

Redistricting in Tennessee: A Once-in-a-Decade Opportunity to Increase Public Engagement

Redistricting is the process of redrawing electoral boundaries for the U.S. House of Representatives and state legislatures. It takes place every ten years, after the U.S. Census has been conducted.

Why Redistricting Matters

Changes in population and demographics that have taken place over a decade are reflected in the new boundaries -quite literally changing the electoral map and, potentially, the balance of power. For some voters, decisions about where the lines go could mean a change in who represents them in federal and state government.



Redistricting shapes how we will be governed for the next decade. When it comes to the health of our democracy, the process through which redistricting is conducted can be as important as the lines that are ultimately drawn.

Opening a window into Tennessee's redistricting process to allow citizens to meaningfully participate would enhance their trust in the system. In a state that consistently ranks near the bottom of the country on voter registration and turnout, redistricting is a key opportunity to **deepen civic engagement**.

Who Draws the Districts

In most states, including Tennessee, state legislatures are responsible for drawing congressional and state legislative districts. A growing number of states, at least 15 to date, turn to commissions -- with or without state legislators and other elected officials -- to draw congressional and/or state legislative maps.(i)

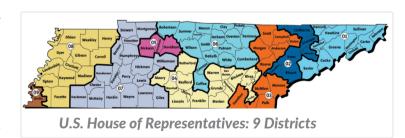


Redistricting commissions can be advisory in nature, with approval remaining under the purview of state legislators, or they can be independent commissions with final decision-making power. County and municipal district maps are typically drawn by local governments and are guided by separate principles.

Who Gets to Weigh In

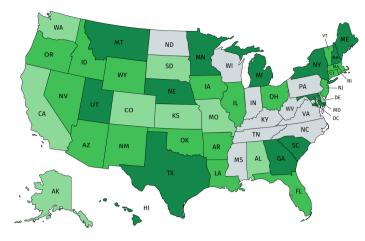
Tennesseans historically have had **fewer opportunities** for public participation, and less access to draft district maps, than people in most other states.

While most states proactively seek public input in the redistricting process, Tennesseans' opportunities for engagement previously have been limited to submitting draft maps and sharing their opinions with their legislators.



Few people exercised these options: Only four draft maps were submitted in Tennessee's previous redistricting cycle.

In most states, members of the public are able to provide input into district design.



- At least 32 states hold public meetings to gather community input to inform map drawing.
- 26 states allow public input at redistricting hearings.*
 - Hold meetings specifically to gather public input
 - Public access and input welcome at redistricting meetings
 - Both

*In Tennessee, public input at redistricting hearings varied. Public comment was allowed during House hearings, while the Senate allowed pre-arranged testimony.

Most states make draft maps available for public review before they are finalized.

• 33 states allow members of the public to **view draft maps**, with many actively encouraging public comment and feedback.



ThinkTennessee's Three-Part Series on Redistricting

As the Tennessee General Assembly prepares for the redistricting process, this three-part brief series seeks to inform Tennesseans about **how redistricting works** and where there are **opportunities to engage** in this once-in-a-decade process.

Part I: Redistricting Laws and Timelines describes the federal and state laws governing redistricting, along with general timelines and map-drawing requirements.

Part II: Redistricting in Tennessee (2011-2012) describes how Tennessee's most recent redistricting process worked and who was responsible for it.

Part III: Recommendations to Enhance Public Trust lists four proven ideas legislators should consider if they want to give voters an opportunity to more fully engage with the redistricting process.

(i) National Conference of State Legislatures. (January 5, 2021). Creation of Redistricting Commissions. *See* https://www.ncsl.org/research/redistricting/creation-of-redistricting-commissions.aspx. A bill is currently pending in Congress that would require every state to have an independent redistricting commission. *See* https://www.congress.gov/bill/117th-congress/house-bill/1/text.



PART I: REDISTRICTING LAWS AND TIMELINES

Part One of this three-part series explains **how the redistricting process works**. It describes the federal and state laws that govern it and provides an overview of the general timeline it must follow.

Federal Requirements

Article I, Section 2 and the 14th Amendment of the U.S. Constitution stipulate that members of the House of Representatives shall be apportioned to each state based on the "enumeration" of their populations every ten years. Federal law also requires each congressional district to be represented by a single member. In other words, legislators cannot draw a district twice as large and ask it to elect two Members of Congress.(i)

The U.S. Supreme Court has further defined the federal laws that guide redistricting. These decisions protect the idea of equal representation based on "one person, one vote" and help prevent racial discrimination.

