

A REVIEW OF REDISTRICTING IN WASHINGTON STATE



LEAGUE OF WOMEN VOTERS®
OF WASHINGTON EDUCATION FUND

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A Review of Redistricting in Washington State

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LWVUS Campaign For Making Democracy Work® The League of Women Voters of the United States (LWV) launched a major campaign, Making Democracy Work®, for the 2016 – 2018 biennium. The League’s focus throughout the nation is on voter registration, education, mobilization and protection, including redistricting.

According to the League of Women Voters of the United States’ position, ‘Redistricting Position in Brief’, the League *Support(s) redistricting processes and enforceable standards that promote fair and effective representation at all levels of government with maximum opportunity for public participation.*

Other parts of the LWVUS and the LWVWA positions cover details of redistricting. See Appendix A for detailed League redistricting positions.

As part of this campaign, the League of Women Voters of Washington (LWVWA) has chosen to review the work of the three Washington Redistricting Commissions—commissions that were formed after the laws were changed in 1983 to give the responsibility for redistricting legislative and Congressional districts to a bipartisan commission rather than allowing the legislators to draw those lines. This report is the product of that review.

The Redistricting Review Committee’s charge: Review current redistricting practices in Washington, whether those practices are consistent with League of Women Voters’ positions and whether LWVWA needs to do an update study. The work to include:

- A review of the work of the first three Washington Redistricting Commissions after passage of the 1983 amendment to the state constitution: 1991, 2001 and 2011.
- An overview of court cases on gerrymandering and their possible consequences.
- A summary of what’s happening on the redistricting issue throughout the country, including what various Leagues are doing.

The report begins with general redistricting information: its level of importance, the legal requirements, and the process used to carry out these requirements across the nation. Then the report discusses Washington’s redistricting history, the process used in recent decades and the changes in representation since the state constitution was amended in 1983. After discussion of how several other states are working for better representation, the report concludes with suggestions on improving Washington state’s redistricting process. In order to keep the report brief, there are numerous appendices to provide in-depth information on many of the topics.

The Review Committee collected the information for this report from a variety of sources. We successfully contacted and interviewed ten of the twelve surviving commissioners, as well as a representative from the Secretary of State’s office, a former committee member of the King County Districting Committee, League member and former state Senator Lois North, and others. The Review Committee also did extensive research in both print and online sources.

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REDISTRICTING:

What It Is, Why It Matters, How It's Done

We live in a representative democracy. That is, we each have representatives at both national and state level¹ who speak for us, who make and change laws that affect our lives. Each of them represents an approximately equal number of people at the national level (Congressional districts) or the state level (legislative districts, as required by the U.S. and Washington state constitutions).

The political division of a state into areas containing approximately equal numbers of people puts them into what are commonly known as districts. The resulting process to periodically adjust the division boundaries because of changes in population within those boundaries is called redistricting.

Redistricting is the process by which we adjust the district boundaries that determine who represents us.

Each of us lives in federal, state, and local districts. The process of redistricting begins at the national level with the Bureau of Census ten-year count of the population. That is followed by reapportionment, which is the reallocation of the number of House of Representative districts per state, based on changes in relative population among the states.

Redistricting is the next step after Census count and reapportionment; it is the process of adjusting district lines to rebalance the number of people among the districts, both congressional and state legislative. After a series of cases starting in the mid-1960s, the U.S. Supreme Court ruled that each legislative district must have roughly equal population. That means that every 10 years, when the U.S. Census Bureau conducts the Decennial Census of Population and Housing², districts must be redrawn to account for this new population information.

Why it is important. On a cold 2017 January day in Philadelphia, a group called a meeting to talk about redistricting and more than 800 people showed up.³ Eight hundred people for a meeting about redistricting? Usually meetings on that issue get the attention of far fewer than even eighty people. So why are people showing up now? Even more curious, why has redistricting become part of many national news shows?

Redistricting affects political power. It can determine which party controls Congress and state governments across the country. Every state has at least one representative in the U.S. House of Representatives, regardless of the size of its population. Beyond that, a state may gain or lose House members based on its census count relative to that of all other states since the total number of House members is capped at 435. In each of those states, the ten-year counts and resulting changes in population may affect not only the possible number of Congressional delegates, but also affects the geographical size and shape of each district for both Congressional and state legislative representatives.

The Census count also affects the number of electors for each state in the Electoral College since the number of electors allocated is equal to the number of the state's Congressional delegation, including both Senate and House.

Even as the redistricting decision makers divide the population equally, the way they decide to draw the lines makes a difference to the citizens of the state. If lines are drawn carefully and in a partisan manner, they can reward Democrats and punish Republicans or vice versa. Redistricting can be done in such a way that it protects incumbents or guarantees incumbents will face more effective challengers, either from their own party or the opposite party. Consequently, redistricting has a direct bearing on which issues a legislature chooses to tackle, and which to ignore.

A simple example of possible results of line drawing follows, using a very small population of men and women, each members of their own W or M party.

W	W	W
W	W	W
M	M	M

Figure 1. This town council has three districts. It's time to draw district lines.

Plan 1: draw vertical lines.

W	W	W
W	W	W
M	M	M

Figure 2

Result: Three women councilors are each elected 2-1.

Plan 2: Redraw the lines so the districts are horizontal.

W	W	W
W	W	W
M	M	M

Figure 3

Result: Two women and one man, each elected unanimously. Both parties have representation on the town council.

District lines affect which races and which ballot measures will be on each voter's ballot. District lines determine who represents us in Congress, as well as in our state legislature, and, at a more local level, possibly in our county and local governments.

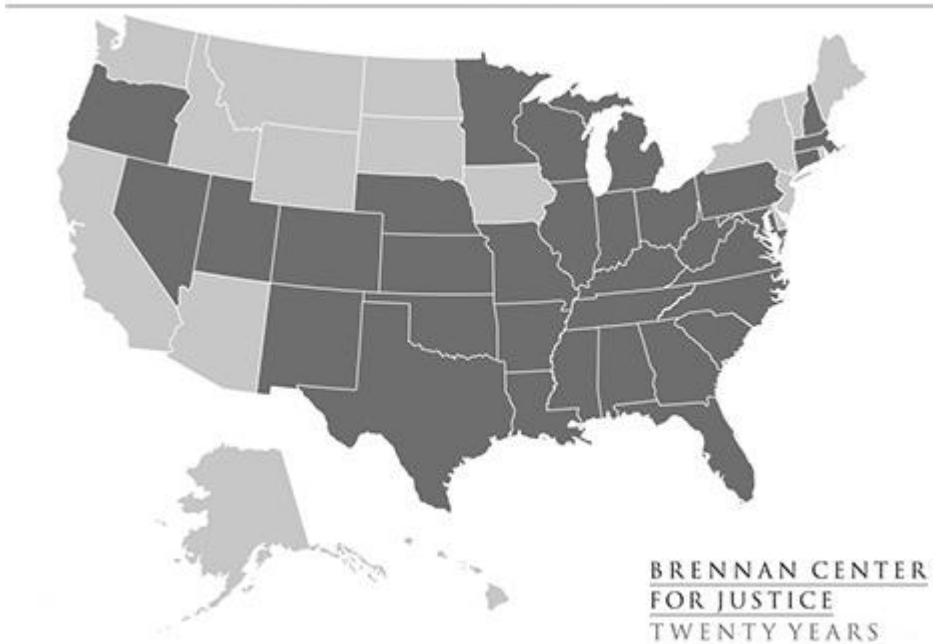
Drawing the Lines. The Constitution allows each state to determine its own process for redistricting within certain federal guidelines. As a result, every state is somewhat different, each with its own laws. In most states, the state legislature has primary control of the redistricting process, both for state legislative districts and Congressional districts. (Fig. 4 - 5)⁴ In those states, the state legislature draws both legislative and Congressional districts, passing the results by majority vote in both houses, subject to veto by the governor. In a few states, it requires supermajority votes. In some states, the governor cannot veto the results.

Having legislators do the redistricting can be contentious. For example, in 1981 in Illinois, in a dispute over the plan, a legislator charged the Senate President, whereupon a legislative colleague punched him in the face.

(That was the more genteel example quotable from "Destroying Political Goodwill", in *All About Redistricting*. Redistricting.Ils.edu)

BRENNAN CENTER
FOR JUSTICE
TWENTY YEARS

State Legislature Draws Congressional Districts



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In some states, a political commission, including elected officials, draws the lines, while in other states the commission is independent, or at least considered independent, though generally the commission is actually bipartisan rather than independent. In those states, while elected officials cannot be on the commission, the legislatures choose the commissioners. (See Appendix 0 for a complete list redistricting processes by state.)

