

Arizona Redistricting

A Perspective on the Process



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“For those of us demented souls who find vicarious nourishment in the game of politics, the redistricting morass is an epicurean feast,” wrote political scribe John Kolbe for *The Phoenix Gazette* in 1981.¹

Kolbe was writing about a process that takes place every 10 years, following each decennial census, when Arizona and all other states must change the boundary lines of the districts out of which members of the state Legislature and the U.S. House of Representatives are chosen. How this function is performed, and the districting maps it produces, are of considerable interest to political parties and candidates and considerable significance to representation, state politics and policy.

This commentary focuses on the performance of the five-member Arizona Independent Redistricting Commission (AIRC), which has had responsibility for undertaking the task of developing congressional and legislative districts in the state three times — in 2001, 2011 and 2021 — since the voters created it in 2000. I look at the commission’s creation, legal matters concerning its operation and the criteria used in making mapping decisions, how it has done its job the three times it has operated, what we have learned from this activity, and what might improve the process. The basic argument is that while the system is an improvement over the one controlled by the Legislature, partisan politics is still very much involved in the commission’s work, and some reforms may well be needed.

Emergence of the Commission

Before 2001, Arizona legislators had the task of adjusting legislative and congressional district lines. They were reluctant to tamper with the district boundaries from which they were elected and united around the goal of protecting incumbents. Beyond this, legislators sought to maximize party and area interests. The quest for incumbent protection or party advantage sometimes led to very odd-shaped, gerrymandered districts, cutting across a wide terrain and several jurisdictional boundaries.² The net result was that voters had a meaningful choice among candidates in only a handful of districts in the general election. Many districts were so heavily weighted in favor of the candidates of one party that many legislative candidates ran unopposed in the general election. In a reversal of democratic norms, legislators were choosing their voters rather than voters choosing their legislators. Considerations reflecting party and incumbent protections also fed into how state legislators formed congressional districts and led to similar results in terms of gerrymandering and competition.

Organized efforts to take the redistricting task out of the hands of legislators began in 1999 when Arizona Common Cause, the League of Women Voters and the Valley Citizens League formed the Fair Districts Fair Elections Committee to put the AIRC proposal on the November 2000 ballot. Reformers hoped that the threat of an initiative would prompt the Legislature to submit a suitable plan to the voters, but the Legislature failed to do so. The AIRC plan, inspired by an article in

the Texas Law Review in 1997, appeared on the ballot as Proposition 106. It received the strong endorsement of The Arizona Republic and other leading newspapers in the state, community leaders who gathered at the 1999 meeting of the Arizona Town Hall, the Democratic Party, and several prominent Republicans. Jim Pederson, a real estate developer later to become chair of the state Democratic Party, contributed \$600,000 out of his own pocket to the campaign and served as campaign director. Some opposition came from Republicans in the state Legislature and Congress and from business groups, but the split among Republicans and the difficulty of raising funds hampered the opposition.³

Supporters put considerable emphasis on the unseemliness of legislators’ custom-designing their own districts to avoid serious competition.⁴ The need for more competitive districts — ones where the number of Republicans and

Democrats was so evenly split that candidates from either party had a reasonable chance of winning — was a central feature of the campaign. The campaign committee submitted some 250,000 signatures supporting the proposition (only 152,643 were needed) and coasted to victory with 56% of the vote.

The Nature of Redistricting Plans

Under the provisions of Proposition 106, as found in the Arizona Constitution, each decade, the majority and minority leaders of each chamber of the Legislature select four of the five commission members from a list of 25 candidates (10 from each major party, five who do not belong to a major party) that has been compiled and vetted by the Commission of Appellate Court Appointments (CAC). The four members then select the fifth member by majority vote, and that person acts as chair of the commission. The fifth commissioner — the

Safe and Competitive Seat Allocation in the IRC’s Three Rounds of Redistricting

	Safe Seats for Democrats	Safe Seats for Republicans	Competitive Seats
2001 Legislative Districts	10	16	4
2001 Congressional Districts	2	5	1
2011 Legislative Districts	10	16	4
2011 Congressional Districts	2	4	3
2021 Legislative Districts	12	13	5 (4 leaned toward Republicans and 1 leaned toward Democrats)
2021 Congressional Districts	3	4	2

chair — cannot belong to the same political party as any other commission member. They must register as “unaffiliated with a political party for three or more years immediately preceding appointment.”⁵

Under the law, each commissioner is expected to be committed to acting “in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process.”⁶ To encourage objectivity, the law further reads: “Within the three years previous to appointment, members shall not have been appointed to, elected to, or a candidate for any other public office, including precinct committeeman or committeewoman but not including school board member or officer, and shall not have served as an officer of a political party, or served as a registered paid lobbyist or as an officer of a candidate’s campaign committee.”⁷

To stave off gerrymandering, the law prohibits commissioners from considering where incumbents or candidates for office reside when drawing districts. It also mandates that the commission starts from scratch, with a grid map that ignores incumbency and political data (party registration and voting history), though those criteria are used later in evaluating the plans to test for competition.

