

Where Do You Draw the Line?

A Look at Maryland's Redistricting Policy

Erin Chase, Nevin Hall, Carly Hviding, Nicholas Shenton

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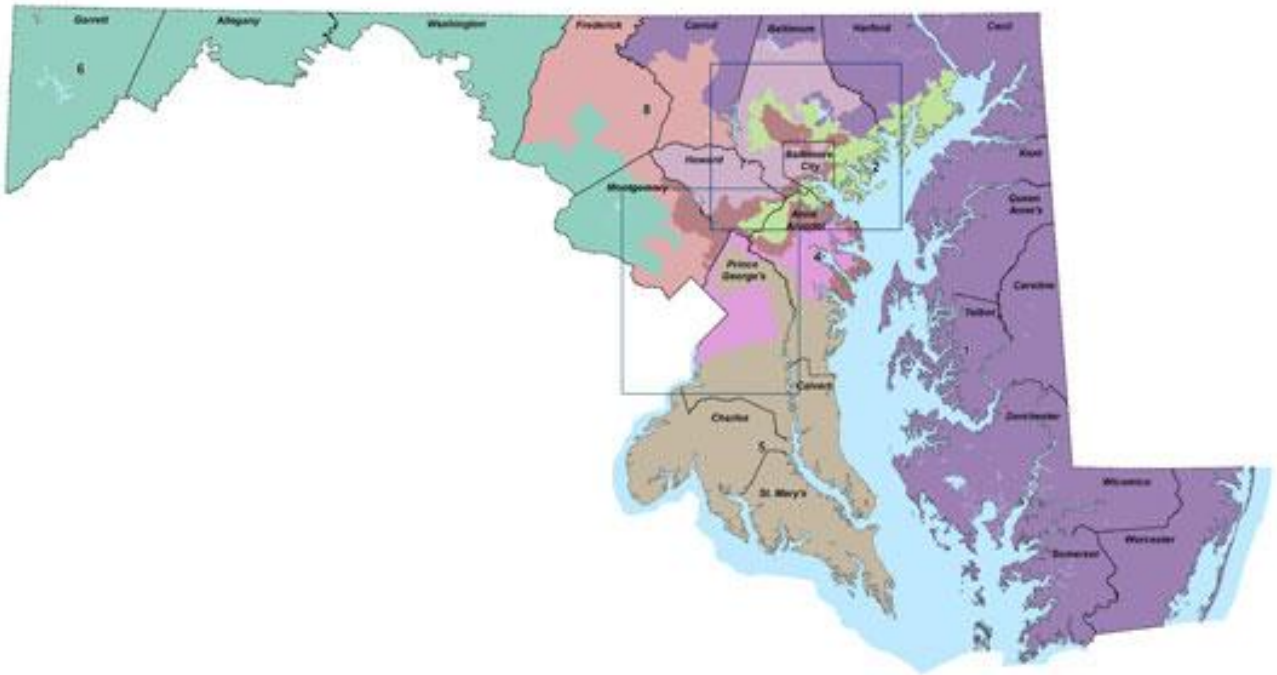


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*Governor
State of Maryland*

Hannah Schmitz

*Program Coordinator, Applied Learning
The Shriver Center at UMBC*

Roy Meyers

*Professor, Political Science Department
UMBC*

Melissa Easley

*Deputy Chief Employment Services
Department of Health and Mental Hygiene*

Joe Getty

*Chief Legislative Officer,
Governor's Office*

Andrew Ross

*Legislative Liaison and
Federal Programs Coordinator
Maryland Department of Aging*

Elena Russo

*Deputy Director of Media Communication
Maryland State Police*

Karl Aro

*Executive Director
Department of Legislative Services*

Tom Ferraro

*Volunteer Chief Writer for
Tame the Gerrymander,
Former Congressional Reporter*

Phil Andrews

*Former Montgomery County Councilmember
Former Executive Director,
Common Cause Maryland*

Justin Leavitt

*Professor of Law
Loyola Law School Los Angeles*

Nate Persily

*Professor of Law
Stanford Law School*

Executive Summary

Maryland voters are frustrated with the State's redistricting system, and the reason is obvious. One does not have to look any further than a map of congressional districts to see that districts are being drawn with a political agenda. Maryland's districts have been drawn in a way that packs districts to create a partisan advantage. The redistricting process in Maryland has a discouraging effect on State voters; it undermines Maryland's democratic system, and discourages candidates from running for office in districts that are drawn to favor a certain political ideology.

Legislators are elected to pass legislation to serve the people and to represent their constituents. The current redistricting policy enables the legislative leadership to draw district lines to protect their positions, or for the majority party to maintain power. Public opinion polls have shown that voters and citizens of Maryland of all political persuasions are opposed to the current redistricting policy. Under a new administration dedicated to changing Maryland for the better, this state has a unique opportunity to challenge the current redistricting policy, and pursue alternate means of drawing legislative and congressional districts.

