

Utah Independent Redistricting Commission and Standards Initiative
A Study by the League of Women Voters of Utah
September 2017

Voters should be choosing their representatives; their representatives should not be choosing them

In September 2017, signature gatherers will begin the process of gathering the 113,143 signatures of Utah voters necessary to place on the 2018 ballot an initiative, which would create an independent advisory redistricting commission. The commission, consisting of seven members, would recommend plans to the Utah Legislature for the decennial redistricting process that creates the boundaries for the Utah Legislature, state school board and the congressional districts. The Utah League of Women Voters has had a position since 1980 supporting such a commission and has signed as an early supporter of this effort.

Utahns for Responsive Government is responsible for the submitted petition. They have drawn upon the experiences of other states which have commissions, the Brennan Center of the New York University Law School which has a long record of being involved in voting and redistricting issues, and other legal experts to come up with this redistricting plan. In an April 2017 Utah survey, 67 percent of Utah voters supported an independent advisory redistricting commission. Another survey conducted in June had similar results <http://bit.ly/UtRedistrict>.

What problem does the initiative address and why is an initiative necessary?

The United States is the only country with a representative democracy that has elected representatives choose their constituents. The U.S. Constitution requires that states redistrict every 10 years after the Census. (The Constitution also gives control of drawing congressional districts to Congress, but this has never been exercised.) Currently, 10 different bills requiring this have been filed in Congress. (For more information, see <http://bit.ly/RedistrictReformTracker>) The Utah Constitution gives the sole responsibility for redistricting to the Legislature.

Since the country's founding, politicians have drawn legislative boundaries to favor parties or individuals, particularly incumbents. Sophisticated data acquisition and computer programs that can collect information on party affiliation, income and education levels, and voting records by Census block have resulted in both political parties manipulating the system with these results:

- creating non-competitive, safe districts favoring incumbents who may not be responsive to their constituents
- creating safe districts where the races are competitive in the party primaries and the outcome is determined by the most ideological voters on either end of the political spectrum
- creating a dysfunctional Congress which, because of the reasons above, has little incentive to compromise
- creating leaders who are less accountable to their constituents
- preventing new leaders from emerging

It is no accident that a recent poll found that only 10 percent of the voters surveyed approved of Congress. Many citizens and political leaders look at partisan gerrymandering as a threat to our system of government.

In Utah since the last redistricting in 2011, 59 out of the 271 state legislative races have been uncontested. In the 2011 congressional redistricting (finalized in the Republican closed caucuses, then

brought to chambers for public vote), 15 cities are split into two or more congressional districts (for example, Holladay with a population of 26,472 has citizens in three congressional districts) and Salt Lake County, which in 2010 had 40 percent of Utah's population but has no member of the four congressional districts living in Salt Lake County.

Citizens who are unhappy with the redistricting procedure have had three options: changing the law, appealing to the courts and, in states that have initiative processes, placing an initiative on the ballot for citizen approval. It is perhaps foolish to think that legislators who have the power would, on their own, vote to reduce it. The Utah Constitution requires that the Legislature do redistricting, hence the petition provides only for an advisory commission.

Court cases have been resulted in the "one man, one vote" rule and recognized racial gerrymandering under the Voting Rights Act. However, when it came to recognizing partisan gerrymandering, the effect of previous court cases has been to conclude that partisan gerrymandering may exist but there is no measurable standard which can be applied. In a 2004 case, *Vieth v Jubelirer*, the U.S. Supreme Court said that gerrymandering was a political decision because there were no standards that the judiciary could apply to determine partisan gerrymandering. However, Justice Anthony Kennedy, in a concurring opinion, wrote that there might be some standards that could be applied in the future. Some formulas for standards have been proposed, as well as computer programs. A Wisconsin case, *Gill v Whitford*, will be heard by the Supreme Court in October and may present an opportunity to establish some standards (the efficiency gap) to measure extreme partisan gerrymandering. (To learn more about this case, go to <https://www.brennancenter.org/blog/bringing-whitford-focus> and look at the *amicus* briefs filed in the case, and see <https://www.brennancenter.org/blog/what-briefs-say-about-extreme-gerrymandering>). Utah has joined Texas and other states in a brief arguing that partisan gerrymandering is not unconstitutional. The League of Women Voters United States has filed an *amicus* brief in the Gill case (<http://bit.ly/GillAmicus>).

