# Fact Sheet: Redistricting and Reapportionment

   In a recent speech, Walter Cronkite noted, “In Massachusetts, prior to the election of 1812, the party in power was facing defeat when the governor, Wilbridge Gerry, redrew districts to consolidate his party’s strength and weaken that of the opposition. A local newspaper editor thought one tortuously drawn district resembled a salamander and coined the word used ever since to describe the product of partisan redistricting—a ‘gerrymander’. Gerrymandering has been and still is a bipartisan sin.’’

            The redistricting process and results in Maryland following the census of 2000 indicated that this was a topic ripe for study by LWVMD. The committee has researched the redistricting processes for both congressional and legislative districts for all fifty states. This condensation of our findings is presented to help all League members in Maryland to discuss redistricting, to answer the consensus questions, and, perhaps, to embark on a effort to improve the Maryland process.

### Supreme Court

            Redrawing the boundaries of legislative and congressional districts after each decennial census has been primarily the responsibility of state legislatures since the earliest days of the republic. As the nation’s population began to shift from rural to urban, many legislatures lost their enthusiasm for this decennial task and failed to carry out their constitutional responsibility. For decades, the U.S. Supreme Court declined repeated opportunities to enter the “political thicket” of redistricting and refused to order the legislatures to carry out their duty. However, in 1962, the Court held that federal courts did have jurisdiction to consider constitutional challenges to redistricting plans.

            As the courts began striking down redistricting plans for inequality of population, Congress enacted the Voting Rights Act (VRA) of 1965 to remedy the inequality of opportunity afforded to racial and ethnic minorities to participate in elections, and required pre-clearance of changes in state laws in many instances. The Justice Department began to use this new authority to require that redistricting plans in selected states be pre-cleared.

            In the 1970s, the Court developed a standard of population equality that required legislative districts to deviate by no more than 10% from the smallest to the largest. In the next decade they refined the standard of equality that required them to be mathematically equal unless justified by some “legitimate state objective’.

            The Court’s work on population was then essentially complete, but its rules for treatment of minorities were far from settled. After most of the plans based on the 1980 census had been enacted, Congress amended the VRA to make clear that it applied to any plan that resulted in discrimination against a member of a racial or ethnic minority group, regardless of the intent of the plan’s drafters. Drafters of redistricting plans after the 1990 census went to great lengths to draw “majority-minority” districts wherever they might be needed to obtain pre-clearance, and some of the districts took on bizarre shapes, causing them to be labeled “racial gerrymanders”. Many of those plans had to be adjudicated in the federal courts.

            A case on political gerrymandering has recently reached the Supreme Court about Pennsylvania’s plan, arguing that extreme partisanship by the Republican-controlled General Assembly diluted Democratic voting power. The Court remains in the “political thicket” it tried for so long to avoid. A decision on ‘political redistricting’ is expected in early 2004.

###

### A Brief History of Redistricting in Maryland

**Legislative**

         In 1960, Maryland was one of the many states in which the legislature was seriously malapportioned. Fast-growing suburban areas were under-represented, and rural areas and Baltimore City were over-represented. At that time, the apportionment of the General Assembly was fixed in the state’s Constitution: each county had one Senator, Baltimore City had six; counties had between two and six delegates, Baltimore City had thirty-six. No attempt was made to reapportion the legislature to reflect the 1960 census; there was no constitutional or statutory requirement to do so.

        In the early 1960s, after the Supreme Court handed down its landmark decisions making equal population the basic requirement for both houses of state legislatures, the Court applied the “one man, one vote” rule to a Maryland case and declared our legislative districts unconstitutional. In 1965 the General Assembly adopted a plan retaining a senator for each county in spite of great population variances. Only after the Maryland Court of Appeals voided this plan did the General Assembly shape a plan with districts of substantially equal population which the court accepted in 1966. In 1970 voters approved a constitutional amendment requiring reapportionment following each census, and established the procedure in effect today—the governor presents a plan to the legislature that goes into effect automatically if the legislature fails to agree upon an alternate plan within 45 days. The General Assembly has never adopted an alternate plan. An additional constitutional amendment in 1972 changed the size of the General Assembly so that senators and delegates could run from the same multi-member districts.

            As early as 1978, constitutional amendments have been introduced calling for the establishment of a bipartisan commission to prepare reapportionment plans for both legislative and congressional districts. They also specified standards which would more strictly define “equal population” and “compact” and would prohibit drawing lines to favor any person, party or group. These proposals have received little serious consideration.