States across the country have recognized and addressed problems concerning redistricting. Some states that have reformed their redistricting processes have formed redistricting commissions to help give fair representation to the voters. Arizona, California, Washington, and New Jersey are among some of the states that have reformed the redistricting process so that a state's majority political party does not draw the district lines to favor the party in control. This paper recommends the implementation of an independent redistricting commission in Maryland in order to reform the redistricting process to better serve the needs of Maryland voters.

Problem Definition

The current model that Maryland uses to redistrict congressional and legislative districts leads to unfair and unbalanced elections, resulting in voters feeling that their votes are worthless. According to the Cook Political Report, Maryland voters as a whole vote ten percentage points more Democratic than the rest of the country.¹ Maryland's districts, however, show a different, more extreme trend in favor of Democrats. After the most recent redistricting cycle, Maryland's districts were drawn to dilute the influence of Republican (the minority party) votes. Maryland's first district, for example, is packed with the State's Republicans, and according to the Cook Political Report, this district has a 14 percentage point Republican-lean. Maryland's other seven districts are drawn to have a partisan lean between 4 and 26 points more Democratic. The data in Chart 1 below shows the partisan lean of Maryland's Congressional districts. The redistricting process has allowed for the packing of Republican voters into Maryland's first district and diluting Republican influence in other districts.² This process can be seen throughout the country where the redistricting process is controlled by elected officials and districts are drawn to protect incumbents and favor the state's majority party. Whoever controls the state, whether Republican or Democrat, across the country, redistricting practices are abused.

MD 1	HARRIS, ANDY (R)	R+14	72
MD 2	Ruppersberger, 'Dutch' (D)	D+10	326
MD 3	Sarbanes, John P. (D)	D+ 9	320
MD 4	Edwards, Donna F. (D)	D+26	401
MD 5	Hoyer, Steny H. (D)	D+14	348
MD 6	Delaney, John K. (D)	D+ 4	268
MD 7	Cummings, Elijah E. (D)	D+24	397
MD 8	Van Hollen, Chris (D)	D+11	331

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Citizens of Maryland have expressed their frustration with the current system for redistricting. Recent poll data show that 72% of Marylanders would prefer a redistricting system where districts are determined by an independent commission, as opposed to 23% of Marylanders who prefer having elected officials draw the lines.⁴ Maryland's congressional

¹ "Partisan Voter Index By State 1994-2014." *Cook Political*. 2013. Web. 27 July 2015.

² "Partisan Voting Index: Districts of the 113th Congress." *Cook Political Report*. 2013. Web. 27 July 2015.

³ Ibid.

⁴ Goucher Poll. 2015. "Goucher Poll Releases Results on Politician Approval Ratings, Local Presidential Hopefuls, Transportation, Vaccines, and the Environment." *Goucher College*.

district maps have been consistently challenged in court through multiple redistricting cycles, helping to show that the lines drawn create controversial districts.

Causal Model

The origin of redistricting for political gain, informally known as gerrymandering, can be traced back to the process in which Massachusetts Governor Elbridge Gerry redrew the map of the State's Senate districts in a dramatic and unusual fashion that resembled a salamander. In doing so, he effectively weakened the representation of his opposing party throughout the State.⁵ Since then, this process has not been drastically modified.

The intent of partisan redistricting is to assure the preservation of political dominance for one party and maintain incumbency. When districts are gerrymandered to favor a political party, the minority party can lose influence in two ways. The idea of the "excess vote" occurs when one or two districts are drawn to concentrate large numbers of the minority party. The minority party will then win Congressional seats in those districts, but the party then loses all influence in other districts. The "wasted vote" occurs when districts are drawn to dilute the influence of the minority party. Members of the minority party are spread across many different districts so that the ratio of majority to minority voters diminishes possible influence of the minority party. Subsequently, these voters lose their sense of political influence and may choose not to vote because they do not believe that their vote makes a difference in elections.⁶

This phenomenon is cyclical in that the dominant political faction will either sustain the redistricted regions or redraw them in accordance with changes in populations to combat population disparities. In doing so, political parties and a portion of a state's citizenry will be underrepresented in the nation's legislature. The practice of gerrymandering enables incumbents who are "safe" in their districts to take extreme political positions that do not reflect the views of their constituents.

Gerrymandering did not end with Elbridge Gerry in the 19th century. It continues today, and is a serious issue for Maryland voters. Maryland needs to follow the lead of other states that

<http://www.goucher.edu/Documents/Polisci/hughes/Goucher%20Poll%20Wednesday%20Feb%2025%20Release%20FINAL.pdf> (July 1, 2015).

