whose support is also needed to approve a map. Partisan appointments may constitute the majority, but neither party’s members are close to a majority on their own – they need to win votes from independents, experts, or the other party to pass a plan they favor. More demanding voting rules can reinforce this pressure toward compromise by requiring more support for any plan to be adopted.

These voting rules are not necessarily limited to votes on the maps, moreover, but may apply to every decision taken by the committee, such as approving contractors and technical experts. Only a few bills specify a supermajority vote to select the chair, however, although it is a key decision. The fact that many bills include failsafe measures for voting on the chair to protect against deadlock suggests that drafters may expect it to be hard enough to agree on a chair without imposing a tougher voting rule.<sup>9</sup>

*What are the main options and how do they stack up?* In addition to the simple majority (half the members of the commission plus one), there are four alternatives for setting a more demanding voting rule. These are shown in the figure below.

Box 14 illustrates these alternatives using the example of an 11-member commission consisting of 4 members each from the X and Y parties, plus 3 U/Os.

Box 14. Alternative commission voting rules  
(shaded blocks indicate the minimum required to approve maps, and possibly other decisions)

	11-Member Commission										Vote	
Commission Composition	X	X	X	X	U	U	U	Y	Y	Y	Y	4-3-4
Simple Majority	X	X	X	X	U	U	U	Y	Y	Y	Y	6-5
Bipartisan Simple Majority	X	X	X	X	U	U	U	Y	Y	Y	Y	6-5
Supermajority	X	X	X	X	U	U	U	Y	Y	Y	Y	7-4
Bipartisan Supermajority	X	X	X	X	U	U	U	Y	Y	Y	Y	7-4
Concurrent Majority	X	X	X	X	U	U	U	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 could be achieved with 3X/1U/2Y, 3X/2U/1Y, 3X/3U, 2X/2U/2Y, etc. The supermajority rule shown here requires 60% for passage.*

*Source: White Paper team*

The power of the more demanding voting rules to force compromise makes them a potentially powerful tool to prevent extreme gerrymanders. It also gives the U/O members more leverage in the process:

1. An important job for the U/Os is to prevent the two groups of partisans from simply divvying up the state into D and R blocs of safe districts for everyone (the “bipartisan gerrymander,” a result that some observers argue was a frequent outcome of Democratic gerrymanders prior to 2010).

<sup>9</sup> California’s commissioners got around the challenge of selecting a chair by deciding to have the commissioners take turns chairing the commission, one month per turn with the parties alternating. This reportedly worked well and might be emulated.



2. If the U/Os have sufficient members on the committee and vote as a bloc, they can make the two parties compete for their favors by offering fairer and more competitive plans.

Forcing the two parties to compromise is a core feature of RRR models. This element distinguishes the RRR approach from the current situation in many legislatures where one party controls both houses, the party in charge may see no benefits in compromising with the other party and faces little internal or external pressure to do so.

Stronger voting rules may also help in winning support for the reform bill in the legislature. It ensures both parties and unaffiliated members (if any) a say in the process. Even if one party holds firm control over both houses in the legislature at present, everyone knows that this can change (especially if we get eliminate gerrymandering!).

On the other hand, these more demanding rules raise the danger of deadlock if none of the parties is willing to compromise. This reinforces the need for a strong failsafe mechanism that kicks in if the commission cannot pass a set of maps. As discussed below, the presence of a failsafe mechanism itself pushes the commissioners to compromise; otherwise, they risk losing any say over the outcome at all.

Where did the study bills come out? Of the 44 plans that include a voting rule, less than half (45%) require only a simple majority.<sup>10</sup> The remaining 27 bills break out as follows:

1. Bipartisan simple majority: 4 bills (plans may be adopted by simple majority, but the majority must include at least one member of each party)
2. Supermajority: 13 bills (adoption of a plan requires more than 50%+1, typically around 60%)
3. Bipartisan supermajority: 6 bills (supermajority must include both D and R votes or must include Ds, Rs, and U/Os)
4. Concurrent majority: 1 bill (The plan must be approved by a majority of each sub-group (Ds, Rs, and U/Os); this is the system used in California's independent commission)

The prevalence of consensus-forcing voting rules is noteworthy, because the structure of most commissions already requires support from more than one party: no party has a majority on its own. Drafters apparently believe that broader support for the maps (and sometimes for other decisions as well) should be required for the commission's work to ensure that dissenting voices are not steamrolled. These more demanding voting rules also provide some protection in the event that one or more commission members turns out not to be quite so loyal to their party badge (or lack of one) as anticipated at their appointment.

What are the implications for designing a North Carolina commission? More demanding voting rules bring important advantages to the process, even though they may raise the danger of deadlock somewhat. They prevent bipartisan gerrymanders while forcing compromise. They also increase the influence of the U/Os over the process, a key point in their favor as U/Os are now the second largest grouping in North Carolina, exceeding the Republican voters statewide and exceeding Democrats in nearly a quarter of the counties. The protections provided to each party by a more demanding voting rule may also spell the difference between success and defeat in getting a reform adopted, especially if the bill is structured as a constitutional amendment, requiring 60% in each house and ratification by the voters.

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<sup>10</sup> While it might be assumed that the 6 bills not specifying a voting rule implicitly supported the standard majority rule, the study team chose not to make this assumption and classified them as "not addressed" on this issue.

## 5. The legislature's role in approving the maps

*What is the issue and why does it matter?* The two questions that shape the legislature's role – who selects the commission and who is responsible for final approval of the maps – are the two most important issues in the design of a redistricting commission.

Three questions must be answered to define the legislature's role in finalizing the maps:

1. Does the legislature have a role at all:
  - a. Does the reform assign the power to approve the maps to the commission, eliminating the requirement for a vote by the legislature (and/or approval by the governor where that is the current practice)?
  - b. Does the legislature have other means at its disposal to affect the maps before they are finalized by the commission, other than naming some or all of the commissioners?
2. Can the legislature modify the commission's maps and, if so, under what conditions?
3. If the legislature votes, does it approve the map by a simple majority or does a more demanding voting rule apply, such as a supermajority or bipartisan supermajority?