How good is the process?

No matter which system, the answer depends on who draws the lines, who influences the process, and, of course, the point of view of those affected by the redrawn lines.

When the legislature controls the process, the lines are often drawn in such a way that the word gerrymandering can be used to describe the results.

Gerrymandering: the process of manipulating those district lines to stack the deck in favor of incumbents or of a particular group or political party.

As Karl Rove pointed out in 2010, “he who controls redistricting can control Congress.”⁵ The Republican successful game plan for 2010 was to target swing districts in states where legislators do the redistricting, and where a governor wouldn’t veto the results.⁶

A recent Brennan Center for Justice study of gerrymandering found, among other things, that: “In the 26 states that account for 85 percent of Congressional districts, Republicans derive a net benefit of at least 16-17 Congressional seats in the current Congress from partisan bias”,⁷ the

systemic bias that gives a political party the advantage in turning votes into seats.⁸

The political party with the most power may choose to draw the lines to advantage their party (Figures 1 – 3). Or the political parties may agree to keep all incumbents safe, rather than dealing with partisan challenges to the redistricting plans.

Partisanship in redistricting reinforces voters’ feeling of ineffectiveness in the political process. It encourages extreme views in the party since the party is “guaranteed” control of a district and so candidates only have to compete during the primary, a voting event that has low voter turn-out except by people with strongly held views. As a consequence, those elected from single party dominated districts have little incentive to compromise at the state and Congressional levels because their seat is “guaranteed”⁹ and the parties can easily become more polarized. Primaries become more important since party control is assured. Brian Klass, London School of Economics, believes gerrymandering threatens democracy itself, stating:

“Ultimately, though, we must remember that what truly differentiates democracy from despotism is political competition. The longer we allow our districts to be hijacked by partisans, blue or red, the further we gravitate away from the founding ideals of our republic and the closer we inch toward the death of American democracy.”¹⁰

Another study states only a minor net partisan bias, though it is compared to a randomized system of drawing districts rather than any system in use. Gerrymandering & partisan composition of Congress (cont.). Justin Levitt, Election Law Blog. See Appendix B.

THE LEGAL ENVIRONMENT

There are three primary legal issues governing redistricting that have resulted in litigation.

- 1) What constitutes electoral districts being of equal population? The courts are pretty strict with the interpretation of this requirement. The one person, one vote principle for federal elections is required by Article 2, Sec 1 of the U.S. Constitution, and for state elections by the equal protection clause of the 14th amendment. According to several commissioners, the Washington Supreme Court allows up to a 10-percent variance.
- 2) What constitutes evidence that districts have been drawn in a way that disadvantages minority groups? The answer today is that excessive and unjustified use of race is prohibited by the equal protection clause of the 14th amendment. Some provisions of the Voting Rights Act may limit the use of race in redistricting.

- 3) What constitutes evidence that districts have been drawn to favor one political party, i.e., gerrymandered? The answer today is unclear. Sharply divided Supreme Court decisions save the possibility that such action might be invalidated, but no case in the high court has yet succeeded.

At least one lower federal court has stricken the redrawn districts; that case, from Wisconsin, will be reviewed by the Supreme Court with oral arguments expected in the fall of 2017. As of this writing, state statutes forbidding party favoritism in redistricting have not been the basis of litigation.

The Legal Environment – the Issue of Partisan Redistricting

Courts have not been eager to adjudicate claims that redistricting has been done with political or partisan motives. In 1986, the U.S. Supreme Court considered a case in which Democrats received 52% of the vote for the state House but obtained only 43% of the House seats (Davis v. Bandemer¹¹). The Court rejected plaintiff's claim in this case, though the Court held that partisan gerrymandering might be the basis of a successful attack on a redistricting plan if it could be shown that the plan had both discriminatory intent and effect. This became known as the Bandemer test. No case met that test for the next 18 years.

In a more recent case¹², Democrats outnumbered Republicans in the state but after a plainly partisan gerrymander obtained only 7 of the state's 19 seats for the U.S. House of Representatives. Again, the attack failed. Four justices regarded it as an unwise judicial foray into what was an inescapably political thicket. Four other justices felt it could be shown that the plan had both discriminatory intent and effect. Justice Kennedy tipped the balance against the plaintiff, concluding that the Bandemer test had not been met in this case, but was unwilling to rule out altogether the possibility that a justiciable case might be presented in the future.

Today, several cases are exploring the legality of gerrymandered districts. Perhaps the fullest discussion has been in a Wisconsin case (Whitford v. Gill¹³). A three-judge federal district court decided that these kinds of issues are justiciable, that the plaintiffs had standing, and that the legal standard was whether a redistricting plan was intended to and had the effect of disproportionately reducing the power of a rival party, without justifications of the traditional sort (contiguity, compactness, etc.). The plan under attack produced a 60% majority of Republican seats in the state assembly with only 49% of the votes cast. In ordering a new map to be drawn by the legislature, the court considered some mathematical tests by which this proportion could be measured, including the 'efficiency gap' (see Appendix C).

The district court opinion was handed down in September 2016, ordering a new map to be drawn. In March 2017, Wisconsin filed an appeal in the Supreme Court and in June 2017, the Court agreed to hear the case. Arguments are set for September 2017 and an opinion should be issued during the 2017-18 term. The law concerning redistricting is complex and is further discussed in Appendix D.

It is unclear as to how the Court will rule on the Wisconsin case, though by a divided vote the Court did stay the immediate redrawing of the Wisconsin map ordered by the lower court. One criterion for granting a stay is whether the Court feels the party asking for the stay (here, Wisconsin) is likely to prevail on the merits. Four Justices would have denied the stay (Ginsberg, Breyer, Sotomayor, Kagan) so apparently five Justices (Roberts, Alito, Gorsuch, Thomas, Kennedy) feel at this stage that Wisconsin might prevail, reversing the lower court.

If the Court reaches the merits (e.g., doesn't rule based on some technical issues like standing, etc.), it will either (1) reject the whole notion that courts have any role in limiting partisan gerrymandering--the known view of several Justices-- or (2) continue prior law that there might be some judicial remedy for clearly proven and plainly egregious partisanship in districting.

It seems doubtful that the Court will adopt a third position, namely, carving out a major role for the courts in controlling the redistricting process as it has for the reapportionment process. Reapportionment--for all the fears of the "political thicket" that prior to the 1960s made the Court reluctant to take an active role--presents a much simpler case (equalize the number of people in each district).

If the Court adopts option (1) or (2), attention will be shifted to the states, where the use of bipartisan or nonpartisan commissions will likely be seen by reformers as the only dependable route to curb unacceptable partisan behavior in districting. These administrative techniques seem beyond legal challenge, but the adoption or improvement of any plan which seriously restrains the passion for partisan advantage will face stubborn political obstacles.

The Role of the United States Census Bureau¹⁴

The U.S. Census Bureau counts every resident in the U.S. every ten years for those years ending in zero. The next census will occur in 2020. The data collected serve as the basis for the distribution of federal funds to local, state and tribal governments. The data also are used to apportion seats in the U.S. House of Representatives and to define state legislative districts.

Public Law 94-171 enacted in 1975 directs the Census Bureau to, within one year following Census Day (April 1), provide the governor and legislative leadership with the data needed to redraw districts. The Census Bureau therefore sends each state a count of residents as of April 1st of the years ending in zero. The states then begin the process of redistricting, using the new population data.

For further information about census taking, see Appendix E.

REDISTRICTING IN WASHINGTON

The League of Women Voters has been crucial in the work to improve redistricting in Washington. The 1889 state Constitution required that the legislature redistrict based on “the number of inhabitants” after each U.S. Census. However, little or no redistricting had been done as late as 1954. At that point, an eastern Washington representative represented about 19,000 people while one in Seattle represented 152,000. (See Appendix F)

In 1954, the League, led by Mary Ellen McCaffree and Lois North, proposed Initiative I-199, which added three new legislative districts and included a new redistricting map. The initiative passed but the legislature amended the law, redrawing the map until the representatives were all back in ‘safe’ districts.¹⁵ However, in 1957, a federal court found Washington’s legislatively amended map to be discriminatory.

In 1958, the League again proposed an initiative, I-211, which was defeated due to large sums of money spent by the opposition.¹⁶ At this point, the courts again intervened. Over the next three decades, the federal courts threw out the plans of the 1950s and the 1960s. After the failure of the 1963 legislature’s redistricting plan, a federal court ordered the 1965 legislature to adopt a redistricting plan before adopting any other legislation. The legislature complied, but after the 1970 census, the 1965 redistricting plan was found unconstitutional and the state was restricted from holding further elections under the existing law. That court gave the state until February 25, 1972 to create a fair redistricting plan. When the legislature failed to meet the deadline the court drew the plan.