⁵ Lalor, John. "Cyclopædia of Political Science, Political Economy, and the Political History of the United States." *Lalor, Cyclopaedia of Political Science, V.2, Entry 110, GERRYMANDER*. Web. 27 July 2015.

⁶ Murray, Mike. "Political Extremism, Salamanders, and Computer Programs: Gerrymandering in the House." *Princeton University*. 1 Oct. 2004. Web. 27 July 2015.

are addressing this problem. Of the solutions that other states have turned to in order to reform the redistricting process, commissions appear to have been the most effective in reducing the frequency of gerrymandering and drawing districts that more accurately represent the population.

Current Policy

Current redistricting policy varies from state to state and is determined by the individual state's redistricting policy for both congressional and legislative districts. Congressional districts are drawn in the year following the U.S. Census using the census data and the requirements specified in federal law. Federal redistricting law requires that congressional districts are drawn with equal population and without disadvantaging racial minorities. State legislative districts are drawn using the individual state's requirements.

Redistricting in Maryland

The U.S. Constitution and the State Constitution require Maryland to redraw the congressional and state legislative district lines every ten years, following the decennial census. The U.S. Constitution requires that congressional districts should be as equal in population as practicable, requiring strict equal population ratios in each district.⁷ The Voting Rights Act of 1965 (VRA) is a crucial piece of legislation that has substantial impact on the redistricting process. Section 2 of the VRA provides that racial minorities cannot be intentionally or unintentionally put at a disadvantage due to redistricting, potentially causing discrimination.⁸ In order to avoid this VRA violation, majority-minority districts can be created, where districts are drawn that contain a majority of minority persons.

Maryland's governor is not required to submit a congressional plan, since the power is vested within the General Assembly. However, the redistricting advisory commission (which typically includes the Senate President and the House Speaker, is established by the Governor) usually submits a plan. This plan is then submitted by the Governor to the General Assembly as a

⁷ GAM - Redistricting. 2012. "Reapportionment and Redistricting." <http://mgaleg.maryland.gov/Other/Redistricting/Redistricting.htm> (July 1, 2015).

⁸ All About Redistricting. 2015. "Where are the lines drawn?" *Loyola Law School* <http://redistricting.lls.edu/where.php> (July 3, 2015).

part of the redistricting legislation. While the commission's plan is usually adopted, any member in the legislature is eligible to propose a plan to be voted on.⁹

Review of States with Independent Commissions

Arizona

In 2000, the Arizona Independent Redistricting Commission (AIRC) was created following passage of Proposition 106, a ballot initiative that amended the Arizona Constitution.¹⁰

The amendment created a five-person commission to redraw the congressional and legislative district lines after each decennial census. The initiative to create the AIRC was spearheaded by citizens who felt that Arizona state legislature, which was previously responsible for drawing the lines, acted in a partisan manner that benefited politicians more than the voters.

The commission is intended to have a balanced partisan composition. Each commissioner must meet certain criteria to be eligible for appointment. This criteria states that all commissioners cannot have been a candidate for, or appointed to, any public office; a political party officer; a paid lobbyist; or an officer for a candidate's campaign committee, within the last three years prior to appointment. In addition, each member of the commission must be a registered voter, and affiliated with the same political party for at least the past three years.¹¹

Citizens who meet the eligibility criteria for the commission are then encouraged to apply to serve as a commissioner. Arizona's Commission on Appellate Court Appointments is then tasked with nominating ten Republicans, ten Democrats, and five unaffiliated individuals. From these 25 applicants, the majority and minority leaders in the legislature each pick one individual to serve on the commission. The four commissioners then select a chair, who does not share a political party identification with any of the other commissioners.¹²

California

In 2008, California voters approved a ballot initiative creating the Citizens Redistricting Commission (CRC), an independent redistricting commission. The CRC is composed of 14

⁹ "What is Redistricting" 2010. Maryland Department of Legislative Services. <http://mgaleg.maryland.gov/Other/Redistricting/RedistrictBookletPrintable2010.pdf> (July 2, 2015).

¹⁰ Arizona Independent Redistricting Commission. 2011. "Frequently Asked Questions" <http://azredistricting.org/About-IRC/FAQ.asp> (July 5, 2015).

¹¹ All About Redistricting. 2015. "Arizona." *Loyola Law School*. <http://redistricting.lls.edu/states-AZ.php> (July 6, 2015).