            The governor’s 1991 legislative district plan was challenged in state and federal courts, primarily on equal population and political gerrymandering grounds. The Maryland Court of Appeals appointed a special master and accepted his finding that the state constitutional requirement that districts have “substantially equal population” was not violated by the plan and that the plan was not a partisan gerrymander according to the principles previously outlined by the Supreme Court. However, minority vote dilution of black voters in the region was found and the court ordered remedial action. The state prepared and submitted a modified districting plan for house districts on the Eastern Shore which included a single-member district with a majority-black voting age citizen population.

            This 1992 redistricting plan also created a number of districts which crossed county boundaries. The Court of Appeals, although it ultimately approved the plan, cited it as “perilously close” to running afoul of constitutional requirements. The plan adopted subsequent to the 2000 census added a number of these cross-jurisdictional districts, and the Court of Appeals declared the plan unconstitutional and drew its own legislative redistricting plan.

**Congressional**

            When Maryland gained its eighth congressional district as a result of the 1960 census, its house districts were extremely malapportioned. Baltimore City and rural areas were over-represented and suburbs in Baltimore, Montgomery and Prince George’s counties were under-represented. In 1960 the General Assembly created the additional district by simply dividing the largest district, leaving all other districts essentially unchanged. LWV-MD petitioned this bill to referendum and the redistricting plan was defeated by the voters. In 1963 the General Assembly passed a second plan which did not correct the inequities. This plan was also petitioned to referendum, but before a vote could be taken, the constitutionality of the plan was challenged in federal court.

            While the MD case was under consideration, the US Supreme Court declared that the population of congressional districts should be as nearly equal as practicable. Finally, in 1966 the U.S. District Court declared another plan unconstitutional and drew a plan for eight districts itself. Although these districts were compact, contiguous and equal in population, the plan preserved three Baltimore City congressional districts by extending them into surrounding counties. In 1971, The General Assembly drew new lines for congressional districts without challenge; Baltimore City was reduced to essentially two districts.

            During the 1991 round of redistricting, the governor’s congressional district plan was challenged in U.S. District Court on equal population and vote dilution grounds. The court upheld the plan, stating that the population variance was acceptable in light of the state’s interest in keeping major regions intact, in creating a majority-minority district, and protecting incumbents.

### Redistricting Across the Nation

**Instructions to Readers**

     Before you delve into fifty redistricting processes and their details, take a look at the map of the US. The map does not help much if you are trying to envision the requirement of equal population, but you might be able to see mountains and waterways; straight boundaries vs. wiggly ones; rural vs. industrial; liberal vs. conservative, etc. All of these will become real components when incorporating the criteria of compact, contiguous, communities of interest etc. in the variety of redistricting processes used by states following each decennial census. For example, Hawaii contends with “canoe districts’, and at least one member of the Colorado redistricting commission must be from the ‘western slope’.

Now, look at the map of Maryland and think of its geopolitical realities. How do you redistrict that?

**Statutory Requirements for Legislative Districts**

       States vary widely in the mandatory requirements for creating new districts. The most frequently cited criteria are contiguous and compact; equality of population is mentioned by only 13 states, probably because federal case law establishes it with no need for restatement.

            Many states (28) set criteria for political boundaries such as keeping whole counties, cities, unincorporated towns, boroughs, townships or wards. Fifteen states mandate or request ‘due regard ‘ for keeping communities of interest intact, without specific definitions for ‘communities of interest’. A few require giving regard to the cores of prior districts or geographical boundaries. Five states require the process to be blind to the residence locations of incumbents and political party registrations while an equal number allow the process to protect incumbents. Oregon requires that the district must be connected by transportation lines. Arizona voters passed a proposition in 2000 stating, “To the extent practicable, competitive districts should be favored where to do so would create no detriment to the other goals.”

### Authorities for Legislative Redistricting

**Legislatures**

Constitutionally or by statute, most states designate the legislature as the responsible entity for drafting the redistricting plan which will be considered a regular bill to be enacted with the provision for a gubernatorial veto. Some legislatures have a redistricting committee and others have an advisory committee made up of legislative leaders (or their designees or named party officials) to do the work of drawing up the plan, but the legislature has final authority. A few states have a provision for a back-up commission to make the decision if the legislature cannot agree by the deadline.

            Arkansas bypasses the legislature by giving the complete responsibility to a Board of Apportionment made up of the governor, secretary of state, and attorney general. Iowa is unique in that it uses its Legislative Services Bureau to develop up to three ‘criteria driven’ plans for presentations to the legislature. Included in the process is an advisory commission consisting of four ‘civilian’ members chosen by each caucus in the legislature and chaired by a 5th member chosen by the four. Their role is to advise only upon request; the legislature has the final authority. Maryland is the only state where the governor has the responsibility for drafting the plan. The legislature has final authority.