Currently nearly 150 bills have been introduced in state legislatures to address the redistricting process. See <http://www.brennancenter.org/redistricting-reform-tracker-state-bills>

The Utah Independent Redistricting Commission and Standards Act

In brief, the petition establishes standards for redistricting, provides for the an independent seven-member redistricting commission to formulate redistricting plans for congressional districts, the state Legislature and the state school board districts, and then to present them to the Legislature which may choose to accept or reject the plans. If the plans are rejected, the Legislature must give reasons why the plans were rejected. Citizens are given the right to seek an injunction if they have a case to show that the Legislature has ignored the standards. The specific lines of the provision are noted in parentheses after each section for further reference.

The Highlighted Provisions of the Utah Redistricting Initiative (Lines 36-57)

- Enacts redistricting standards, procedures and requirements, including provisions related to the timing of redistricting;
- Establishes the Utah Independent Redistricting Commission;
- Provides that the commission and the Legislature shall consider redistricting plans in a transparent manner that allows for public input;
- Requires the commission to recommend redistricting plans to the Legislature;

- Requires the Legislature to either enact or reject redistricting plans recommended by the commission;
- Requires the Legislature to issue a detailed explanation if it enacts a redistricting plan other than a plan recommended by the commission;
- Provides that the commission may issue public statements, assessments and reports in response the Legislature, enacting a redistricting plan other than the plan recommended by the commission;
- Grants a private right of action to Utahns to seek and obtain a court-ordered injunction halting the enforcement or implementation of a redistricting plan that fails to abide by or conform to the redistricting standards, procedures and requirements set forth in this initiative;
- Amends the Open and Public Meetings Act and the Government Records Access and Management Act to apply to the commission; and
- Provides a severability clause.

A time line is provided to redistricting. (*Lines 89-101*)

Redistricting Standards and Requirements (*Lines 104-144*)

The Legislature and the commission are required to abide the following redistricting standards to “the greatest extent practicable in the following order of priority:”

- U.S. Constitution laws and federal laws, including achieving equal population among districts
- Minimizing the division of municipalities and counties across multiple districts, first priority to cities, second priority to counties
- Creating districts that are geographically compact
- Creating districts are contiguous and allow for ease of transportation
- Preserving traditional neighborhoods and local communities of interest
- Following the natural and geographic features, boundaries, and barriers
- Maximizing boundary agreement among different types of districts

The initiative prohibits the Legislature and commission from

- Dividing districts that “purposefully or unduly” favor or disfavor incumbents or prospective candidates or political party
- Considering partisan political data and information such as partisan election results, voting records, political party affiliation information and residential addresses of incumbents or prospective candidates except for data permitted

The initiative also requires

- Use of judicial standards and best available data, scientific and statistical methods (including *measures of partisan symmetry*) to assess whether a proposed plan abides by and conforms to the standards
- Requires that Legislature and commission make computer software and information and data concerning proposed redistricting plans available to the public so that the public has a “meaningful” opportunity to review the plans and see that they conform to standards

This provision is important because it requires both the Legislature and the commission to follow the same rules in redistricting.

The Utah Independent Redistricting Commission (*Lines 151-246*)