The law does not preclude politics or partisanship but aims to minimize or balance out its effects and promote cooperation. It brings legislative and party leaders into the choice of commissioners and encourages an outcome where we have two Republican commissioners, two Democratic commissioners, and one independent commissioner who acts as a swing

vote on important questions. The authors of the proposition saw the vetting process through the commission on judicial appointments as an essential safeguard assuring the quality of the commissioners.⁸

When it comes to the criteria to be employed in making districts, the commission must meet federal requirements that the districts are roughly equal in population and protect the voting strength of minorities. State law further requires districts that are, as far as possible, geographically compact and contiguous, and reflect “communities of interest.” It also states that “to the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.”⁹

“Communities of interests,” minority representation, and competition have proven to be the three most salient criteria, gaining the greatest share of attention. The law does not define “communities of interests.” The importance of this depends on what the commission does in response to claims made by the people or groups seeking districts that protect a community, be it a particular town, school district, historic neighborhood, retirement area, rural community, Native American tribe, or a wide variety of other social or economic clusters. A “community of interest” is whatever people can convince the commission of believing. Their ability to do so depends on the quality of organized effort and the status in the eyes of the commissioners of the group making the claim.

The Voting Rights Act of 1965 and its later revisions extend voting rights protections to racial minority voters and require drawing

“minority-majority” election districts — those with a minority group population large enough to facilitate the election of minority group members. Because minorities lean toward the Democratic Party, Republicans stand to benefit by packing as many minorities as they can into a few districts, thus limiting the number of districts Democrats have a chance of winning. Democrats have been on guard to ensure that districts are not so heavily populated with minorities that there is no opportunity to include them in other districts, where more Democratic votes could tip the scale in their favor.

Because of its long history of discrimination, Arizona became covered by special preclearance provisions of the Voting Rights Act when it was amended in 1975. Under the preclearance provision, Arizona and eight other states, mainly in the South, were required to obtain the approval of the U.S. Department of Justice for any decision regarding elections or voter requirements that affects the voting rights and representation of racial minorities. Starting in 1982, the Justice Department vetoed four statewide redistricting plans on the grounds that they discriminated against minorities. The first two independent redistricting commissions were subject to the preclearance provisions. In June 2013, however, in a 5-4 ruling, the U.S. Supreme Court struck down the preclearance provisions in the case *Shelby County v. Holder*.¹⁰ Federal law still requires minorities to be protected regarding their voting rights and representation but enforcing these rights has become more difficult in Arizona since the elimination of preclearance.

When it comes to competition, it is commonly assumed, especially on the Republican side,

that the wording means that competition is subordinate to other goals such as community of interest. This was not the intent of the authors of Proposition 106. As Bart Turner, one of the authors, recently put it: “We thought competition was as important as other goals.”¹¹ Writing to the commission in January 2021, another author, Dennis Michael Burke, noted: “Our prime intent was to improve the competitiveness of political districts in Arizona, but to do so in ways that did not simply create a new design for gerrymandering that would deprive communities of a sense of fair and natural representation and would make it harder for candidates and elected leaders to travel easily to meet with voters and constituents. Communities, after all, are different from individuals. We wanted to respect both, while leaning toward competitiveness wherever possible.”¹² Burke, though, has conceded that while the sponsors of Proposition 106 wanted to give competition priority, the proposition was poorly worded.¹³

Various metrics have been used by commissions and others to measure competition. Using party registration figures, districts have been considered competitive if the difference between Democrats and Republicans is less than a certain percent; seven and five have been commonly employed. Competitiveness has also been measured by past voting records in the districts. In this analysis, an attempt has been made using a variety of measurements to establish the competitiveness of the plans arrived at by each commission and to use the same metrics in comparing the commission plans over the years.

