

# **The Arizona Independent Redistricting Commission:** One State's Model for Gerrymandering Reform

Colleen Mathis, Daniel Moskowitz & Benjamin Schneer

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September 2019



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## EXECUTIVE SUMMARY

In most states, redistricting, the process by which electoral district boundaries are drawn, is an overtly partisan exercise controlled by state legislatures. Politicians from the party in power draw the lines that determine new congressional and legislative districts after each decennial census; often they adhere to a brutal partisan calculus that privileges maintaining political power rather than reflecting the will of voters (that is, legislators routinely engage in “partisan gerrymandering”).

The U.S. Supreme Court’s 2019 decision *Rucho v. Common Cause* held that federal courts cannot review allegations of partisan gerrymandering.<sup>1</sup> While extreme gerrymanders may not be democratic, the majority opinion suggested, the court should not wade into the “political thicket” to determine standards for what constitutes a partisan gerrymander. This decision likely blocks any attempts at systematically addressing partisan gerrymandering at the federal level for the foreseeable future; for policymakers and concerned citizens, the second-best options involve implementing policy changes at the state level—for example, by amending state constitutions and creating independent redistricting commissions. Indeed, after the *Rucho* decision, independent redistricting commissions represent perhaps the most viable means to combat partisan gerrymandering.

When states create independent redistricting commissions, they remove the authority for drawing electoral lines from politicians and hand it over to independent bodies consisting of multi-partisan citizen volunteers who do not hold public office.<sup>2</sup> These redistricting commissions are independent from the legislature and designed to be insulated from politicians, whose primary interest is often helping ensure their own re-election. As a result of a 2015 U.S. Supreme Court decision upholding the constitutionality of Arizona’s independent redistricting commission (*Arizona Legislature v. Arizona Independent Redistricting Commission*),<sup>3</sup> redistricting reform efforts have

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1 *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

2 For a listing of states that have commissions for legislative and/or congressional line drawing, see: <http://www.ncsl.org/research/redistricting.aspx>

3 *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 135 S. Ct. 2652 (2015).

expanded into several other states.<sup>4</sup> In 2018 alone, advocates and voters in more than half a dozen states advanced ballot initiatives and legislation to create independent commissions to draw district lines in the upcoming redistricting cycle.<sup>5</sup>

Nevertheless, commission-based redistricting reform may remain on precarious footing given the changing composition of the Supreme Court. Court watchers have observed that a future decision may reverse the *Arizona Legislature* holding and strike down independent commissions as unconstitutional based on Article I of the Constitution, which grants the state legislature (and not necessarily voters themselves) the power to set the rules for congressional elections.<sup>6</sup> The constitutionality of voters opting for independent commissions hinges on the interpretation of the word “legislature”—and whether it is an umbrella term that includes ballot initiatives.

Despite these headwinds, independent redistricting in practice has proven remarkably successful along several dimensions. This policy brief outlines key lessons learned from redistricting in Arizona, a state with a five-person independent redistricting commission. Based on a mix of empirical evidence and first-hand experience, we argue that Arizona’s approach to redistricting:

- increases transparency through public engagement and participation in the mapping process.
- fosters increased competition in districts, which has several effects thought to be beneficial for democratic representation.
- contributes to higher levels of compactness (i.e., how far the district extends from its center) in newly-drawn districts and promotes partisan fairness in the state as a whole.
- benefits from its multi-partisan composition and ought to be insulated from legislative interference.

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4 See <https://www.brennancenter.org/blog/redistricting-reform-gains-momentum-2016> for more details.

5 See <https://www.brennancenter.org/analysis/current-citizen-efforts-reform-redistricting> for more details.

6 See <https://blog.harvardlawreview.org/the-next-threat-to-redistricting-reform> for more details.

## BACKGROUND

Since statehood, through the initiative process, Arizona citizens have had the power to draft propositions, collect the requisite signatures through petition drives, and place measures on the ballot for voters to consider. In 2000, a multi-partisan group of Arizona voters and citizen groups came together to draft a proposition to end gerrymandering by taking the power to draw legislative and congressional districts away from the legislature and granting that responsibility to a new independent entity. This proposition<sup>7</sup> passed with 56 percent of the vote and the Arizona Constitution was amended to create an independent redistricting commission.

