

# A History of Redistricting in New Mexico

## Executive Summary

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As New Mexico gears up for the decennial census in 2020, so do the mechanisms powered by census data, including redistricting and reapportionment. The nation's founders made a census a constitutional requirement for a simple purpose: to distribute seats in the U.S. House of Representatives. That's a little more complicated these days, but since its foundation as a territory, New Mexico has rarely accomplished this task without a struggle.

New Mexico is among the more than 30 states where state lawmakers conduct redistricting. (Other states use a variety of [commission structures](#).) Legislators have to abide by [two federal rules](#): districts have to be equal in population, and the process can't dilute the voting strength of ethnic and racial minorities by "packing" them all into one district or "cracking" their communities into so many pieces that their votes effectively don't carry as much weight as others'. The first has historically been harder than it sounds, and interpretation of the second usually happens in court.

Lawmakers craft their own short set of [guidelines](#) but are otherwise given much free rein to work out the details among themselves. Giving elected officials exclusive control of drawing their own districts makes it political by nature, and can put legislators in the difficult position of having to choose between their own reelection chances and creating districts that best serve voters' interests. As it has been throughout history, across the nation, "the gerrymander is alive and well," [according to](#) Loyola Law School professor Justin Levitt, a national expert on redistricting. "Politicians still carve territory into districts for political gain, usually along partisan lines."

Throughout the state's history, redistricting has created tension between individual lawmakers, Democrats and Republicans, the rank and file and majority leaders, the Legislature and the governor, rural areas and cities. These struggles are not uncommon, according to a 2012 [data-driven analysis](#) of all 50 states conducted by the Center for Public Integrity, which described redistricting as "notoriously opaque and politically-tainted in many states."

During the past two redistricting cycles, in the 2000s and 2010s, booming population growth demanded major changes to district boundaries—the state's population [grew by nearly 40 percent](#) from 1990 to 2015. Each time, control of state government was split between a Democrat-controlled Legislature and a Republican governor, but Democrats' intra-party tensions contributed to the friction. Both times, the Legislature failed to pass some plans, the governor vetoed most of the rest, the process ended up in court, judges picked the final maps and taxpayers paid millions of dollars in attorneys' fees. Both times, editorial pages [criticized](#) the process as an expensive fiasco.

The environment for redistricting in 2021 will be different, in part because the state is in its slowest period of growth since statehood. If the census shows that the state's overall population hasn't increased much, as predicted, that could limit the amount of major redrawing required, leaving lawmakers to accommodate an [internal migration trend](#) that has shifted the state's residents into metropolitan areas and booming oilfield areas.

Other things have changed since the state last took up redistricting. In 2018, Democrat Michelle Lujan Grisham was elected governor, and [Democrats strengthened their control](#) of the state Legislature, gaining a 46–24 edge in the House and a 26–16 advantage in the Senate (with current vacancy). Experts say it’s unlikely the 2020 general election will flip control of either body, and thus New Mexico will most likely embark on redistricting with single-party rule for the first time in three decades. This situation took on greater importance when the [U.S. Supreme Court ruled](#) that partisan gerrymandering was beyond the purview of federal courts. The prospect of full control by one party, with the nation’s highest court turning a blind eye to political gerrymandering, creates an environment in which the public sees few barriers to putting partisan concerns ahead of voters’ interests.

Redistricting puts a great deal at stake for New Mexicans and the 112 members of the Legislature, many of whom will be participating in the process for the first time. This report presents some of the most salient points in the history of redistricting from the first territorial assembly until today. Commissioned by the nonprofit news organization New Mexico in Depth, it is intended to help voters, journalists, students and elected officials prepare for the upcoming task by putting our history in a contemporary context.

This report, to be published this month, was compiled using court records, news accounts, politicians’ memoirs, academic papers, census data, legislative records and policy reports. That historical information was augmented by long-form interviews conducted with two dozen current and retired lawmakers, academics, demographers, attorneys, activists and public employees who have had firsthand experience with redistricting dating back more than 40 years.