Districts Must be About the Same Size.

In a 1964 ruling in *Reynolds v. Sims* -- a case made possible by its predecessor, Tennessee case *Baker v. Carr* -- the Supreme Court determined that the 14th Amendment's Equal Protection Clause required states to create state legislative districts based on "substantial equality of population among the various districts."(ii)

This idea of equal representation -- "one person, one vote" -- ensures that each elected official represents as close to the same number of constituents as possible, so that **each individual's vote has about the same weight**.

To ensure equal representation, mapmakers divide the total state population by the total number of districts to determine how many people -- the "ideal population" -- each district should include. This concept is interpreted slightly differently at the federal and state levels.



Congressional Districts: Population sizes must be "as nearly equal as possible," so that there is little to no variability between federal districts.



State Legislative Districts: State districts may be "**substantially equal**" due to the more difficult challenge of distributing populations into smaller districts and considering geographical and local factors.

States interpret "substantially equal" differently, but generally, maps with state districts that have populations within a **5% range above or below the ideal population** and have an overall or "maximum deviation" below 10% are considered **constitutionally acceptable**.

Legislatures Can't Discriminate Based on Race.

Section 2 of the Voting Rights Act (VRA) of 1965 and the Equal Protection Clause of the 14th Amendment **protect against racial discrimination** in redistricting.

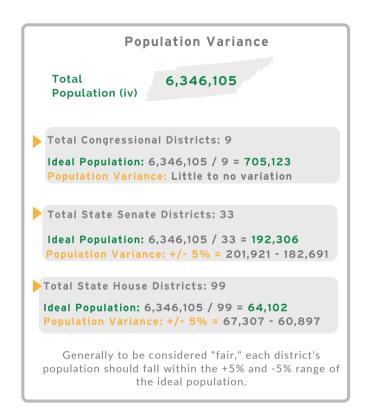
The U.S. Supreme Court interpreted the U.S. Constitution to require a state to have a compelling reason before it can make the race or ethnicity of citizens the "predominant" reason for drawing particular district lines. The Court has repeatedly implied that one such compelling reason is to ensure compliance with the VRA.(iii)

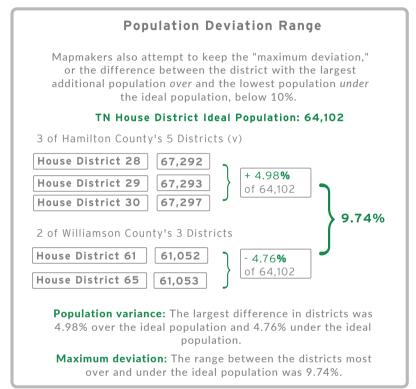
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The VRA prohibits states from drawing electoral districts in ways that improperly dilute the voting power of people of color. Such dilution could occur, for example, through "**cracking**" a community and distributing voters of color between several districts so as to weaken their electoral influence or through "**packing**" them into as few districts as possible.

To prevent dilution of a racial minority's voting power in violation of the VRA, states may create "majority-minority" districts in which members of a racial minority constitute a majority of the voting population. Such districts provide an equal opportunity for racial minority populations to elect a candidate of choice rather than having their votes diluted in districts that diminish their political power.

Ideal Population, Population Variance and Maximum Deviation Demonstrated With 2010 Tennessee Census Data





Tennessee Requirements

Some requirements for redistricting are mandated by federal law, but other decisions are **left to the states**. That means the process for drawing new districts **varies across the country**.

In Tennessee, the state constitution and state law include additional redistricting requirements. Federal and state court decisions provide further guidance about how districts should be drawn.



Article 2 of Tennessee's Constitution requires that legislative districts are **based on population**; that counties within a district must be **contiguous** (adjoining at least one other county in the district); and that counties shall **not be divided**.

State Law State law further articulates that congressional districts must be contiguous; Senate districts may not contain split precincts and House districts must be substantially equal in population and represented by a single member. Whereas the state constitution says that counties shall not be divided, state law allows the House to split no more than **30 counties** to form multi-county districts.(vi)

Court Rulings Federal and state court rulings **cap** the number of counties that can be split into different legislative districts and require legislators to **justify** the creation of districts that are substantially bigger or smaller than they should be.

Counties may be split into multiple districts.

