



Laboratories of Democracy at Work: A Comparison of the 2018 Anti-Gerrymandering Ballot Initiatives

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When the Pew Research Center polled Americans about gerrymandering in 2006, 89% of respondents had never heard the term or knew little about it. Fast forward twelve years and gerrymandering is a cause célèbre, a focal point for widespread concern over the state of our democracy. This year, five states vote on constitutional amendments to block partisan gerrymandering and change how redistricting is done, far more than in any other year. Ohio approved its amendment in May with 75% support; four others -- Colorado, Michigan, Missouri, and Utah -- will vote in November. Nearly a million citizens in these states have signed petitions to bring these reforms to voters.

The five initiatives differ in the changes they envision to both the process and the purpose of redistricting. They differ in political context, in the degree of independence from elected officials, in what redistricting should prioritize, and how competitiveness should be treated. As this report¹ details, the solutions cover the range of options on all the key variables -- exactly what we look for from our state “laboratories of democracy.”

1. Changing the Process: New Commissions and a “State Demographer”

Redistricting reform centers on addressing the conflict inherent in state legislatures controlling the once-every-ten-year re-drawing of district boundaries. Other democracies rely on entities separate from the legislature for redistricting², and thus avoid our political and legal battles. Likewise, three of the five state reforms under review propose some form of independent commission, but differ significantly in their selection and role. One state, Missouri, introduces the post of full time State Demographer. Ohio has a more political commission (including Governor, Secretary of State and State Auditor) and relies on bi-partisan approval levels to prevent partisan gerrymandering. The graphic below summarizes these core differences.

¹The purpose of this report is to inform readers about the differences among these important reforms.

² For more on redistricting in other countries, see Edward McMahon, [“Guarding the Henhouse: Who Should Draw Credible Election Boundaries”](#), an Election Reformers Network report.

State	New Redistricting Entity	Composition	How Selected (summary)
Colorado	Two 12 member commissions, (one for congressional maps, one for legislative)	1/3 rd Dem 1/3 rd Rep 1/3 rd un-affiliated	All applicants reviewed by bi-partisan panel of retired judges. 6 Selected at random, six selected by judges, including four from short lists from R and D legislative leaders
Michigan	13 member commission	4 Dem 4 Rep 5 Independent or 3 rd party	Applicants reviewed by Secretary of State. R and D legislative leaders may strike some, then commissioners selected at random.
Missouri ³	State Demographer	1 person	State Auditor selects short list from applications and sends to R and D legislative leaders. If they don't agree Demographer selected at random.
Ohio	7 member commission (established in 2015. Takes charge if legislature cannot reach plan approved by 50% of both parties)	At least 2 from minority party	Members are the Governor, Auditor, Secretary of State, and 4 appointed by the majority and minority leaders of the General Assembly.
Utah	7 member Commission	2 must be unaffiliated. Minority party likely to have 2	Majority and minority legislative leaders select three each, including one unaffiliated each. Governor selects one.