**Commissions**
            Some states have appointed commissions in an attempt to remove the authority for legislative redistricting a step away from the elected officials. These commissions which have final authority vary in their degree of independence from elected officials. Some members of most commissions are appointed by the legislative leaders (Alaska, Colorado, Hawaii, Montana, Washington) or they are the legislative leaders or other legislators (Pennsylvania, Rhode Island), or they are appointed by the major parties (Idaho, New Jersey) or by the Governor from the major parties (Missouri). In some cases one or two people are added as public members considered to be ‘tie-breakers’.

       In Arizona, the Commission on Appellate Court Appointments (CACA) appoints a pool of 25 nominees—10 each from the two largest parties and five not from either of the large parties. Legislative leaders then choose four members from the pool and these four appoint a chair. If the four deadlock on choice of a chair, the CACA appoints one from the pool. Colorado has an 11-member commission. First, the majority and minority leaders of each house of the legislature designate themselves or an alternate; then the governor appoints three members and finally the Chief Justice appoints four members to assure a commission that meets three criteria: (1) no more than six members from one party, (2) each congressional district is represented, and (3) one member is from the Western Slope.

      Probably the commissions who are the most independent (Alaska, Hiawaii. Idaho, Missouri, Montana, Washington) are those in which all the members are ‘civilians’, i.e., currently they may not be elected officials nor will they be allowed to run in defined future elections.

**Statutory Requirements for Congressional Redistricting**
The relatively small populations of seven states earn them only one congressional representative so they are, therefore, spared the process of congressional redistricting—Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming.

            Only 17 of the remaining 43 states include criteria in their state constitutions or statutes. The criteria strongly mirrors those for legislative districts: contiguous (16), respecting political boundaries (14), compact (12), keeping communities of interest intact (7), equality of population (6), ignoring or not favoring incumbents (5), maintaining cores of prior districts (4), protecting incumbents (3), having the district connected by transportation lines(1), and favoring competitive districts(1). The federal case law of the last half century, summarized earlier, does substitute as a basis for state action when constitutions and statutes are silent.

            Although it has been conventional wisdom that redistricting occurs only once a decade, recent happenings indicate that this is another area where statutes/constitutions may need to be amended.

**Authority for Congressional Redistricting**

  There are few significant differences between the authority for congressional versus legislative redistricting in the 43 states with more than one congressional district. Legislatures are involved in some manner in most of the states, either primarily responsible for the drafting the plan or passing the legislation or both.

**Court Action on Redistricting Plans**

      Only about half of the redistricting plans for congressional seats or for either house of the legislature escape court action. After the 2001 round of redistricting, about ten percent of the time the courts drew the plan after a legislative impasse. They rejected or corrected a dozen or so more, often at the instigation of a citizen who believes that individual constitutional rights have been violated. Two plans still have challenges pending and Maine has not finished action.

### The Redistricting Process in Maryland

**Congressional**
Both the Maryland Constitution and statutes are silent on the matter of congressional redistricting. Congress has given the state legislature to redistrict congressional seat. The only federal statutory requirement is that congressional districts be single-member districts. The Maryland plan is introduced as a regular bill in the General assembly and must be passed by both houses and signed by the governor who has veto over the plan.

**Legislative**
Article III, Section 5 of the Maryland Constitution requires the Governor to prepare a legislative districting plan following the decennial census. The Governor must present the plan to the President of the Senate and the Speaker of the House of Delegates. The presiding officer must have the plan introduced as a joint resolution on the first day of the regular session in the second year following the decennial census. If the General Assembly has not adopted another redistricting plan by the 45th day of the session, the governor’ s plan as presented becomes law.

  Article III, Sections 2 and 3 set out the requirements for redistricting the General Assembly. The size shall be 47 senators and 141 delegates. One senator and three delegates are to be elected from each district. For the purpose of electing delegates, a district may be subdivided into 3 single-member districts or one- single member district and one multi-member district. An additional ‘resident delegate’ requirement has been added to the Assembly’s joint resolution since 1970 prohibiting two delegates who represent a district that includes more than one county or parts of counties from living in the same county.

  Article III, Section 4 requires legislative districts to be substantially equal in population, compact in form, and contiguous. It also requires a legislative redistricting plan to give ‘due regard’ to the natural boundaries and the boundaries of political subdivisions. Article III also requires public hearings to be held before the legislative plan is enacted.

  Although not required by law, since 1981 the Governor has appointed an advisory committee to draft his plan for legislative and congressional districts. The committee sets the legal and policy guidelines it will use in creating the plans. It receives input from legislators, community organizations and the general public through a series of public hearings throughout the State.

