

LWVNE NEBRASKA REDISTRICTING STUDY

INTRODUCTION

Redistricting is a once-a-decade process that involves redrawing Congressional, Nebraska Legislative, and other single member districts to reflect changes in the population and changes in the distribution of population in Nebraska. This is done to assure that elective districts contain very close to the same population—and thus that Nebraska is operating in accord with the decisions of the U.S. Supreme Court that require nearly equal populations within districts, which supports the “one person, one vote” principle.

The 2011 Nebraska redistricting process resulted in substantial concerns. One concern related to what some saw as partisanship in drawing the boundaries of the Second Congressional District. The other concern was in Alliance, Nebraska, a city which was divided so that two parts were in different Legislative districts, which seemed inconsistent with the principle of honoring city boundaries.

NEBRASKA’S REDISTRICTING PROCESS¹

Nebraska’s redistricting process has undergone significant changes since its nonpartisan, unicameral legislature began in 1937, as a result of a voter approved initiative in 1934. The 1937 unicameral legislature had 43 districts based on the 1930 census. By 1961, the population of the districts varied from 18,824 to 100,826. In 1965, after rulings by the U.S. Supreme Court and the U.S. District Court for the District of Nebraska, the legislature passed its third legislative district plan. The new Legislative redistricting plan had 49 districts and met the Court’s mandate of less than 15% difference in population of districts. Redistricting was done in 1971 and 1981 with no challenges. The 1991 plan, which required that no district deviate more than plus or minus two percent from the ideal district size, had several challenges, but only one was successful; it resulted in a minor change in the map.

The 2001 legislative redistricting legislation mandated the Legislative Executive Council to appoint nine legislators, three from each Congressional District to the Redistricting Committee, and not more than five from the same political party. Staff support is from the office of the director of Legislative Research. The Committee adopts guidelines and presents them to the Legislature for approval and to the public. The new districts drawn by the Committee and the statistics used are submitted to the Legislature and the public. Public hearings (at least one in each Congressional District) are held to solicit and receive input. There may or may not be revisions in the districts, but a final map of districts is submitted to the Legislature and acted upon.

HISTORY LEADING TO LWVNE’S REDISTRICTING STUDY

Prior to the League of Women Voters of Nebraska’s (LWVNE) April 2013 Annual Meeting, long-time member Bev Traub proposed an exploratory committee to address Nebraska’s

¹ Legislative Research Office, *Redistricting 2011: History of Legislative Redistricting in Nebraska*, Vol. 1, No. 5, 2010, Room 1201, State Capital, Lincoln, NE 68509

redistricting process. The proposal was approved at the Annual Meeting. A committee was charged to take up the question of whether the LWVNE should undertake a study of the Nebraska redistricting policies and processes. The committee was tasked to review five specific resources² plus others they might identify. Based on these documents, their own knowledge, and conversations with key people who could share information about redistricting, the committee would make recommendations.

In May 2013, the LWVNE President named four LWV Greater Omaha members to the LWVNE Redistricting Study Exploratory Committee: Rob Moore, Bev Traub, Helen Atwater, and Rebecca Armstrong. Rob Moore was named chair. The committee met four times. It studied the five resources named in the charge, as well as a selection of academic literature gathered through the Academic Search Complete database, an analysis of the transcript from the Nebraska Legislature hearings held on the 2010 redistricting process, and a handbook on redistricting compiled by the Brennan Center for Justice. The exploratory committee followed the LWV protocol of evaluating the issue of redistricting from four perspectives: relevance, timeliness, practicality, and capacity.

EXPLORATORY COMMITTEE REPORT

The LWVNE Redistricting Study Exploratory Committee's report made a number of observations. The following are observations from that report:

1. Redistricting is becoming a national issue, and many states are undertaking legislation and/or constitutional amendments to address the issue. This is partly because of the increased hyperpartisanship at national and state levels. The report noted that the 2012 election cycle resulted in a strange situation in which House Democratic candidates won 50.5% of votes nationwide but only won 46% of the seats in the House of Representatives. The report observed that many commentators have pinned this gap on a redistricting process controlled at the state level, frequently by partisan state legislators.
2. Nebraska's redistricting system is controlled completely by *elected legislators*. The state legislature's Executive Council appoints a redistricting committee of legislators that has authority to craft the district maps. Once approved by the unicameral, these new district maps are used for the next 10 years.
3. The report identifies two other states, Iowa and California, that have adopted other policies and processes that differ significantly from Nebraska's.