Where the legislature has to approve the maps, some of the study bills provided for multiple maps to be reviewed and voted on, sometimes with different voting rules. Some bills also provided strict limits on the changes that can be made, such as limiting modifications to a small percentage of the total area (e.g., 2%). The bills also provide in some cases for the legislature or its leadership to comment on the maps and receive responses from the commission before the commission finalizes the maps and votes on them.

New approaches are emerging to handle this question, notably the newly adopted Ohio method, shown in Box 15.

About three-quarters of the constitutional amendments creating independent commissions initiated in the legislature, rather than through citizen initiative (collection of voters' signatures to put a measure on the ballot). Half of these were in non-referendum states like North Carolina, where the legislature could not have been acting to forestall a citizens' ballot initiative. This demonstrates that, under the right conditions, legislatures can and have adopted reforms that gives the commission the final say on the maps.

*How do the options stack up?* The best guide to navigating these complex options is arguably to look to the 29 independent and advisory commissions that already exist. As discussed above, the legislature and/or other politicians have a role in the front end – selecting the commissioners – in every commission, even in California's. Only 9 of the 29 – less than a third – are “advisory,” requiring the legislature to approve the maps on the back end. This may indicate that that

Box 15. Ohio's new approach to sharing responsibilities between the legislature and a commission

The recently-adopted Ohio model for Congressional maps (adopted by the legislature and then ratified by 75% of the voters) gives the legislature the first shot at passing a map, but requires a bipartisan supermajority for approval. The map must receive both 60% support and a majority of each party's delegation in each house. If this is not achieved, the maps are then drawn by an independent commission (7 members, four appointed by the legislature and the remainder by other elected officials). They only need a majority vote, but it must be a bipartisan majority, with at least two votes coming from the minority party). There are two additional options if those both fail, each involving a vote in the legislature.

reformers – both those in the legislature and those outside – recognize the inherent weakness of an approach that ultimately permits the legislature to control the map-drawing. Particularly in today’s hyper-partisan and data-rich environment, such an approach does not inspire confidence as a way to ensure bipartisan compromise on the maps nor to end extreme gerrymandering.

*Where do the study bills come out?* Taken as a set, the study bills strongly support a role for the legislature in the process but also impose limitations on how that role can be exercised. Unlike the situation for reforms that have actually been adopted, only a slim majority of the study bills (27 of 50) provide for maps to become final on the commission’s vote and do not require a vote in the legislature.

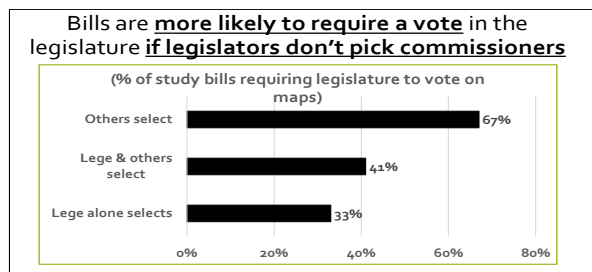
Of the 23 that provide for a vote, only four allow the legislature to modify the commission’s maps, however. Three of these follow a system similar to the Iowa model: the legislature cannot amend the first two maps, but the third map can be amended as a normal bill (opening the door to substitution of a completely different map). One bill permits the legislature to amend any plan, requiring only that they take comments from the commission. Of these 23 bills, only two require more than a simple majority in the legislature (requiring a 2/3 vote in one case and 3/5 in the other).

Box 16. The tradeoff in the study bills between legislative selection of the commissioners and the legislature’s vote to approve the maps

Analysis of the study bills shows that bill-drafters see a tradeoff between having the legislature involved at the front-end vs. the back-end of the process. As shown in the figure below, the greater the role of the legislature in selecting commissioners, the more likely the bill will provide for a final vote by the commission.

This is a potentially important dynamic. Legislators around the country show a willingness to trade away their ultimate control over the maps if they can get a greater say in who does the map-drawing. A Reasonable Redistricting Reform model that gives the legislature substantial say in picking the commissioners (but not approving the maps) could therefore have a much better chance of passage than a fully independent, California-style commission. It is also interesting that there are so many bills picking the middle option, with the legislature picking some but not all of the commission, with most of these bills making the maps final without a vote in the legislature.

The same dynamic appears in the study bills’ preferred commission voting rule. If the legislature has a larger say in picking the commission, the bill drafters are more willing to accept a simple majority vote in the commission to approve the maps, rather than requiring a supermajority.



The bill drafters also linked voting rules on the commission itself to the degree of control that the legislature has over the commission's membership. The more say the legislators have in who the commissioners are, the more willing they are to accept a simple majority vote for commission map approval. Conversely, if they have no role in naming the commission, the legislators want a stronger voting rule in the commission, such as a supermajority that would protect the interests of both the majority and minority party.

The voting dynamic in the commission is different from that in the legislature, of course. Unlike the legislature, the Ds and Rs on the commission always have the same number of votes (almost all of the bills specify a specific partisan division among Ds and Rs for at least a majority of the commissioners). Most of the study bills include unaffiliated members with voting power, unlike many of the commissions currently in place. These members will often hold the balance of power between the two partisan delegations, encouraging each side to propose a more neutral map to win unaffiliateds' support. Their presence also discourages the two parties from simply carving up the state and drawing safe seats for everyone – the “bipartisan gerrymander” option.

*What are the implications for North Carolina?* Nothing is more dangerous to a fair redistricting process than allowing a vote on the maps in the legislature. A process that gives the legislature the ability to modify commission-drawn maps may be functionally equivalent to having no commission at all.

The chances of achieving a broadly fair map are even further reduced if the legislature is able to modify the commission's maps, particularly if there are no limits on how much alteration the legislature is permitted. Legislatures under the control of either party have shown a willingness to violate the constitution in order to gerrymander, as demonstrated by multiple cases where federal and state supreme courts have found legislature-drawn maps to be unconstitutional.