+++++++++++++

###  Glossary of Redistricting Terms

Census block: The smallest unit of census geography for which the Census Bureau collects data. The boundaries for these areas are generally streets or other notable physical features.

Compactness: Refers to extent to which a district’s geography is dispersed around its center. Districts should not be too diffuse (i.e., extend too far from the center of the district)

Commission: A statutory or constitutional body charged with researching or implementing policy. Redistricting commissions have been used to draw districts for legislatures and Congress.

Community of interest: A group of people united by a common social, political, economic, or ethnic similarities. Court decision have come down discarding some plans that disregarded communities of interest.

Competitiveness: Districts are considered competitive is there is a 10% or greater variance between the votes obtained by the winning and the losing candidates. Districts are considered highly competitive if there is a 5% or less variance between the votes obtained by the winning and the losing candidates.

Contiguity: A requirement mandating that a district be in one piece. A district is considered contiguous if all parts of the district touch one other at more than one point.

Deviation: The degree to which a district’s population can vary from the ideal size.

Gerrymandering: The drawing of non-compact, tortuous districts to benefit a political party. Many so-called gerrymandered districts have been challenged in court. In 1962, the Supreme Court ruled that districts must follow the principles of “one man, one vote” and have fair borders and an appropriate population mixture. The Supreme Court has subsequently found that manipulating districts to give an advantage to one political party was unconstitutional.

There are two basic techniques in Gerrymandering:

Packing: Drawing district boundary lines so that the members of the minority are concentrate, or “packed” into as few districts as possible. They become a supermajority in the packed districts. They can elect representatives from those districts, but their voters in excess of a simple majority are ‘wasted.” They are not available to help elect representatives in other districts, so the cannot elect representatives in proportion to their numbers in the state as a whole.

Fracturing: Drawing district lines so that the minority population is broken up. Members of the minority are spread among as many districts as possible, keeping them a minority in every district, rather than permitting them to concentrate their strength enough to elect representatives in some districts. Also known as “cracking.”

Minority-majority district: A district containing a majority (50 % plus 1) of minority population

Minority opportunity district: A district that provides minority voters with an equal opportunity to elect a candidate of their choice regardless of the racial composition of the district. In this type of district, minorities constitute less than 50% of the voting age population.

Multi-member district: A district that elects two or more members to a legislative body.

Natural boundaries: District boundaries that are natural geographic features (rivers, mountains, etc.)

Pre-clearance: Obtaining approval from either the U.S. Department of Justice or special court in the District of Columbia of voting changes, including redistricting plans. The Justice Department or court must review the plans in order to prevent the dilution of minority voting strength. The following states are entirely subject to pre-clearance: Virginia, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Arizona and Alaska. The following states are only partially covered (i.e., only certain sections of the state must obtain pre-clearance: California, Florida, North Carolina, New York, Michigan, New Hampshire and South Dakota.

Reapportionment: The process of reassigning a given number of seats in a legislative body to established districts, usually in accordance with an established plan or formula. The number and boundaries of the districts do not change, but the number of members per district does.

Redistricting: The process of changing the district boundaries. The number of members per district does not change, but the district’s boundaries do.

Single-member district: District electing only one representative.

Voting Rights Act of 1965: Prior to 1965, many black voters, in spite of the provision of the 15th Amendment that the right to vote shall not be denied or abridged on the basis of race, color or previous condition of servitude, were disenfranchised. White-dominated legislatures prevented blacks from voting though poll taxes, literacy tests, vouchers of “good character” and disqualification for “crimes of moral turpitude.” Although the laws appeared prima face to be “color-blind” they were designed to exclude black citizens disproportionately by allowing white election official to apply the procedures selectively., By 1910, the overwhelming majority of blacks sin the south had been disenfranchised.

   By 1965, the civil rights movement brought the disenfranchisement of blacks to the front of the political agenda. Public sentiment turned against the voting restrictions, especially after white supremacists committed several high-profile violent acts against voting rights activists.
The Voting Rights Act temporarily suspended literacy tests, and provided for the selection of federal examiners, vested the power to registered qualified citizens to vote, in those jurisdictions “covered” under a formula in the stature. In addition, under Section 5 of the Act, these covered jurisdictions had to acquire pre-clearance for new voting practices and procedures from either the District Court for the District of Columbia or the U.S. Attorney General. Section 2 of the Act places a national restriction on the denial or abridgment of the right to vote on the basis of race or color.