² *Shining a Light: Redistricting Lessons Learned in 2011*, LWVUS Education Fund white paper, January 2012.
Redistricting 2011: History of Legislative Redistricting in Nebraska, Legislative Research Office, State Capitol, Lincoln.

Survey other League activity in U.S.

Various newspaper articles.

Speech by Deputy Secretary of State for Elections Neal Erickson, "Census, Redistricting, Election Administration: How These Three Parts Work Together," Speech to be given at LWVGO Annual Meeting on April 27, 2013.

- a. The Iowa system has been upheld as a national model for best practices in state redistricting processes.
 - b. California chose an independent, nonpartisan commission, which “has shown some statistical progress in achieving many of the benchmarks that are commonly agreed upon to make up a fair redistricting system.” The report noted that this system has had some “disappointing results in promoting competitiveness in elections” but “positive results in promoting compact districts and preserving communities of interest within the district scheme...”
4. The Redistricting Study Exploratory Committee report said “a study is warranted if the resources exist to undertake the study itself. Further interest in reform may be spurred by the study, but even without actual reform, this is the sort of issue for which the League is well-suited. The LWVNE’s unique role as a prominent non-partisan good government group in Nebraska suits the organization to undertake this study.” The report also said, “The LWVNE is the premiere organization for good government and democratic principles in the state of Nebraska. No other organization in the state has the reputation for unbiased and deliberate position formulation in the field of good government... Redistricting... is quickly becoming one of the most important issues in voter rights nationally. If the LWVNE does not take the lead on this issue, it is unlikely anyone else in the state will. While redistricting has flared partisan tempers recently in Nebraska, that does not make it an inherently partisan issue. To undertake a study concerning Nebraska’s redistricting system falls strictly within LWVNE’s mission ‘of encourag[ing] informed and active participation in government’ and ‘work[ing] to increase understanding of major public policy issues.’ In addition, LWVNE’s unique role as a grassroots, nonpartisan, good government organization puts it in a position to achieve high visibility for its position on redistricting in the state.”

The report of the Redistricting Study Exploratory Committee was completed on October 12, 2013 and submitted to the LWVNE board of directors. The issue of whether to conduct a study of redistricting in the State of Nebraska was placed on the agenda of the LWVNE 2014 Annual Meeting. The decision was a strong vote in support of undertaking such a study. The new LWVNE president, Sherry Miller of Lincoln, sought members for the Redistricting Committee. Ten members volunteered to serve on the committee: John Else (Omaha), Belva Junker (Hastings), Pris Lawin (Seward), Sherry Miller (Lincoln) Rob Moore (Omaha), Janet Price (Lincoln), Judy Reimer (Hastings), Barbara Rennard (Omaha), Bev Traub (Omaha), Barbara Tripp (Omaha). Sherry Miller agreed to serve as chair.

THE NEBRASKA REDISTRICTING STUDY

The LWVNE Redistricting Study Committee analyzed the status of the redistricting issue nationally. It found that the basic issue is gerrymandering of districts—by whichever party controls the state legislature—to increase the likelihood of maintaining or increasing the number of seats won by that party. Instead of the voters choosing their legislators, gerrymandering means that legislators choose their voters—by the shape of the districts and demographics of voters they put into their district maps. It also found that, while much of the current discontent

relates to states in which Republicans control the legislatures, there is sufficient evidence that the same bias in redistricting has occurred blatantly in states where the Democrats control the legislatures.