Arizona citizens, like those in other states, had grown increasingly concerned that gerrymandering was linked to governmental dysfunction. With growing numbers of candidates running unopposed and government shutdowns becoming more commonplace, citizens and commentators increasingly saw “safe seats” drawn to preserve the status quo for a party or an incumbent lawmaker as part of a broken system.

While the term gerrymander—defined as manipulating “the boundaries of [an electoral constituency] so as to favor one party or class”—most commonly connotes nefarious activity, there can also be valid reasons to gerrymander.<sup>8</sup> Consider Arizona’s Congressional district map below, which the Department of Justice pre-cleared under Section 5 of the Voting Rights Act in 2004. The middle of Congressional District 1 appears to be an obvious gerrymander. However, the “island” of Congressional District 2 surrounded by Congressional District 1 was drawn at the request of the Hopi Tribe, a sovereign Native American nation, in response to the tribe’s concerns about sharing a district with the surrounding Navajo Nation.

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<sup>7</sup> See <http://azredistricting.org/2001/Prop-106.asp>.

<sup>8</sup> “gerrymander.” Oxford Living Dictionary. Oxford University Press. <https://en.oxforddictionaries.com/definition/us/gerrymander> (accessed November 01, 2017).

.....  
Figure 1.



Source: <http://azredistricting.org>

.....  
This situation, one of many that requires navigating complex relationships among various communities, provides an excellent illustration of the competing criteria that must be weighed and balanced when drawing district maps. In this case, one criterion, compactness, was sacrificed for the sake of another, respecting communities of interest. Deciding when and how to make such trade-offs also illustrates why officials cannot completely eliminate human involvement by fully automating redistricting.

## **KEY FINDINGS AND OBSERVATIONS FROM ARIZONA'S EXPERIENCE**

### **Public Participation**

The Arizona Independent Redistricting Commission (AIRC) went to great lengths to ensure the public had numerous opportunities and methods to engage throughout the entire process. The commission carried out most of its work during the 2011 calendar year, with final maps adopted in January 2012. But before a single line was drawn, the commission embarked on a "listening tour," where commissioners traveled the state



to host 23 public hearings exclusively held to obtain input on what the redistricting criteria set forth in the state constitution meant to Arizona citizens. Then, during the line-drawing phase, the commission provided time for public comment at all of its business meetings, allowing anyone in attendance to fill out a “request to speak” form and supply their input for the record. Members of the public could submit comments online at any time. Finally, once the commission completed drawing draft maps, the commissioners again traveled around the state to 30 towns and cities to gather feedback on their work.

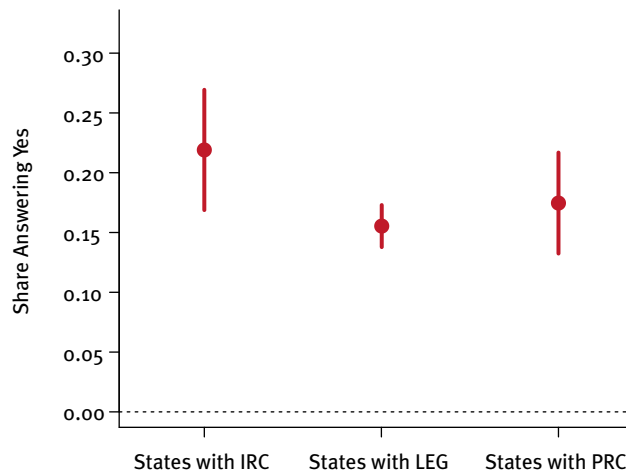
Ultimately, the commission received more than 7,400 items of public input along with 224 maps suggested by the public. Commissioners considered this feedback and incorporated much of it into the final maps.

The AIRC also employed a public information officer and a video/IT expert in order to ensure that the public could participate by streaming the meetings live. Videos and transcripts of these meetings and hearings remain archived and accessible on the AIRC website at <http://azredistricting.org>.