## CONSENSUS QUESTIONS – Redistricting in Maryland

 **LEGISLATIVE REDISTRICTING**

The Maryland Constitution currently gives the Governor the authority for redistricting: “Following each decennial census of the United States and after public hearings, the Governor shall prepare a plan setting forth the boundaries of the legislative districts for electing of the members of the Senate and the House of Delegates.” With respect to criteria for the redistricting plan, the Constitution states: “Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.”

(1) Should the criteria for legislative redistricting stated in the Maryland Constitution be changed or expanded?
The criteria currently in the Maryland Constitution are considered appropriate minimal standards for redistricting. These criteria are divided into two categories, strict criteria (each district shall...) and subordinate criteria (due regard shall be given to…). Should any of the following criteria be added to the Constitution? Please note which criteria you propose should be “strict” criteria or “due regard” criteria. Consider: keeping communities of interest intact, keeping core of prior districts intact, not favoring a particular political party, protecting incumbents/not protecting incumbents (no regard for incumbents), creating competitive districts or other criteria.

(2) Who should have the authority to draft the legislative redistricting plan?

Consider: the Governor, the Legislature, an Independent Commission, a state agency (such as Department of Legislative Services), or the Court of Appeals or other.

(3) If an independent commission were given authority to draft the legislative redistricting plan, who should have the authority to appoint members to this commission?
Consider: the Governor, the Legislature, Judges/Chief Judge of Court of Appeals, political parties, others, or some combination of the preceding.

(4) If an independent commission were given authority to draft the legislative redistricting plan, what should be criteria for membership on this commission?
Consider: not an elected official, not an appointed state official, not allowed to become an elected official for some period after the enactment of the plan, not a political party official, not a public official, others. Also, should the commission contain geographical distribution (some from Western Maryland, Eastern Shore, etc) and political distribution (members required from each major political party)?

(5) Who should have the final approval for the legislative redistricting plan?

[Any citizen has the right to sue the state over a redistricting plan that he or she believes violates his state or federal constitutional rights, and redistricting litigation is common. This question does not address this circumstance.] Consider: the appointed redistricting commission, the Legislature, the Governor (veto power over the Maryland Court of Appeals (should Maryland law mandate a review of the plan?)

**CONGRESSIONAL REDISTRICTING**

     Currently, there is no mention in the Maryland Constitution of Congressional redistricting. Although there are no specific criteria for Congressional redistricting within the Maryland Constitution, federal case law has mandated that states are required to redistrict after the census, the districts should be substantially equal in population, the districts should be compact, districts may not be drawn in such a way as to dilute a minority population’s voting strength, race should not be the predominant consideration in drawing district boundaries and a redistricting plan may not interfere with a minority party’s ability to participate in the electoral process to the point that party is effectively shut out of the legislative process altogether.

(6) Should the Maryland Constitution contain requirements or criteria for Congressional redistricting? If so, which criteria should be included?

Consider: Deadline (such as prior to federal election immediately following the availability of decennial census data), frequency (such as only once each ten years), respecting political boundaries, respecting geographical or natural boundaries, keeping communities of interest intact, keeping core of prior districts intact, not favoring a particular political party, protecting incumbents/not protecting incumbents (no regard for incumbents), creating competitive districts, or others.

(7) Who should have the authority to draft the Congressional redistricting plan?

Consider: the same person/entity as that which drafts the legislative plan, the Governor, the Legislature, an Independent Commission, a state agency, the Maryland Court of Appeals or others.

(8) If an independent commission is given the authority to draft the Congressional redistricting plan, who should have the authority to appoint members to this commission?

Consider: the same person(s) or entities who appoint the commission for legislative redistricting, the Governor, the Legislature, Judges/Chief Judge of Court of Appeals, political parties, others or some combination of the preceding.

(9) If an independent commission is given the authority to draft the Congressional redistricting plan, what should be criteria for membership on this commission?

Consider: same as for commission responsible for legislative plan, not an elected official, not an appointed state official, not allowed to become an elected official for some period after the enactment of the plan, not political party official, or others. Also, should the commission contain geographical distribution (some from Western Maryland, Eastern Shore, etc.) and political distribution (members required from each major political party)?

(10) Who should have the final approval for the Congressional plan?

[Any citizen has the right to sue the state over a redistricting plan that he or she believes violates his state or federal constitutional rights, and redistricting litigation is common. This question does not address this circumstance.] Consider: the appointed redistricting commission, the Legislature, the Governor (veto power over the Maryland Court of Appeals (should Maryland law mandate a review of the plan?)

(11) Should the League support changes in Maryland’s constitution and/or statutes that would create a redistricting process which would promote fair and effective representation in the state legislature and the House of Representatives with maximum opportunity for public scrutiny?

**RESULTS: The League reached a consensus on this issue and adopted a position on Redistricting.**