The report shows that the history of redistricting in New Mexico is marked by:

#### [Action Behind Closed Doors](#)

State law does not require public access or input into the redistricting process, nor does it allow the public to submit maps for consideration. Unlike other states, New Mexico lawmakers are not required to provide an explanation for the changes made to the original maps, although in recent years the Legislature has held a series of public hearings around the state and posted much information online. However, critics say those transparency efforts are largely ineffective because the bulk of the decision-making and debate over redistricting happens in caucus meetings, the closed-door gatherings of Democrats and Republicans during the legislative session. “The problem is that when you get to the [redistricting] session, the public is closed out more than even in a regular session,” says former state Sen. Dede Feldman. “There’s less access, it’s off-season, the press corps isn’t as assembled as usual, the lobbyists aren’t there, there are fewer eyes all around, and it’s mainly hashed out in the caucuses, which aren’t open anyway.”

#### [Allowing Advantages for Incumbents](#)

The system privileges incumbents and limits competition by favoring incumbents in redistricting laws and guidelines, and by lacking structures or laws that would limit secrecy and politicization. For example, lawmakers have been able to consider where an incumbent lives as one of the criteria in redistricting. “Where the incumbent lives is a major factor in whether they’re going to vote for it,” says Feldman. Many observers describe New Mexico’s process as one that effectively allows incumbents to tailor their districts to suit their political base. “Malapportionment

and gerrymandering are bipartisan,” says attorney Joe Goldberg, who has worked on redistricting since the 1980s. “Incumbents are interested, first, in their own districts, and, a very distant second, their party.”

### Vulnerability to Partisanship

Unlike other states, New Mexico does not prohibit favoring an incumbent or party, or using partisan data in the process. Partisanship and incumbency are dueling forces in the redistricting process, but as plans move forward toward final passage and signing, and legislative leaders and the governor jockey for advantage, the impact of politics increases. Outside pressure to achieve a political majority in the Legislature and gain advantage in congressional districts can be acute. When one party has an advantage, former senator Rod Adair says, “They’re going to make not just solid, but impenetrable districts. They’re going to take advantage of their position and make themselves reasonably close to veto-proof. And they’re going to do it because they can.” The process can create districts that are progressively safer and safer for incumbents and their parties, disenfranchising voters who live in those districts but don’t share their elected officials’ views.

### A History of Racial Discrimination in Voting and Redistricting

Hispanic and Native American voters have long faced legal, institutional and cultural barriers to the political process, and the state has repeatedly been sued for violating minority voting rights. In a landmark decision in the early 1980s, a panel of judges wrote: “If one ... set out to construct a districting plan for Cibola, Sandoval, and McKinley Counties which effectively minimizes the impact of Indian votes, the plan which would result would probably look much like the plan passed by the Legislature in 1982.” The judges required all redistricting plans to be submitted to the federal Department of Justice in the 1990s. Despite that oversight, the DOJ still flagged evidence of potential “cracking” of Hispanic communities in southern New Mexico and forced the state to redraw several districts in 1991. In recent redistricting sessions, representatives of minority voters have been invited to give input into the process, and today New Mexico’s top elected officials are, as a group, among the most diverse in state history, albeit still more Anglo than the state.

### Conclusions

The 170-year history of New Mexico’s experience with redistricting shows that it has been at various times neglected, secretive, politically contentious, discriminatory and ultimately expensive. In the 1920s, ’30s and ’40s, the state simply did not take up redistricting. At other times the process wasn’t completed until mid-decade. In the 1980s a primary election had to be invalidated and done over. During the last two rounds of redistricting, political dysfunction pushed decision-making into the courts and doubled the cost to the taxpayers. “Legislatures do redistricting in the majority of states, and we’re no worse than the majority,” says Sen. Bill O’Neill, who has sponsored independent redistricting commission proposals. But other states that have experienced similar negative consequences have made significant changes to the way they redistrict, from adding more stringent criteria to having nonpartisan staff draw the maps to giving advisory or full control to various types of commissions. The report does not recommend any specific policy proposals, but it does present evidence that it is possible to make changes to the process to improve fairness, mitigate partisanship, improve competition and limit litigation.