The Tennessee Supreme Court recognized that to ensure equal protection and to incorporate nearly equal populations into districts, all counties -- which vary in population size -- would not be able to remain whole as required by the state constitution. The court ruled that **counties may be divided**, but it **capped** the allowable number of split counties at 30.(vii)



For example, Dickson County is "split" into two House Districts, 69 and 78.

Maps with a population variance of more than 10% require justification.

As noted above, state legislative districts are required to be only "substantially equal" in population, rather than "as equal as possible" like at the federal level. Court rulings have determined that a 10% variation in district populations is the highest acceptable level unless the state can justify the variance.(viii) A map with a variation of less than 10%, however, is not automatically considered constitutional.

Additional Redistricting Considerations

Across the country, mapmakers may consider additional guidelines when drawing legislative districts. Some states include these more formally into redistricting guidelines or laws.(ix)



<u>Compactness and Contiguity:</u> When achieving the ideal population requires districts to include more than one county, compactness and contiguity guidelines keep them from sprawling across large areas. Counties that are contiguous -- that share a common border, by land or water -- can be included in the same district.



<u>Communities of Interest:</u> Mapmakers also may consider a community's racial, ethnic, social, cultural or economic similarities when drawing districts. Keeping these "communities of interest" together helps maintain a community's legislative representation and its ability to advocate for shared policies.



<u>Political Boundaries:</u> When drawing districts, mapmakers try to adhere to the political boundaries -- county and city lines -- to the extent possible. While districts may need to include multiple counties, this guideline helps minimize the number of splits within a county.



<u>Avoiding Pairing Incumbents:</u> To the extent practicable, mapmakers may draw districts in a way that avoids putting two incumbent representatives in the same new district, thereby making them compete against each other for re-election.

Redistricting Timeline

In a typical census year (a year ending in "0"), data is delivered to the president by **December 31**. This data informs "**reapportionment**," the process of redistributing the 435 seats in the U.S. House of Representatives based on population changes. Once a state knows how many congressional districts it will have, it can begin the redistricting process, through which it will ensure that each district has roughly the same number of people.

State-level redistricting data is typically provided to states by **March 31** the following year (a year ending in "1"). States use that data to finalize maps in time for the **candidate-qualifying deadlines** in the next related election. This typically takes place by the next spring, if not earlier.

Like so much else, however, the census timeline has been impacted by the Covid-19 pandemic. States may not receive the data until **September 30**, **2021**, which throws redistricting timelines into flux.(x) With Tennessee's state and federal legislative candidate qualifying deadline in **April 2022**, this cycle's redistricting timeline will be **condensed**.

The Pandemic's Anticipated Impact on Redistricting Timelines



Conclusion

In Part Two of this series, we take a closer look at how the redistricting process worked in Tennessee during the 2011-2012 cycle.

Notes and References

- (i) 2 U.S.C. § 2c (2018).
- (ii) Reynolds v. Sims, 377 U.S. 533 (1964) and Baker v. Carr, 369 U.S. 186 (1962).
- (iii) Shaw v. Reno, 509 U.S. 630 (1993).
- (iv) Tennessee General Assembly, House Ad Hoc Committee on Redistricting. (June 16, 2011). General Redistricting Information.
- (v) Tennessee General Assembly. (January 13, 2012). Population Summary Report.
- (vi) Tenn. Code Ann. §§ 2-16-103, 3-1-102, 3-1-103.
- (vii) Lockert v. Crowell, 631 S.W.2d 702 (Tenn.1982).
- (viii) Moore v. State, 578 S.W.2d 78 (Tenn.1972). Gaffney v. Cummings, 412 U.S. 735 (1973).
- (ix) National Conference of State Legislatures. (April 23, 2019). Redistricting Criteria. See
- https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx.
- (x) U.S. Census Bureau. (February 12, 2021). Census Bureau Statement on Redistricting Data Timeline. See

https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html.



PART II: REDISTRICTING IN TENNESSEE (2011-2012)

Part Two of this three-part series explains how the redistricting process worked in Tennessee during the 2011-2012 cycle. With the process yet to be publicly announced for 2021-2022, we look to the past to anticipate the future.

Every ten years, the Tennessee state legislature draws congressional and state legislative district maps. The Tennessee House and Senate each draw their own district maps, and the two collaborate to draw the congressional district map. All three maps are presented and passed in both chambers and are then signed into law by the governor.

Redistricting committees oversaw the process.

In 2011, the House and Senate appointed members to **redistricting committees** to oversee the drawing of their respective maps. Each included **only members of the majority party** (Republicans).