The legislature continued to draw and redraw the maps under court order until, in 1982, they decided to set up an independent, bipartisan redistricting commission rather than keep on fighting. They took that proposal to the voters, and in 1983, the voters approved amending the state constitution and instituted the Washington State Redistricting Commission.¹⁷

Washington’s redistricting timeline:

1889 The state Constitution requires that the legislature redistrict based on “the number of inhabitants” after each U.S. Census

1930s Citizens begin to complain – no redistricting being done

1950s:

1954 The League of Women Voters proposes its own redistricting initiative—Initiative 199.

1956 Initiative 199 passes, the legislature amends

1957 Federal court finds Washington districts discriminatory.

1958 The League of Women Voters’ I-211 redistricting amendment fails.

1960s Federal court again involved. The legislature takes 3 years to redistrict

1970s Court finds 1965 redistricting legislation unconstitutional, state restricted from holding further elections under the existing law, court draws the lines.

1980s legislature proposes independent, bipartisan redistricting committee to begin work in 1991, appoints a temporary five-commissioner panel to redistrict.

1983 State Constitution amended, Washington third state in U.S. to redistrict by commission, based largely on a proposal from the LWV.

WASHINGTON STATE REDISTRICTING COMMISSION

Its structure. Based on the 1983 amendment to the state constitution, redistricting authority now rests with a bipartisan redistricting commission, the Washington State Redistricting Commission, to draw legislative and Congressional district lines. There have been three Commissions to date: 1991, 2001 and 2011.

In Washington, a commissioner may be any registered state voter who meets the following requirements:

Is not a current registered lobbyist, or former lobbyist within one year before appointment,

Is not a current elected official or an elected state, district, or county party officer nor has held such a position for two years prior to appointment,

Will not campaign for elective office or actively participate in or contribute to a state or federal candidate running for office, and

Will not campaign for a state legislative office or for Congress for two years after the new redistricting plan takes effect.

The majority and minority party leaders of the Washington Senate and Washington House of Representatives each appoint one registered voter to the commission. Those four appointees then appoint a non-voting, non-partisan commission chair.

Because the sitting politicians choose the commissioners, the Redistricting Commission is considered a bipartisan, rather than an independent commission. The voters who identify as Independents and those who are members of parties other than Democrats and Republicans are not represented since by law the Commission make-up is limited to the top two political parties.

- Comply with the federal Voting Rights Act to ensure that minorities have an equal opportunity to elect representatives of their choice;
- Make sure that, insofar as practical, parts of a district are contiguous (not physically separated), convenient and compact;
- Make sure that, to the extent possible, geographical and political boundaries, and communities that have common interests are respected, and their division minimized; and
- Make sure they do not favor or discriminate against any incumbent, candidate, or political party; provide fair and effective representation; and encourage electoral competition.

If the Commission is unable to furnish a redistricting plan to the legislature by the deadline set by the law, the process moves to the Washington Supreme Court to resolve.¹⁸ (See Appendix G)

The resulting redistricting plan must be approved by three of the four commissioners and becomes final unless it is amended by the legislature within thirty days after the beginning of the next regular or special legislative session, and any proposed amendments have defined limitations. The governor cannot veto the Commission's redistricting plan.¹⁹

The statute requires at least 3 of the 4 commissioners to agree on the plan but the members of the three Commissions to date have felt it important to obtain unanimity. Thus, all plans submitted to the legislature have been supported by all four voting commissioners.

Moving the Redistricting Commission deadline to November 15 from December 31 has helped county auditors meet deadlines such as candidate filing dates and determining the ballot's content for each precinct.

Statutory requirements. For redrawing district lines, the 1983 amendment to the state Constitution specifies that the Commission:

- Encompass, as nearly as can be done (or is "practicable") equal numbers of people in each district;

The first three Commissions have had until the end of the calendar year to finish its work and be dissolved. Because the voters recently approved a change in the law, the 2021 Commission must finish its work by November 15th of that year.

WASHINGTON STATE REDISTRICTING PROCESS

For each Commission (to date: 1991, 2001, 2011), the commissioners are appointed by the leaders of the two largest political parties in the state legislature. The senate leaders appoint two commissioners, one from each party, and the leaders in the House of Representatives likewise appoint two commissioners representing their two parties. These appointments are made in January of the year following the U.S. Census count. The commissioners choose a fifth, non-voting chair, then work to put together a redistricting plan that at least three commissioners can agree to, that will be acceptable to their party caucuses, and that will be finished by the mandated deadline.

Washington has ten Congressional districts; and 49 state legislative districts, each with one state senator, two representatives.

The commissioners begin by working on the boundaries of the state legislative districts. Each gets an early map from the Washington Secretary of State showing the current district lines plus the estimated change in population in each district.

The official change in population arrives on their desks at some point in April, but the earlier estimates are sufficient to give the commissioners an understanding of the potential changes they'll need to make.

The Secretary of State provides non-partisan staff for administrative and technical support. Each commissioner also gets map-drawing staff support from the caucus that appointed them. Each staff produces maps that reflect the caucus and individual party members' preferences, which may include incumbents' residence locations.

Throughout the redistricting process, the commissioners interact with their caucuses, legislative members, and Congressional delegates, getting information from them as well as keeping them informed.

The commission holds two sets of public hearings throughout the state. The first set shows the public the changes in population and resulting need for district changes, and provides a mechanism for the public to give input.

The second, less extensive set of hearings introduces the public to eight sets of maps—two

from each commissioner, one shows Congressional and the other shows state legislative districts. At this point, each commissioner describes his or her idea of where the new district lines should be for both state legislative and Congressional districts. Those maps are drawn with the help of the party caucus that nominated each commissioner.

After publicly presenting the eight sets of maps, the commissioners begin working toward a single set of maps that at least three of the four commissioners can agree on—one map for state legislative districts and one map for Congressional districts. In this phase of their work, they negotiate in ever-changing pairs among the four commissioners, particularly in order to avoid the requirements of the Open Public Meetings Act, which would be invoked by a meeting of more than two people.

They generally try to consider communities of interest, though that is a term that means different things to different commissioners as well as to the public. At least some of the commissioners take into consideration such things as school districts, economic differences, neighborhoods, minority populations, etc., when considering where to draw a particular line. Unfortunately, as various commissioners pointed out, it's complex work and each time they solve one problem, the results unsolve others.

When they have agreed on one map for state legislative districts and one map for Congressional

Two officials of the commission working together is considered a private meeting, but if there are three, the law defines it as a public meeting and it must be open to the public. Open Public Meetings Act. RCW 42.30.020:

"Meeting" means meetings at which action is taken.

"Action" means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.

"Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

districts, the commission presents the results to the state legislature for adoption or for technical corrections and then adoption. If the legislature doesn't approve of the results, the legislators have

thirty days to amend the plan; however, the revised plan requires two-thirds approval of each house and is limited in the amount of change allowed. (See Appendix G)

Points commissioners considered of particular importance:

For each redistricting cycle, commissioners felt they achieved success if they:

- Achieved unanimity in completing a plan with both parties treated fairly;
- Finished on time;
- Maintained equal population;
- Paid attention to majority minority populations;
- Had respect for existing boundaries, especially county;
- Had no aggressive undermining of incumbents by moving lines slightly;
- Had no resulting lawsuits, which sets the commission system apart from the oft-sued legislative redistricting process it replaced, although in 2011 a suit was filed against the commission and then withdrawn. (See sidebar.)

In February 2012, a seriously ill John Milem sued to overturn the 2011 redistricting plan, saying the way voter districts are drawn benefit the politicians more than the people. He cited large numbers of divided counties & municipalities, lack of compactness, and apparent lack of competitiveness. (#86976-6, Supreme Court of the State of Washington) His petition was withdrawn upon his death some months later.

The commissioners also felt that constituent/incumbent protection was their responsibility since that's who the voters had elected. All three commissions tried to create minority/majority districts, but were not always successful. And they commented that it is not possible to have competitive districts in areas where people self-segregate, and it's not possible to take politics out of politics. (See Appendix I)

They also commented on the structure of the process, specifically that:

- Having a non-voting chair is vital to the process because when only four members can vote it requires those four political commissioners to negotiate, compromise and come to agreement.
- Appointing commission members in late December or January is untimely, because it doesn't allow sufficient time to set up the office or always enable commissioners to attend the January national training workshop.