The Committee analyzed redistricting constitutional amendments, laws, and processes in several states where redistricting has received significant national attention. It found a wide range of strategies. The four states whose processes are summarized below represent the major differences in redistricting strategies found among the states studied. The main differences were in the roles of the legislature:

1. California, where the legislature is almost entirely excluded from the process. The Bureau of State Audits (BSA) recruits candidates (non-officials) widely, receives applications, and selects 20 potential members for the California Citizens Redistricting Commission. The four Republican and Democratic leaders in the state Senate and House are each permitted to strike two persons from the list. The Commission is then selected from the remaining names. That Commission draws the maps, conducts hearings, makes any revisions it decides upon, and produces the final map that serves the state for the next 10 years.
2. Arizona, where the legislature has responsibility for the appointment of four of the five members (non-officials) of the commission (2 Republicans, 2 Democrats). Those four select a fifth nonpartisan member as the chair. That Commission draws the maps, conducts hearings, makes any revisions it decides upon, and produces the final map that serves the state for the next 10 years.
3. Iowa, where the legislature acts on maps drawn by a nonpartisan state agency, the Legislative Service Agency (LSA) and submits them to the legislature and the public. A “Temporary Redistricting Committee” conducts public hearings and prepares and submits a report to the legislature. The legislature votes on the maps, with no amendments. If the Legislature votes “no,” the LSA prepares a second map, and there is a second Legislative vote, with no amendments. If the Legislature votes “no” again, the LSA prepares a third map, and there is a third Legislative vote, this time with amendments permitted. If the Legislature votes “no” on the third map, the approval of a map is moved to the Iowa Supreme Court.
4. Florida, where the legislature retains responsibility for creating and approving the maps, based on criteria established by amendments to the Florida Constitutional passed in 2010. The amendments were in the form of an initiative petition approved by over 60 percent of the voters.

REDISTRICTING CRITERIA

All the redistricting processes involve sets of criteria, most of which are composed of similar items. The following represents the criteria of almost all of the states. Though they differ in what is actually stated, almost all in reality have all the criteria.

- Comply with the U.S. Constitution and the Voting Rights Act (federal mandate)

- Equal population (federal mandate)
- Compact and contiguous
- Respect of communities of interest
- Where possible, district lines shall follow permanent and easily recognized features, such as toll ways, expressways, highways, streets, rivers, and clear geographical features, and when practical, shall coincide with census tract boundaries
- Maintain, as much as feasible, city, town & county boundaries, & undivided census tracts
- Create competitive districts with no significant detriment to other goals.
- Ignore incumbent officials addresses
- Cannot intentionally favor or disfavor a political party, incumbent, or candidate
- No city block shall be subdivided, since a city block is the smallest parcel for which census data are available

States also follow the principle that every State Senate District is divided into two State House Districts, but that principle does not apply to Nebraska, since it has a unicameral legislature.

Since the redistricting process ignores addresses of incumbents, the plans often result in incumbents living outside their new districts and sometimes two incumbents living in the same new district. The redistricting laws of each state clarify how the new elections are handled. The important points are (1) that including addresses of incumbents in the redistricting process makes it virtually impossible to draw district lines in accordance with the criteria, and (2) even if the state Constitution prescribes four year terms, that provision contradicts the U.S. Constitution's prescription of equal size districts, so the state must abide by the U.S. Constitution.

FOUR STATE MODELS

1. California³

California's electorate, via referenda in 2008 and 2010, voted for constitutional amendments that established the California Citizens Redistricting Commission, an independent body of 14 citizens (5 registered with the largest political party, 5 registered with the second largest political party, and 4 who are not registered with either of the two largest parties). In 2011, the Bureau of State Audits (BSA) conducted a broad recruitment campaign and received over 30,000 applications.

The criteria for application for membership on the Commission were very stringent. Candidates must have been registered with the same political party for at least 5 years. For 10 years prior to applying, applicants cannot have been appointed to, elected to, or candidate for federal or state office. Neither can they have served as an officer, employee, or consultant for a political party or campaign committee; nor have been a registered lobbyist. They also cannot have contributed \$2,000 or more to a candidate for public office. They must agree that they shall be ineligible to hold elective public office at the federal, state, county, or city level for a period of 10 years from appointment and shall be ineligible to hold appointive

³ Belva Junker, email attachment, (date)

Raphael J. Sonenshein, *Executive Summary, When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission*, League of Women Voters of California, 2012

federal, state, or local public office or serve as paid staff for the Legislature or to register as a lobbyist for a period of five years from appointment.

The BSA established an Applicant Review Panel, consisting of 3 qualified independent auditors, to screen applicants. The BSA removed individuals with conflicts of interest, then publicized the names in the applicant pool and provided copies of their applications to the Applicant Review Panel. That panel then selected 60 of the most qualified applicants--20 from the largest political party, 20 from the second largest political party, and 20 from individuals not registered with either of the two largest political parties. The Applicant Review Panel presented this pool of recommended applicants to the Secretary of the Senate, and the Chief Clerk of the Assembly.

