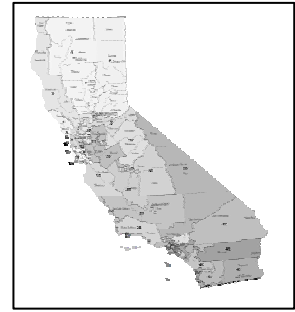


Redistricting in California

Justin Levitt

CALIFORNIA
(status quo)



KEY POINTS:

California redistricting is governed by Article XXI of the state constitution, modified significantly in 2008 by a ballot initiative that will first be effective for the 2011 redistricting process. The state legislature will draw congressional districts, subject to gubernatorial veto. An independent fourteen-member citizens' commission will draw the state legislative districts; the first eight members of the commission are chosen randomly from pools of vetted applicants sorted by partisan affiliation, and those eight choose the other six. Both congressional districts and state legislative districts must be contiguous, preserve political boundaries (including neighborhoods and communities of interest) where possible, and encourage compactness where practicable; in state legislative districts, candidate residences may not be considered, and districts may not be drawn to favor a candidate or party. Each state legislative map is also subject to a popular referendum.

PROCESS:

Congressional districts are drawn by the state legislature, subject to gubernatorial veto.

State legislative plans are drawn by an fourteen-member commission chosen from a pool of applicants vetted by state auditors. Assuming that Democrats and Republicans are the largest political parties, the auditors choose 20 Democrats, 20 Republicans, and 20 who are neither; the four legislative leaders may each cut two people from each pool. Eight commissioners (3 Democrats, 3 Republicans, 2 neither) are chosen randomly from the remaining nominees; those eight choose six colleagues (2 Democrats, 2 Republicans, 2 neither). The final commission will thus have 14 members (5 Democrats, 5 Republicans, 4 neither).

For the commission drawing state legislative districts, commissioners must have voted in at least two of the last three statewide elections, and may not have changed party affiliation for at least five years. Neither commissioners nor immediate family may have been, within ten years of appointment, a candidate for federal or state office or member of a party central committee, or an officer, employee, or paid consultant to a federal or state candidate or party; a registered lobbyist or paid legislative staff; or a donor of more than \$2,000 to an elected candidate. Furthermore, neither commissioners nor immediate family may be staff, consultants, or contractors for state or federal government while serving on the commission. Commissioners are also not eligible for elected federal, state, county or city office for the ten years after lines are drawn; or to be appointed to federal, state, or local office, serve as paid legislative staff, or register as a federal, state, or local lobbyist for five years after lines are drawn.

For state legislative plans, a map passes if it gets nine commissioners' votes: 3 Democrats, 3 Republicans, and 3 neither. The map for each legislative house is subject to public referendum. If the commission fails to pass a map for any house, the California Supreme Court will select special masters to draw that map.

Commission proceedings are subject to the state Open Meetings Act; commission records, redistricting data, and computer software will be available to the public. Both the commission and the legislature must issue public reports after drawing the plans for state legislative or congressional districts, explaining their decisions.

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- **Independence from Legislators:** Though the legislative leadership has some role in screening some of the potential commissioners from the applicant pool, the commission's screening criteria almost certainly remove those likely to be most beholden to particular legislators, including the leadership.
- **Partisan Balance:** The structure of the commission provides a partisan balance among the commissioners.
- **Minority Participation:** The state auditors must assemble the pool of potential commissioners considering the diversity of the state, and the six commissioners chosen by their commissioner colleagues must also be selected considering the diversity of the state. The random selection process for the first eight commissioners, however, limits the extent to which diversity will be possible to control overall.
- **Public Input:** Meetings of the commission are open to the public, and the commission is required to hold public hearings to solicit input both before and after drawing proposed maps. The commission must also make redistricting data and software available to the public.
- **Timing:** Before the law was changed in 2008, state law had been construed to prohibit drawing both congressional and state legislative districts more than once per decade. The 2008 amendments retained some of the same language, but in different context; it is likely, but not certain, that the law would now be construed to continue the prohibition on drawing lines more than once per decade.

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CRITERIA:

Congressional districts and state legislative districts are mostly subject to the same requirements. In addition to federal constitutional and statutory limitations, expressly incorporated in state law, districts must be contiguous. To the extent possible, they must also preserve the geographic integrity of cities, counties, cities and counties, neighborhoods, and communities of interest. To the extent practicable, and where so doing does not violate higher-priority constraints, districts must also encourage compactness, defined by lines that do not bypass nearby population in favor of more distant population.

Several additional requirements also govern state legislative districts. Where practicable, and where not in conflict with the criteria above, state Senate and state Assembly districts must be nested within each other. Moreover, for state legislative districts, candidate residences may not be considered, and districts may not be drawn to favor or discriminate against a candidate or party.

- **Population Equality:** The law allows some population disparity; some residents' votes may be more valuable than others, though the flexibility leaves room to keep political entities or communities together. There is also no express provision to determine whether the state must rely on the count conducted by the federal census (which counts incarcerated persons where they are incarcerated, skewing representation).
- **Minority Rights:** There is no provision expressly protecting minority rights in state legislative or congressional districts beyond federal law, although the provisions protecting communities of interest may provide such protection in practice.
- **Compactness:** Districts must be compact, measured by proximate population, where compactness would not interfere with federal law or the geographic integrity of political entities or communities of interest.
- **District Competition:** There is no provision expressly encouraging or discouraging competition within a district, though it is possible that provisions against favoring a political party in state legislative districts will be interpreted to foster competition.
- **Statewide Partisan Balance:** There is no provision expressly encouraging or discouraging statewide partisan balance, though it is possible that provisions against favoring a political party in state legislative districts will be interpreted to limit substantial statewide partisan imbalance.
- **Preservation of Political Boundaries:** Districts must follow city and county boundaries where possible.
- **Communities of Interest:** Districts must preserve neighborhoods and communities of interest where possible.
- **Nesting:** Where doing so does not interfere with other priorities, state legislative districts must be nested, tying each state house's districts to each other. The nesting requirement marginally restricts flexibility in designing districts, but marginally increases the ease of election administration.
- **Incumbent Residence:** Commissioners are prohibited from considering the residences of incumbents in drawing state legislative districts. This reduces the likelihood of intentional harm (or benefit) to individual legislators, but also poses the potential for unintentional impact on incumbents.