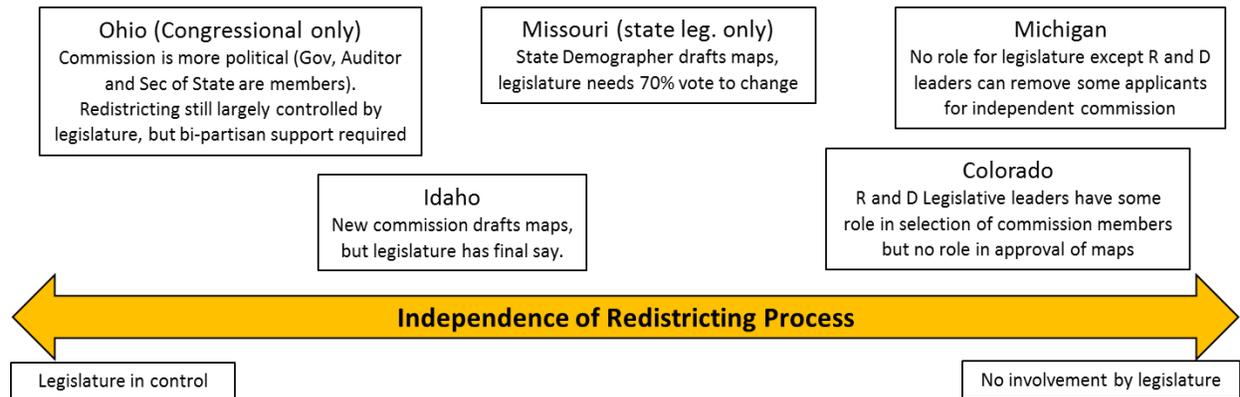
Interestingly, only one of the states, Michigan, has a process that could result in a member of a third party serving on a redistricting commission, as other reforms call for the non-Democrat or non-Republican commissioner slots to go to individuals unaffiliated with any party. All prohibit political insiders such as lobbyists, party officials, consultants, and former candidates from serving on these commissions. Michigan extends this ban to insiders' spouses and family.

Some commissioners will receive only per diem for their efforts; Michigan offers the highest salary, set at one fourth that of the governor. Colorado's plan is remarkably optimistic about the potential interest among citizens in applying: its process calls for selection from pools of 1,050 applicants. Colorado is also most detailed in requirements for geographic balance: all nine of the state's congressional districts must be represented, and no district may have more than two of twelve slots.

2. Independence

³ Missouri's reform applies to state legislative redistricting only, not Congressional redistricting.

States vary considerably in the extent to which these entities have the last word on redistricting plans. The graphic below places these reform plans along a “spectrum of independence”, illustrating how some take redistricting completely out of the hands of elected officials, and others involve the legislature but with new requirements and limitations.



Partisan maps are typically drawn behind closed doors, so an important component of these reforms is involvement of the public through hearings and opportunities to submit maps and comments. Idaho and Colorado detail the range of locations where hearings must be held and provide for two rounds, one to gather information before maps are drawn and a second for comments on proposed maps. Missouri is something of an outlier, providing for only three hearings on maps proposed by the State Demographer, and not explicitly providing for hearings and outreach in advance of map drafting.

Provisions to limit backroom influence also play a role. Utah requires disclosure of all material private conversation by any Commissioner, and Michigan prohibits any communication about redistricting with any members of the public other than at hearings. In Colorado, even Commissioners’ communications with staff about redistricting must occur only at public hearings. Here again Missouri’s plan is an outlier, with little of these provisions, because of its reliance on the State Demographer position.

3. Compactness vs Local Boundaries vs Communities of Interest

All five reforms specify the criteria that must guide redistricting. Common to all (and required by law) is equal population, and all require districts with contiguous boundaries. Those two are straightforward and unambiguously important -- after that, the tradeoffs start. The posterchild for gerrymandering is that misbegotten shape that swoops through towns to pick up enough voters to meet a partisan goal, and to counter such images, compactness is an explicit criteria in all five reforms. But surprisingly, most reforms make compactness a low priority, in most cases ranked below respecting local boundaries, and below an important if vague concept of “maintaining communities of interest” (which also plays an important role in the redistricting reform California adopted in 2008). Michigan’s proposed amendment defines communities of interest as including “populations that share cultural or historical characteristics or economic interests.” Colorado narrows this a notch, referring to groups that “share one or more substantial interests that may be the subject of state legislative action, composed of a reasonably proximate population.”



The graphic below compares how four of the reforms prioritize among compactness, local boundaries, and communities of interest:

State	Communities of Interest	Local boundaries	Compactness
Colorado	1 ⁴	2	3
Michigan	1	2	3
Missouri	Not mentioned	1	2
Utah	3	1	2

Ohio’s reform does not include explicit ranking of redistricting criteria, but instead has the most detailed requirements regarding limits on dividing local boundaries. The initiative provides, for example, that 65 of the states’ 88 counties must fall entirely within a Congressional district, and limits the number of divisions for the remaining 23 to only one division for 15 counties and only two for the remaining 8.

