

Fair Maps Nevada: Our Proposed Redistricting Reform Amendment

Fair Maps Nevada offers this information in support of our redistricting reform ballot question. In this document, we provide supportive reference material and address the legal challenge against our description of effect. Please note that the first legal challenge was only against the summary of our amendment and its effect, and the Nevada Supreme Court appeal was ruled without merit, neither lawsuit challenged our actual amendment. Any efforts to discredit the amendment by citing the simple fact that opponents filed lawsuits are bad faith efforts by opponents who wish to maintain gerrymandering power.

A Brief History of Current Redistricting Reform

In June 2019, the U.S. Supreme Court ruled in *Rucho v. Common Cause* that partisan gerrymandering is a political issue to be resolved at the state level and so blocked federal courts from accepting partisan gerrymandering cases. Many good governance groups responded by researching ways to continue the battle against this insidious form of voter suppression.

Under the *Rucho* case, if we do not amend state constitutions and pass state laws to stop partisan gerrymandering, good governance advocates will have no recourse against partisan gerrymandering. Moving forward, every time a state has one-party control, the majority party will have a license to draw and approve partisan gerrymandered maps without legal consequences.

Agreeing that politicians should not be allowed to pick their voters by drawing their own district maps, our coalition searched for tested models of redistricting commissions already approved by voters in other states. No need to reinvent the wheel when other states are ahead of us in this area; ultimately, we found approved redistricting commissions in Colorado and Michigan that could work in Nevada.

Yet, Nevada is different from Colorado and Michigan in one important respect; our very strict Single Subject Law. This law stopped us from adopting either state's redistricting model whole cloth. Instead, we tailored our ballot question to fit our state's rules within nationally recognized best practices for redistricting.

Nevada's single-subject law reads:

NRS 295.009 General requirements for state or local petition for initiative or referendum: Must embrace one subject; must include description of effect.

1. Each petition for initiative or referendum must:

(a) Embrace but one subject and matters necessarily connected therewith and pertaining thereto; and

(b) Set forth, in not more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters. The description must appear on each signature page of the petition.

2. For the purposes of paragraph (a) of subsection 1, a petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.

In addition to being mindful of this law, we also referred to best practices from the Campaign Legal Center's guide to *Designing Independent Redistricting Commissions* and the Brennan Center for Justice's *Model Legislation for Independent Redistricting Commissions* while writing our ballot question.

[Designing IRC Report2 FINAL Print](#)

[2019 10 ModelBills longtextFINAL](#)

The Single Subject Law and our amendment:

Nevada strictly enforces our single-subject rule to ensure ballot question language cannot appear to do only one thing, while covertly doing something additional. Our initiative, therefore, could not address Nevada's many different redistricting problems without risking a single-subject violation.

For instance, currently, we cannot ensure elected legislators who work on redistricting reflect our state's diversity. Whoever is elected into the legislative majority in the session following the census count is allowed to redistrict. We see more legislative diversity now, but this is not a guaranteed outcome.

However, when drafting our amendment, a court could view creating a new process to ensure redistricting commissioners reflect Nevada's wide-range of diversity, in ways that our current process does not, as a second subject on its own, and that a redistricting commission must first exist before a diversity process can be added.

Consequently, our amendment could not address an additional process, which voters could view as a second subject, simultaneous to proposing a redistricting commission. We could not ask voters 1. Do you agree to create a new redistricting commission? And 2. Would you also like to approve our proposed process for addressing redistricting commissioner diversity? Those are two different questions, so two different subjects.

Does this mean that our amendment ignores the issue of diversity? No, we address diversity later in this document, but if voters accept our redistricting commission and would like to explore an additional diversity process, they can run a separate ballot question or ask legislators to pass enabling legislation with administrative processes included. The advantage of adding administrative processes to an amendment through legislation is the opportunity gained to tweak the administrative details each legislative session if needed.

The Nevada Constitution, Article 19 Sec. 5, allows for legislation to implement an initiative:

<https://www.leg.state.nv.us/const/nvconst.html#Art19>

Two Democratic Virginia legislators just submitted enabling legislation that addresses some of these issues for their state's redistricting reform amendment: https://wset.com/news/local/senators-lucas-locke-introduce-legislation-to-further-enhance-redistricting-in-virginia?fbclid=IwAR1CsB2fNP36YhuTAWIxuYUipMzq751IeiKLVwrK-5_t1YrKT9IqiNcCymg

Why we need redistricting reform now and through an amendment:

The history of drawing distorted district maps, which is called gerrymandering, includes two types. One is racial gerrymandering, which became a serious problem after the Civil War, and the second is partisan gerrymandering, which has become a growing problem over the past twenty years. This second type, which advantages political parties over voters, has been a problem since the first gerrymander in 1812.