There is some evidence that the combination of independence from the legislature, transparency and the chance to participate has led citizens of Arizona to feel more positively toward their state’s redistricting process. In the Cooperative Congressional Election Survey, respondents from Arizona answered yes to the question of whether they thought their state’s redistricting process was fair more frequently than citizens in all but the top fifth of states.<sup>9</sup> More broadly, among respondents who had an opinion on the fairness of the redistricting process, those from states with independent redistricting commissions were more likely to feel that the redistricting process was fair. Figure 2 shows that states with an independent commission had a roughly six percentage point edge over states with a legislature controlling the redistricting process or a commission of politicians (this difference is statistically significant).

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9 Schaffner, Brian; Ansolabehere, Stephen, 2015, “2010–2014 Cooperative Congressional Election Study Panel Survey,” <https://doi.org/10.7910/DVN/TOE811>, Harvard Dataverse.

Figure 2. Is Redistricting Process Fair? Share Answering Yes in 2014



## COMPETITIVENESS

Another important aspect of independent redistricting in Arizona is the elevation of competitiveness to a full-fledged redistricting criterion with the same weight as other more traditional redistricting criteria such as compactness, contiguity, respecting communities of interest and utilizing natural/geographic boundaries. Specifically, the AIRC must consider and evaluate competitiveness, along with the other redistricting criteria, with the goal of helping to ensure “fair and competitive” districts where both major parties have an opportunity to win an election.<sup>10</sup> The AIRC is also forbidden from considering incumbents’ addresses.

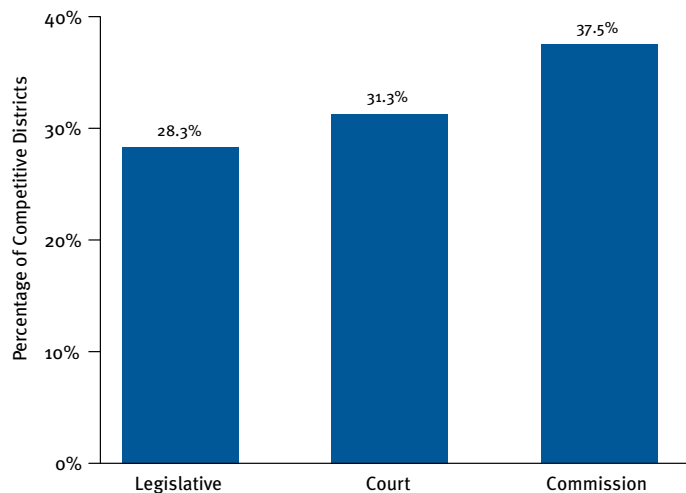
The link between competitiveness and independent redistricting, as well as the potential benefits of competitiveness, requires some examination. Political scientists disagree over whether independent redistricting leads to increased competitiveness. Research on the topic, from Abramowitz Alexander and Gunning (2006) and McDonald (2006), for example, has come to differing conclusions.<sup>11</sup> That said, it does seem

<sup>10</sup> e.g., Ariz. Const., Art. IV, §2.1

<sup>11</sup> See Abramowitz, Alan, Brad Alexander, and Matthew Gunning. “Don’t blame redistricting for uncompetitive elections.” *PS: Political Science & Politics* 39, no. 01 (2006): 87–90. Also see McDonald, Michael P. “Drawing the line on district competition.” *PS: Political Science & Politics* 39, no. 01 (2006): 91–94.

evident that states that have insulated the process from legislators in some manner exhibit increased competitiveness. For example, in a systematic study of competitiveness by redistricting method between 1972 and 2012, Carson et al. (2014) found that commission-drawn (though not necessarily independent commission-drawn) districts are, on average, substantially more competitive than legislature-drawn districts.<sup>12</sup>

Figures 3. Percentage of Competitive House Races by Redistricting Method, 1972–2012



Based on results from Carson et al. (2014).