Round One: Redistricting in 2001

In 2001, most of the more crucial votes were 4-1, as the chair, Steve Lynn, who had been a Republican before registering as an independent, and one of the Democratic commissioners (who had been brought on board to represent the interests of rural areas¹⁴), both joined the Republican commissioners. The dissenting Democrat was a vocal supporter of giving more attention to competitiveness. The legislative plan the commission produced had 16 districts that were safe for Republicans, 10 that were safe for Democrats and only four districts that were considered close enough to be competitive. Of the eight congressional districts, five were considered safe for Republicans, and two were considered safe for the Democrats. Only one congressional district was considered competitive. This was a new rural district larger in land area than Pennsylvania. At the time, Democrats led in registration, but Republicans were expected to close the gap within a few years because the demographics were favoring them. Under the congressional plan, all six incumbents were protected.¹⁵

Democrats and the initiative's sponsors were greatly disappointed. There were fewer competitive legislative districts in the commission's plan than in the one drawn up in the Legislature after the 1990 census. Jim Pederson declared: "It's really disappointing All the incumbents are really safe. The state has not been served well."¹⁶ Another spokesman for the Democratic Party exploded: "It's a step backward. This map is more protective of the Republican Party than those designed in the basement of the state Capitol 10 years ago." He charged the commissioners with using

voting rights and the goal of keeping similar communities together "as a cover" to avoid making more competitive districts.¹⁷ Most of the commissioners, acting on legal advice, gave little attention to the requirement for competition. They regarded it of lesser importance than the other criteria and put off consideration of it until the others had been addressed.

Some Latino leaders were pleased with the creation of an additional legislative district that was controlled by minorities, giving them two of this nature. Other Latino leaders, such as Pete Rios, who was serving in the Legislature, contended that the two districts were overpacked with Democratic-leaning Latinos, giving Democrats a 20 percentage point advantage. Many of these votes could have been used elsewhere to challenge Republican control. To Rios, creating more minority districts "doesn't mean a hill of beans [...]. We will control no one's agenda. White Democrats are more likely to be sensitive to the needs of the minority community than most Republican office holders. The Republicans are using the Voting Rights Act to ensure themselves a majority for the next 10 years."¹⁸

Republicans countered that the commission was just following the law — that the Voting Rights Act and community of interest considerations prevented the commission from making more competitive districts. A veteran lobbyist who closely followed the commission's proceedings offered the following evaluation of the new system: "I guess it's a little better for the general public, at least in perception, but when the smoke clears, it might look the same as the old way. There was plenty of politics going on. It was just done in a different way."¹⁹

The initial maps adopted by the commission failed to receive DOJ preclearance on the grounds that they diminished Latino voting strength in several legislative districts. The maps produced by the commission also engendered four lawsuits, one of which challenged that the map for the Legislature had not given enough weight to competition. This case, finally resolved by the Arizona Supreme Court in May 2009, came down in favor of the commission. The commission chair referred to the competitiveness clause as “sixth, last and subordinate.”²⁰ Democrats responded with an initiative drive, ultimately unsuccessful, that would have amended the law to clearly make competitive districts a priority.

An analysis conducted by The Arizona Republic showed that, over the next decade, the maps generally worked out well for Republicans. The maps did little, if anything, to improve competition. In response to this study, Chair Lynn contended: “The truth is, when you start reading the law ... the ability of this commission or any group of people to create competitive districts is hampered in so many ways that it is difficult, if not impossible, to fulfill that desire.”²¹ The next go around, though, cast doubt on this conclusion.

Round Two: Redistricting in 2011

In 2001, Democrats viewed the plans adopted as victories for Republicans. In 2011, Republicans viewed them, especially the map for Congress, as victories for Democrats. The proceedings were rancorous. Four commissioners, two on each side representing the major parties, engaged in winner-take-all struggles. Compromise between them was

virtually impossible. Chair Colleen Mathis sided with the Democratic commissioners on the important votes. Public hearings were flooded with angry outbursts. Republicans were outraged over the maps and aimed much of their unrelenting criticism at the chair. Their anger culminated in an unsuccessful attempt by Republican Gov. Jan Brewer to fire the chair. Threats to the chair’s life were reported to FBI officials. Five lawsuits were filed against the commission, two of which went to the U.S. Supreme Court, but all the challenges to the commission’s authority and maps failed.

Mathis later remarked that the job was inescapably political, that the commissioners simply could not come together. Still, nevertheless, the commission was able to produce “fair and competitive districts” and, unlike the previous commission, a plan that secured the approval of the Department of Justice on the first try.²² Securing preclearance was facilitated by the commission largely accepting districting arrangements proposed by Native American and Latino groups. These groups leaned Democratic, as did the commission, but the fear of rejection in the preclearance process appeared to give racial minorities additional bargaining power.²³

During the deliberations, Democratic commissioners constantly pushed for more competitive districts. Republicans rejected this as a violation of the Arizona constitution and stressed the importance of respecting communities of interest. In December 2011, the commission approved a congressional map with nine seats, including one new seat. The seats were considered to lean to the Republicans in four districts, to the Democrats

in two districts, and to be competitive in three districts (33% of the seats compared to less than 13% in 2001 and about 12% in Congress as a whole). Voting “yes” were the chair and two Democrats, voting “no” were the two Republicans. In the Legislature plan, 16 seats were generally considered safe for Republicans, 10 safe for Democrats, and four competitive — a distribution identical to that produced 10 years earlier.²⁴ The voting on the legislative map was complicated by the effort of one of the Democratic commissioners to get an additional Democratic district and the fear of one of the Republican members that this might happen. This resulted in a 3-2 vote, with the chair, one Democrat and one Republican voting against one Democrat and one Republican.