## A Glossary of Terms

*Adapted and condensed from “A Guide to State and Congressional Redistricting in New Mexico 2011,” prepared by the Legislative Council Service*

**Apportionment:** The process of assigning the number of members of Congress that each state may elect following each census.

**At large:** When one or several candidates run for an office, and they are elected by the whole area of a local political subdivision, they are being elected at large.

**Census:** The enumeration or count of the population as mandated by the United States Constitution.

**Community of interest:** A community defined by actual shared interests, be they political, social, or economic.

**Compactness:** Having the minimum distance between all the parts of a constituency (a circle is the most compact district). There are various methods of measuring compactness.

**Contiguity:** All parts of a district being connected at some point with the rest of the district and not divided into two or more discrete pieces.

**Deviation:** The degree by which a single district’s population varies from the “ideal” may be stated in terms of “absolute deviation” or “relative deviation.” Absolute deviation is equal to the difference between a district’s actual population and its ideal population, expressed as a plus (+) or minus (-) number indicating that the district’s population exceeds or falls short of that ideal. Relative deviation is the more commonly used measure and is attained by dividing the district’s absolute deviation by the ideal population.

**Fracturing/fragmentation:** The splitting of an area where a minority group lives so that it cannot form an effective majority in a district, for the purpose of minimizing the group’s voting strength.

**Gerrymander:** To draw districts in a way that gives one group or party an advantage over another.

**Homogenous district:** A voting district in which at least 90 percent of the population shares a common ethnic background.

**Ideal district population:** A population measure equal to the total state population divided by the total number of districts.

**Majority-minority districts:** A term used by the courts for seats where an ethnic minority constitutes most of the population.

**Method of equal proportions:** A mathematical formula provided by federal statute to reapportion congressional seats after each decennial census.

**Multi-member district:** A district that elects two or more members to a legislative body.

**Natural boundaries (visible boundaries):** District boundaries that are natural geographic features.

**One person, one vote:** The constitutional standard established by the Supreme Court mandating or directing that all legislative districts should be approximately equal in population.

**Packing:** A term used when one group is consolidated into a small number of districts in a districting plan. Drawing a minority-controlled district with an excessively high percentage of a minority population “wastes” the additional people who could increase the minority population of another district.

**Reapportionment:** The allocation of seats in a legislative body (such as Congress) among established districts (such as states) where the district boundaries do not change but the number of members per district does.

**Redistricting (districting):** The drawing of new political district boundaries.

**Voting Rights Act of 1965:** The federal law prohibiting discrimination in voting practices on the basis of race or language group.

## ABBREVIATED LIST OF SOURCES USED IN PREPARATION OF THIS REPORT

This report would not have been possible without the people who lent their considerable candor, insight and decades of expertise to this project, especially (in no particular order): Brian Sanderoff, Jim Williams, Jon Boller, former senators Dede Feldman, Rod Adair and Sue Wilson Beffort, Sens. Bill O’Neill, Stuart Ingle and Mark Moores, Representative Brian Egolf, Teresa Leger de Fernandez and Joe Goldberg.

In compiling this history, I leaned heavily on the Legislature’s own [redistricting archive](#), especially Richard Folmar’s comprehensive history, *Legislative Apportionment in New Mexico, 1844 to 1966*, which until now was not available online.

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Gwyneth Doland is a term faculty member in the Department of Communication and Journalism at the University of New Mexico, where she teaches media law and ethics, multimedia writing and editing, media management, interviewing and other courses. She has been a journalist since 1999 and has covered government and public affairs for New Mexico PBS, The New Mexico Independent, New Mexico in Depth and KUNM Radio News. In 2012 and 2015 she authored reports on government accountability for the Center for Public Integrity in Washington, D.C. The 2012 State Integrity Report was a finalist for the Goldsmith Prize from Harvard's Kennedy School of Government. Her work covering state government has also been honored with a First Amendment Award from the ACLU of New Mexico, and top honors from the New Mexico Broadcasters Association. Gwyneth was previously the executive director of the New Mexico Foundation for Open Government and has served on the boards of the Society of Professional Journalists and the Journalism and Women Symposium.