You can learn about gerrymandering

here:https://www.washingtonpost.com/video/business/wonkblog/gerrymandering-explained/2016/04/21/e447f5c2-07fe-11e6-bfed-ef65dff5970d_video.html

Discrimination is not absent from Nevada’s past, yet our state’s redistricting history is marred more by incumbent protection and battles over proportional representation among the counties. We often refer to this second battle as the “one person, one vote” redistricting battle as Clark County boomed and northern counties worried about losing legislative influence.

https://www.leg.state.nv.us/Division/Research/Districts/Reapp/2011/Publications/PoliticalHistoryNV2006_Ch8.pdf

Protecting incumbents is a form of partisan gerrymandering that blocks electing new legislators and so keeps new ideas out of legislative decisions. Nevada voters approved term limits, which took effect in 1998, to exercise a check on power-hoarding, but while this reduced incentives to protect specific office-holders through gerrymandering, term limits did not address redistricting, which provides a partisan advantage for one political party over another.

We must address this party-advantaging problem through redistricting reform now because under the *Rucho* decision the federal courts will be unable to strike down future partisan gerrymandered maps.

Once partisan gerrymandering advantages either party, that party will undoubtedly resist reducing their control over redistricting. Even if a party does the right thing and passes laws to eliminate partisan gerrymandering, once the other party gains a legislative majority, it could easily strike down those laws.

Consequently, we need a constitutional amendment to make it very difficult to undo redistricting reforms. The amendment process is cumbersome, so any attempt to undo our amendment will also be cumbersome.

The men who wrote Nevada’s Constitution added the initiative, the referendum, and the recall for times like this when voters feel it is necessary to insulate needed reforms from common political practices.

Proposed reform outcomes:

We started crafting our amendment by prioritizing solutions to a few basic problems.

We prioritized addressing:

- 1. Conflict of interest: Legislators draw their own districts, which gives them and their parties a corrupt advantage.**
- 2. Lack of transparency: Our legislature exempts itself from Nevada’s Open Meeting Law, so the maps are currently drawn behind closed doors with little public oversight.**
- 3. Exclusion of influence: Members of the minor political parties and Nevadans registered as nonpartisan are excluded from the redistricting process.**

To stay within the single-subject rule, we wrote these priorities into the amendment and then managed other parts of the current redistricting process through various checks and balance mechanisms. If Nevadans agree with us, they can easily address other issues more directly through enabling legislation that adds specific administrative processes after our amendment passes.

How our commission works:

Our amendment tasks the two major political parties, through the majority and minority leaders in each legislative house, to select the first four redistricting commissioners and then these four commissioners will select the next three commissioners, who cannot be affiliated with the two major parties. This is not a major change because the current process allows the legislative leadership to appoint legislators to the legislative redistricting committees. So, the process is not drastically changed, instead, we changed the commissioner qualifications to address conflict of interest.

We looked at an automated application process that randomly draws commissioners from a pool, but we found that randomization in other states created panels of mostly white commissioners from major cities. Arizona is having the most problem with this right now.

Commission positions will be open to Nevadans not currently connected to political offices or professional lobbying as well as to Nevadans who are not affiliated with the two major parties.

We do also restrict family members to the third degree from serving, which is the same standard used in the Revised Nevada Code of Judicial Conduct. [Judicial Philosophy NEVADA CODE OF JUDICIAL CONDUCT](#)

We do not restrict commissioners from running for office after serving on the commission. Studies show women and members of diverse communities are more likely to run for office after serving on a board or commission, so we will not block them from running for office. We see this as a diversity issue.

Quite a bit of current research shows women are much more likely to run for office after serving on a board or commission: https://cawp.rutgers.edu/sites/default/files/resources/poisedtorun_0.pdf

Returning to the issue of diversity, we addressed diversity through the public's role in our commission. We asked these questions when thinking about our process for appointing commissioners:

- **Would the major political parties ignore their constituent bases when making selections for the commission?**
- **Would Democratic legislative leadership ignore communities of color, women, and the working class?**
- **Would the Republican legislative leadership ignore rural communities, women, and business owners?**

The answer to each question is: very unlikely. Both parties might ignore their respective base of voters, but they will pay a high price in their internal party governance. Party insiders do not stand idly by when ignored or lied to.

Similarly, the criticism that nothing prevents legislative leadership from excluding nonpartisans from the commission ignores typical political strategies. Approximately 22 percent of Nevada voters are registered as nonpartisan, with an additional six (6) percent registered in a minor political party, so a sufficient number to swing individual elections. Will the political parties want to alienate that many voters by not appointing any nonpartisans? It would be foolish and would go against the parties' self-interest.