The President pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, and the Minority Floor Leader of the Assembly are each allowed strike up to two applicants from each sub-pool of 20. After all legislative leaders have exercised their strikes, the Secretary of the Senate and the Chief Clerk of the Assembly jointly presented the pool of remaining names to the BSA.

BSA then randomly drew eight names from the remaining pool of applicants—3 from the largest political party, 3 from the second largest political party, and 2 from the remaining sub pool. These 8 individuals became the core members of the Citizen's Redistricting Commission. The 8 appointees were chosen to ensure ethnic, geographic, and gender diversity. The remaining 6 Commission members were selected by those 8 Commissioners, with the intent to maintain or improve diversity.

The Commission held public meetings and sought and obtained massive amounts of public input in the form of testimony at hearings, emails, draft maps, and other communication, and revised the maps/districts. It completed its work of drawing the final districts and issued the final map of the new districts that will serve for the next 10 years by the mandated date of August 15, 2011. The Commission received positive votes for its final maps from all 3 required groups of Commissioners, and they survived legal challenges in state and federal courts with no adverse judicial decision.

Public responses to the Commission were very positive. It received a 100% score on transparency. It received generally positive results in achieving the goals of the amendments, respecting communities of interest, meeting accepted standards for addressing the Voting Rights Act, and following accepted mapping techniques and processes.

2. Arizona⁴

Historically, Arizona's legislature was responsible for redistricting. However, in 2000, Arizona passed proposition 106, a citizen initiative that amended the Arizona Constitution by delegating power to draw congressional and legislative boundaries to a bipartisan and independent commission. The Arizona Independent Redistricting Commission (AIRC) passed by popular vote 56.1% to 43.9%. The five-member Redistricting Commission acts independently of the State Legislature.

The commission is composed of 2 Democrats, 2 Republicans and 1 Independent chair.

This selection thus assures there are no more than 2 members from the same political party. To be eligible to be on the list of candidates for the Commission, the person cannot have held office in the previous 3 years, and cannot have switched parties during the previous 3 years. Furthermore, no more than 2 of the first 4 members can be from the same county.

That Appellate Court Screening Panel is charged with selecting 20 Republican candidates, 20 Democratic candidates, and 10 Independent candidates. The list of 20 Republican candidates is given to the Republican leaders in the Arizona Senate and House, each of whom selects one AIRC member from the list. The list of 20 Democratic candidates is given to the Democratic leaders in the Arizona Senate and House, each of whom selects one AIRC member from the list. The list of Independent candidates is given to the four appointed AIRC members, who select the AIRC chair from that list.

The Commission held extensive public hearing around the state to obtain input on the districts before creating the map based on the Constitutional rules. Once the map was prepared, it held another series of 26 meetings to gather feedback on the map. On December 20th, the Commission adopted a tentative Congressional map and this draft was sent to the Department of Justice in January 2012. The Congressional district map was approved by the Department of Justice on April 4, 2012. The Commission also adopted a Legislative districts map which was sent to the Department of Justice at the end of February 2012. The Legislative districts map was approved by the Department of Justice on April 27, 2012.

Since its inception in 2001, this new system for redistricting has been mired in conflicts, resulting in numerous lawsuits. The conflicts were greater related to the 2011 process. The governor can remove a member for neglect of duty or misconduct, but otherwise, political control is nonexistent. On November 1, 2011, the Republican Governor (R) officially impeached Independent Redistricting Chair Colleen Mathis, the lone independent on the five-member commission, for violating the Open Meetings law. The Arizona State Senate's 21-6 vote in favor of Brewer's decision essentially meant that the Governor fired Mathis from the Commission. On November 17, 2011, the Arizona Supreme Court overruled the Governor (R) and reinstated

⁴ BALLOTPEdia, Arizona on POLICYPEDIA, http://ballotpedia.org/Redistricting_in_Arizona, February 12, 2015
League of Women Voters of Arizona, Arizona Redistricting, http://www.lwvaz.org/Independent_Redistricting.html,
February 12, 2015.
Wikipedia, Redistricting in Arizona,
http://www.ask.com/wiki/Redistricting_in_Arizona?o=2800&qsrc=999&ad=doubleDown&an=apn&ap=ask.com,
February 12, 2015.