League of Women Voters' positions on redistricting state, in part:

Responsibility for redistricting preferably should be vested in an independent special commission, with membership that reflects the diversity of the unit of government; Promote fair and effective representation; Compactness and competitiveness may also be considered as criteria; Accomplished in an open, unbiased manner with citizen participation and access at all levels and steps of the process; Preservation and protection of "communities of interest;"^{11 SEP} Explicitly reject protection of incumbents, through such devices as considering an incumbent's address; Explicitly reject preferential treatment for a political party, through such devices as considering party affiliation, voting history and candidate residence.

FINDINGS OF THE REDISTRICTING REVIEW COMMITTEE

Fair and effective representation, electoral competition, maximum opportunity for public participation, open and unbiased process, and preservation and protection of 'communities of interest' -- all are phrases used in redistricting. For ease of discussion, the committee has grouped these terms used in redistricting as representativeness, transparency and public participation.

Representativeness. The major intent of redistricting is to ensure that every citizen has equal representation through the voting process.

The system in Washington does assure some balance in Republican and Democratic representation, especially since the four commissioners have to work toward a plan acceptable to two commissioners from one party and at least one from the other as well as to the caucuses they represent, and the non-voting commission chair cannot step in to break a tie. Also, various commissioners pointed out that they successfully created several districts made up of a majority of racial minority voters through their work.

However, perhaps a third of the population includes citizens who identify with neither major party. They may not feel well represented because of the make-up of the commissions since the two major party caucuses chose the commission members and provide the technical map-drawing help. There is no provision in the Washington

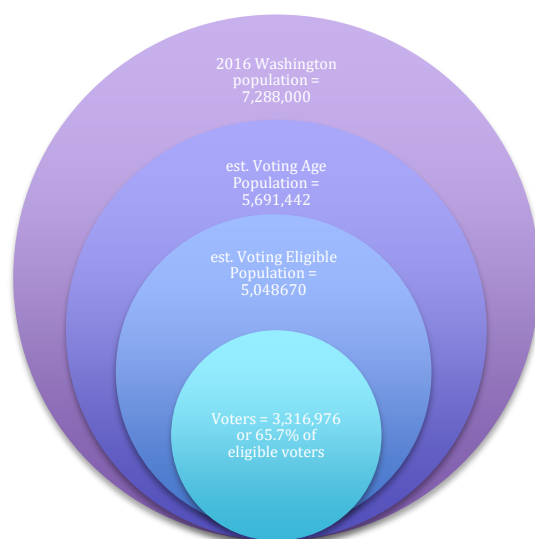
constitution for non-affiliated or third-party members to be on the Commission.

As the 2016 UW poll shows, 40% of Washington voters consider themselves neither Republican nor Democrat, though it may not be possible to know whether some of those voters actually lean toward one major party or the other, given usual Washington voting patterns.

A Washington state party affiliation poll was conducted between October 6 and Oct 13, 2016 by Washington Poll, of the University of Washington. The results showed that 40% of voters identified as Independent; 35% as Democrat and 24% as Republican. This breakdown is in accord with a national trend. WA Poll, UW, posted 10-27-16

According to [America Goes to the Polls 2016](#)²⁰, partisan redistricting affects political competition and voter choice, and lack of competition is one factor that decreases voter turnout. Therefore another aspect of representativeness of the process for redistricting needs to be an examination of voter turnout.

Figure 6: Voter turnout in Washington, 2016.²¹



In 2016, for example, Washington voters turned out at a rate that put the state 12th in the nation, basically tied with Florida and Michigan at 65.7% of all eligible citizens 18 and older.