¹² Ibid

commissioners, who all meet specific requirements. In order to be considered as an applicant for the CRC, an individual must have voted in the last two of three statewide elections, and have maintained the same party affiliation for at least the last five years. Commissioners and their immediate family cannot be have been appointed to or elected to a state or federal position; member of a party's central committee; an officer, employee, or paid consultant for a state or federal candidate or party; a registered lobbyist or paid legislative staff; or a donor of \$2,000 or more to any elected political candidate.¹³

Individuals who are interested in serving as a member of the commission are encouraged to submit an application. After the application period closes, a panel of state auditors is charged with selecting 20 Republicans, 20 Democrats, and 20 who are unaffiliated or affiliated with a third party. The panel is expected to select members of the pool based on analytical skills, a demonstrated appreciation for California's diverse demography, and ability to be impartial.¹⁴ From these 60 applicants, each of the four state legislative leaders are authorized to strike two people from the three pools. The first eight commissioners are then selected by a random draw. The eight commissioners are then tasked with selecting the remaining six members from the applicant pool.¹⁵ This brings the CRC to 14 members, five Democrats, five Republicans, and four unaffiliated/third-party.

Once the Commission has created new maps, a vote is held to pass the proposed districts. In order for the maps to pass, nine votes are necessary, three from Democrats, three from Republicans, and three from unaffiliated/third party members.¹⁶

Washington

Washington reformed the State's redistricting process through Constitutional Amendment in 1983. Since having the bipartisan commission, Washington has been through three redistricting cycles: 1991, 2001, and 2011. In Washington State, each house and senate caucus leader of the state legislature appoints one commission member to serve on a bipartisan redistricting commission. The four commission members then work together to choose a fifth,

¹³ All About Redistricting. 2015. "California" *Loyola Law School*. <http://redistricting.lls.edu/states-CA.php> (July 6, 2015).

¹⁴ California Citizens Redistricting Commission. 2014. "Background on the Commission" <http://wedrawthelines.ca.gov/commission.html> (July 6, 2015).

¹⁵ Ibid

¹⁶ Ibid

non-voting, non-partisan chairperson of the commission. Eligible commission members are any registered voter meeting the criteria the amendment has outlined:

- 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 official,
- Has not 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,
- Will not campaign for a state legislative office or for Congress for two years after the new redistricting plan takes effect.¹⁷

When drawing district lines, the bipartisan commission members must abide by the following criteria:

- Encompass, as nearly as can be done (or is “practicable”) equal numbers of people.
- Comply with the Voting Rights Act to ensure that minorities have an equal opportunity to elect representatives of their choice.
- Make sure that parts of a district are not physically separated.
- Make sure that, to the extent possible, boundaries of cities, counties, neighborhoods and communities that have common interests are respected, and their division minimized.
- Make sure they do not favor or discriminate against any incumbent, candidate, or political party.¹⁸

The redistricting plan drawn by the bipartisan commission must be approved by three of the four voting commission members. The legislature has 30 days after the beginning of the next legislative session to submit an amended plan, or the commission’s plan becomes final. If the legislature chooses to amend the proposed plan, they cannot change any district boundary line by no more than 2% of a district’s population, and this plan must be approved by two-thirds of the members of each legislative chamber. The Governor of Washington cannot veto the redistricting

¹⁷ "Frequently Asked Questions." *Washington State Redistricting Commission*.
<http://www.redistricting.wa.gov/faq.asp> (July 28, 2015.)

¹⁸ "Frequently Asked Questions." *Washington State Redistricting Commission*.
<http://www.redistricting.wa.gov/faq.asp> (July 28, 2015.)

plan. If the commission does not complete a plan by January 1 of the year following the release of U.S. Census data, the State Supreme Court must prepare a plan by March 1 of the same year.¹⁹

New Jersey

New Jersey employs a politician commission to draw both its congressional and legislative districts. The congressional commission consists of 13 members, who are to be appointed to represent the demographics of the State. Each of the State's legislative leaders and the chairs of the two major political parties nominate two members, totaling six Democrats and six Republicans. The nominees cannot hold an elected congressional office or be employed in Congress. The first twelve commissioners then select the thirteenth commissioner to serve as the chair. The chair is not permitted to hold a party or public office in the State within the past five years. If the commissioners are unable to select a chair, then they must send two names to the State Supreme Court, which will choose the thirteenth commissioner.²⁰ The full commission is then tasked with drawing up the congressional districts. If the commission is unable to agree on one plan, then two plans must be submitted to the State Supreme Court, which choose one of the two plans to enact.²¹

Recent Supreme Court Decision Affirms Independent Commission for Redistricting

The U.S. Supreme Court issued a decision in June in the case of *Arizona State Legislature v. Arizona Independent Redistricting Commission*. The Arizona State Legislature was arguing that an independent redistricting commission violated the Elections Clause of the U.S. Constitution. The clause reads, "Times, places and manner of holding elections for...representatives shall be prescribed in each state by the legislature thereof."²² The Court had to determine whether the Legislature had standing, and if the voters have the right to transfer the power of redistricting from the legislators to an independent commission. The issue became a matter of whether or not the Legislature was injured by the change in law, and what constitutes

¹⁹ Ibid.