Mathis to the commission. The court held that the Governor failed to show that Mathis had engaged in any conduct to provide grounds for removal.

On April 28, two lawsuits were filed against the IRC. One filed in state court challenged the map of nine U.S. House districts and the other lawsuit challenged the Legislative districts. On June 7, 2012, the Republican-controlled legislature filed a lawsuit in U.S. District Court that challenged the existence of AIRC. The plaintiff lawyers argued, on August 22, 2012, that the voter approved law, which allows a Commission rather than the Legislature to draw congressional districts, violates the U.S. Constitution, which says that the “times, places and manner” of electing members of congress “shall be prescribed in each state by the Legislature thereof”—and therefore does not allow redistricting of a state by any official body not controlled by the Arizona Legislature. The case was heard on March 22, 2013, by a three judge panel in U.S. District Court. Both parties filed closing briefs by April 9th. The court case *Harris (et al) v AZ Independent Redistricting Commission* was heard on March 22, 2013, by a three judge panel in U.S. District court. The final arguments wrapped up on March 30, 2013. Both parties filed closing briefs by April 9, 2013.

On February 21, 2014, the three judge panel ruled, in a split decision, that the AIRC can be the redistricting organization for Arizona, holding that the use of the term “legislature” in the Elections Clause should be read to refer to the entirety of a state’s legislative process, including ballot initiatives passed by the voters. The case was appealed to the U.S. Supreme Court, which agreed in October 2014 to hear the case. Arguments are expected in early 2015.

3. Iowa⁵

The U.S. Supreme Court decided in 1962 that redistricting plans could be brought to and resolved in court. In 1964, the U.S. Supreme Court decided that all redistricting plans must be based on population and be as nearly equal as possible. The Iowa Constitution was amended in 1968 to fulfill the requirement that districts be drawn based on population and to approve the timeline (September 1) for establishing Senate and Representative districts. If the General Assembly fails to pass a redistricting law by September 15, the Iowa Supreme Court establishes Legislative districts based on Constitutional requirements.

The 1971 redistricting plan was struck down by the Iowa Supreme Court because the plan established too wide a variation in population from the ideal population (13% for Senate and 14% for House). The Court adopted its own redistricting plan, which had an overall variance .0005% for Senate and .0009% for House.

During the 1980 Iowa Legislative session, a new law established the statutory process for drawing Legislative and Congressional districts beginning in 1981. The Legislative Services Agency (LSA), a nonpartisan bill drafting agency of the General Assembly, was given primary responsibility for drawing the Legislative and Congressional districts, subject to Legislative and gubernatorial approval. Also, a set of criteria is presented in the Iowa Code. One of these defined criteria is disregard of the addresses of incumbent legislators.

⁵ Ed Cook, *Legislative Guide to Redistricting in Iowa*, Legislative Services Agency, State of Iowa, 2007. Telephone Interviews with Ed Cook, Legal Counsel, Legislative Service Agency, State of Iowa.

LSA must deliver the first proposed plan to the General Assembly by April 1 of each year ending in one. Public meetings on the proposed districts are conducted by the nonpartisan “Temporary Redistricting Commission,” which then prepares and submits to the Legislature a report on the public meetings within 14 days after LSA submitted the plan to the General Assembly. Then the Legislature votes for or against the map with only corrective amendments allowed.

If the Iowa Legislature votes “no” on the first plan, the LSA prepares a second map taking into consideration concerns raised in the Legislature and submits it to the Legislature within 35 days after the first plan was disapproved for a vote without amendments. If the Legislature again votes “no”, the LSA prepares a third map and submits it to the Legislature within 35 days after the second plan was disapproved; this time amendments are allowed before the vote. If the Legislature accepts the map, this plan contains the new districts. If the Legislature votes “no” a third time, the Iowa Supreme Court is empowered to create and adopt a redistricting map, and when it accepts the map, it contains the new districts.