Given this experience, many reformers in North Carolina are naturally leery of models where the legislature can set aside the commission's work after going through a series of procedural steps, draw any map the majority party wants, and then vote it in. What is the value of a fully independent commission if the legislature can ultimately set aside their maps? An arguably better reform model would give the legislators the ability to select some of the commissioners—possibly even a majority—but not to vote on the maps. Although it might be possible to put strict limits on how the legislature could modify the maps, these would need to be buttressed with *ex ante* judicial review and a strong failsafe that would kick in automatically should the legislature fail to follow the rules.

Recent experience also suggests that legislative map approval may fail altogether. Even with just a simple majority requirement, legislatures have deadlocked in at least two cases, proving unable to draw a map that complied with a court order to follow the law. This happened both in Florida in 2015 and in Virginia just this year (in late 2018), forcing the court to draw the map.

It may be far better to allot the legislature a real role in the front of the process—selecting a large share or even a majority of the commissioners, striking possible commissioners from the pool, etc.—than to permit a vote on the maps in the legislature, creating the possibility of the process veering off the tracks just as it approaches the end of journey.

6. Failsafe mechanisms and resolution of challenges.

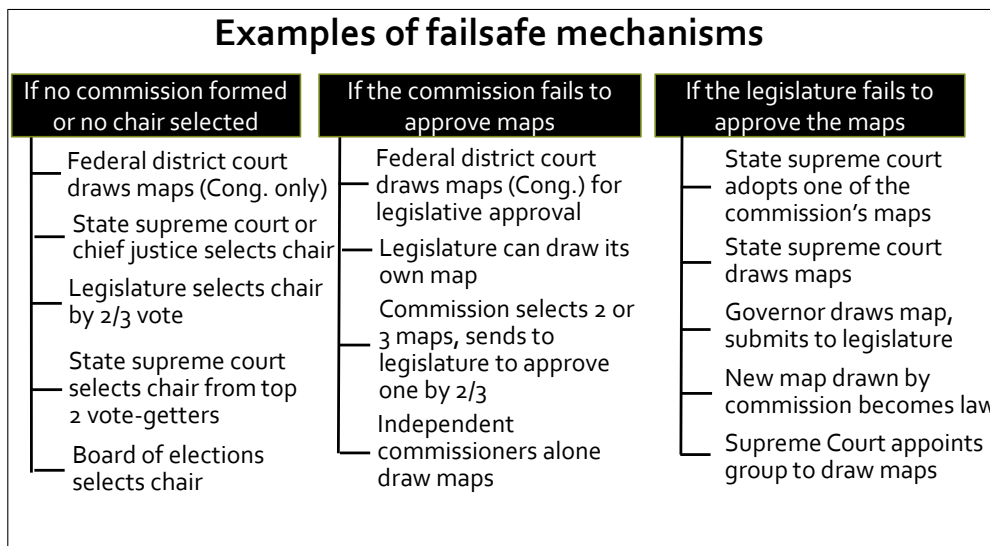
*What is the issue and why does it matter?* Redistricting processes can and do deadlock, typically because the two parties cannot agree on a key step (selecting a chair, picking consultants, approving a map, etc.). Failsafe mechanisms provide a much-needed way out of this situation, specifying an alternative path to complete the map-drawing process. Strong failsafes (those that take control out of the hands of the parties) can also induce the deadlocked parties to reach agreement and take action to get the process back on track, rather than losing control.

The mechanism included in the Iowa model is an example of a very weak failsafe mechanism. It kicks in if the legislature fails to adopt the first and second maps submitted by the legislative research division (which act as the plan’s advisory commission). The legislature is not permitted to amend these first two maps, only to vote them up or down. If these fail, a third map is submitted but the legislature is then free to amend it without limit. Although this has never happened in Iowa, it is not hard to imagine legislators in a state such as North Carolina turning down two maps and then setting the third map aside, effectively returning control of the process to the majority party.

*What are the main options and how do they stack up?* Failsafes typically fall into two categories: those that transfer control to another body altogether and those that limit the choices available to the parties to promote agreement. It is difficult to generalize beyond this, given that different solutions are needed for different problems.

*Where did the study bills come out?* Somewhat surprisingly, only 3/5 of the bills included failsafe mechanisms. The figure below gives examples of failsafe mechanisms proposed for three of the most common areas where the process breaks down.

**Box 17. Failsafe mechanisms**



Approval of the maps by the legislature or the commission is not necessarily the end of the process, of course: frequent court challenges are a feature of US redistricting, whether legislators or commissions draw the maps. Several study bills provide an expedited process for judicial review of the maps or alternative dispute resolution mechanisms for challenges arising after the maps were officially adopted. Given that court cases can otherwise drag on for years and cost millions of dollars, such post-map failsafes are arguably a very good idea.

*What are the implications for designing a North Carolina commission?* A good commission design should include failsafes such as those shown above, ideally addressing all three of the danger points identified as well as the need to expedite resolution of post-map-drawing disputes. An effective failsafe should take the power to make decisions on the maps or other high-priority decisions out of the hands of the party that has failed: it should impose an alternative that is so unwelcome that it never has to be used. The failsafe mechanism also must be practical, rapid, and perceived as fair by the state's citizens, so that the threat of relying on it is credible.

## 7. Constitutional amendments vs. regular legislation

*What is the issue and why does it matter?* In an environment of high and rising mistrust between the parties and arguably between the voters and their elected officials, measures to increase the stability of the system and inspire trust play an even more important role than ever. The choice to structure the reform as a constitutional amendment builds trust in the reform in two ways. First, it gives the voters a direct say in how the reform is structured, as constitutional amendments require ratification at the ballot box. Second, it makes it much harder to change the way redistricting reform is done when control of the legislature changes hands. Both the party in charge and the party out of charge when the new system is adopted know that sooner or later they will find their roles reversed. This encourages them to agree on a plan that protects both the minority and the majority party, moving them toward a design that is more fair for everyone, including the voters who must approve it and live with the results.