It also seems that the 2011 iteration of the AIRC did increase competitiveness. To evaluate the change in competitiveness before and after the 2010 redistricting cycle, we measure competitiveness as the underlying partisan composition of the district. We derive our measure from the non-partisan *Cook Political Report's* Partisan Voting Index (PVI).<sup>13</sup> The PVI averages the mean-deviated, Democratic share of the two-party vote in a given congressional district over the past two presidential elections. We use the PVI based on the 2004 and 2008 presidential elections. Intuitively, the PVI indicates the extent to which a given congressional district favors a Democratic candidate

<sup>12</sup> Carson, Jamie L., Michael H. Crespin, and Ryan D. Williamson. "Reevaluating the effects of redistricting on electoral competition, 1972–2012." *State Politics & Policy Quarterly* 14, no. 2 (2014): 165–177.

<sup>13</sup> For more information, see: <http://cookpolitical.com/house/pvi>.

or a Republican candidate relative to the average congressional district. A PVI of 0 indicates a 50/50 district, while a PVI of D+10 or R+10 indicates a 60/40 district favorable to a Democratic candidate or Republican candidate, respectively.

Figure 4 illustrates how the competitiveness of congressional districts in Arizona changed after the 2010 redistricting cycle (the 2012 election was the first with the newly drawn districts). The figure orders congressional districts from least to most competitive; square markers represent pre-2012 districts, and circular markers represent post-2012 redistricting districts. As the plot illustrates, the 2010 redistricting cycle made the two most competitive districts even more competitive and created a third highly competitive district. The remaining districts generally stayed equally competitive or changed marginally in either direction. Based on the PVI competitiveness measure, the three highly competitive districts resulting from the redistricting (AZ-1, AZ-2, and AZ-9) had vote distributions between 53/47 and 50/50. These districts represent 33 percent of Arizona's congressional districts. For comparison, only 15 percent of congressional districts outside of Arizona meet the same threshold for competitiveness.

Figure 4. Arizona Competitiveness: Pre- and Post-Redistricting

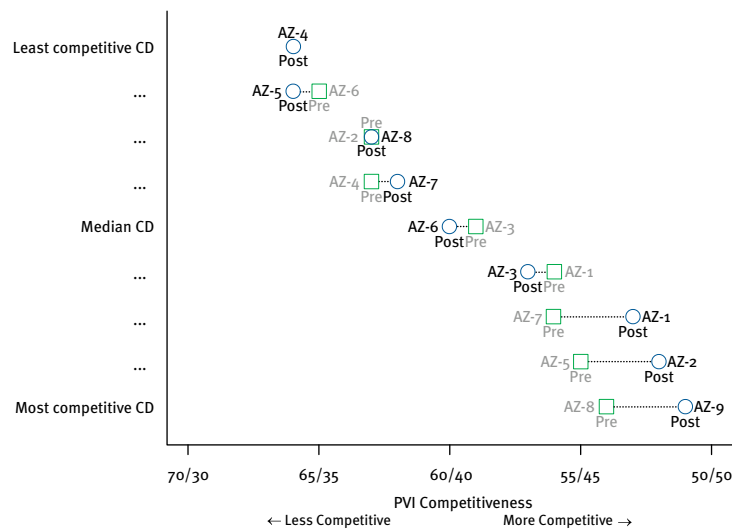
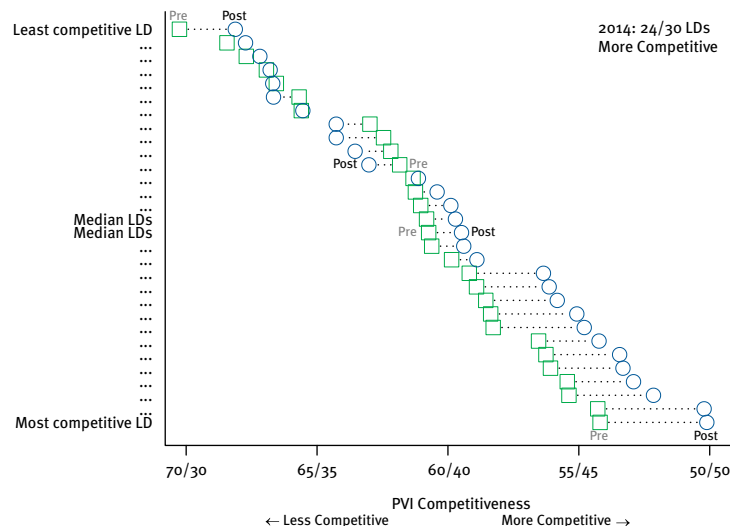