The “Temporary Redistricting Commission” consists of four members selected by the respective majority and minority floor leaders by the Senate and House by the end of each year ending in zero. By February 15, those four must select the fifth Commissioner, who shall also serve as chair. The Commissioners must be registered voters in Iowa, but none shall hold a partisan political office or a political party office nor be related to or employed by a member of the U.S. Congress nor the Iowa General Assembly, nor be employed by the Congress or Iowa General Assembly. The Commission has two tasks: (1) to provide advice and guidance to the LSA on any matters not clear in the Iowa Constitution and Code when it makes a specific request in writing, and (2) to conduct hearings around the state and submit a report on the hearings to the Legislature.

The results of the 1980 redistricting law have been amazing. None of the plans have been challenged in court. In 1981, the third plan submitted by the LSA was passed into law without amendment. In 1991 and again in 2011, the first plan submitted became law. In 2001 the second plan was enacted into law.

4. Florida⁶

For decades Florida politicians drew legislative and Congressional districts to protect themselves or advance the interests of their political parties. In 2010, a bipartisan coalition of Florida individuals and organizations created a new organization, called FairDistricts Now, which proposed two Constitutional Amendments to be on the statewide November ballot.

⁶ Redistricting in Florida, Florida on POLICYPEDIA, BALLOTPEDIA, February 12, 2015.
Aaron Deslatte, “Judge rules Florida congressional map violate Fair District standards,” July 10, 2014, www.orlandosentinel.com/news/politics/political-pulse/os
Fair District Now website: <https://www.fairdistrictsnow.org/home/>

The Amendments mandated that the Legislature draw maps every 10 years in accordance with the principles in the Amendment. If the Legislature fails to draw new districts, the Governor shall call it back into a 30 day session for that specific task. If the Legislature fails to draw new districts, the Florida Supreme Court is mandated to draw districts. If the Legislature draws new districts, they are submitted to the Florida Supreme Court within 15 days for review of the validity of the apportionment.

If the Court decides the apportionment is not valid, the governor must reconvene the Legislature within five days for a 15 days session to develop another plan. Once that is passed, it is again reviewed for validity by the Florida Supreme Court. If it is found to be invalid, the Court is mandated to draw districts.

The standards included in the Amendments were:

- prohibition of the intent to favor or disfavor a political party
- prohibition against favoring or disfavoring an incumbent
- prohibition against abridging the equal opportunity of racial or language minorities or to diminish their ability to elect representatives of their choice
- contiguous territory
- as nearly equal in population as is practicable
- compact
- where feasible, utilize existing political and geographical boundaries

The Florida Legislature was so distressed by the Amendments that they proposed an alternative Amendment, intended to confuse the voters. The Fair Districts group took the issue to court and the court voided the Legislature's Amendment. Two representatives—Rep. Mario Diaz-Balart and Rep. Corrine Brown, filed suit against the Amendments in May 2010, but in August 2010 the court dismissed the challenges.

On the November 2, 2010 ballot, Floridians overwhelmingly passed Amendments 5 and 6—the FairDistricts Amendments—with 63% of the vote. The Florida Legislature was once again distressed by the passage of the Amendments. On November 3, 2010, the two representatives named above asked the court to nullify the Amendments. On January 24, 2011, the Florida House of Representatives joined a suit and spent over \$200,000 in taxpayer funds on the case. On September 9, 2011 a U.S. District Judge rejected the lawsuit saying she was “unswayed” by the arguments and noted that the amendment was a "valid regulation of the legislative process."

In the meantime, Governor Crist submitted the Amendments to the U.S. Justice Department on December 10, 2010 for their review and hopefully positive “pre-clearance” decision. However, when Governor Scott came into office in early January 2011, he pulled the request for U.S. Justice Department's pre-clearance approval. The FairDistricts coalition filed suit against Scott in early February, but on March 29, the Florida Legislature resubmitted the Amendments, and they were approved on May 31, 2011.