*What are the main options and how do they stack up?* Constitutional amendments offer both advantages and disadvantages relative to regular bills. On the plus side, they give the voters of the state an opportunity to weigh in on the critical decision of how their representation is structured. On the minus side, they are more difficult to adopt, requiring a supermajority in the legislature as well as ratification by the electorate.

*Where did the study bills come out?* The study bills gave a slight edge to the constitutional amendment approach, with 54% taking this approach (excluding the four Congressional bills). This is somewhat surprising given that most of the current commission designs are enshrined in their state constitutions and that the reforms moving forward in 2018 (in Ohio, Missouri, Michigan, and Colorado) all take the form of constitutional amendments.

*What are the implications for designing a North Carolina commission?* Ballot measures to change redistricting rules have failed several times. Such referenda failed at least three times in Ohio alone, in 1981, 2005, and 2012, before successes in 2015 (for the legislative maps) and 2018 (Congressional maps). Both successes resulted from negotiation between legislative leaders and reform groups (with the League in a leading role as the head of a large and broadly bipartisan coalition). Agreement on compromise approaches resulted in bipartisan support for citizen ratification, replacing the expensive and highly polarized pro- and anti-reform measures in previous years with a more limited but consensus reform.

Once adopted, constitutional amendments are much harder to change, but this is a two-edged sword. On the plus side, the reform is insulated from the changeable winds of the state's legislative process. On the negative side, if the reform performs badly, it is much more difficult to fix. Florida is wrestling with this challenge now, having adopted a constitutional amendment that specified only the criteria for map-drawing, rather than the process. Not only did it require years of court battles to force the legislature to abide by the criteria, but the narrowness of the reform proved insufficient to control gerrymandering. As a result, the state is once again considering reform to the process. No redistricting reform made it through Florida's recent constitutional revision commission (a process that is constitutionally mandated in Florida every 20 years) and neither of the two bills included in the White Paper study is structured as a constitutional amendment.<sup>11</sup>

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<sup>11</sup> Florida is among the states whose constitutions mandate periodic constitutional revision conventions. The 2017-18 convention placed eight measures on the ballot. The convention considered an amendment that would create a fully independent redistricting commission, but it was not adopted.

## Fitting the pieces together into a model

Many observers (including the League) believe that creation of an independent commission is the best model for reform, but it is not by any means the only option. All across the country, state legislatures are looking at reform models that keep the legislature at the center of the redistricting process, while at the same time introducing modifications in that process to expand citizen input, increase transparency, and limit extreme gerrymandering.

The 50 study bills reviewed in this study demonstrate the wealth of good ideas that legislators of both parties are advancing to improve redistricting in their states. Some of these ideas have already made their way into adopted legislation; others are being actively considered and may move forward in time for the 2021 redrawing.

It is not our intention to propose a specific model here. To the contrary, we feel that the best design for our state will be one that emerges from a broad debate that engages legislators, citizens, and the full diversity of interests in our state. Our aim in producing this paper is to fuel and foster such a broad debate by bringing forward ideas emerging from legislatures in other states.

Many of these ideas fit into models that we have called “reasonable redistricting reform.” There is no one RRR model, as each state must respond to its own situation, but at its base the RRR model incorporates three features:

1. ***Include the legislature*** in the redistricting process
2. Organize the map-drawing process through an ***independent commission*** named at least in part by the legislature’s leadership
3. ***Structure how the commission carries out its work to prevent extreme gerrymandering*** by barring politicians from serving on the commission, crafting transparent procedures, limiting what data can be used and the criteria for drawing the maps, adopting decision-making rules that encourage compromise, protecting the process against breakdown, and providing for broad public participation

Some designs enable the commission to approve the maps itself; others require the legislature to vote on the commission’s maps.

The following ten suggestions offer design principles that, based on our analysis, would contribute to a Reasonable Redistricting Reform model that will work for North Carolina:

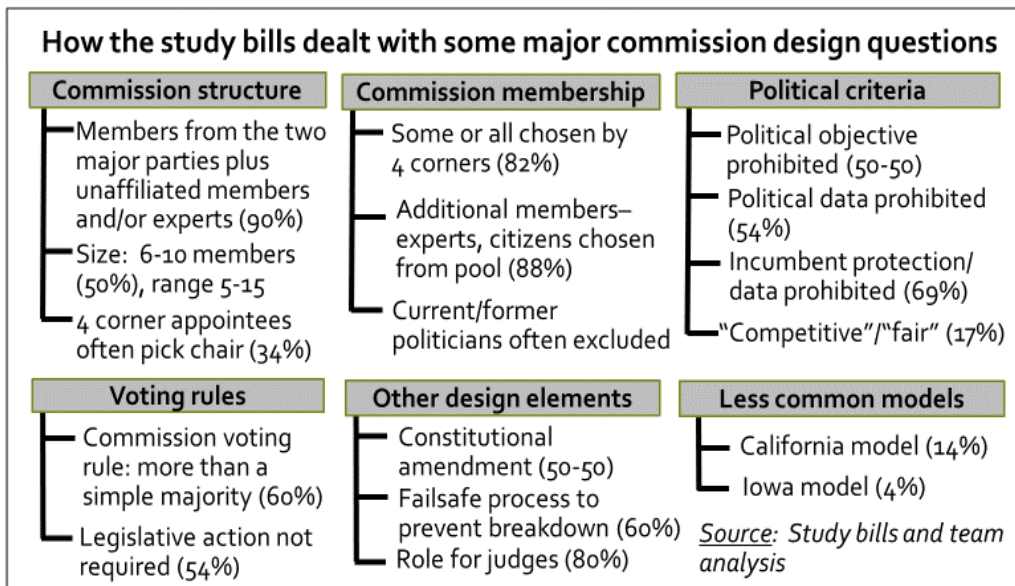
1. Structuring the reform as a ***constitutional amendment*** offers citizens the opportunity to approve the change, while also leaving room for implementing legislation to refine the process over time, but reforms can also be implemented through regular legislation.
2. The commission must be ***large enough to represent the state’s diversity*** and to provide breadth of professional backgrounds and experience, suggesting a range of 9-15 members, with a membership made up of equal numbers of Democrats and Republicans, plus several unaffiliated or other party voters (the chair usually being drawn from this group). Experts in the law and the state’s demography could contribute to more effective commission deliberations, as well.
3. Many RRR designs call for the ***legislature’s four corners to select around half of the members***, with the ***remainder chosen through a process led by nonpartisan experts***; all members should be regular voters but not have active involvement in political leadership roles at present or in recent years. Clear procedures are needed to screen potential members, remove members for cause, and fill vacancies to maintain the commission’s integrity.