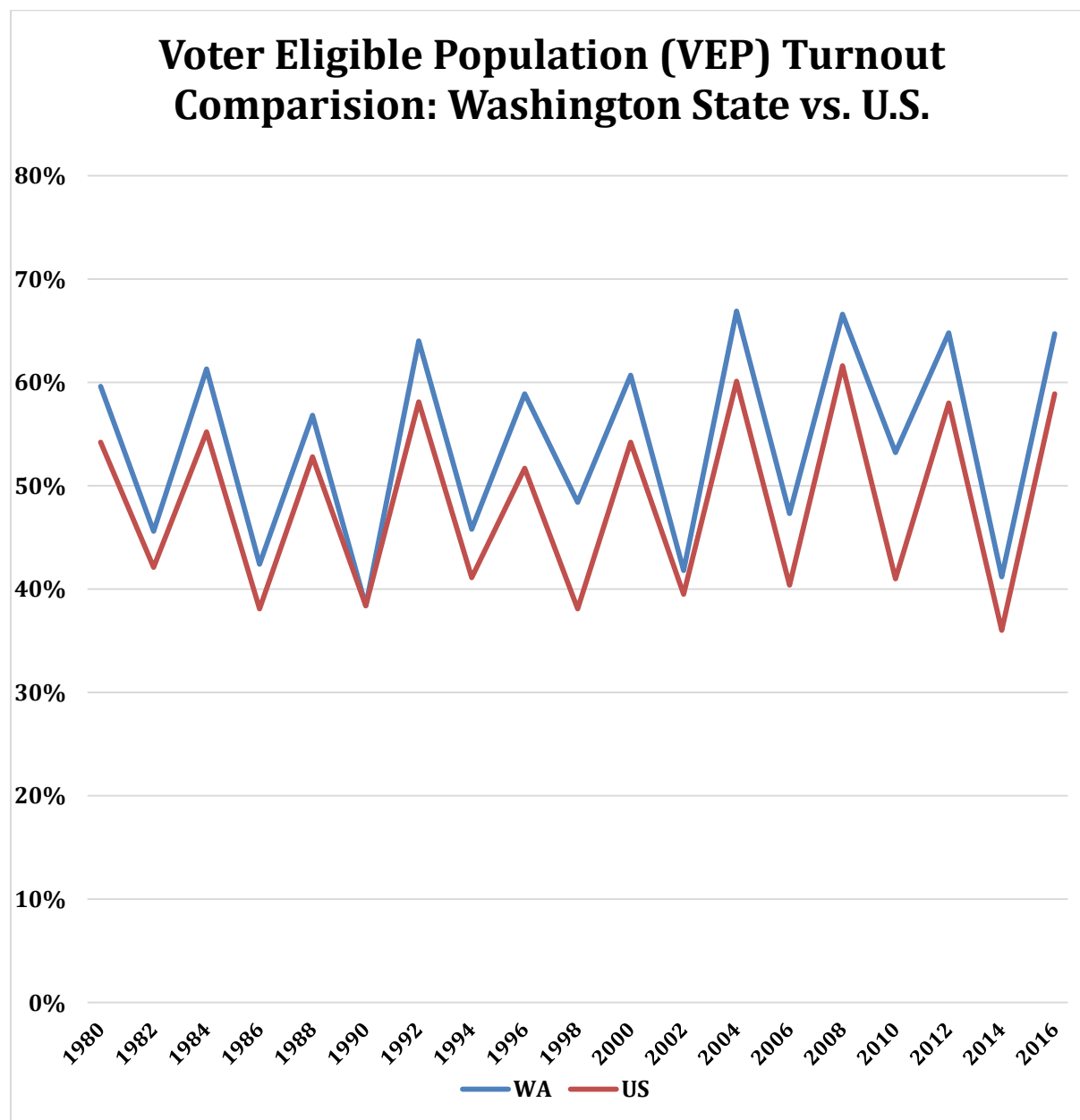


Figure 7: Voter Turnout, Washington and U.S., 1980 - 2016²²

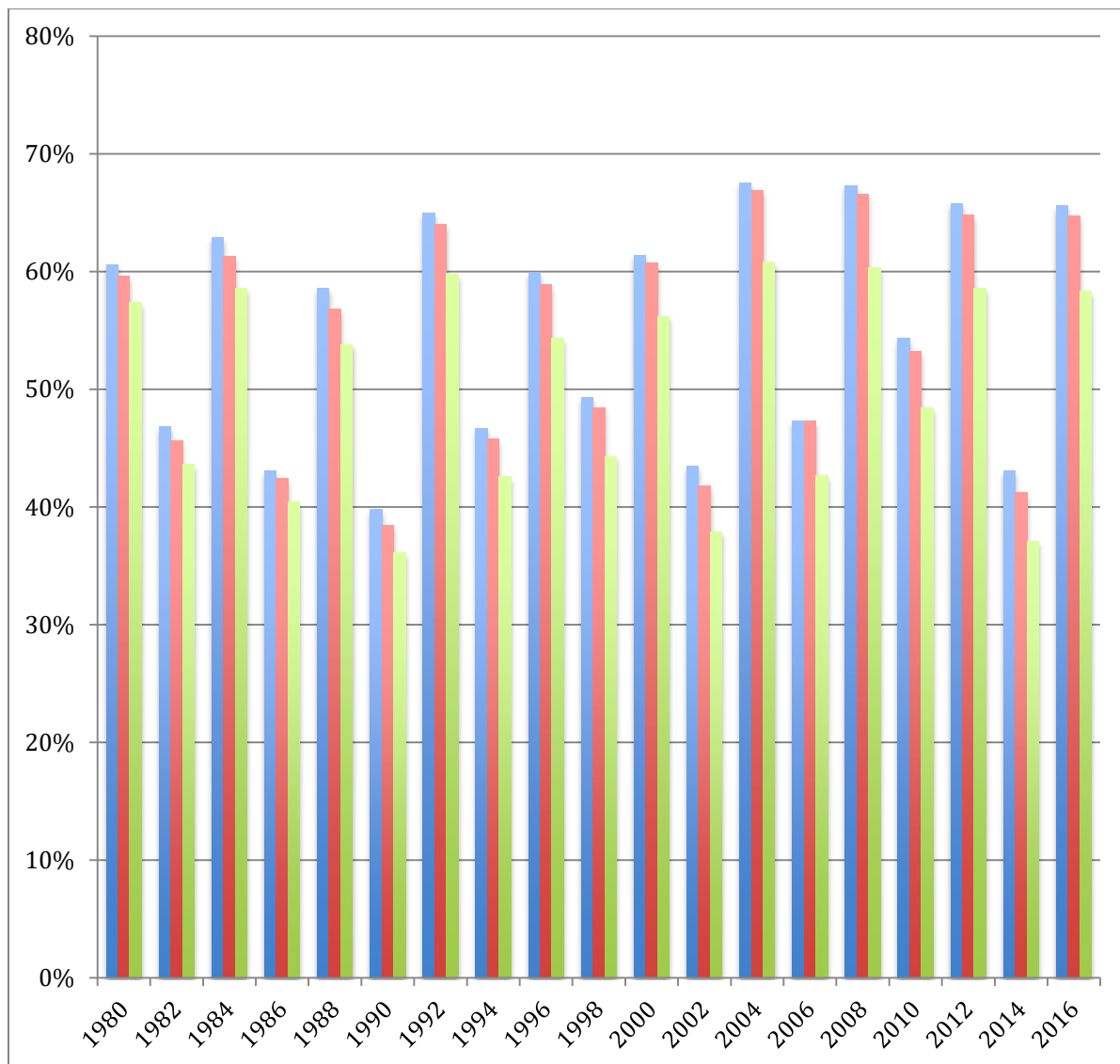


Figure 8: Voter Turnout In Washington, as a Percentage of Eligible and Voting Age Population 1980 - 2016²³

- The **blue** = total ballots counted as a percentage of all eligible voters.
- The **red** = the percentage of eligible voters who voted for the highest office that was on the ballot that year, either president or governor.
- The **green** = the percentage of voting age population who voted for the highest office on the ballot that year.

There are numerous ways of showing the voting patterns in Washington districts to examine the shift in voting that may be related to redistricting. The graph above (Fig. 8) includes both presidential and non-presidential year elections. Looking only at non-presidential election years in order to avoid effects of presidential election turnouts, there was a heightened turnout between 1990 and 1994, but a decreased turnout between 2000 and 2004 and between 2010 and 2014, all years straddling state redistricting.

It seems from these statistics that redistricting has not particularly affected voting patterns. But redistricting does seem to have affected the competitiveness of various districts.

Several depictions of recent elections follow, based on the Congressional voting district numbers on the Congressional maps in Appendix J. In Figures 9 and 10, each election year from 2010 (before the 2011

redistricting) through 2016 is shown by district, indicating the percentage by which the Congressional winner in that district won his/her race. Using District One as an example, in 2010 the winning candidate won 58% of the votes in that race, and in 2012, the difference was 54% for the winner and therefore 46% for the losing candidate.

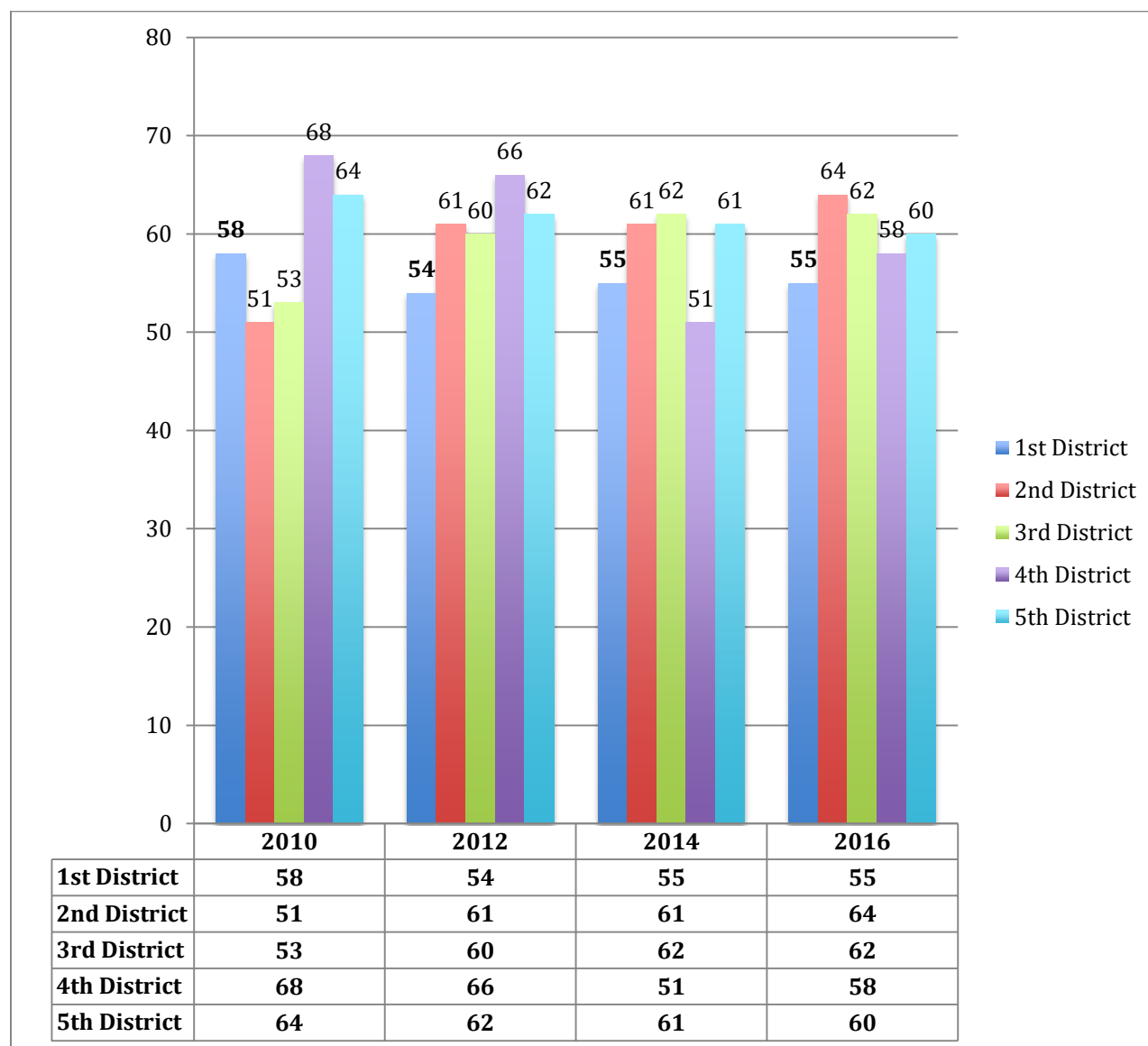


Figure 9: 1st – 5th Congressional Districts
Percentage of Votes Received by Winner in Each of Those Years

In contrast, in the 7th District (Figure 10), the winner got over 80% of the votes each election year except 2016. The 9th District looks more competitive than the 7th—but only in comparison. Those percentages give a strong clue about competitive vs. safe districts.