The Florida Senate and House formed committees and undertook the redistricting process. There was considerable contentiousness during the redistricting process. The FairDistricts Now website describes the process of creating the redistricting maps:

- Once it was clear that the new rules for redistricting were here to stay, the Legislature hatched a plan to delay the maps and to make it look like they were complying while they ignored the will of the people and drew districts to favor themselves. They held a listening tour with 26 meetings all over the state. They asked citizens to come and tell them what sort of districts they wanted the Legislature to draw. Members of the FairDistricts coalition and scores of other citizens told the legislators: (1) we want you to follow the FairDistricts amendments, (2) we want you to speed up the map drawing process, and (3) we want you to show us your maps so we can have a reasonable opportunity to comment on them.
- But the Legislature did not speed up the process and did not produce any maps for citizen comment (and made no comment themselves) until months after the “listening tour” had concluded. And while making a show of complying with the amendments, the Tallahassee politicians did everything they could to avoid applying the FairDistricts rules.
- Finally, just before the Holidays in 2011, in Tallahassee, at their last committee meetings of the year, legislators revealed the maps they were advancing. And at the end of January 2012, they passed new maps for Congressional districts as well as state House and Senate districts.

The House and Senate maps were submitted to the Florida Supreme Court for an initial “facial” review. The Court upheld the Florida House of Representatives’ map, but found that the Florida Senate maps had been drawn to favor incumbents—“was rife with improper intent” and ordered the Florida Legislature to redraw it. The Florida Senate map was redrawn, but according to FairDistricts, it does not fully comply with the FairDistricts Amendment. However, the map was used in the 2012 election.

The redrawn maps did not receive an automatic facial review in the Florida Supreme Court. Because the FairDistricts Coalition believes that maps do not comply with the FairDistricts reforms, it filed suit to challenge the Congressional map in a Tallahassee state trial court. However, the case was not heard in time to change the map for the 2012 elections.

Various Court challenges by FairDistricts, League of Women Voters of Florida, and Florida Common Cause have continued. On July 10, 2014, a Florida judge threw out the state's 2012 Congressional redistricting plan. In the ruling, he found that Republicans "conspired to manipulate the boundaries to protect the party's majority in Washington and 'made a mockery' of the rules of transparency in the process." He also specifically ordered that two of the state's districts—Florida's 5th Congressional District and Florida's 10th Congressional District—should be redrawn as they violated a "FairDistricts Florida" standard approved by voters in 2010 to ban legislators from favoring or protecting incumbents.

Aaron Deslatte’s article in the Orlando Sentinel, November 25, 2014, reveals some of what had occurred. “The Florida Supreme Court released thousands of pages of emails, testimony and sealed court records related to the GOP political consulting firm Data Targeting...” The records revealed “the lengths to which the political operatives went to influence the 2012 redistricting

process...” He concluded, “One of the biggest bombshells of the trial came courtesy of former Florida State University student Alex Posada—once praised by GOP lawmakers for maps he supposedly submitted to the Legislature in 2011—who said under oath he was asked to participate and did not draw any of the maps submitted under his name.”

In June 2014, Leon County Circuit Judge Terry Lewis ruled the GOP had violated the 2010 Fair Districts reforms...and blasted Republican political operatives for waging a "secret, organized campaign to subvert the supposedly open and transparent redistricting process.... They managed to taint the redistricting process and the resulting map with improper partisan intent..." They wrote scripts for people to use when testifying and submitted public maps through third-parties.

Maps deemed acceptable by the Courts have still not been drawn by the Florida legislature. The WFTV 9 news, on November 10, 2014, noted, “The legal fight, which has already cost taxpayers more than \$6 million, will soon cost the state even more. Two key issues including the newly drawn congressional maps, as well as some of the secret documents used in the map drawing process, are now headed to the Florida Supreme Court.”

LWWNE ANALYSIS

The analysis of these four models leads to a number of conclusions. First is that none of the first three, that involve Commissions, exactly fit our State, since Nebraska has a nonpartisan unicameral legislature. It is possible, however, to adjust the mechanisms of creation of the Commissions to fit the Nebraska Legislature.

Second, the Arizona and Florida models have clearly created the most conflict and are still in court. One question is whether this is due to the personalities in leadership of the Legislatures in those two states or the models themselves. In Florida, the Legislature has been charged with continuing to draw the boundaries and is fighting the restrictions on that privilege created by the FairDistrict Amendments. In Arizona, the process worked relatively smoothly in 2001, but the districts drawn in 2011 seemed to create the conflict.

Third, there has not been significant conflict in either California, where the Legislature has an extremely limited role, nor in Iowa, where the districts are drawn by a nonpartisan state agency and then approved by the Legislature. The Iowa plan (often identified as the best redistricting process in the U.S.) maintains the role of the Legislature, that is, the legislature is responsible for approving one of the plans that has been created by the nonpartisan professional agency.