4. In addition to the traditional criteria of compactness, contiguity, etc. (ideally with stated procedures for assessing them and acceptable ranges), **criteria to preserve communities of interest and limit splitting of geographic units** promote the integrity of the maps, as do **exclusion of political criteria**, including partisan outcomes and incumbent protection, together with the data necessary to apply them.
5. Commission operations that **follow open meeting rules and provide for extensive public participation and transparency** at all stages promote public confidence and engagement in the process. Other measures to incorporate citizens' perspectives include hearings before and after drawing the maps, full public access to commission work products, and a ban on *ex parte* communications.
6. Ensuring adequate **budgetary and professional resources** supports professional and open commission operations. Many RRR bills specify transparent procedures to give the commission the ability to contract for professional assistance in addition to the support of the legislative services division.
7. Rules for **commission approval of maps** that require yes votes from members of all three constituent groups (Ds, Rs, and U/Os) encourage compromise.
8. Many RRR models provide for **multiple rounds of maps in cases where the legislature must approve** the commission's work, but do not permit or strictly limit amendment.
9. If RRR procedures require legislative approval, **voting rules in the legislature that require support from both main parties** can reinforce both the actual and perceived fairness of the redistricting process; many RRR models bar amendment of the maps.
10. **Incorporation of failsafe mechanisms** at each stage in the process where deadlock is a possibility. Failsafe mechanisms ensure that redistricting is completed in a timely manner and that disputes are resolved along the way, rather than derailing the process. Where there is a history of redistricting through the courts, provision for expedited judicial review may contribute to a less contentious and more orderly process.

The box below shows how the study bills stack up on these questions.

**Box 18. Summary of study bill treatment of commission design issues**



We have further simplified the above findings to articulate five principles of Reasonable Redistricting Reform, shown in the box below.

**Box 19. Five principles of reasonable redistricting reform**



## principles for reasonable redistricting reform

1. Include **the legislature** in the process, such as by 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**

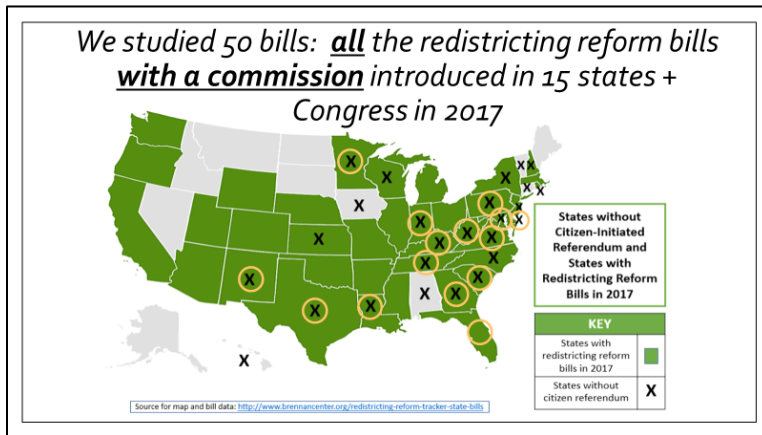
## ANNEXES

- A. [Study Methodology](#)
- B. [League of Women Voters' state and national Policy on Redistricting](#)
- C. [Findings for areas of broad consensus](#)
- D. [Using new map analysis techniques to support redistricting](#)
- E. [The role of the judiciary](#)

## Annex A. Study Methodology

**What bills did we look at?** To answer these questions, the League’s Fair Election Action Team (FEAT) looked at more than 50 bills introduced in 2017 that meet three criteria:

- 1) **They were introduced in the US Congress<sup>12</sup> or in non-referendum states’ legislatures**
- 2) **They establish or revise a redistricting commission of some sort, rather than merely restricting how the legislature carries out the redistricting (alone or together with the governor or other parties)**
- 3) **The states where they were introduced share broad similarities with North Carolina, i.e., Southern states and/or “purple states.” (See map below for states included)**



Almost all of the states included are “gerrymandering trifecta states”: non-referendum states where the legislature draws its own maps and the Congressional maps. In all cases, we included every bill introduced in that state’s legislature in 2017 that proposed some form of redistricting commission (that is, that did not simply modify how the legislature itself was to draw the districts) and included a complete commission design, rather than minor

modifications to an existing commission. We relied on the [Brennan Center website](http://www.brennancenter.org/redistricting-reform-tracker-state-bills) tracking redistricting reform to identify the bills.

The table below shows the coding system used for each of the 12 commission design factors studied, which included 2-4 options for each of the 12 parameters, or 30 options in all. Although this coding system does not cover every possible variable in a commission design, in theory over 40,000 different commission designs could be defined using our criteria and categories.

In analyzing the results, we assigned the same weight to each bill (identical bills introduced in each chamber were counted only once). We did not have the resources to determine which merited greater weight based on the seniority or reputation of the sponsors nor to track their progress through the legislature. We believe that most of these bills did not make it to the

12 key elements make up a commission design

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

<sup>12</sup> The Constitution grants Congress substantial power to shape how Congressional elections are structured; bills introduced in Congress generally address only Congressional races.

floor for a vote; certainly no legislature adopted commission legislation in 2017 or 2018 in any of the study states.