The Republican commissioners and Republican politicians, in general, were especially critical of the congressional map.²⁵ The fact that Democrats did particularly well in congressional races in 2012 was viewed by some as proof that the districts had been rigged in their favor. But others saw the midterm elections as evidence that the commission had done a good job increasing the number of highly competitive races, which Republicans could have won with better candidates and could well win in the future.²⁶ During the decade, two districts changed hands between the two parties. A study Mathis worked on with academic researchers, which was published in September 2019 by the Harvard Kennedy School, found that use of the commission’s maps increased competition in 80% of the state’s legislative districts in subsequent elections.²⁷

Round Three: Redistricting in 2021

Early on during redistricting round three, Republicans and Democrats on the commission split on choosing an executive director (unlike in the earlier two rounds) and a mapping consultant (as in 2011). In these early votes, the independent chair sided with the Republican commissioners. Still, the commission’s work proceeded in a largely peaceful fashion, especially as compared to 2011, until the final days when partisanship set in when the commissioners began to tinker with the draft maps.

Using the commission’s metrics, the legislative map provided 13 districts safe for Republicans, 12 for Democrats, and five competitive districts (though four of these leaned Republican and only one leaned Democratic).²⁸ On congressional districts, four appeared solidly Republican and three solidly Democratic, and two could go either way (based on previous voting patterns). At the time, Democrats held five of the nine seats.²⁹

Round three looked in large part like a return to round one. The chair tended to vote along with the Republican commissioners on important matters, and communities of interest generally prevailed over competition. The 2021 commission seemed especially drawn to the criteria of communities of interest, even more than the commission in 2001.³⁰ This was a central focus. Demands or suggestions for the consideration of various communities of interest were expressed directly to the commission in its “listening tour” around the state and in hundreds of emails sent to its website.

The commission also appeared less disposed than the previous commission to adopt districting proposals made by Native Americans and Latinos. Some organizers attributed the diminished clout of racial minorities to the invalidation of the preclearance provision.³¹ In the end, one of the Democratic commissioners, Derrick Watchman, a member of the Navajo Nation, expressed his appreciation for what the commission had done on behalf of the Indigenous communities in the state.³² Still, some minority spokespeople, especially those affiliated with the Democratic Party, were unhappy about the Native American vote being washed out in a newly designed congressional district and the Latino vote in Maricopa County being packed into a few legislative districts and underrepresented in others.³³

Though the congressional map was widely considered to favor Republicans, it received a 5-0 vote, the Democratic members apparently feeling that they had been able to secure as many concessions as possible. When it came to the legislative map, they did not get the concessions they wanted. The final legislative map provided for one less competitive district than the draft map, going from six to five. Democratic Party leaders attacked Chair Erika Neuberg for regularly siding with the Republican commissioners. To them, Neuberg, a former registered Republican, was actually “a partisan in sheep’s clothing.” They also saw her as being guilty of giving unequal weight to maps submitted by conservatives.³⁴ At the same time, Democrats could be found who conceded that the chair had been sensitive to some of the Democrats’ suggestions or complaints and felt, at least as far as the Legislature was concerned, “it could have been worse.”³⁵

At the beginning of the process, Neuberg sought consensus, hoping to avoid being the tie-breaking vote.³⁶ The process went rather smoothly for much of the period. She did, though, frequently side with the Republicans, including, importantly so, at the end. She attributed that to “a fundamental difference that we have in terms of interpreting our constitutional mandate.”³⁷ She accepted the long-standing Republican positions that competition was less important than community interest criteria and that federal law required concentration of much of the Democratic vote in a few districts to secure the election of minority candidates. After citing the importance of these considerations in determining her vote in 2021, the chair added that she felt that there were enough competitive districts, according to metrics used by the commission, to give Democrats an opportunity to control the Legislature.³⁸

In 2021, the stakes were especially high in Arizona because even the smallest of boundary changes could be significant in the Legislature, where Republicans held a narrow one-person advantage over Democrats in both houses. Moreover, when it came to congressional districts, a shift in boundaries could be crucial in helping Republicans pick up the few seats needed to take control of the U.S. House of Representatives. Given this, the conflict level among the commissioners was surprisingly low until the days leading up to the final vote, thanks in large part to the skills of the chair as arbitrator. In the end, though, Republicans were given an advantage in retaining control of the Legislature over the next decade, and their hopes of gaining control of the U.S. House of Representatives were boosted.

What Have We Learned? What Can We Expect?