²⁰ All About Redistricting. 2015. "New Jersey" *Loyola Law School*. <http://redistricting.lls.edu/states-NJ.php> (July, 7 2015).

²¹ New Jersey Redistricting Commission. 2012. "About the NJ Redistricting Commission" <http://www.njredistrictingcommission.org/aboutredistricting.asp> (July 7, 2015).

²² Brennan Center for Justice. 2015. "Arizona State Legislature v. Arizona Independent Redistricting Commission (Amicus Brief) Brennan Center for Justice. (July 28, 2015).

“the legislature.” The State legislature claimed that having AIRC passed by unelected citizens injured them by taking power away from them, and that the U.S. Constitution had intended a literal interpretation of the word “legislature” to mean the official lawmaking body. The Arizona Independent Redistricting Commission argued that the Legislature was not injured by the law change, and that the legislature as a part of Arizona cannot argue how the powers of institutions are divided in the State. The Arizona Independent Redistricting Commission also argued that the U.S. Constitution did not intend for the word “legislature” to apply only to the official lawmakers, but instead meant for it to include the voters’ power to make laws.²³

In the final court decision, the majority opinion focused on how the use of independent commissions addresses partisan gerrymandering and has led to more competitive districts. The support for independent commissions influenced the Court’s decision to expand the interpretation of the phrase “state legislature.” The Supreme Court preserved AIRC by expanding the definition of the “legislature” in the Constitution.²⁴

This decision is important when considering redistricting reform in Maryland because the Supreme Court has ruled that independent redistricting commissions are constitutional.

Recommendation: A New Plan for Maryland

Based on a comprehensive analysis of what other states have done to solve the problem posed by the redistricting process, it is recommended that Maryland adopt a new plan. A constitutional amendment should be passed that creates a redistricting commission that meets the following criteria.

Commission Members

The commission should be made up of 12 total members, eleven commissioners and a chair. The partisan breakdown shall be five Democrats, five Republicans, and two unaffiliated/third party. To be eligible to serve on the commission, members must meet the following qualifications:

- Maryland resident for at least ten years.

²³ Mann, Thomas E. 2015. "Arizona State Legislature v. Arizona Independent Redistricting Commission, Et Al." *The Brookings Institution*. June 29(July 28, 2015).

²⁴ Arizona Independent Redistricting Commission. 2011. “Frequently Asked Questions” <http://azredistricting.org/About-IRC/FAQ.asp> (July 5, 2015).

- At least eighteen years of age.
- Registered voter that has not changed political party affiliation within the past four years.
- Cannot have held any elected or appointed office within the past ten years, with the exception of the members appointed by the Governor, Majority Leaders of the House of Delegates and Maryland Senate, and the Minority Leaders of the House of Delegates and Maryland Senate.
- Cannot be a direct relative of anyone that currently holds elected or appointed office.
- Cannot be a registered lobbyist.
- Cannot be an officer of a political party.
- Cannot be an officer of a campaign entity.
- Cannot be directly employed by an elected official.
- Cannot have contributed \$2000 or more to any candidate running for political office within the past two election cycles.

The selection of the commission is through application and appointment. The applications should be processed and vetted by the Maryland Court of Appeals. The Court of Appeals should be charged with vetting the applications with a strong regard for each applicant's ability to be impartial, analytical, and exhibit diversity that mirrors the State. This selection criterion would be somewhat similar to California's. Following the vetting process, the Court of Appeals will appoint six commissioners. The appointment power will then shift to the Governor, Majority leaders of the House of Delegates and State Senate, and the Minority leaders of the House of Delegates and State Senate. The Governor will be responsible for appointing two more commissioners, the Majority leaders will work together to appoint two commissioners, and the Minority leaders will collaborate to appoint two commissioners. This brings the total number of commissioners to 12. It is important to note that when the Governor and Majority and Minority leaders are appointing commissioners, they are allowed to appoint members who have run or held elected office, although they are not required. Elected officials, and those who have run for office are likely to better understand the redistricting process, and the need for fairly drawn districts that do not exhibit qualities of gerrymandering.

These 12 members of the commission must work together to choose the chair of the commission by selecting one of their own. The commissioner that is selected will be responsible for ensuring that the criteria for drawing districts is followed, and that federal provisions are properly employed. The chair will serve as a tie-breaking vote, should it be necessary. If the commission members are unable to choose a commission chair, they shall send two names to the Court of Appeals, who will be tasked with selecting the chair.