Our analysis is based on the percentage of the bills including each of the 30 design options. Not all bills address all twelve design parameters, but most did. Given the variation in states and bill sponsors, this is an admittedly imperfect way to summarize the 50 bills, but we feel it nonetheless provides very useful information on what commission designs legislators feel merit consideration. Given that legislators are the ones who must vote for a commission in order for it to be adopted in a non-referendum state, such as North Carolina, their opinions certainly carry weight and are deserving of study.

## **Annex B. League of Women Voters' State and National Policy on Redistricting**

### **LWVNC Policy on Redistricting**

Congressional districts, both houses of the state legislature, county, as well as municipal government districts including boards of education, should be apportioned primarily according to population.

Districts should be single member, compact, convenient, contiguous, and should reflect a community of interest.

Specific standards of fair representation as required by the National Voting Rights Acts should be assured. reapportioning should rest with an independent agency commissioned by the legislature once every ten years; the agency plan (for redistricting) should be submitted for legislative approval without amendment. The independent agency should not be a court. While the agency should reflect the geographic, racial, and gender make-up of the state population, no elected official should be a member. As a creature of the legislature, the agency should be subject to the Open Meetings Law. Definite provisions should be made for compensation and staff services of the independent agency.

A process should be provided to effect automatic, compulsory and periodic redistricting and reapportioning. Measures to enact this process should include: authority, enforcement powers, time schedule, and funding. The specific measure may take the form of a constitutional amendment or legislation.

Specific provisions should be made for court review of redistricting and reapportioning measures and for courts to require the independent agency to act on a specific schedule.

The state and its political subdivisions should be redistricted and reapportioned every ten years within a year of certification of the census.

Definite time limits should be set for an agency to act after the decennial census figures are available in order to comply with federal Voting Rights legislation. Time limits should be set for initiating court action for review of the constitutionality of measures.

*(adopted 2009)*

### **LWV National Policy on Redistricting**

The League of Women Voters believes responsibility for redistricting preferably should be vested in an independent special commission, with membership that reflects the diversity of the unit of government, including citizens at large, representatives of public interest groups, and members of minority groups.

Every redistricting process should include:

- Specific timelines for the steps leading to a redistricting plan
- Full disclosure throughout the process and public hearings on the plan proposed for adoption
- Redistricting at all levels of government must be accomplished in an open, unbiased manner with citizen participation and access at all levels and steps of the process, and
- Should be subject to open meeting laws.
- A provision that any redistricting plan should be adopted by the redistricting authority with more than a simple majority vote.
- Remedial provisions established in the event that the redistricting authority fails to enact a plan.
- Specific provisions should be made for court review of redistricting measures and for courts to require the redistricting authority to act on a specific schedule.
  - Time limits should be set for initiating court action for review.
  - The courts should promptly review and rule on any challenge to a redistricting plan and require adjustments if the standards have not been met.

The standards on which a redistricting plan is based, and on which any plan should be judged, must:

- Be enforceable in court

- Require:
  - Substantially equal population o Geographic contiguity
  - Effective representation of racial and linguistic minorities
- Provide for (to the extent possible)
  - Promotion of partisan fairness
  - Preservation and protection of “communities of interest”
  - Respect for boundaries of municipalities and counties
- Compactness and competitiveness may also be considered as criteria so long as they do not conflict with the above criteria
- Explicitly reject
  - Protection of incumbents, through such devices as considering an incumbent’s address
  - Preferential treatment for a political party, through such devices as considering party affiliation, voting history and candidate residence.

*Statement of Position on Redistricting, as Adopted by Concurrence, June 2016. This position does not supersede any existing state League redistricting position.*

### Annex C: Findings for areas of broad consensus

Our study found broad consensus among the bills in three areas within the redistricting process. Substantial variation remains on the details, but overall good practice is fairly well defined in each of these areas, based on state experience and widely recognized principles of good governance (such as transparency, measurable results, and public participation). It must be emphasized that these practices alone are not likely to lead to effective control over gerrymandering, but the right choices on each one can smooth the path to a good set of maps.

#### 1. Basic criteria: contiguity, compactness, communities of interest, equal population, compliance with the VRA and with state and federal constitutions

*Overview.* Use of the criteria above is essential in any redistricting system. Measurement of contiguity, compactness, and equal population is straightforward; the challenge is in picking among the many measures and setting appropriate limits on what is acceptable. There is no agreement on which standard or set to standards to use, nor on where to draw the line between the acceptable and unacceptable. Many redistricting bills allow contiguity by water (an issue on the North Carolina coast). Equal population—closely related to the Constitutional one-person-one vote principle—is strictly applied to Congressional districts, with, in theory, zero deviation permitted from the target.<sup>13</sup> For legislative districts and other state offices, states generally apply maximum limits on population deviation across districts of 2.5-5.0%. While many plans call for communities of interest to be respected, there is no generally accepted definition of the term nor how to apply or measure it in practice.

Section 2 of the VRA potentially applies to areas to be redistricted where a minority population lives in a concentration sufficiently large to form a district of their own (or at least a majority-minority district). It requires forming such a district only when it is needed to ensure that minority voters have a reasonable chance of electing the candidate(s) of their choice. The standard method for determining the need for a VRA district is a polarized voting analysis, which looks at whether the minority population and neighboring non-minority areas vote differently. The most accepted method for such an analysis is to examine recent election data at the precinct level to determine whether minority populations typically have indeed voted differently from nearby non-minority populations and, if so, whether they were generally able to elect the candidates of their choice (whether or not such candidates were minorities themselves). Drawing districts to dilute minority voting power, including by creating majority-minority districts that are not required by Section 2, is not consistent with the VRA nor with the equal protection clause of the US Constitution.