Seven-member commission

- Governor appoints the chair
- President of the Senate, Speaker of the House, leader of the largest minority party in the Senate and leader of the largest minority part in House each appoint one
- Leadership of majority party in Legislature and minority party each appoint an unaffiliated person to serve. Unaffiliated must have been registered as “unaffiliated” over the course of the last two election cycles preceding the formation of the commission and for the preceding five years been affiliated with a political party, voted in a political party’s primary or been a delegate to a political party convention
- Additional requirements for all commissioners include being an active voter for the preceding four years and a prohibition before service on the commission for four years preceding and four years after as a lobbyist, a candidate for public office, an officer of a political party (excludes political party delegate) or a paid political campaign employee, a political appointee or an employee of Congress or the Legislature. All commissioners must sign a statement that they will abide by the standards.
- A commissioner can be removed only by a majority of votes from the four legislative leaders and may be removed only for failure to meet qualification or good cause “such as substantial neglect of duty or gross misconduct in office.”
- They receive no compensation but may receive a per diem and travel expenses.
- If there is a vacancy, the agency appointing that commissioner has 21 days to fill the vacancy. If this passes, the chief justice of Utah’s Supreme Court appoints someone.
- The Legislature is required to appropriate adequate funds to the commission. The Office of Legislative Research and General Counsel is required to provide staff, computer equipment and software, and other resources. The commission (with majority vote) may hire service and equipment to accomplish their work.

The Duties of the Independent Redistricting Commission (*Lines 252-313*)

Submission of Redistricting Plans

The plan includes specific requirements that transparency is part of all steps of the process through maintenance of a website, public meetings throughout the state and requirements to meet the Open and Public Meetings Act.

- The commission must establish and maintain a website to disseminate information about its meetings, proposed redistricting plans, and assessments and reports and allow the public to view its meetings and public hearings.
- The commission must consider any redistricting plan submitted by any person, organization or commissioner and make the plans available to each commissioner and the public as well as allow public comment on plans.
- A commission members(s) may not engage in any private communication about the plan without making the communication or detailed description of the communication including parties names, the plan or element of the plan available to the commission and to the public.

Members of the commission, consultants, and employees of the Office of Legislative Research and General Counsel are exempt from this plan.

Selection of Recommended Redistricting Plan *(Lines 317-379)*

- A super majority of five commissioners is required to adopt one or as many as three redistricting plans within the time limits. A supermajority requires that someone of the opposite party must break ranks with a strictly partisan plan.
- If a majority of the commissioners fail to agree on a redistricting plan, they must submit two or more plans to the Chief Justice of the Utah Supreme Court, who will select a plan or plans to submit to the Legislature
- The commission submits the plan to the Legislature and makes it available to the public including a detailed report of the plan(s)' adherence to the standards of the law.
- The Legislature either enacts the recommended plans without amendment or rejects the plan. If rejected, the Legislature must make public a written report as to why the plan was rejected.
- If the Legislature proposes a plan, there must be adequate public notice and time for public comments before it is enacted.

Private right of action and injunctive relief

Any Utah resident may bring an action alleging that a Redistricting Plan enacted by the Legislature fails to meet the standards in the Act. If the court finds that the standards have not been met, the court can issue a permanent injunction barring enforcement or implementation of the plan. If that is the case, the Legislature is required to adopt a new plan, which would meet the standards. A successful plaintiff would be allowed to collect attorney's fees from the state. In cases where the plaintiff is unsuccessful and the judge determines that the lawsuit was frivolous or filed for an improper reason, the state can collect legal fees.

Finances and the Signature Gathering Campaign

The initiative includes the provision for paid signature gatherers but is looking for volunteer help as well. It is estimated that a signature gathering campaign will cost about \$1.2 million and another \$1 million will be needed for voter education if the initiative goes on the 2018 ballot. Signature gatherers have until April 15 to get signatures. Better Boundaries has estimated that each volunteer signature is worth \$10.

Does Utah have an experience with a redistricting commission at another level of government?

Yes, the Salt Lake County Council appointed a nonpartisan commissioner to draw boundaries for county council districts and the Granite, Canyons and Jordan school districts. Commission members had to apply for their positions. They presented three plans to the County Council. The council did not choose the most favored plan but opted for one that did not place two of the council members in the same district. However, the process was open and there was citizen involvement.

Other League Resources

1. The redistricting pages of the Utah League of Women Voters.
<http://www.lwvutah.org>
2. LWVUS redistricting action kit
http://forum.lwv.org/sites/default/files/redistricting_action_kit.pdf
3. LWVUS task force of redistricting
<http://lwv.org/content/shining-light-redistricting-lessons-learned-2011>
4. Map of Current Utah congressional districts
<http://bit.ly/UtDistMap>

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