4. Partisan Symmetry

What about fairness? How do the proposed systems fix the distortions that have won Republicans more seats in Congress than their share of the vote in recent elections (with Democrats enjoying the inverse advantage in prior cycles)? The main difference among the reforms lies between three (Colorado, Michigan, and Utah) that rely on independent commissions to block partisan gerrymandering; Ohio, which relies on bi-partisan approval minimums in the legislature; and Missouri, which employs a Demographer guided by detailed provisions on how fairness is defined, prioritized and tested.

Missouri’s initiative ranks “promoting partisan fairness” as a top priority for redistricting. The term is defined with precision: “parties being able to translate their popular support into legislative representation with about equal efficiency.” The proposed amendment specifies in detail the analysis the Demographer must conduct to test maps for fairness. Specifically, the Demographer would be required to:

- calculate wasted votes for each party, defined as votes cast for a losing candidate or a winning candidate below or above the 50 percent threshold to win the election;
- sum the wasted votes for each party across each state legislative district in the plan.
- make sure the difference between the two parties wasted votes, divided by the total votes cast for the two parties, is as close to zero as possible.

This is effectively the efficiency gap analysis developed by Nicholas Stephanopoulos and Eric McGhee to demonstrate partisan gerrymandering in cases headed to the Supreme Court. (The reforms in Michigan and Utah also reference this type of analysis, though in less detail.)

The states other than Missouri use more general prohibitions against unfairness, in language that may turn out to be challenging for courts to interpret, such as restriction against “unduly favoring one political

⁴ Preserving a community of interest can have priority over town and city lines if the community of interests “legislative needs are more essential.”

party.” Four of the five reforms also require some level of bi-partisan approval as a safe guard against unfairness (with fallback provisions if sufficient levels of agreement are not met). The table below compares these fairness elements:

State	Fairness Requirement	Analysis Requirement	Bipartisan Approval Requirement
Colorado	Maps may not be drawn “for the purpose of protecting one party”	None specified	8 of 12 commission members must approve, including 2 of 4 independents
Michigan	“Districts shall not provide a disproportionate advantage to a political party”	“Disproportionate advantage shall be determined using accepted measures of partisan fairness”	At least 2 of 4 commission members from each political party and 2 of five independents
Missouri	“Partisan Fairness” is an explicit priority	Efficiency gap analysis required and must sum to near zero	State House and Senate bodies can change Demographers plan with 70% vote
Ohio	Plans cannot “unduly favor a political party”	None specified	Sliding levels beginning with at least 50% of both parties in legislature
Utah	Plans cannot “purposefully or unduly favor a political party”	“statistical methods including measures of partisan symmetry”	5 of 7 Commission members

Here it is important to emphasize that no system perfectly translates percentage of votes into percentage of seats, particularly given single-member-district elections. Added to that mathematical limitation is the factor of “self-sorting” by Americans into likeminded communities, which can put mapping to create an overall outcome proportional to party strength in direct conflict with other goals such as compactness and respect for local boundaries. An illustration of this dilemma is recent research by Fairvote indicating that the average county-level margin of victory for presidential elections grew from 15% in the 1990s to 40% in 2016. The requirements of the Voting Rights Act for majority-minority districts can also reduce options for partisan symmetry.⁵

5. Competitiveness

Self-sorting also impacts perhaps the most vexing issue in redistricting reform: competition. Partisan concerns have drawn attention to the asymmetry of elections since the 2011 redistricting, but arguably the lack of competitive districts is an even worse failing of our democracy. This issue is particularly apparent in state legislative elections. In the 2016, 42% of state races had candidates from only one major party,⁶ meaning almost half of voters that year did not have a second party to choose from for their state

⁵One of many very good discussions of these issues is at [538, The Gerrymandering Project](#)

⁶https://ballotpedia.org/Major_party_candidates_with_major_party_competition_in_the_November_2016_state_legislative_elections



level representative. Self-sorting is partly responsible, but gerrymandering to entrench incumbents is at work as well.