Figure 5 performs the same exercise for Arizona legislative districts. At the state legislative district level, increases in competitiveness are even more marked than at the congressional district level. A full eighty percent of Arizona legislative districts became more competitive post-redistricting.

Figure 5. Arizona Competitiveness: Pre- and Post-Redistricting



Perhaps the best measure of competitiveness is how the districts have performed across all elections since redistricting. Party registration among voters in the state is roughly evenly split among Republicans, Democrats, and Independents. In Arizona's case, after complying with Section 5 of the Voting Rights Act (which was operational at the time of the drawing of the most recent maps), as well as all the other criteria, the commission drew a congressional district map with four safe Republican seats, two safe Democratic seats (which are majority-minority districts to comply with the Voting Rights Act), and three competitive districts.

In the 2012 election, Democratic candidates swept all three competitive races with one race that took two weeks to call (a 2454 vote difference). In 2014, the Republicans won back one of those competitive districts in a race where the election was decided by only 167 votes. Consequently, Arizona was home to the most competitive

district in the country and recognized as having three of the handful<sup>14</sup> of truly competitive districts (out of 435) nationwide. In 2016, Republicans held on to a 5-4 edge in the congressional delegation. Competitiveness in AZ-1 declined due to the entrance of a third-party candidate, and in AZ-2 (the location of the extremely tight race in 2014), the advantages of incumbency led to a more comfortable margin of victory (43,933 vote difference) for Rep. Martha McSally (R-AZ). Most recently, in 2018, Democrats edged out Republicans 5-4. Ann Kirkpatrick (D-AZ) won in AZ-2 in an open seat election as McSally left her seat and ran for U.S. Senate. Thus, in the four congressional elections since redistricting occurred, both Democrats and Republicans won five seats twice—results that reflect the competitive nature of a state where Donald Trump won in 2016 by less than 100,000 votes and where, in 2018, Kyrsten Sinema (D-AZ) narrowly defeated McSally in a U.S. Senate race that pitted two incumbents from competitive districts against one another.

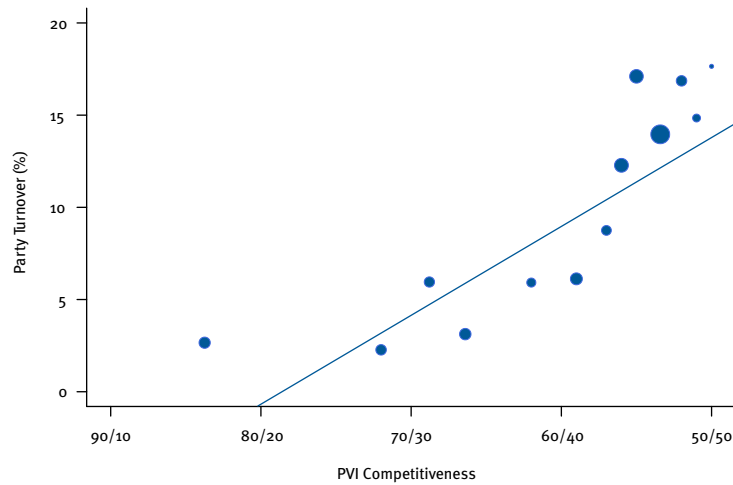
Why all the focus on competitiveness? Many political scientists think that competitive districts have some significant benefits, including encouraging more contested races, attracting more high-quality challengers, and producing more responsive elected officials. Competitiveness also reinforces the idea that everyone's vote matters.