The commission will remain in place until the maps are finalized and adopted by the state. At this time, the commission will be dissolved. The next redistricting cycle will take place after the following U.S. Census and a new commission should be created using the same process.

Drawing Districts

This paper recommends that the State criteria adopted for Congressional Districts abides by federal law and the following criteria:

- Must be contiguous.
- Must be compact when possible.
- Must incorporate majority-minority districts as necessary.
- Must be based on communities of interest (defined as including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible).
- Must attempt to keep municipalities from being split between districts.

It is important to take into consideration Maryland's shape and population concentrations when using criteria such as "compact." The shape of Maryland poses unique geographic challenges if the commission were to be charged with drawing compact districts. Unlike the redistricting reform that took place in Iowa, Maryland is limited by the State's shape and compact districts would not necessarily protect voters or communities of interest based on population sizes. While other states have used criteria promoting compact districts to restrict gerrymandering, Maryland's shape and population concentrations may not allow for perfectly compact districts to be drawn.

Once the map has been drawn, the commission must pass the map with a simple majority vote. If a tie occurs, the chair will serve as the tie-breaking vote. Following the passage of the maps, the plan should be submitted to the General Assembly for approval.

Use of Political Data

One of the main objectives of the commission is to create fair electoral districts that give voters a voice and adequate representation, a vision that could be lost should the body be permitted to use political data. If the commission can use information such as poll data, voter registration data, and voter turnout data, it could allow the commissioners the ability to create districts that embody certain characteristics, continuing and reinforcing the cycle of gerrymandering. Under this proposed policy, all commission members would be barred from utilizing the data previously described. The elimination of such data from the commission would help to reiterate the fundamental purpose of restoring the voters' sense of political efficacy. This data should not be used during commission meetings or outside of official commission business. While it is impossible to ensure that the commissioners will not find this data outside of commission meetings and business, the commissioners should do their best to not be influenced by that data to the extent that it would impact the drawing of maps.

Legislative Power and Influence

Currently, Maryland has as Republican governor, and a Democratically controlled legislature. Both the Governor and Maryland General Assembly enjoy having control over the redistricting process, and neither may be willing to fully hand over the power. The Governor and Legislature are able to maintain some control over the process during the selection of the commissioners, but will also be able to have some influence once the commission submits maps. Once the commission has submitted its map, legislators could change the population of a district using an amendment, but by no more than 2%, while maintaining the necessary population quotas. If the General Assembly decides to employ this power, it must be approved by a 2/3 vote, and the alterations must be justified and released through a published public statement. This legislative power would mirror that of Washington State's.²⁵ The maps are not required to be amended; however, an amended plan must be passed by the 45th day of sessions, or else the commission's map becomes law. The Governor is not eligible to exercise the executive veto.

²⁵ All About Redistricting. 2015. Washington" Loyola Law School. <http://redistricting.lls.edu/states-WA.php> (July 20, 2015).

Maintaining Transparency

Transparency is an important matter for the State, and the redistricting process should be a fairly public matter, allowing for voters to feel that they can influence the process, while maintaining government accountability. In previous redistricting cycles, many of the discussions surrounding the creation of new congressional maps were held behind closed doors, leaving the voters in the dark about the process. During the O'Malley Administration, the Governor created the Governor's Redistricting Advisory Commission, which did not have to abide by the Open Meetings Act, since it was not established with an executive order. This gave the Commission the ability to create the 2012 maps behind closed doors, only requiring that the Commission hold public hearings.²⁶ In future redistricting cycles, and with the adaptation of a redistricting commission, public hearings would be required, and conducted across the State, permitting the public to give opinions and input on the maps. There should be a minimum of six public hearings: in Western Maryland, Washington-metropolitan region, Southern Maryland, the Eastern Shore, Annapolis, and Baltimore City. More public hearings could be conducted, but the commission must meet the minimum of six. In addition, the commission should be mandated to abide by the Open Meetings Act. Following the Open Meetings Act would still allow the commission to meet privately behind-closed-doors, if necessary. Furthermore, all public hearings that are conducted shall provide an interpreter to encourage non-English speaking voters to express their opinions and give their feedback. The hearings shall also be recorded, and transcribed if deemed necessary.

Funding

The commission will need to be funded appropriately, and would be best funded through the Governor's budget. Adequate funding will need to be required to defend the proposed maps in the legal setting, since litigation surrounding the maps will likely surface. If enough funding is not appropriated to the commission, the legal battles that emerge could render the commission defunct, enabling another entity the ability to create maps.²⁷

²⁶ Lazarick, Len. 2012. "Commentary: Redistricting map is a stain on the political process." *Maryland Reporter*. October 26. <http://marylandreporter.com/2012/10/26/commentary-redistricting-map-is-a-stain-on-the-political-process/> (July 21, 2015).