*Emerging good practice.* Several of the bills examined provide good examples of efforts to **define communities of interest in measurable ways**, or at least in ways that permit communities to be defined through citizen input (at hearings, for example). Experience in the 2011 California redistricting also suggests that district-specific hearings and public input informed by draft maps and expert testimony can be very **helpful in addressing both VRA and community of interest concerns** in ways that are meaningful to local residents as well as respectful of the law. Care should be taken to assess whether spokespeople alleging to represent community groups are genuine or in fact are partisan wolves in sheep's clothing.

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<sup>13</sup> Although, as former NC Supreme Court Justice Bob Orr points out, this is a meaningless requirement. Even if the Census were 100% accurate, which it is not, change in the form of births, deaths, and moves into or out of the districts continue apace. As a result, strict "equal population" cannot be obtained using Census data collected more than a year before the actual redrawing and, even if it could, would not last until the next sunrise.



*Considerations for North Carolina.* In the most recent redrawing of legislative districts, some committee members called for communities of interest to be included among the criteria but this request was turned down by the redistricting committee leadership on the basis that the concept could not be defined operationally. As part of the 2011 redrawing, confirmed by multiple courts to be an unconstitutional racial gerrymander, a faux polarized voting analysis was conducted after the districts had been drawn, which has been heavily criticized (see the *Covington* court's memorandum of opinion). It would be highly desirable to conduct a new polarized voting analysis to determine whether in fact there is still a need for majority-minority districts in North Carolina and, if so, where.

In order to be useful, ***criteria must be measured and limits set for the minimum (or maximum) acceptable level.*** Only one of the study bills included such cutoffs, however (specifying that each measure must be within 15% of its "ideal" level). This area needs further attention from scholars.

## 2. Public transparency and commission operations

*Overview.* Transparency must be built into all aspects of commission operations. The public should be able to witness all parts of the commission's operations, not only to provide accountability but to act as a check on back-room maneuvers. Full transparency requires resources to support a large website that makes available all of the commission's documents as well as videos of hearings and meetings. It also requires staff and, often, outside technical support to prepare materials for the commission members and advise them on technical matters. The most common methods for meeting this need is to assign the legislature's legislative services division to support the commission. Many plans also ***provide for the commission to hire or contract staff.***

*Emerging good practice.* Many bills offer model language on how to achieve transparency, including by ***making commission meetings subject to open meeting rules, forbidding votes except in open meetings, providing for notice periods, and (perhaps most important) forbidding or even criminalizing ex parte communications*** (any communication on commission business with people other than commission members and staff outside of a public meeting). Several bills require ***publishing all draft maps in local newspapers in a large enough format for the public to fully understand*** what neighborhoods are included in each district. At least one bill requires that a ***bipartisan commission vote to approve technical consultants to protect against overly partisan advice.*** Some bills require that the commission map be accompanied by a ***report that not only explains the map but also discusses public comments received*** and the extent to which each comment is reflected in the final maps.

Bill drafters also recognize that ***funding for operations must be provided by legislative action,*** making the process vulnerable to fiscal starvation. Funds are needed not only for ***hearings and maintenance of a comprehensive website,*** but the ***hiring of consultants to help commissioners address citizen comments and handle complex demographic, legal, and civil rights issues.*** Many bills address the danger that funding will constrain transparency and limit real public involvement by requiring the legislature to fund the commission. One even incorporates language on specific funding levels into a proposed constitutional amendment (despite self-evident drawbacks of doing so).

Although there is not consensus as to whether the commissioners should be paid, payment may be necessary to ensure a diverse commission that can devote the months of work needed to complete the maps. Bills uniformly call for expenses to be covered.

*Considerations for North Carolina.* Full transparency requires staff support that may well exceed what Legislative Services can provide, suggesting a need for additional technical support and therefore funding as well as clear rules on contracting. Substantial financial resources are also required for video

posting, livestreaming, and newspaper notices. Data released should include breakdowns of districts by precincts and other political subdivisions, as well as maps and shapefiles, to facilitate citizen understanding and analysis of the maps. Without adequate technical and financial support, language on transparency is an empty letter.

### 3. Public participation

*Overview.* Public participation takes two forms beyond potential citizen membership on the commission: public hearings and consideration of citizen-drawn maps. Of these, the former has been the most important to date. **Hearings must be held not only after each set of draft maps is released, but also before the first set of maps is prepared to gather citizen input.** Information provided at this early stage offers the best source for determining communities of interest and VRA considerations, both of great importance to drawing any map.

*Emerging good practice.* Many bills **specify a minimum number of hearings and their distribution around the state.** Some bills specify **pre- and post-map-drawing hearings and call for recording and posting of hearings.** Many bills also provide for citizen input to the map-making process in the form of **citizen-proposed maps (and access to software to produce them) as well as submission of comments** on draft maps or other matters. Some bills require the committee to prepare a **report to accompany maps approved by the commission explaining how the maps were drawn, what decisions were taken, and how each public comment was addressed** (or not) as well as any public maps submitted. Some bills state that **commission members and staff must attend hearings.**

*Considerations for North Carolina.* Hearings are a necessary but by no means sufficient mechanism to ensure transparency and fair redistricting outcomes. In the 2011 redrawing in North Carolina, more than 60 hearings were held across the state. Testimony in the subsequent lawsuits revealed that these hearings were largely window-dressing. The consultant drawing the maps admitted that he had neither attended any hearings nor reviewed transcripts. Sham hearings clearly do not lead to better maps.

## **Annex D: Using new map analysis techniques to support redistricting**

One of the most common questions we receive when presenting our analysis is, “Why not just use a computer programmed with neutral criteria to draw the maps?” This annex provides our answer to that question, which can be summarized as follows:

1. Computer programs for drawing districts are becoming more and more powerful and are a tool both for gerrymanderers and those who seek to prevent gerrymandering.
2. The problem is that, even using fair criteria, they turn out far too many maps, some of which are, in effect if not intent, gerrymanders.
3. Map drawing programs can’t draw the maps for us, but they can still be very useful in two ways
  - a. Preparing a set of neutral “starter” maps that can then be adjusted based on community feedback to arrive at final maps.
  - b. Checking the work of the commission to ensure that the maps drawn reasonably reflect the voting population’s political breakdown, while keeping political data out of the hands of the commission itself.