House Ad Hoc Committee on Redistricting The Speaker of the House appointed **six majority-party members** to oversee the process. Additionally, **seven majority-party "area leaders"** (with some overlap with committee members) served as regional coordinators for Rural East, Rural Middle, Rural West and Davidson, Hamilton, Knox and Shelby counties.

Senate Working
Group on
Redistricting

The Lieutenant Governor appointed a **four-person working group**, which included himself and three majority-party coordinators, each charged with overseeing one of the three Grand Divisions.

Both committees worked with legislative staff and outside consultants to draft the new district maps.

Maps were approved about one week after the public saw them for the first time.

Committee members received census data in April 2011 and worked throughout the year to draft district maps. These draft maps, also known as "concepts," were presented to House and Senate committees in early January 2012 for approval. They moved through the legislative process quickly; **each was introduced and passed in about a week**.(i)

2011-2012 Tennessee Redistricting Timeline

2011

June 16: House Ad Hoc Committee on Redistricting's Initial Meeting

Committee members and guidelines announced.



Members of the public could submit draft congressional, House or Senate maps through their representative.

June - December: Maps Drafted by Legislators and Staff

Meetings discussing and designing district maps were not open to the public.

2012

<u>January 4:</u> House Ad Hoc Committee on Redistricting and the House State and Local Subcommittee Meetings Draft House concept (map) introduced for first time.

January 10: House State and Local Committee and Senate Judiciary Committee Meetings

Draft congressional, Senate and House concepts introduced and passed in full House and Senate committees.

January 12: House Floor Vote

Final House vote approving the House and congressional district maps.

January 13: Senate Floor Vote

Final Senate vote approving the Senate, House and congressional district map.(ii)



Opportunities for public engagement were limited.

Public participation in the 2011-2012 redistricting process included opportunities to (1) **provide input to legislators** and redistricting committee members as they would on any other topic; (2) **submit draft maps** for consideration and (3) attend limited committee hearings.



Both chambers shared the **names and contact information** for redistricting committee members on a **redistricting website**. The House also provided a phone number for public comment. After the draft maps were submitted to the committees in January 2012 -- about a week before final passage -- they were made available online, although **public comment was not actively sought**. (iii)



Both chambers invited members of the public to **submit maps for consideration**. Draft maps were required to encompass the whole state, rather than just individual districts. They had to be submitted through a legislator and received by November 1, 2011. Only **four maps** were submitted.(iv) It is not clear how they were reviewed or whether they factored into the committees' decisions.



The public could **attend legislative committee meetings** where draft maps were presented and discussed, but **participation was limited**. There were two opportunities to view conversations about the House process and draft map and one opportunity for both the Senate and congressional drafts.

Tennessee House Map: Two Opportunities to Engage

The **House Ad Hoc Committee** met publicly in **June 2011** to announce committee members and share the guidelines it would use to draw districts, as well as those for public submissions of redistricting plans. Its **next public meeting** was in **January 2012**, where the draft map was presented to the committee for approval. Meetings involving the development of the map **were not made public**.

During the January 2012 meeting, which was livestreamed, members of the public had two opportunities to participate:

- Those who had submitted draft district maps were invited to present their plans to the committee. Four maps were presented.
- The chair opened the floor for audience and non-committee member questions or comments. One member of the public and two minority-party (Democratic) representatives commented.(v)

Tennessee Senate Map: One Limited Opportunity to Engage

The **Senate Working Group** appears to have held **no public meetings** prior to the January 2012 Senate Judiciary Committee meeting where it presented its draft map.

Members of the public were able to watch the meeting in person or online. While the committee chair **did not open the floor** for public comments as in the House, the committee **did hear pre-arranged comments** from one senator and two community members who anticipated being placed into different districts.(vi)

Congressional Map: One Limited Opportunity to Engage

The House and Senate redistricting committees were also responsible for drawing the **congressional map**, but neither announced details about its process or how the public could engage.

The House State and Local Committee did not discuss the map because it was not ready when the committee met. The Senate Judiciary Committee heard details about the population size of congressional districts, and it appears that the draft map was visible to those in attendance but not to those viewing the meeting online.(xvii) This hearing was the **only opportunity for the public to engage** with the draft map, but those present were only allowed to comment if they had arranged it in advance.