For three of the five reforms (Utah, Ohio and Michigan) an explicit competitiveness requirement is a bridge too far. Colorado does require its commission to “maximize the number of competitive districts” to the extent possible after other criteria are met, with competitiveness defined as “having a reasonable potential” for the seat to change parties in a decade.

Only Missouri gives a high priority to competitiveness, which is defined as “parties' representation in the state legislature being similarly responsive to changes in the electorate's preferences.” As with partisan fairness, the Missouri proposal includes explicit guidance on the sensitivity analysis to be conducted to assess competitiveness. As the table below illustrates, Missouri is the state among these five with by far the least competitive legislative elections, with only 32% of 2016 state legislative elections contested by both parties, which help explains this priority for Missouri reformers.

	% of state legislative races contest by both parties	Rank in competitiveness of state legislative elections	Competitiveness included in Redistricting Criteria?
Colorado	81%	9 th	Yes. “Maximizing the number of competitive districts” is a criteria, but lower priority
Michigan	100%	First	No
Missouri	32%	41 st	Yes. Promoting competitiveness is a priority criteria, defined as “parties' representation in the state legislature being similarly responsive to changes in the electorate's preferences”
Ohio	74%	15 th	No
Utah	63%	23 rd	No

6. Political Context: Grassroots vs Grasstops; bipartisan endorsement or partisan battle

Recent news on redistricting reform has focused in part on the compelling story of Katie Fahey who launched a half-million-signature movement in Michigan with a Facebook post. Grassroots organizing against gerrymandering, and the political insiders who benefit from it, is indeed a growing phenomenon, but in some states, reform is also being led from the top, by influential ‘grasstop’ leaders including legislative and political figures from both parties.

In both and Colorado and Ohio, redistricting reform has come about through a process of compromise between competing proposals advanced by incumbent Republican leadership on the one hand, and Democrats plus citizens’ groups on the other. That both sides have brought forward reforms, and both sides could compromise, are very noteworthy elements of this reform cycle. Self-interest is inevitably a factor, so it’s possible that predictions of a Democratic wave election in 2018, with a potential for change of control in swing states, has added to Republican interest in acting now to curtail partisan



gerrymandering. It's important to note in this context that Ohio's reform addresses only Congressional redistricting.

Katie Fahey made her post the day after Trump's victory, and to a certain extent, the energy behind reform of the unfairness of gerrymandering runs parallel to the central Trump – Anti-Trump axis in America. But conversations with campaign leaders also reveal state level motivation separate from that national narrative. In Missouri, for example, redistricting takes place in the context of a series of graft and other scandals involving state legislative leaders. This background has generated a reform that is proposing changes to the state constitution in lobbying, campaign finance and public records, in addition to state legislative redistricting. In Utah likewise, state level anti-government sentiment and a perception of widespread self-dealing in state government is driving redistricting reform, according to campaign leaders.

The confluence of state level concerns, national grassroots momentum, and political timing seems to bode well for the prospects of the four remaining ballot initiatives in November. All four campaigns say their polling shows majority support for the reforms, including majorities among democratic, republican and independent voters. All four have prominent endorsements from political leaders of both parties, although Republican endorsements (other than in Colorado) are typically from high profile *retired* elected officials such as former Senator John Danforth in Missouri, not from incumbents. Signature gathering in the three of the states for which petitions were required surpassed required totals by 50% or more (the Colorado amendment was referred to voters by unanimous vote of both state legislative chambers.)

In Colorado it is unlikely there will be an organized opposition campaign (there was also none in in Ohio's referendum in May). The biggest obstacle in Colorado may be the 55% threshold required for constitutional changes. Utah likewise does not yet have an organized "No" campaign, and there is an expectation that anti-reform sentiment there will prioritize other amendments on the ballot this year on medical marijuana and expanding Medicare.