Electoral competition demonstrably contributes to turnover in seats between the parties. The figure below shows that historically, as the underlying competitiveness of the district increases, the percentage of districts that change parties in an election increases as well. In cases where the underlying level of competitiveness is within five points of a dead heat election, almost 15 percent of seats on average ended up switching to the other party.

When politicians face the risk of losing their seats, they may be both more responsive to the preferences of more of their constituents and more likely to pursue bipartisan solutions.

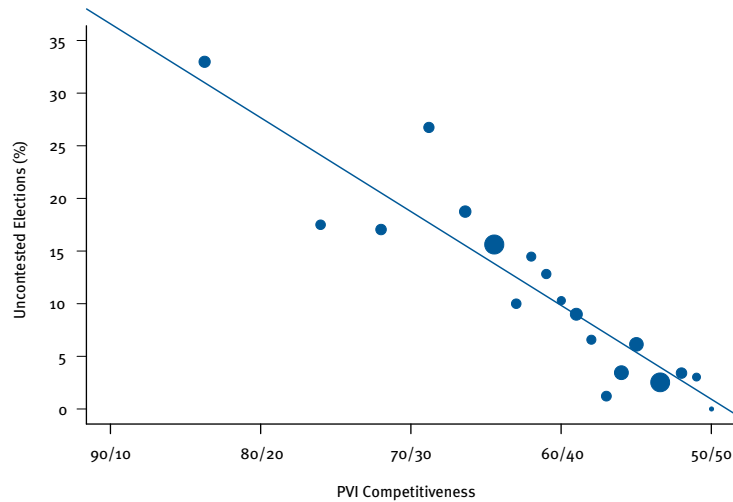
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<sup>14</sup> [https://www.washingtonpost.com/news/the-fix/wp/2016/02/23/the-house-isnt-competitive-in-2016-but-gerry-mandering-is-on-trial/?utm\\_term=.7b79214c93a3](https://www.washingtonpost.com/news/the-fix/wp/2016/02/23/the-house-isnt-competitive-in-2016-but-gerry-mandering-is-on-trial/?utm_term=.7b79214c93a3).

Figure 6. Competitive Electoral Conditions and Party Turnover, 2004 to 2010



Electoral competition also means there will be more races with two viable candidates. Uncontested elections do not grant voters a choice in the general election. Election results since 2004 show a clear relationship between the underlying level of competition in a district and the probability of an election being uncontested. Less than ten percent of races go uncontested in districts with an underlying level of competitiveness of 60/40 or better. In less competitive districts, the percentage of contested elections drops considerably.

Figure 7. Competitive Electoral Conditions and Uncontested Elections



## COMPACTNESS

Arizona’s 6.4 million people (at the time of the last census) are spread across almost 114,000 square miles. While over half of the population is concentrated in Maricopa County, roughly 3 million Arizonans are dispersed throughout the rest of the state. This geographic distribution of the population makes it challenging to draw compact districts of equal population.

Despite this, Arizona ranks highly in terms of compactness compared to other states with similar numbers of congressional districts. Five of nine districts in Arizona rank in the top 20 percent of all districts in the nation in terms of compactness, and the average compactness measure for Arizona districts is more compact than 75 percent of all other congressional districts in the country (using the “Reock” measure of compactness).<sup>15</sup>

That said, the AIRC received some criticism for the size of AZ-1, which, though similar in size to the previous commission’s AZ-1, has been described as “sprawling.”

<sup>15</sup> Reock, Ernest C. “A note: Measuring compactness as a requirement of legislative apportionment.” *Midwest Journal of Political Science* 5, no. 1 (1961): 70–74.



The commission in 2011 was attempting to honor the rural composition of the district—considering rural voters as a community of interest. In order to achieve this and still meet the equal population requirement, vast areas of land had to be included. As an alternative to large geographic districts, the commission could have drawn wedge-shaped districts that took a slice of the dense population near the center of the state in Maricopa County, but this might have resulted in the urban parts of the districts dominating representatives' time and attention and the more sparsely populated rural parts being somewhat neglected.