²⁷ Cain, Bruce E. 2012. "Redistricting Commissions: A Better Political Buffer?" *Yale Law Journal* 121(7). May. http://www.yalelawjournal.org/pdf/1081_q3w7vqgt.pdf (July 20, 2015).

Drawbacks

Redistricting commissions may not be the ultimate answer when addressing the issue of gerrymandering and partisan redistricting. Implementing and utilizing a commission will not necessarily guarantee that districts will be drawn equally, fairly, and free of gerrymandering. Even with a commission in place, there is no guarantee that legislative influences will not impact the maps, as it can be difficult to fully remove the influence of elected officials from the process. Furthermore, the likelihood of litigation surrounding proposed maps will not likely experience a decrease, and it is imperative that enough funding be established for the commission.²⁸ Without adequate funding, the commission may be unable to fight legal battles, which could render it defunct. Perhaps, most importantly, it is critical to recognize that even with a commission, the political battles surrounding district maps may never cease, since no matter how a map is drawn, not everyone can be pleased, including political parties, incumbents, special interests groups, etc.²⁹

Additional Considerations

The commission could be created through various avenues, mainly through statute or constitutional amendment. The avenue chosen could impact how the commission evolves. Should the commission be created by legislation making it statute, the General Assembly would have the ability to alter and tamper with the commission by submitting and passing legislation in future legislative sessions. Creating the commission through a constitutional amendment would be more difficult, since it would require that the voters ratify the amendment by a simple majority using a referendum on the next ballot. Should the State seek to create the commission with a constitutional amendment, the wording and interpretation of the question on the ballot will be crucial. Although more difficult, creating the commission through a constitutional amendment would help insulate the commission from legislative pressures.

Redistricting is a political process by nature, but the politics of redistricting need not determine the outcome of elections. According to Bruce Cain, New Jersey has created a plan that, rather than ignoring the political influences of redistricting, reduces the partisan impact on district lines and channels the partisan influence into competitive elections. Having a politically

²⁸ Ibid.

²⁹ Cain, Bruce E. 2012. "Redistricting Commissions: A Better Political Buffer?" *Yale Law Journal* 121(7). May. http://www.yalelawjournal.org/pdf/1081_q3w7vqgt.pdf (July 20, 2015).

neutral commission is unlikely and unrealistic. Giving political or partisan figures some influence in the process by having them take part in the commissioner selection process could potentially serve as a buffer in the redistricting process.³⁰ When selecting members to serve as a part of the commission, some power could be given to certain political figures in the State, such as the Governor, presiding officers in the House of Delegates and Maryland Senate, along with the majority and minority leaders in both chambers. Giving these politicians the opportunity to help select the members or a certain amount of members would give the Legislature more influence on the process, which could increase the likelihood of a commission that would pass the House and Senate, and remain fully functioning. A concern then rises surrounding the potential for strong political influences within the process, which is what the commission largely seeks to avoid.

The creation of a redistricting commission in Maryland opens the door for a multitude of individuals and organizations to become involved in the process. It would be wise for the commission to include a variety of voices from within the State, and could consider requiring representation from certain groups, such as Common Cause, academic experts, undergraduate and/or graduate students that exhibit an interest and broad depth of knowledge on the topic, representatives from the Maryland Municipal League (MML) and the Maryland Association of Counties (MACO), League of Women Voters, among many more experts.

If Maryland seeks to establish a redistricting commission in time for the 2022 election cycle, the State needs to consider the timing necessary to create a fully functional commission. Since there will be elections occurring in 2022, maps will need to be adopted early in 2022. In order to meet all necessary electoral deadlines, the commission members should be chosen in late 2020 prior to the release of the Census data in February/March of 2021. Once the data is released to the commission, the data could be manipulated, allowing for maps to be drawn in an appropriate amount of time. Adequate time must be set aside to allow for the public hearings throughout the State. A special session may be necessary to allow for implementation of congressional maps.

Another characteristic that Maryland could consider for a redistricting commission would be to allow the commission to submit a map, and if the General Assembly should refuse to adopt

³⁰ Cain, Bruce E. 2012. "Redistricting Commissions: A Better Political Buffer?" *Yale Law Journal* 121 (7). May. http://www.yalelawjournal.org/pdf/1081_q3w7vqgt.pdf (July 20, 2015).

the map, the commission could draw another map. This mirrors aspects of the Iowa plan, where the legislature is permitted to refuse up to two maps submitted by the commission, both of which cannot be amended. The third map submitted by the commission can be altered by the legislature, and should the legislature reject the third map, it has the ability to create its own maps. While the legislature does have the discretion to create its maps after three rejected plans, the legislative body has never employed this power.³¹ This is a model that Maryland could potentially follow, allowing the General Assembly to retain some of the power in the redistricting process.