Related to this issue is the question: Will your process produce commissioners who have the right experience to redistrict? Our citizen legislators have the exact same experience, so our Legislative Counsel Bureau, the legal team that assists legislators with redistricting, will be available to help redistricting commissioners in exactly the same way.

The role of the public as a check on power:

We include a role for the public in our redistricting processes to produce better outcomes. We argue the public will engage to help our commissioners and to remind the political parties that we the people want fair maps.

Redistricting needs public input to counterbalance the use of software.

The 1991 redistricting cycle was the first where software began to change the process, and this influence has increased exponentially, so that by the 2011 cycle the combination of high-powered software and a lack of transparency produced a noticeable uptick in partisan gerrymandering. We do not see the use of software receding; therefore, we propose balancing the use of software in redistricting with a large dose of transparency and to arm the public with its own software.

To amplify the public's role, computer scientists have created redistricting software that anyone can download to a personal computer. A little training on using shapefiles and census data can turn any community member into an active redistricting participant.

To facilitate the public's redistricting role, we mandate that all redistricting commission documents be public records; so, anyone can download maps in-progress to check for amendment criteria violations. We also mandate that the public be allowed to submit maps to the commission for consideration. The federal redistricting criteria from the 1965 Voting Rights Act, which our legislators have been expected to follow since the 1970s, comes loaded into these redistricting software packages:

Public Map Drawing Resources

District Builder: <http://www.districtbuilder.org/>

Auto-Redistrict: <http://autoredistrict.org/>

Dave's Redistricting App: <http://gardow.com/davebradlee/redistricting/launchapp.html>

Funding the redistricting commission and approving the redistricting maps:

One issue discussed in the legal challenge to our description of effect is a supposed failure to state how our redistricting commission will be funded.

Nevada's Constitution mandates redistricting after every census in Article 4 Sec. 5:

Sec. 5. Number of Senators and members of Assembly; apportionment. Senators and members of the Assembly shall be duly qualified electors in the respective counties and districts which they represent, and the number of Senators shall not be less than one-third nor more than one-half of that of the members of the Assembly.

It shall be the mandatory duty of the Legislature at its first session after the taking of the decennial census of the United States in the year 1950, and after each subsequent decennial census, to fix by law the number of Senators and Assemblymen, and apportion them among the several counties of the State, or among legislative districts which may be established by law, according to the number of inhabitants in them, respectively. [Emphasis Added]

Every Nevada legislator swears an oath upon entering office and that oath includes pledging to uphold our state's constitution. So, since Nevada became a state in 1864, in every legislative session after the decennial census our legislature has funded redistricting to meet our constitution's mandate.

If our amendment is approved, Nevada’s constitution will direct our legislature to fulfill its mandatory duty to redistrict and to do so through a redistricting commission.

Can legislative leaders meet their oath to uphold the state’s constitution if they withhold funding for our redistricting commission? No, if redistricting is a constitutional mandate and our commission also has the same mandate, these leaders will be in violation of their oath.

Legislators who refuse to fund our commission will be in violation of their pledge to uphold Nevada’s Constitution.

A new redistricting institute at The Grainger College of Engineering, University of Illinois at Urbana-Champaign, is now offering free services to redistricting commissions. The Institute for Computational Redistricting is using computer technology to make the redistricting process more transparent and accountable to voters.

Our commission will have the ability to use free services such as this if the political parties decide to put party over their oath to uphold Nevada’s constitution.

“ICOR’s mission is to provide transparent approaches for redistricting grounded in computational methods, which serves the needs and values of the people. Their vision is for governments and legislative bodies to adopt transparent redistricting processes that empower all voters to express their choices for the elected officials who will represent them. As such, to have the greatest impact, ICOR offers its services, at no cost, to any state agency or commission seeking assistance with their redistricting process.

“When legislators pick their voters, rather than voters electing their legislature, we are a weaker nation.” Jacobson noted. “Creating a computational environment for transparent redistricting is a huge leap forward in combating gerrymandering and empowering voters within our democratic system.”

<https://cs.illinois.edu/news/computational-redistricting-drawing-maps>

Our commissioners will only be paid per diem reimbursements for expenses and the services provided for the commission are the same services that have been provided when legislators redistricted, so we do not anticipate extra costs.

We have data for how much our legislature spent on redistricting in 2001 and 2011 as a baseline. In 2001, the Republicans held the majority in the Senate and the Democrats held a majority in the Assembly of our legislature and Republican Kenny Guinn was the Governor. Because the legislature and the governor could not reach a compromise on maps during the regular session, the process went into a special session that cost \$70,000.