A central message suggested in the above account is that in Arizona, as elsewhere, conflict is unavoidable in the redistricting process no matter what system is used because we are talking not about finding the one-and-only best map for legislative or congressional districts but about choosing among an unlimited number of legally acceptable maps that differ by the criteria employed in developing them and offer different political outcomes. In redistricting battles, we find political parties seeking control, legislators seeking protection of their seats, minorities seeking representation, and rural areas seeking sway. Along with this, we can expect disputes over slicing up or combining cities, towns, and counties and over what “communities of interest” should be given priority.

The essential conflict thus far in Arizona has been between Democrats, as the minority party, giving preference to competition, and Republicans, the majority party, rejecting the emphasis on competition, claiming it is legally subordinate to all other goals, especially that of having districts built around communities of interest, and something that cannot be achieved in any great amount without violating federal law, which requires that strong efforts be made to promote the representation of minorities. There is, though, much more flexibility in the law than the Republican stand suggests. The number of minority voters needed in a district to ensure minority representation and the extent to which competition represents a “significant detriment to other goals” are matters of debate, and, as in 2011, a commission that wishes to pursue

the competitive objective can produce court-approved plans that significantly do so.

Still, in the absence of significant change, it is difficult to imagine a scenario other than one in which the single independent on the commission, the chair, winds up playing the pivotal role and their decision on the final maps will be praised by one of the major parties and criticized by the other. Problems concerning minority representation and rural areas, and competition versus communities of interest, are also likely to be repeated. We can also expect Democratic Party activists, rightly or wrongly, accusing Republicans of trying to put far more Latinos in legislative or congressional districts than are needed for a Latino to win an election, simply to diminish the chances of Democrats winning in other districts.

The choice of a mapping consultant is likely to be an early indicator of partisan dispute. This rests in large part on the fact that there are only a limited number of firms offering such services, and nearly all of them have had some connection to the candidates of one of the two major parties. Republicans like Republican-linked firms, Democrats like firms linked to their party. As it has worked out, no firm has been given a second contract: the party that saw itself as the loser last time around will have nothing to do with the firm that drew the map 10 years later and, with the support of the chair, has had its way. In 2011 this took the form of Democratic commissioners and the chair turning down the Republican firm that made the maps in 2001, and in 2021 it was a matter of the Republican commissioners and the chair turning down the firm linked to the Democrats that made the map in 2011.

The elimination of the preclearance requirement has made it far more difficult to secure compliance with federal law requiring minority representation. At the same time, the issue of minority representation is likely to continue to be a lively one because it is still required by law, minorities are likely to push for fair representation, and Republicans are likely to benefit by packing or deliberately overpacking minorities into a few districts. From the Democratic point of view, the trick is to pack minority-dominated districts but not to overpack them to the extent that the party suffers in other districts. Latinos are caught somewhere in the middle. On one hand, they can be virtually guaranteed to elect someone of their own in a few districts but, in doing so, reduce the likelihood that the party they tend to vote for will control the Legislature. Latino voices are heard demanding two possibly conflicting themes: the need for strong minority-majority districts and the need for more districts in which Democrats can do well.

The creation of districts representing rural areas has historically been a major concern in redistricting but has become increasingly difficult over the years and is likely to be even more difficult 10 years down the road because of population changes. Rural counties have had to be lumped together in much larger legislative districts, sometimes along with portions of urban counties, to make sure the districts are roughly the same as other districts in terms of population. The larger geographical size makes it more difficult for representatives to stay in touch with constituents and the mixture of urban and rural populations in the same district dilutes the rural input.³⁹ Rural areas may continue to receive vicarious representation from urban or suburban politicians (this vicarious support for rural

interests is most likely to come from urban or suburban Republicans). Still, rural communities can expect little in terms of representation from people drawn from rural areas.

Politics and Where Do We Go from Here?

One of the most common criticisms of the Arizona redistricting process is that it is too political, essentially partisan in nature. It is commonly viewed as a winner-take-all contest between the two major parties — a battle filled with behind-the-scenes manipulations and hidden partisan activity or, in the case of the independent chair, hidden partisanship. One also finds suspicions that the technical staff, especially the hired mappers, are trying to steer the commissioners in a particular direction — that the experts are on top rather than simply on tap and have a partisan agenda.