In addition to creating a redistricting commission to draw congressional districts, a commission could also be established to draw the State's legislative districts. Utilizing commissions for both sets of districts would help to encourage fair districts throughout the State at all levels.

Summary of Recommendations

1. Propose a Constitutional Amendment establishing an independent redistricting process.
2. Establish a redistricting commission in the year following the U.S. Census that is responsible for drawing district lines.
3. Modify criteria used when drawing congressional districts.

Conclusion

After years of adopting maps that are severely gerrymandered, diminishing the voter's voice, Maryland now has the opportunity to move forward with change. By reforming the State's current redistricting policy, and substituting it with an approach that would restore faith in the redistricting process, and giving Marylanders the voice that they deserve. The establishment of a redistricting commission in time for the redistricting cycle in 2021 would change Maryland for the better, and help influence other states to make the right choice in redistricting reform.

³¹ All About Redistricting. 2015. "Iowa" *Loyola Law School*. <http://redistricting.lls.edu/states-IA.php#institution> (July 30, 2015).

References

- All About Redistricting. 2015. "Washington" Loyola Law School.
<http://redistricting.lls.edu/states-WA.php> (July 20, 2015).
- Arizona Independent Redistricting Commission. 2011. "Frequently Asked Questions"
<http://azredistricting.org/About-IRC/FAQ.asp> (July 5, 2015).
- Brennan Center for Justice. 2015. "Arizona State Legislature v. Arizona Independent Redistricting Commission (Amicus Brief) Brennan Center for Justice. (July 28, 2015).
- SCOTUSblog RSS. 2015. "Arizona State Legislature v. Arizona Independent Redistricting Commission". <http://www.scotusblog.com/case-files/cases/arizona-state-legislature-v-arizona-independent-redistricting-commission/> (July 28, 2015).
- Cain, Bruce E. 2012. "Redistricting Commissions: A Better Political Buffer?" *Yale Law Journal* 121 (7). May. http://www.yalelawjournal.org/pdf/1081_q3w7vqgt.pdf (July 20, 2015).
- California Citizens Redistricting Commission. 2014. "Background on the Commission"
<http://wedrawthelines.ca.gov/commission.html> (July 6, 2015).
- Cook Political Report. 2013. "Partisan Voter Index By State 1994-2014."
<http://cookpolitical.com/file/filename.pdf> (July 27, 2015).
- Cook Political Report. 2013. "Partisan Voting Index: Districts of the 113th Congress."
<http://cookpolitical.com/file/2013-04-49.pdf> (July 27, 2015).
- "Frequently Asked Questions." *Washington State Redistricting Commission*.
<http://www.redistricting.wa.gov/faq.asp> (July 28, 2015.)
- GAM - Redistricting. 2012. "Reapportionment and Redistricting."
<http://mgaleg.maryland.gov/Other/Redistricting/Redistricting.htm> (July 1, 2015).
- Goucher Poll. 2015. "Goucher Poll Releases Results on Politician Approval Ratings, Local Presidential Hopefuls, Transportation, Vaccines, and the Environment." *Goucher College*.
http://www.goucher.edu/Documents/Poli_Sci/hughes/Goucher%20Poll%20Wednesday%20Feb%2025%20Release%20FINAL.pdf (July 1, 2015).
- Lalor, John. "GERRYMANDER." *Cyclopædia of Political Science, Political Economy, and the Political History of the United States*. "Lalor, Cyclopædia of Political Science, V.2, Entry 110. (July 27, 2015).

- Lazarick, Len. 2012. "Commentary: Redistricting map is a stain on the political process." Maryland Reporter. October 26. <http://marylandreporter.com/2012/10/26/commentary-redistricting-map-is-a-stain-on-the-political-process/> (July 21, 2015).
- Mann, Thomas E. 2015. "Arizona State Legislature v. Arizona Independent Redistricting Commission, Et Al." *The Brookings Institution*. June 29(July 28, 2015).
- Murray, Mike. 2004. "Political Extremism, Salamanders, and Computer Programs: Gerrymandering in the House." Princeton University. October 1 (July 27, 2015).
- New Jersey Redistricting Commission. 2012. "About the NJ Redistricting Commission" <http://www.njredistrictingcommission.org/aboutredistricting.asp> (July 7, 2015).
- "What is Redistricting" 2010. Maryland Department of Legislative Services. <http://mgaleg.maryland.gov/Other/Redistricting/RedistrictBookletPrintable2010.pdf> (July 2, 2015).