Floor discussions about the map primarily involved proposed amendments -- alternative maps -- rather than detailed discussion of the districts themselves.(viii)

Notes and References

- (i) Tennessee General Assembly. (2012). Legislation Archives. HB1555/SB1513. See https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB1555&ga=107. HB1557/SB 1514. See
- https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB1557&ga=107. HB1558/SB1515. See
- https://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB1558&ga=107.
- (ii) Though initially passed on January 13, 2012, the Senate withdrew the Senate map bill (HB1557) due to an administrative oversight leaving out Tipton County from the text of the legislation. Both chambers re-voted on the corrected bill and passed it again on January 18, 2012 in the House and January 19, 2012 in the Senate.
- (iii) Tennessee General Assembly. (2012). Senate Redistricting. See http://www.capitol.tn.gov/senate/redist/redistricting.html. House Ad Hoc Committee on Redistricting. See
- https://www.capitol.tn.gov/house/archives/107GA/committees/redistricting.html.
- (iv) Tennessee General Assembly. (January 4, 2012). House Ad Hoc Committee on Redistricting Hearing. See http://tnga.granicus.com/MediaPlayer.php?view_id=129&clip_id=19326.
- (v) Ibid.
- (vi) Tennessee General Assembly. (January 10, 2012). Senate Judiciary Committee Hearing. *See* http://tnga.granicus.com/MediaPlayer.php?view_id=196&clip_id=4639. (vii) lbid.
- (viii) Tennessee General Assembly. (January 12, 2012). House Session 41st Legislative Day. *See* http://tnga.granicus.com/MediaPlayer.php?view_id=196&clip_id=4661. and Tennessee General Assembly. (January 13, 2012). Senate Session 42nd Legislative Day. *See* http://tnga.granicus.com/MediaPlayer.php?view_id=196&clip_id=4667.



PART III: RECOMMENDATIONS TO ENHANCE PUBLIC TRUST

In this third and final part of our redistricting series, we share **four recommendations** that can be implemented this year to increase Tennesseans' opportunities to participate in the redistricting process.

Last time, there were limited opportunities for public comment.

During the last redistricting cycle, legislators created new opportunities for the public to engage -- they provided a website and comment line and invited the public to submit draft maps. But **few people exercised these options**: Only four draft maps were submitted.

Looking ahead, allowing the public to be more involved will deepen civic engagement and build trust.

The boundaries legislators draw this year will quite literally change the electoral map in our state. For some voters, decisions about where the lines go will mean a change in who represents them in federal and state government.

As they prepare for this redistricting cycle, Tennessee legislators should consider **four ideas that have worked in other states**:

Recommendation One: Actively share information with constituents about opportunities to participate in the process.

Tennesseans should know which legislators will be making the decisions, what process they will use and how and when they plan to engage the public.

- As they did ten years ago, the House and the Senate should maintain **websites** that serve as one-stop shops for redistricting information.
- Legislators should **actively share** this information -- the same way they would information about a voter-registration drive or a town hall meeting -- with their constituents, *e.g.*, through social media, in their newsletters and on their websites.

Examples from Other States





The **Arkansas** General Assembly issued a press release announcing its 2021 redistricting process.

The release, which is available on the General Assembly's website, provides an overview of the process, a general timeline and a notice that all committee meetings will be livestreamed for real-time participation.(i)

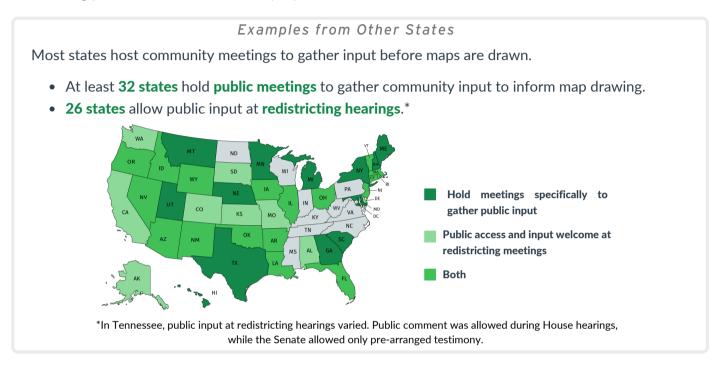
A Guide to 2021 Redistricting that details requirements, a timeline and additional information to help inform residents about the process is posted on the **Texas** legislature's website.(ii)

The Texas state senator who chairs the redistricting committee uses social media to promote redistricting hearings and invite public participation.(iii)

Recommendation Two: Host meetings to solicit community input on the redistricting process.

While Covid-19 may impact legislators' ability to hold in-person meetings, it also has provided them a window of opportunity to engage the public in redistricting discussions while awaiting the delayed census data.