From time to time, commissioners have indicated that they try to represent their party and keep in touch with those who appointed them or others who speak for the party they identify with, along with other outsiders they turn to for information. In 2021, Republican Commissioner Doug York observed that the commissioners were “representing the factions that have chosen us.”⁴⁰ Following the final vote on the maps, there were accusations between commission members that cues were being taken from party groups. Democratic Commissioner Shereen Lerner responded to this charge by leveling a similar charge against Republican Commissioner David Mehl and went on to remark to the chair: “So, let’s be honest, all of us be honest. We all had people talking to us. It’s our decisions who we listen to and who

we don't. But don't accuse me of something that you and the Republicans were also doing."⁴¹

Partisanship has brought a great deal of heat to the commission's proceedings. However, while significant, the extent of partisanship in the process and the production of maps is not all that clear-cut. The four commissioners who owe their position to a political party leader — who would not have their positions if they were not a Republican or a Democrat — are likely to feel a certain obligation to do what they can to protect party interests by successfully bargaining with or outfoxing the other side or somehow winning over the deciding vote of the chair. They can be expected to listen to party people and a great many others. At the same time, they are not comparable to state legislators, members of Congress, and party leaders in terms of their self-interest being tied up in the results of their work. As in the case of citizens serving as members of state constitutional conventions who are also involved in a once-in-a-lifetime, highly important civic activity, they are conceivably likely to have a mixture of idealistic public interest motivations and practical political concerns.⁴² Their practical political concerns may have less to do with partisan motivations than with protecting an area of the state or a particular community of interest with which they identify.

AIRC commissioners carving up districts function in an environment of high expectations in terms of their behavior. The Arizona constitution itself calls on the commissioners to play a public-spirited, above politics role, ignoring political party ties and interest group pleadings, acting independently and objectively in the public's interest. They are watched.

Those going too far in a political direction are likely to hear voices — coming from the media and public, as well as from those in the opposite political party — sharply condemning them for violating the idealistic, public interest norms. Commissioner York's comments in 2021 about representing the party factions, for example, prompted a backlash from people and groups submitting online comments. One reminded the commissioners of what was in the constitution and urged all five "to reaffirm that they each represented every person in Arizona."⁴³

The idealistic non-political norm surfaced again a few months later following a proposal by the chair that the commission invite the majority and minority legislative leadership "to come and share with us what their vision is of our responsibility and have a comfort level with us."⁴⁴ The proposal was met with a stream of protest. A representative of the League of Women Voters, for example, urged the chair "to consider carefully the purpose of meeting with legislative leaders," pointing out that the "IRC was created specifically to remove redistricting from the Legislature. [... T]he Legislature does not approve the maps you produce. You must consider the interests of all Arizonans, not political parties. You should not provide an opportunity to unfairly weight the scales."⁴⁵ Chair Neuberg scrapped the idea, acknowledging that it was a "hot spot" in the public comments and that the other commissioners shared the public's concerns.⁴⁶

Under the existing system, the chair is lonely because the chair is the sole independent — a designation that brings even higher expectations of impartial behavior than those imposed on other commissioners — and

because, as chair, they are not only on top but called upon to lead from the middle, trying to bring the others together and prevent a standoff between the Democratic and Republican commissioners. The system encourages the independent to become an arbitrator and avoid having to break a tie. Skilled arbitrators can do much in promoting compromise. But when partisanship erupts among the four other members and the chair is forced to take sides, the chair is no longer seen as an independent. When it comes to voting on important matters, Independents in general and, one suspects, also those serving as chairs of redistricting commissions, are likely to wind up joining the members of the party they identified with before becoming an independent.

While the impact of partisan politics is difficult to ignore, independent redistricting commissions, including the AIRC, have been generally viewed by academics as head and shoulders above state legislatures in undertaking the redistricting process.⁴⁷ Several factors appear to be at work in the system to reduce the overall impact of partisanship, encourage more compromise, and limit the extent to which the maps give one party an advantage. Taking self-interest out of the process and increasing transparency have been cited as especially important — the latter being accompanied by pressure to go above politics as usual. Looking at all three rounds in Arizona — existing studies have been based on one or two rounds with considerable emphasis on the second round — one can say that while the basic design of the system encourages neutrality, it also leaves room for partisan involvement and the partisan leaning of the commission greatly conditions the extent to which competition is emphasized.

There is room for improvement in the system in regard to limiting partisan politics and political gaming. One of the more popular reform ideas is to increase the size of the commission to nine members — three Democrats, three Republicans, and three Independents, with one of the Independents chosen as chair by all the others. This theoretically would reduce the pressure on the chair, further dilute partisan influences, and encourage greater willingness to compromise. It also would give more equitable representation to Independents, who constitute around a third of the registered voters but have only a fifth of the AIRC members. In addition, requiring seven votes to adopt the final maps would make it impossible for Republican or Democratic commissioners, even with the support of three “hidden partisans” posing as Independents, to win the final vote without the support of a commissioner in the opposite party. One also might put more emphasis on improving the transparency regarding contacts between the commissioners and outsiders.