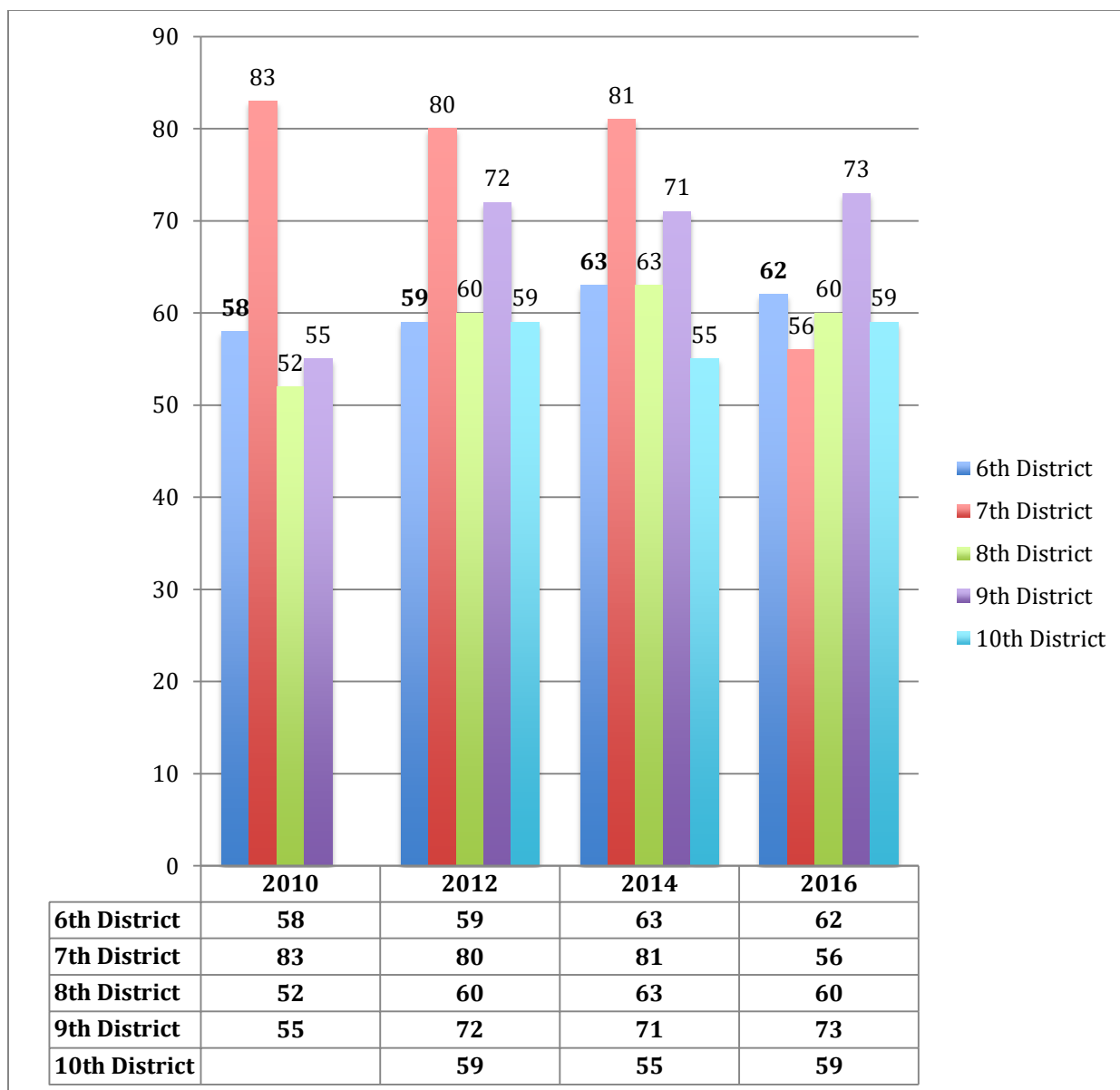


Figure 10: 6th – 10th Congressional Districts
Percentage of Votes Received by Winner in Each of Those Years

These 2010 – 2016 Congressional-election statistics show that only Districts 1 and 10 can currently be considered ‘competitive’, meaning that either major party could win any given seat. While District 4 may appear competitive, the race was between two of the same party and the district voting pattern is strongly single party. The other Congressional districts range from somewhat uncompetitive (over 55% wins) to highly uncompetitive (over 70% wins), including District 7, another single-party district.

In at least some of the districts, part of the reason may have to do with self-sorting of the voters, e.g. Democratic voters in big cities or Republican voters in rural and suburban areas, rather than an example of gerrymandering. The following self-sorting information in recent Washington elections is by Ben Anderstone.²⁴

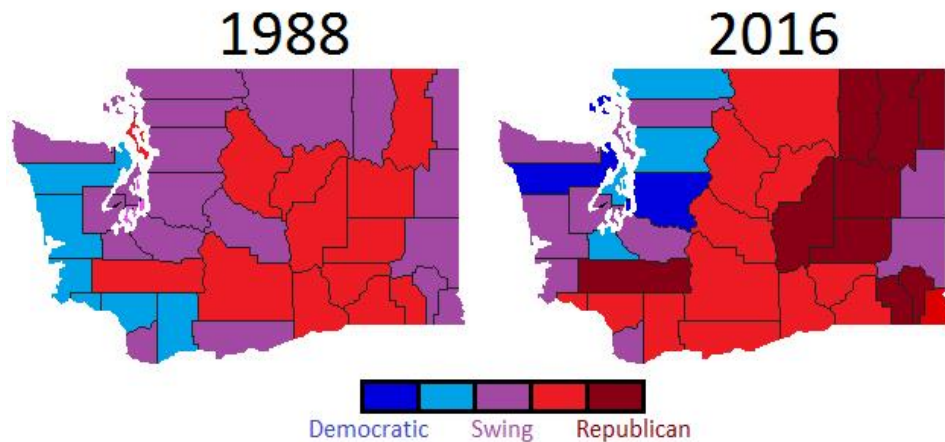


Figure 11: By County, Changes in Presidential Results

	Puget Sound	Rest of Washington	Gap
1988 Bush v. Dukakis	Dukakis +4%	Bush +5%	9 points
2016 Clinton v. Trump	Clinton +30%	Trump +13%	43 points

Figure 12: Puget Sound Results, Compared to the Rest of Washington

Furthermore, Anderstone has found that the average Clinton supporter in Washington lives in about a 2-to-1 Clinton precinct while the average Trump supporter lives in a 50/50 precinct. That means a lot of Clinton votes are ‘wasted’ in non-competitive districts. (Wasted votes are those votes beyond the number needed to win.) Overall, of the 49 representative districts in Washington, only 11 districts were within 10 points in 2016, whereas about 26 districts were within 10 points in 1988.

According to Bill Bishop, author of [The Big Sort](#)²⁵, people now more often congregate only with those they agree with and read and watch only the media with which they agree. They are more likely to join single-issue organizations that may not be interested in entertaining alternative viewpoints. Robert Putnam discusses in [Bowling Alone](#), the difficulties of maintaining a participatory democracy when “Americans at the political poles are more engaged in civic life, whereas moderates have tended to drop out.”²⁶

The Commissioners have been reluctant to move district lines significantly since they feel that existing legislators have strong bonds with their electorate that shouldn’t be threatened. However,

it may be possible to draw lines so that those districts that are currently somewhat competitive could be considered more competitive, within the limits of state law regarding compactness and contiguity.

Based on looking at the pattern of outcome of state representative elections directly before and directly after each redistricting, there has been only a small change in the make-up of the legislature as a result of the redistricting process. In the 1990 – 1992 comparison, the voters in nine of the 49 districts chose a change in party representation for at least one of their representatives. In the 2000 – 2002 years, voters in eight districts chose a change, and in the 2010 – 2012 years, voters in seven districts chose a change in party representation for at least one of their representatives (See Appendix J)

There are numerous instances where the opposition to a major party winner was from a party other than the ‘regular’ opposing party, the occurrences of a multi-party general race, and, in one case, the consistent winner who identifies as neither Democrat nor Republican. Thus, third-party participation seems clearly present, and

may be hindered by the state's emphasis on bipartisan control of the redistricting process.²⁷

There are three steps involved in measuring the efficiency gap:

1. In each district, determine the total number of votes each party wasted in the election. Any votes cast for a losing candidate are wasted; any cast for a winning candidate over the number needed to win are also wasted.

2. Calculate the total number of wasted votes for each party, then calculate the net wasted votes. (Total wasted party 1 – total wasted party 2 = net)

3. Divide the net number of wasted votes by the total number of votes cast in the election.

The result is a percentage and reflects the percentage of total seats the winning party received that they would have been expected to receive. This mathematical system is put forward as a method of indicating how biased a state's political structure is.

Another depiction of voting patterns, the 'efficiency gap', has been proposed as a measure of bias that could be used in the courts as a standard indicator for determining partisan gerrymandering. It is currently in use in the gerrymandering case, *Whitford v.*

Nichol, discussed on pages 5 above.²⁸

Based on the efficiency gap formula, Washington has gone from a bias toward Democrats to close to unbiased in its efficiency gap

measures.²⁹ See Appendix C for further explanation of the efficiency gap and Washington's rankings in several decades.