## **PARTISAN BIAS AND FAIRNESS**

Partisan bias refers to an asymmetry between political parties in the translation of votes into seats. Partisan fairness, then, is the absence of partisan bias. This could be achieved by proportional representation, or by majoritarian representation that nonetheless treats the parties symmetrically. Fully evaluating an electoral system's partisan fairness requires multiple years of election data. However, we can gain some insight into partisan fairness just by examining the difference in the vote share and the seat share for various states. For example, if a state exhibits close to proportional representation over multiple years, then that can serve as preliminary evidence of partisan fairness.

In 2014, based on the difference between the share of votes cast for each party and the share of representatives from each party, Arizona ranked fourth out of all 50 states in terms of achieving proportional representation. Figure 8 below shows the vote share and seat share for Arizona, Maryland, and North Carolina. Maryland and North Carolina are two of the more extreme examples, in which the spatial distribution of voters and district boundaries result in large differences in the share of votes cast for each party's candidates and the share of representatives actually elected from each party. In contrast, the share of votes for a party roughly corresponded to the share of seats won in Arizona.

In 2016, Arizona ranked first in terms of achieving a proportional translation of votes into seats among all states with more than one congressional district. Figure 9 displays a plot of the seat share against the vote share for each state in 2016, highlighting

states with independent redistricting commissions. Arizona was essentially perfectly proportional, with Democrats gaining 45 percent of votes and 44.4 percent of House seats. While this is no guarantee that Arizona will exhibit partisan fairness in future elections, the evidence from these past two elections suggests that the most recent redistricting plan has led to a fair translation of votes into seats for both parties.

Figure 8: Partisan Fairness in Key States in 2014 Congressional Elections

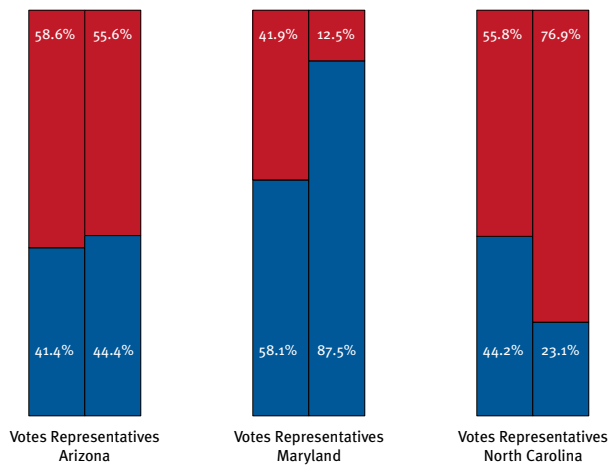
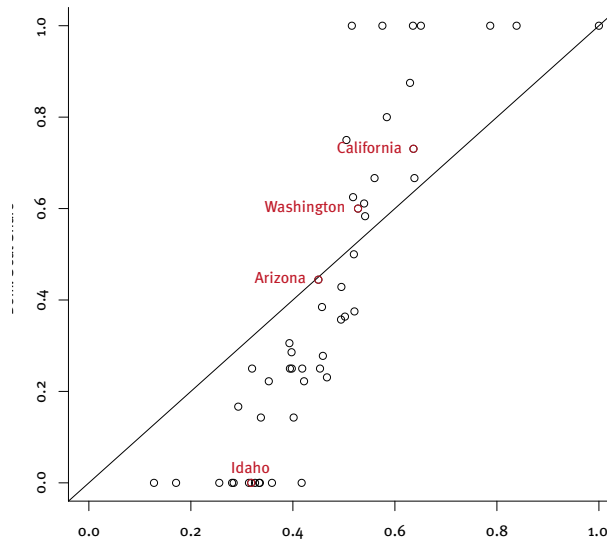


Figure 9: Seat Shares and Vote Shares in 2016 Congressional Elections



## PRACTICAL LESSONS

In addition to the insights gleaned from analyzing the results of the AIRC’s work, there are also important practical lessons to be drawn from Arizona’s process. These impressions are, by necessity, qualitative and reflect just one perspective—specifically, that of the chair of the AIRC (and a co-author on this policy brief), Colleen Mathis.