Programs can readily draw maps that comply with basic redistricting requirements or any set of requirements that can be defined in mathematical terms. Programmers have already generated tens of thousands of maps for North Carolina that use the standard criteria (compact, keeping counties and communities whole, etc.).

Duke mathematics department chair Dr. Jonathan Mattingly drew 25,000 maps for the recent court case that found the Congressional map to be an unconstitutional gerrymander (LWV/Common Cause v. Rucho). All 25,000 complied with the standard criteria. Most of these maps were neutral, producing 6 Democratic and 7 GOP representatives, or vice versa. 300 or so of the 25,000 were gerrymanders, however, producing 10 Republicans and 3 Democrats, or vice versa.

The calculation of how the maps would perform at the ballot box takes the precinct results for 10-15 recent statewide races (governor, senator, etc.) and applies them to the set of precincts in each map’s districts to see how many districts each party would probably each using each map.

With 25,000 to choose from, including 300 that are grossly unfair to one party or the other, there is no clear criterion to decide which map to use.

Computers also cannot distinguish neighborhoods or other communities of interest, at least not with data currently available. Only citizens can provide information on which communities belong together.

Computer drawn maps and map analysis can nonetheless be extremely useful for drawing fair districts, in two ways:

1. Computer-generated maps from the middle of the distribution could provide an excellent source for neutral “starter maps.” Such maps might be chosen randomly from the middle of the distribution by partisan performance, with, say, 10 maps chosen randomly, alternating D-favoring and R-favoring selections.
2. Assessment of the commission’s maps by a separate group of experts, barred from any communication with the commission, could ensure that a commission that was itself not permitted to use partisan data did not inadvertently (or purposefully) draw a gerrymander. Legislation would be required to determine the acceptable range for a map, as there does not appear to be strong consensus on what constitutes a sufficiently “fair” or “competitive” map.

## **Annex E. Possible roles for the judiciary**

Most state constitutions and the federal Constitution define redistricting as a function of the legislature, albeit one that may also assign roles to the executive. In an effort to improve the process and preserve the legislature's role, many study bill drafters have nonetheless assigned limited roles to the judiciary or to judicial institutions. The intent of such process improvements is to draw on the judiciary's nonpartisan tradition and dispute resolution skills to balance the competing interests inherent in the process and to keep it moving forward. Judicial involvement early in the map-drawing process may help keep the whole process from ending up in the courts, which is expensive, time-consuming, and better avoided if there is another route to a well-governed process.

Forty of the 50 bills assign some role to the judiciary, but no study bill transfers the primary responsibility for redistricting to the judiciary. Judges, both current and former, and judicial institutions instead appear in supporting roles in many different parts of the process. In addition to the failsafe provisions described above, some of the roles for judges or judicial institutions specified in a least one bill include:

### **Serve as commissioners**

- Retired judges make up the pool (in whole or in part) from which commissioners selected
- Retired judge serves as commissioner and selects another commissioner from four corners' nominees
- Retired judges selected by other commissioners

### **Select commissioners, especially chair**

- Judges select commission members from a pool assembled by others
- State supreme court chief justice names a member of the commission (along with four corners)
- Full supreme court votes to select commission chair

### **Establish pool of commissioner candidates**

- Judicial nominating commission or retired judges screen applicants to create pool

### **Manage challenges to serving commissioners**

- Review panel of retired judges handles challenges to serving commissioners
- Supreme court rules on challenges to serving commissioners

### **Review maps for constitutionality**

- Court undertakes expedited review of maps' constitutionality and can order appropriate relief

### **Other**

- Judicial code of conduct used as oath of office for commissioners

*Resolving disputes over the maps or the process.* The courts have the primary responsibility for dispute resolution and redistricting is clearly one of the more disputatious processes in American governance (whether federal, state, or local). To short-circuit this process and protect the integrity and timeline of the decennial redistricting process, a number of study bill drafters have provided for expedited consideration of court challenges to redistricting maps. For example, some study bills provide an abbreviated calendar for hearing and resolving disputes to the maps or specify simplified procedures, such as deciding challenges "on the paper," rather than holding full-scale evidentiary trials. These procedures are meant to ensure that the state can meet the constitutional mandate to complete Congressional redistricting after each decennial census in time for the following federal election. For the

2020 census, this means redistricting must be completed during the one-year period between issuance of the new census data in spring 2021 (about a year after the data were collected) and the spring 2022 deadline for candidate filing for that year's federal election.

The recent history of redistricting in North Carolina and elsewhere reveals a further significant flaw in the governance system for redistricting systems: if the commission or the legislature acts in ways that appear to run counter to state or federal law, the only remedy is appeal to the courts. For example, if a map is believed to have drawn majority-minority districts where this is not justified in law, the only route to remedy this defect is to bring suit.

Recent experience indicates that this does not ensure a swift or effective remedy, however. With the finding in *Shelby County v. Holder* that sections 4 and 5 of the Voting Rights Act are unconstitutional, preclearance of maps and voting law changes is no longer available and challenges must be brought after the legislation is in place under Section 2, an extremely slow and costly process. As a result, it is possible to draw maps that are clearly noncompliant in the knowledge that, even if they are ultimately found unconstitutional, they may well have survived several election cycles by the time that happens. There is no legal sanction for applying this strategy. Unlike members of the executive branch, legislators face no punishment for enacting legislation that is inconsistent with other laws. The legislature cannot even be held in contempt of court should it fail to implement a court order in a timely manner or, indeed, at all.

A primary driver for the redistricting reforms discussed in this white paper is to short-circuit this cycle of long, drawn-out court proceedings by establishing a redistricting system that pushes the players toward compromise from the very beginning of the process. The main idea behind reasonable redistricting commission models discussed in this white paper – models that are increasingly coming forward in legislatures around the country – is to use limited, targeted process modifications to eliminate extreme gerrymanders while preserving the legislature's role in redistricting.