In recent years considerable attention has been given to finding a different way of vetting the commission candidates. Existing arrangements provide the governor an opportunity to game and possibly hijack the system through their power to appoint members of the Commission on Appellate Court Appointments, the vetting body. In 2021, Democrats charged that Republican Gov. Doug Ducey had stacked the commission with Republicans to get hand-picked candidates nominated for membership on the AIRC.⁴⁸ There were several complaints that the Commission on Appellate Court Appointment, which was heavily weighted with Republicans, had become politicized and was not properly screening applicants. In 2019, some progressive groups with concerns about

the process suggested shifting the job from the Commission on Appellate Court Appointments to the Clean Elections Commission, a more independent body, though one not looked upon favorably by conservatives.⁴⁹ A move to a semi-independent agency, though, could be good for both the process and the Commission on Appellate Court Appointments.

Political gaming seems inevitable. As former legislator and long-time reformer Ken Clark has pointed out, over time, “political parties are going to be able to find a way to game any system you create to redistrict legislatures,” and adjustments will always have to be made.⁵⁰

Endnotes

- ¹ John Kolbe, "Politically Demented Souls Will Thrill to the Redistricting Rhubarb," *The Phoenix Gazette*, November 30, 1981, Section A, page 6.
- ² Partisan gerrymandering takes place when lines are drawn to waste the votes of supporters of an opposing party by either overloading them into a few districts or spreading them out among several districts — processes known as stacking and cracking. Similar tactics can be used regarding the votes and representation of racial or ethnic minorities.
- ³ On the politics involved, see: Nicholas Stephanopoulos, "Reforming Redistricting: Why Popular Initiatives to Establish Redistricting Commissions Succeed or Fail," *Journal of Law and Politics* 23 (2007): 331-91 and see: Barbara Norrander and Jay Wendland, "Redistricting in Arizona," in Gary F. Moncrief, editor, *Reapportionment and Redistricting in the West*, Lanham, MD: Lexington Books, 2011: 177-197.
- ⁴ David K. Pauole, "Race, Politics and Equality: Proposition 106 Alters the Face and Rules of Redistricting in Arizona, 33 *ARIZ. ST. L.J.* 1219, 1222-26 (2001).
- ⁵ Arizona Constitution, Article 4, part 2, Section 1.
- ⁶ *Ibid.*
- ⁷ *Ibid.*
- ⁸ See, for example, remarks of Bart Turner in: Joe Salkowski, "Redistricting, Politics Still Mix," *Arizona Daily Star*, January 28, 2001.
- ⁹ Arizona Constitution, Article 4, part 2, Section 1.
- ¹⁰ *Shelby County v. Holder*, 133 U.S. 2612 (2013).
- ¹¹ Interview by the author with Bart Turner, December 29, 2021. Turner, now a member of the Glendale City Council and, in 1999, head of the Valley Citizens League, was one of three authors of Proposition 106. Dennis Michael Burke, who led Arizona Common Cause at the time, and who was also interviewed for this study, was another author. The third author, who was with the League of Women Voters, is no longer living.
- ¹² Statement of Dennis Michael Burke, Phoenix January 14, 2021, submitted as an on-line comment to the commission, January 14, 2021.
- ¹³ Dennis Michael Burke interview with the author, December 24, 2021.
- ¹⁴ Paul Davenport, "Rural Business Owner Appointed to Redistricting Panel," *Arizona Daily Sun*, February 2, 2001.
- ¹⁵ Chip Scutari, "Redistricting Map Finished; New Boundaries Don't Please All," *The Arizona Republic*, October 13, 2001; Robbie Sherwood and Chip Scutari, "Redistrict Process Was Still Political; Dems May Try Legal Challenge," *The Arizona Republic*, October 15, 2001.
- ¹⁶ Scutari, "Redistricting Map Finished," note 15.
- ¹⁷ Quoted by Rhonda Bodfield Sander, "Tucson Loses Clout; Redistricting Completed," *Arizona Daily Star*, October 15, 2001.
- ¹⁸ Chip Scutari, "Minorities Doubt Redistricting Success," *The Arizona Republic*, October 16, 2001.
- ¹⁹ *Ibid.*
- ²⁰ Jeremy Duda, "Drawing New Lines," *Arizona Capitol Times*, October 2, 2009.