Transparency. The Redistricting Commissions' work involves public hearings. The first set of hearings, held throughout the state, is focused on collecting citizens' input on what issues are of importance to them in the drawing of new district lines. These comments help to identify "communities of interest" as viewed through eyes of local citizens. The second set of hearings allow the commissioners to present draft maps, reflecting their individual interpretation of the input from these hearings and other statutory requirements.

Following the public hearings, the Commissioners develop two maps: one for the state legislative districts and one for the Congressional districts. Following this step, the Commissioners begin to "negotiate" the final lines. By negotiating only in pairs, they don't run afoul of the Open Public Meetings Act.³⁰

The commissioners also hold regular public meetings including the final one, held to vote on

the final redistricting plan before they present it to the legislators. Thanks to advances in technology, the more recent commission meetings are webcast and/or broadcast, and accept online and in-person public comments.³¹

The website keeps the public up to date so people can zero in on their own area and see the commissioners' draft plans, hear and respond to webcasts of meetings, and listen to messages from the chair about the redistricting process and progress. The site includes a timeline with such dates as public hearings and meetings, how citizens could use the technology to draw their own suggested plans, and when those 3rd party redistricting plans are due. Washington's public affairs television network, TVW, also broadcast all public hearings and meetings.³²

Public Participation. The Washington State Redistricting Commission process involves public participation through hearings, meetings and written comments, both to hear from the public and to teach the public about redistricting. As stated above, more recent Commissions also use the web to inform the public, to live-stream public meetings and to receive public comments. By 2011, the Commission's public hearings also included interpreters in order to widen the pool of who could be included in the hearings.

Commissioners are divided on the value of the public input obtained through these hearings. Some feel that the maps submitted covered only one portion of the state and did not consider the ramifications statewide to other districts. In addition, they feel some of the participants were not clear in their testimony as to what was the real concern that they were trying to address. Other commissioners feel that the hearings were very useful to get a better feeling of the local communities' issues, and that the commission has an obligation to the citizens to make sure they know the process and the progress.

Many of the commissioners said that for the public hearings to be of real value, the public needs to be better educated about the process in order to:

- appreciate the importance of the district lines and the effects of each suggested change;
- give commissioners sufficient information that can be used to understand the problem that they are asked to address;

- understand the political make-up of the state, with rural areas tending to be Republican and urban areas tending to be Democratic;
- understand how to use the technical resources available to them;
- understand the complexity of the process.

Administrative. The Review Committee found various administrative items to be significant in the redistricting process. Particularly, all commissioners emphasized that a non-voting chair is important. While the Washington chair sometimes feels she or he has little to do and certainly no influence, the four voting commissioners have no choice but to negotiate and come to agreement on final maps. There can be no three against two results.

Members of each Commission said they spent almost all their time working on the state legislative district lines, spending little on the Congressional lines. But some told the committee that the Congressional staff paid close attention to their work, and had no complaints.

All commissions felt they had sufficient staff and budget to do their work. The commissioners were able to hire their own legal help, rather than using the State Attorney General. They were concerned that there would be no attorney-client privilege if all were required to use the same state staff.

At least some wish that they had been appointed sooner so all could attend the January national training, and could more quickly get the office set up and staffed. The Secretary of State's office set up the office for one commission, but in other cases, the commissioners had to do it after they were appointed. The Chair didn't always know who to consider appointing as staff Executive Director, which added time to the set-up.

In most Washington counties, the county auditor draws precinct lines that are subsequently approved by the county commissioners. A maximum of 1500 eligible voters can be in a precinct and precinct lines cannot cross city or county lines since it is the precinct lines that dictate what is included on each voter's ballot.

Local Redistricting. Although this report is focused on Congressional and legislative districts, the Committee researched the process at local levels to some

degree, since these local districts also impact the voter's taxes, services and representation.

Local governments are dependent on the Redistricting Commission maps and Census Bureau data to determine precincts and various special districts. In general, those in charge of the specific district, e.g. school or fire, are responsible for any required redistricting. Changing municipal boundaries also affects districts and triggers remapping as soon as the annexation is finalized

See Appendix L for King County and Peoria, Arizona examples.

Systems in Other States. Although in most states their legislatures do the redistricting, several states have developed alternative processes to lessen the partisan influence and to increase transparency and public participation. Florida's legislature has specific standards that must be addressed to avoid partisanship, Arizona has a somewhat independent system, and California has a wholly independent redistricting system.

While **Florida's** legislature does redistricting, its voters passed a ballot amendment in 2008³³ making it easier to fight legislative results. The voters approved 'Fair Districts' anti-gerrymandering standards, an amendment setting new rules for redistricting, including prohibiting drawing districts to favor or disfavor incumbents or political parties. Those changes have allowed Floridians to take their legislature to court based on the redistricting maps, most recently in 2015, with the result that maps have had to be redrawn.³⁴

Arizona has implemented an alternative approach to a less partisan redistricting process.³⁵ Beginning in 2000, Arizona's constitution mandates that a five-person independent redistricting commission be established to provide for the redistricting of Congressional and state legislative districts. It differs from the Washington bipartisan system in two important ways:

- it adds an intermediate step in the process of appointing the commissioners,
- the fifth person on the commission has a vote.

The state's non-partisan Commission on Appellate Court Appointments solicits applications from the public and after review, nominates 25 Democrats, 25 Republicans and five persons not registered with either major party. The four legislative leaders each then choose one commissioner from this pool of 25 nominees. Those four commissioners then select a fifth who is not registered in the same party as any other commissioner.³⁶

Unlike the Washington commissions, the most powerful person on the Arizona commission is likely that fifth person because that person has a vote. As more than one of the Washington commissioners has pointed out, the most important part of setting up that Arizona commission would be choosing that fifth person, because sooner or later it will be three against two. It appears to the Washington commissioners that the others will not need to compromise,

merely pressure the tiebreaker to vote with them.

As to the California system, although the process appears to be more time-consuming, the public was very supportive. "In a comparative study of transparency of state governing process in which (California) received a B- overall, the citizen redistricting process received an A, with a score of 100 percent. When People Draw the Lines, p. 71

California now has the most independent of commissions, with a lengthy set of criteria as to who is eligible to be on the commission. Their commission consists of five Democrats, five Republicans, and four 'Neither Major Party'. It takes nine votes to approve a redistricting plan: three Democrats, three Republicans, and

three representatives of Neither Major Party. The resulting map is subject to public referendum.³⁷

California's independent redistricting commission was established in 2008 through the Voters First Act, to address state legislative districts. It was expanded in 2010 to include Congressional

districts, and first applied during the 2011 redistricting process.

In addition to changing the composition and selection of the Commissioners from the past, the new California law also sets requirements for the actual process of drawing lines to ensure greater citizen involvement. The law requires that the Commission "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines."³⁸

The 2011 Commissioners were advised to use public input as the sole process for drawing lines around "Communities of Interest". They made major efforts to involve the public through hearings and public outreach mechanisms, and considered transparency a high priority. Because of time and budget constraints, they ended up depending on assistance from private non-profit organizations for public outreach as well as significant financial contributions from a California foundation.³⁹

For a more detailed explanation of the 2011 California redistricting process, see Appendix M.

Until California voters passed Proposition 11 in 2008, California's redistricting system was controlled by the state legislature. That previous system had become so manipulative that after the 2000 census, the major political parties effectively decided to call a truce, and to keep the Congressional incumbents of both parties safe from effective challenges. Many incumbents each paid a consultant at least \$20,000 to have their districts custom-designed for [electoral] safety. As one member of Congress explained: "Twenty thousand is nothing to keep your seat. I spend \$2 million (campaigning) every year. If my colleagues are smart, they'll pay their \$20,000, and [our consultant] will draw the district they can win in. Those who have refused to pay? God help them." In the next election, every single incumbent, Republican and Democrat, won by more than 20% . . . except for the one whose margin of victory was 19%. (All About Redistricting)

SUMMARY

The change to Washington's Constitution in 1983 requiring a bipartisan redistricting commission has resulted in a vast improvement from when the legislature undertook the task of redistricting. Due to the lack of legal action or any significant legislative revisions, the redistricting plans of the three Commissions to date have met the broad statutory requirements for state-level redistricting.

Representativeness. The three redistricting cycles that the Committee reviewed have resulted in shifts from election outcomes favoring Democrats to more centrist results, suggesting at least a few more-competitive districts. Currently only three of the ten Congressional districts can be considered ‘competitive’, in that either major party could win any given seat.