By contrast, the Missouri amendment will face organized and funded opposition, and a lawsuit was recently filed to block the amendment on procedural grounds, allegedly funded by the same sources of a similar, unsuccessful, lawsuit in Michigan. Missouri's reform offers a lot for insiders not to like, including strict changes in lobbying, gift giving and campaign finance, and an end to gerrymandering at the state legislative level that has provided considerable job security.

The most challenging campaign is expected in Michigan, where organizers estimate that spending on the campaign may reach \$15m on each side. Michigan is the state with the most at stake politically, and not coincidentally, it is the state among these five with the most significant gerrymandering. Efficiency gap analysis ranks Michigan as the third most gerrymandered state in the country, with three of the Republican's four seat advantage in the state's congressional delegation attributable to gerrymandering⁷.

The table below summarizes elements of political context in the five states

⁷ Analysis of 2016 Congressional elections. Source: Azavea, ["The Most Gerrymandered States Ranked by Efficiency Gap and Seat Advantage"](#)

State	Rank in efficiency gap ⁸ (lower is less fair)	Rank in Competitiveness	Political profile following 2011 redistricting			Organized Opposition to Amendment Campaign
			Polling on party affiliation ⁹	Seats in Congress	Share of State Legislature	
Colorado	36 th	9 th	33% R / 31% D	5 R / 4 D	46% R / 54%D	None expected
Michigan	3 rd	First	37% R / 44% D	9 R / 5 D	61% R / 39%D	Yes, expected to be well funded
Missouri	41 st	41 st	44% R / 39% D	6 R / 2 D	68% R / 32%D	Yes, expected to be well funded
Ohio	22 nd	15 th	42% R / 41% D	12 R / 4 D	68% R / 32%D	None
Utah	13 th	23 rd	59% R / 26% D	4 R / 0 D	83% R / 17%D	None expected

7. Concluding Thoughts

Reviews of the redistricting reforms in the two states with the most prominent experience so far, California and Arizona, point to successes on several fronts, but also reveal shortcomings. California has to date experienced only a negligible increase in transition in party control of Congressional seats, because of the challenge of self-sorting discussed above, and perhaps because California’s reform did not include competitiveness as an explicit criteria. Arizona, which did prioritize competitiveness, has had success on that front but at the cost of extreme partisan battling, reaching the level of death threats to the Chair of the state’s redistricting commission.

It’s clear that drafters of the reforms under review have learned from these experiences, and also benefited from the growing analytical sophistication brought to bear on this issue. But at a big picture level, the potential for impact of redistricting reform is still constrained by the system it works within: single member districts, which almost always create highly contested two party systems and a large number of unrepresented voters¹⁰.

These factors are important to keep in mind exactly because of the remarkable extent that ending gerrymandering has gained attention as the key to solving our democracy’s woes. It seems very likely that these five reforms will succeed in their aims and that much more fair and transparent redistricting will be done in these states after the 2020 census. It’s also possible that some of the highest hopes for how much

⁸ Ibid

⁹ Source: 2014 Gallup Polling, as reported in Wikipedia, [“Political Party Strength in US States”](#)

¹⁰ No system is perfect, but one worth considering is that proposed by the recently introduced [Fair Representation Act](#), which calls for multi-member congressional districts (typically three to five members) elected with ranked choice voting. Among other benefits, this approach would greatly simplify redistricting, it would also likely help diffuse our corrosive partisanship.



this change will fix our democracy will go unfulfilled. From the point of view of our democracy, it may well be the process itself that's most important, a process that in five states in one year led to citizens and their leaders putting a stop to long accepted self-serving behavior by elected officials.

About Election Reformers Network

Election Reformers Network is nonpartisan organization that provides support to election reform initiatives in the United States that have potential for significant impact and more than one party support. The organization was founded in 2017 by individuals who had previously worked together in election and democracy reform overseas.

“Fundamentally we are not a divided people, but we do need to fix our rules.”