- ²¹ Ronald Hansen, “2000 Redistricting Goal of Closer Elections Unmet,” *The Arizona Republic*, July 8, 2010.
- ²² Matt Vasilogmabros, “The Tumultuous Life of an Independent Redistricting Commissioner,” *Stateline*, November 26, 2019.
- ²³ Jeremy Duda, “With Preclearance Gone, Redistricting in Arizona Enters a New Frontier,” *Arizona Mirror*, November 8, 2021.
- ²⁴ On various estimates on how the districts were likely to go, see: Mary Jo Pitzl “Party Representation in Legislature Debated,” *Arizona Republic*, December 22, 2011.
- ²⁵ Jim Small and Evan Wyloge, “State Redistricting Commission Approves Congressional, Legislative Maps,” *Arizona Capitol Times*, December 20, 2011.
- ²⁶ Rebekah L. Sanders, “Election Adds to Debate Over Redistricting,” *Arizona Republic*, November 24, 2012.
- ²⁷ Colleen Mathis, Daniel Moskowitz, and Benjamin Schneer, “The Arizona Independent Redistricting Commission: One State’s Model for Gerrymandering Reform,” Ash Center for Democratic Governance and Innovation, Harvard Kennedy School, September, 2019.
- ²⁸ Jeremy Duda, “Fractious Final Day Ends with Acrimony and Accusations as Redistricting Commission Splits on Legislative Map,” *Arizona Mirror*, December 22, 2021.
- ²⁹ Differing from earlier reports, the Princeton Gerrymandering Project, which rated maps in various states, on February 3, 2022, gave the ones adopted in Arizona for legislative and congressional districts an “A” for partisan fairness. See: <https://gerrymander.princeton.edu/>.
- ³⁰ See remarks of 2001 Chair Steve Lynn in Jeremy Duda, “The Redistricting Conundrum,” *Arizona Mirror*, December 3, 2021.
- ³¹ Duda, “With Preclearance Gone,” note 23.
- ³² Jeremy Duda, “Redistricting Commission Gives Final Certification to New Maps,” *Arizona Mirror*,” January 21, 2022.
- ³³ Kristen Mosbrucker, “Arizona Republicans May Sweep Next Election with New Voting Maps Amid Legal Treats,” *Phoenix New Times*, January 4, 2022.
- ³⁴ Peter Aleshire, “Final Redistricting Maps Favor Republicans,” *White Mountain Independent*, December 28, 2021.
- ³⁵ Interview by the author with Robbie Sherwood. See also comments by Democrat Rebecca Rios, Senate Minority Leader, in Camryn Sanchez, “Rios Encourages Water Conservation,” *Arizona Capitol Times*, January 14, 2022.
- ³⁶ Dillon Rosenblatt, “‘Ambiguous’ Pick, Redistricting Leader is Ready,” *Arizona Capitol Times*, February 5, 2021.
- ³⁷ Howard Fisher, “Redistricting Panel Finishes Legislative Maps,” *Arizona Capitol Times*, December 23, 2021.
- ³⁸ Ibid.
- ³⁹ David R. Berman, “Revisiting the Urban-Rural Relationship,” Morrison Institute for Public Policy, November 2019.
- ⁴⁰ Quoted in Jeremy Duda, Redistricting Commission Narrows Search for Legal Counsel,” *Arizona Mirror*, March 30, 2021.

⁴¹ Duda, “Redistricting Commission Gives Final Certification,” note 32.

⁴² John J. Carroll and Arthur English, “Constitution-Making Roles & Delegate Behavior,” *Polity* 17, no. 3 (Spring 1985): 586-594, <https://doi.org/3234660>.

⁴³ Submitted comments to the AIRC, April 6, 2021.

⁴⁴ Submitted comments to the AIRC from the League of Women Voters, June 1, 2021.

⁴⁵ *Ibid.*

⁴⁶ Jeremy Duda, “Redistricting Commission Prepares to Begin State Tour, But Dates Uncertain and Delay Likely,” *Arizona Mirror*, June 8, 2021. Legislative leaders, though, were invited to speak to the commission at a later date in its proceedings.

⁴⁷ See, for example: Alex Keena, Michael Latner, Anthony J. McGann and Charles Anthony Smith, *Gerrymandering the States* (Cambridge University Press, 2021); Mathis, Moskow and Schneer, “The Arizona Independent Redistricting Commission”; Michael P. McDonald, “A Comparative Analysis of Redistricting Institutions in the United States, 2001-02,” *State Politics & Policy Quarterly* 4, no. 4 (Winter 2004): 371-395; and Jamie L. Carson and Michael H. Crespin, “The Effect of State Redistricting Methods on Electoral Competition in United States House of Representatives Races,” *State Politics & Policy Quarterly* 4, no.4 (Winter 2004): 455-469.

⁴⁸ See, for example, Andrew Oxford, “Nominations for Redistricting Panel Lack Diversity, Democrats Allege,” *Arizona Republic*, October 10, 2020; “Ducey-Appointed Commission Moves to Shield Documents Related to Controversial IRC Selections,” Arizona Democratic Party, November 20, 2020.

⁴⁹ Ben Giles, “Lawmaker Introduces New Proposal to Revamp Independent Redistricting Commission,” *Arizona Capitol Times*, January 16, 2019.

⁵⁰ Interview by the author with Ken Clark, December 30, 2021.