And the Legislative Counsel Bureau reports that the extra redistricting process in 2011, which included two vetoes and a panel of three special masters to draw the maps, cost taxpayers at least \$332,000.

https://www.leg.state.nv.us/Session/17th2001Special/bills/SB/SB1_EN.pdf

Once redistricting maps are completed in our proposed process, five of the seven commissioners must vote yes, and of the five votes one vote must come from each of the two major political parties and one must come from the commissioners not affiliated with the major political groups.

This rule is designed to drive a consensus outcome and to keep the two major parties from colluding. If the two Republicans and two Democrats decide to trade partisan gerrymanders, those four

commissioners must not be allowed to approve the maps without input from the commissioners not affiliated with the two major political parties.

The independent and nonpartisan commissioners must have more than an ability to call out possible collusion, they need the power to veto those maps. Once maps are approved Nevadans can no longer sue to undo partisan gerrymandered districts, so the approval process must include a mechanism for stopping maps outside of the courts.

Allowing the minority to stop the majority from acting is not a new concept in our system of checks and balances and it is not new to the redistricting process. Under the current process for redistricting, a party could have a majority in one or both legislative houses, but no rule forces any legislator to vote yes on redistricted maps. If a few Democrats or Republicans vote with the minority party against their own party's approved maps, even one legislator could exercise an effective veto right now.

In 2011, the Democrats had majorities in both the Senate and Assembly and passed their preferred maps, but then one man, Governor Brian Sandoval, vetoed their two sets of maps. So, we are not creating a new problem, we are maintaining a check on the majority by empowering the minority to stop actions that may not benefit the greater good.

Nothing in the Nevada Constitution states what happens if the legislature fails to produce maps the governor will sign. When that happened in 2001, the legislature went into special session and took more time to draw the maps. When this happened again in 2011, a judge interceded. In each instance, Nevadans created a path forward and produced redistricted maps.

Our responses to the legal challenge:

The legal challenge to our description of effect claims that our redistricting commission is not independent because we include the political parties in our process. Our definition of independent is independent of legislative processes, which include the legislative exemption from the Open Meeting Law. Our redistricting commission will be transparent and include public input, while the current redistricting process happens behind closed doors. If our commission was merely an appendage of the legislature, it would not have the power to reject the Open Meeting Law exemption.

The legal challenge to our description of effect claims that our redistricting commission process cannot claim to produce fair redistricting maps. Our process requires commissioners to use the federal redistricting criteria our legislature has been using since 1970 to create redistricted maps.

The legal challenge to our description of effect claims that our redistricting commission process will not create a commission that reflects our state's diversity. Currently, our legislative redistricting process does not guarantee legislators who draw our redistricted maps reflect our state's diversity. Our process allows the base of each party to apply pressure on the political leadership to appoint diverse Nevadans to the commission and to appoint at least one nonpartisan.

The legal challenge to our description of effect claims that our redistricting commission process will allow a minority of commissioners to stop maps from being approved. Under our current legislative redistricting process, one person, the governor, may stop maps from being approved, so we have not added a new feature to this process.

The legal challenge to our description of effect claims that our redistricting commission process does not include a mechanism for what to do if the commission fails to adopt maps. Our current system has no process dictating what to do if maps are not adopted; yet, we still manage to pass maps every ten years.

The legal challenge to our description of effect claims that our redistricting commission process does not include a funding mechanism or power to force the legislature to fund and staff the commission. The Nevada Constitution mandates that the legislature redistrict after the census count. Legislators who fail to uphold our state’s constitution will be in violation of their oath of office.

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The legal challenge to our description of effect claims that our redistricting commission process should include an application process and non-legislative officials, but this willfully ignores Nevada’s Single Subject Law that prohibits such proposals. It also ignores the Nevada Revised Statute that allows Nevadans, through their legislators, to pass enabling legislation after an amendment passes.

The attorney, who is now Governor Sisolak’s General Counsel, in the appeal against our amendment, references Arizona’s redistricting commission as an example of an application process to ensure commissioners reflect the state’s diversity. Yet, right now one of the complaints about Arizona’s redistricting commission is that all the commissioners are from Phoenix and Tucson. So, in this case, the application process failed to produce the results cited by the opposition’s attorney:

<https://azredistricting.org/About-IRC/FAQ.asp>

We have explained our reasoning and answered the criticisms of our redistricting reform amendment. The Fair Maps Coalition hopes to engage our community in civil dialog about this very important issue as we gather signatures for our petition. It is vital to have this discussion as we face a future without the ability to overturn partisan gerrymandered maps in court.