Fourth, it must be noted that the legitimacy of the California process could be affected by the U.S. Supreme Court’s decision regarding the Arizona plan, namely, whether a Commission created by voter initiative can assume the redistricting responsibility, which the plaintiffs believe are reserved by the U.S. Constitution for the State Legislatures.

Fifth, according to Article III, Section 5, the Legislature is specifically charged with dividing the states into Legislative districts: “The Legislature shall by law determine the number of

members to be elected and divide the state into legislative districts.” This statement, together with the Arizona court case, leads to the conclusion that the Iowa redistricting process is the best model for Nebraska. The Iowa model has the Legislature retain the ultimate responsibility for redistricting.

Sixth, one aspect of the Iowa process creates problems for Nebraska. The Nebraska Constitution provides that senators in office after redistricting are allowed to remain in office for the remainder of their terms, and that the redistricting law shall, where necessary, specify the new district they will represent for the remainder of their term: “When the Legislature is redistricted, the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term” (Article III, Section 7). Since using addresses of incumbents would make it virtually impossible to draw sound districts, either (a) Nebraska’s redistricting law would need to provide for situations in which incumbents no longer resided in their districts or (b) an amendment to the Nebraska Constitution would need to be passed prior to or in connection with the new plan.

Seventh, the Iowa Constitution includes a provision (Article III, Section 35), added in 1968, that in the event that the Iowa Legislature fails to pass a new apportionment law prior to September 15 of each year following the U.S. decennial census, the Iowa Supreme Court “shall cause the state to be apportioned into senatorial and representative districts to comply with the requirements of the constitution prior to December 31 of such year.” It also provides, “The reapportioning authority shall, where necessary in establishing senatorial districts, shorten the term of any senator prior to completion of the term.” The Nebraska Constitution has no such provision. Thus this provision may need to be added to the Nebraska Constitution either prior to or in connection with a new plan.

On the other hand, such an amendment to the Nebraska Constitution may not be necessary. Iowa has never needed to use this provision. In 1981, the third plans were passed—without any amendments. In 1991 and 2011, the first plans submitted were passed. In 2001, the second plans submitted were passed. Since Nebraska is much more similar to Iowa than to California, Arizona, or Florida, a provision for the State Supreme Court to assure responsibility if the Legislature cannot agree on redistricting plans may well be unnecessary.

RECOMMENDATIONS

REDISTRICTING: The League of Women Voters of Nebraska has found that redistricting is an exceptionally important issue for good government, and is a complex issue. The LWVNE supports creating a redistricting process that is fair and unbiased. –Adopted 2015.

Specifically, the League supports:

- 1) A redistricting process that is either patterned after the Iowa model (with the Legislative Research Office preparing the maps without Legislative input) or creates a nonpartisan Citizen Redistricting Commission (composed of an equal number of Republicans and

Democrats plus a mutually agreed upon Independent chairperson) to create maps that are submitted to the Legislature for its approval or rejection.

- 2) A redistricting process that includes the criteria for drawing redistricting that are historical best practices adopted by most states, namely:
 - Comply with the U.S. Constitution (federal mandate)
 - Comply with the Voting Rights Act (federal mandate)
 - Equal population (federal mandate)
 - Compact and contiguous
 - Respect of communities of interest
 - Where possible, district lines shall follow permanent and easily recognized features, such as toll ways, expressways, highways, streets, rivers, and clear geographical features, and when practical, shall coincide with census tract boundaries
 - Maintain, as much as feasible, city, town & county boundaries, & undivided census tracts
 - Create competitive districts with no significant detriment to other goals.
 - Ignore incumbent officials addresses
 - Cannot intentionally favor or disfavor a political party, incumbent, or candidate
 - No city block shall be subdivided, since a city block is the smallest parcel for which census data are available.

- 3) Consideration of two possible amendments to the Nebraska Constitution to facilitate the redistricting process:
 - To provide for two-year elections in the districts where no legislators or two legislators are residents in new districts;
 - To provide for the Nebraska Supreme Court to take responsibility for redistricting if the Legislature rejects three sets of plans submitted to them.