The Review Committee questions whether the representativeness of the districts could be improved, given that the Washington Redistricting Commissions are bipartisan rather than independent. The Commissioners have been reluctant to move district lines significantly since they feel that existing legislators have strong bonds with their electorate that shouldn’t be threatened. This tendency could be construed as partisanship. It may be possible to draw lines so that districts that are somewhat competitive could become more competitive, within the limits of state law.

Election results show little change in state legislative election outcomes that can be firmly attributed to the redistricting processes. Although there were some changes in party representation following each redistricting, those changes may or may not have been as a result of the redistricting but may have been due to other factors, such as self-sorting.

Beyond that, those voters who are not registered in either party are under-represented in the redistricting process since the two major party caucuses chose the commission members. There is no provision in the Washington constitution for those not affiliated with one of the two major political parties to be on the Commission. In comparison, the California redistricting process requires a commission comprised of equal number of Democrats, Republicans, and non-affiliated citizens to insure that non-party views are incorporated into the Commission’s process.

California’s new system has clearly shown how the public can be involved at the Commission level. Although this approach has only been implemented in California over one Census cycle and is still being evaluated, it is an approach that might be considered in the future for Washington to allay the concern of non-representation of independents. However, a change in Commission membership would require a change in the state Constitution, a lengthy and difficult task.

The Review Committee concludes that more could be done under the current system to decrease the potential for partisan redistricting as well as the perception that partisanship plays any role in the drawing of district lines. Whether it is called “protection of incumbents” or “protection of constituents”, and excused by commissioners as unavoidable because it is a “political process”, there is an understandable perception that partisanship plays a role, especially since the shifting of lines takes place in private negotiations. The California model points to a potential way to reduce the appearance or actual fact of partisanship in the Commission’s decisions.

Transparency. The three redistricting cycles reviewed by the Review Committee all involved two sets of public hearings that discussed the process and approaches being used by the commissioners for their work, as well as at least monthly public meetings. The advancement in technology provided means for both the 2001 and 2011 Commissions to more easily apprise the public of the status of the Commission’s work.

However, all commissions relied on privacy while negotiating district lines. It is this step that raises concerns as to the transparency of the process. The Commissioners felt that this was entirely appropriate since redistricting is a political process and thus requires private discussions to come to a consensus. However, such private conversations may result in district lines that are more highly partisan. Without more transparency, it is hard to evaluate. In contrast, California, with its independent commission, requires that the Commission “conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines.”⁴⁰ (See ‘Systems in Other States’)

Public Participation. Beginning with the 1991 commission, the Washington state process has involved public participation through hearings and written comments. The 2001 Commission provided information through a website, and the 2011 Commission provided an even more sophisticated website that allowed the public to follow the progress and submit comments, as well as an on-line mapping tool for citizens to draw maps that addressed their concerns.

Based upon the mixed review by the commissioners of the value of public input into the process, the Review Committee feels that more

could be done to improve the quality of input to the process and the degree of public participation, not only in the hearings but also throughout the process. Activities might include:

Creating educational materials and outreach on the redistricting process;

- training interested citizens in how to give effective testimony for redistricting decision making;
- providing tutoring and other technical support to assist citizens in creating their own maps;
- working on greater outreach to the media to provide timely and informative materials on the status and background of the redistricting process,

The Review Committee suggests that the League consider working on outreach and training of the public both before and during the redistricting process to aid in the quality of public input.

Administrative. The commissioners consider having a non-voting 5th commissioner as chair is very important. The requirement that commissioners of both major parties agree is the reason redistricting results have been accepted by the courts.

They have pointed out various ways the process could go more smoothly, including:

- have the commissioners appointed by the end of the first week in January so they can all attend the national training;
- require the Secretary of State's office to hold a training session to include information passed forward from past Commissions;
- require the Secretary of State's office be responsible for setting up the

Commission's office by the first week in January in time for when the commissioners are appointed;

- require the Secretary of State's office or some other appropriate group put together a short list of possible staff for the commission so when they are appointed, they can immediately interview, choose and install staff;
- include the county auditors earlier in the process so they can more easily meet deadlines since changed district lines affect their elections duties and responsibilities.

Beyond those suggestions, the Review Committee recommends the commissions

- Continue the 2011 Commission's use of the most contemporary appropriate technical tools to enable broad public participation in the process.
- Include on their website all available contemporary technical tools to aid public understanding and input.
- Offer up-to-date mapping tools for public use, perhaps at local libraries and schools.
 - If commissioners continue to include incumbent residence locations on their maps, those addresses should be on the public-use tools as well.
 - If commissioners and their staffs use partisan data, that too should be available on the public-use tools.
- Require a communications director on staff.

In summary, the Washington Redistricting Commission is clearly an improvement over the prior redistricting process. As technology continues to improve, it is important to continue to strengthen the ability of the public to be more closely involved in the process. Meantime, the League of Women Voters of Washington will strive to move from the state's bipartisan system to a more nearly nonpartisan, independent system by continuing to evaluate both short-term and long-term solutions as well as continuing to evaluate the success of states with alternative systems.

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- ¹ County and local levels of government that are divided into districts also require equal population in their district
- ² <https://www.census.gov/programs-surveys/decennial-census.html>
- ³ www.newsworks.org. January 30, 2017
- ⁴ Who Draws the Maps. Brennan Center for Justice. April 14, 2017 <https://www.brennancenter.org/analysis/who-draws-maps-states-redrawing-congressional-and-state-district-lines>
- ⁵ Rove, Karl. “The GOP Targets State legislatures”, Commentary (2010). The Wall Street Journal (online), available at wsj.com March 4, 2010. (Accessed July 11, 2017)
- ⁶ www.redistrictingmajorityproject.com. REDMAP: The Redistricting Majority Project, a Program of the Republican State Leadership Committee. Also see: Daley, D. (2016). *Rat F**ked, The True Story Behind the Secret Plan to Steal America's democracy*. Liveright Publishing.
- ⁷ Royden, L. and Li, M. (2017). Extreme Maps. Brennan Center for Justice Twenty Years. 2017. www.brennancenter.org/publication/extreme-maps
- ⁸ Chen, J. and Cottrell, D. (2016). Evaluating partisan gains from Congressional gerrymandering... Elsevier, Electoral Studies, Vol 44, pages 329-340
- ⁹ Norris, P., Garnett, H.A. and Gromping, M. (2016). Why it's not about election fraud, it's much worse. <https://www.electoralintegrityproject.com/eip-blogs/2016/12/22/was-there-fraud-in-us-elections>
- ¹⁰ Klass, B. (2017). Gerrymandering is the biggest obstacle to genuine democracy in the United States. So why is no one protesting? WA Post, Feb 10, 2017. <https://www.washingtonpost.com/news/democracy-post/wp/2017/02/10/>
- ¹¹ Davis v. Bandemer (478 U.S. 109)
- ¹² Vieth v. Jubelirer (541 U.S. 267)
- ¹³ Whitford v. Gill (2016 WL 6837229)
- ¹⁴ www.census.gov
- ¹⁵ Former Senator Lois North interview
- ¹⁶ Ibid.
- ¹⁷ Washington State Redistricting Commission: <http://www.redistricting.wa.gov/history.asp>
- ¹⁸ <http://www.leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx>
- ¹⁹ <http://apps.leg.wa.gov/RCW/default.aspx?cite=44.05.090>
- ²⁰ Pillsbury, G. and Johannesen, J. America Goes to the Polls 2016, a report on voter turnout in the 2016 election. Prepared for Nonprofit Vote www.nonprofitvote.org, and US Elections Project. www.electproject.org
- ²¹ The United States Election Project: Voter Turnout, State Turnout Rates, 1787-2016. [electproject.org](http://www.electproject.org) <http://www.electproject.org/home/voter-turnout/voter-turnout-data>
- ²² Ibid.
- ²³ Ibid.
- ²⁴ Anderstone, Ben, Progressive Strategies NW. Information is from “Gerrymandering Ourselves”, a presentation to the Redistricting Review committee March 10, 2017.
- ²⁵ Bishop, B. (2008). The Big Sort. Why the Clustering of Like-Minded America Is Tearing Us Apart. Houghton Mifflin Company, Boston New York. 2008
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- ²⁷ Washington Secretary of State Election Results. <https://www.sos.wa.gov/elections/research/>
- ²⁸ Petry, E. (2016). How the Efficiency Gap Works, Faceoff Starts in Wisconsin Gerrymandering Case (Whitford v. Nichol). Brennan Center For Justice. www.brennancenter.org
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- ³⁸ Ibid., p.70
- ³⁹ Ibid., p. 34
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