- States considering creation of an independent redistricting commission must insulate the body from outside influence and interference as much as possible.<sup>16</sup> The commission should enjoy the same privileges and immunities as legislators for the task it is assigned to do. For example, in Arizona, courts have granted the commission legislative privilege for its task of redrawing the state’s legislative and congressional districts. This is essential, as it protects commissioners against the threat of personal lawsuits from factions trying to discredit the work of the commission.
- To ensure the greatest public buy-in, the body that drafts the proposition or legislation creating an independent redistricting commission should be multi-partisan. Arizona’s Proposition 106 was drafted by a Republican, a Democrat and an Independent with non-partisan input and support from Common Cause and the League of Women Voters.
- The composition of the commission should reflect the make-up of the state’s registered voters to the greatest extent possible, and there should be a mechanism allowing for change in the body’s composition as voter affiliation changes over time. For example, Arizona’s current commission is made up of two Republicans, two Democrats and an Independent (who can be a member of any party except the majority or minority party in the legislature). At the time of the drafting of the proposition in 2000, only 18 percent of Arizona’s voters

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<sup>16</sup> A [summary of the litigation in Arizona](#) during the 2010 cycle can be found at Loyola University Law School’s “All About Redistricting” website curated by Professor Justin Levitt. Two of the cases were decided by The Supreme Court of the United States: *Harris, et.al. v. Arizona Independent Redistricting Commission, et al.* (decided April 20, 2016) and *Arizona State Legislature v. Arizona Independent Redistricting Commission, et al.* (decided June 29, 2015). The Commission and/or its Commissioners prevailed in all lawsuits during the 2010 redistricting cycle.

were registered as Independents. However, by 2016, that number had grown to 33 percent. The composition of the commission should reflect that change.

- It is very important to contain the role of the legislature in this task as inevitably some legislators will not like the lines the commission draws. The rule prohibiting consideration of an incumbent's address being factored into line drawing helps protect the commission from inappropriate pressure from legislators. The legislature should not (and, in Arizona, does not) have veto power over the maps. While some criticized the reduced role of the legislature in Arizona's model, at least during the 2010 redistricting cycle, no commission-drawn maps ever would have been approved if the legislature had a vote. Instead, the legislature submits its input via majority and minority reports, which the commission must consider.
- There must be a reliable funding mechanism for the commission. In Arizona, the legislature was charged with this role and that has presented a challenge. Each new fiscal year, the commission has to go, hat in hand, to an antagonistic legislative body to seek funding. In some years, the legislature did not appropriate enough funds for the commission to defend itself from lawsuits that the legislature itself and others acting in concert with the legislature had brought against the commission.

## **CONCLUSION**

Drawing district boundaries is a contentious, difficult exercise. An independent redistricting commission can never satisfy all of the interests all of the time. Aligning districting criteria such as equal population, compactness, communities of interest, administrative boundaries, and competitiveness with legal requirements (e.g., provisions of the Voting Rights Act) is a complex balancing act.

Despite the inherent complexity, the Arizona congressional district map, as evidenced in this analysis as well as in electoral outcomes from the 2012 to 2018 elections, exhibits healthy competitiveness in three of its nine districts while also complying with

the numerous (and often competing) constitutional criteria. The map also reflects the principle of partisan fairness in the elections held to date.

At the same time, independent redistricting cannot cure all the ills that threaten a healthy and functional democratic system; nor can it change inherent characteristics of a given population such as where individuals choose to live. The geographic clustering of like-minded people (of similar age, ideology, ethnicity, etc. for example), presents an ongoing challenge to achieving and maintaining competitive districts.<sup>17</sup> Despite these limitations, we think most citizens would prefer that a multi-partisan commission, independent of the legislature, draw political boundaries. To do otherwise means forfeiting this crucial responsibility to incumbent politicians and, as history has shown, this often leaves voters without meaningful choices at the ballot box.

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<sup>17</sup> See: <http://www.livescience.com/41872-liberals-conservatives-literally-moving-farther-apart.html>



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