- Redistricting committees should host well-publicized community meetings in every Grand Division through 2021. These meetings would allow the public to provide input on communities of interest, local preferences and other issues the legislature may take into consideration when drawing maps.
- **Every legislator** should hold in-person or virtual **meetings in their districts** to share information about the redistricting process and seek community input.



Recommendation Three: Allow the public virtual access to all legislative redistricting meetings, with a week's notice provided for when those meetings will convene.

In addition to hosting community meetings before maps are drawn, legislators should **allow the public to attend** meetings where maps are discussed and drawn.

- ➤ Redistricting meetings should be open to the public to attend in person or virtually. Last cycle, the public could attend and stream legislative committee hearings where draft maps were presented, but the meetings where maps were developed were not publicly accessible.
- ➤ Members of the public viewing these meetings should have an opportunity during the meetings to share their views, and those views should be recorded and made part of the public record.

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Examples from Other States

In 2011, all meetings of the Alabama Reapportionment Committee and its subcommittees were made **open to the public**, with minutes and transcripts maintained as part of the **public record**.(iv)



South Dakota's 2021 redistricting timeline includes **multiple meetings** of the legislative redistricting committee meetings, where **public testimony** is generally accepted.(v)

Recommendation Four: Actively seek public input on draft maps.

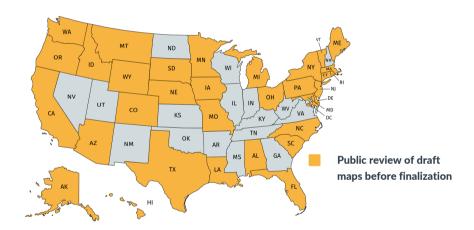
The legislature should continue to allow the public to **submit draft maps**, and it should provide information about how those maps **will be considered**. Legislative committees should **share draft maps** with the public -- potentially along with demographic information and voting patterns for each district -- **before they are finalized**.

- Redistricting committees should host additional well-publicized **community meetings when maps are drafted**. These meetings would allow the public to preview changes to their districts, provide comments and hear legislators' reasoning for proposed district changes.
- Redistricting committee meetings where draft **maps are presented** should be **open to the public**, with enough time between presentation and passage to allow members of the public to submit comments and feedback.

Examples from Other States

In most states, draft maps are presented for public review before they are finalized.

• 33 states allow members of the public to view draft maps, with many actively encouraging public comment and feedback.





In **Louisiana** last cycle, the public could **attend committee hearings** where draft maps were presented and discussed. Maps were not finalized until **weeks later**, allowing time for the public to contact legislators with feedback.(vi)



In **Nebraska** last cycle, members of the **public testified** about concerns with proposed new district boundaries at a redistricting committee hearing.(vii)



In **lowa**, state law requires at least **three public meetings** about draft maps before they are approved. (viii)

Notes and References

- (i) State of Arkansas House of Representatives. (December 11, 2020). Redistricting in Arkansas. See
- https://www.arkansashouse.org/news/post/8060/redistricting-in-arkansas.
- (ii) Texas Redistricting. (January 2021). Guide to 2021 Redistricting. See
- https://redistricting.capitol.texas.gov/docs/guide_to_2021_redistricting.pdf.
- (iii) Twitter. (March 13, 2021). Joan Huffman. See https://twitter.com/joanhuffman/status/1370734974886932482?s=20.
- (iv)The Alabama Legislature. (May 2011). State of Alabama Reapportionment Committee Guidelines for Congressional, Legislative, and State Board of Education Redistricting. See
- http://www.legislature.state.al.us/aliswww/reapportionment/Reapportionment%20Guidelines%20for%20Redistricting.pdf.
- (v) South Dakota Legislature Legislative Redistricting Council. (November 16, 2020). Redistricting 2020, a Primer. *See* https://mylrc.sdlegislature.gov/api/Documents/207169.pdf.
- (vi) Louisiana House of Representatives. (January 24, 2011). Redistricting Timeline. See
- $https://house.louisiana.gov/H_Redistricting 2011/Redistricting Timeline_1_24_11.pdf.$
- (vii) Nebraska Legislature. (May 13, 2011). Public Gives Input on Redistricting Proposals. Unicameral Update. See http://update.legislature.ne.gov/?p=4773.
- (viii) The Iowa Legislature. Iowa Code § 42.6. See https://www.legis.iowa.gov/docs/code/42.6.pdf.