



State of New Jersey
Commission of Investigation

**An Inquiry into Allegations of
Impropriety in the Congressional
Redistricting Process in New Jersey**

September 2023

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Executive Director

Governor Phil Murphy

The President and Members of the Senate

The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M-1 to -20, herewith submits its final report of findings and recommendations stemming from an investigation into the activities of the New Jersey Congressional Redistricting Commission.¹

Respectfully,

A handwritten signature in black ink, appearing to read "R. Burzichelli".

Robert J. Burzichelli
Commissioner

A handwritten signature in black ink, appearing to read "Kevin R. Reina".

Kevin R. Reina
Commissioner

A handwritten signature in black ink, appearing to read "John P. Lacey".

John P. Lacey
Commissioner

¹ Chair Tiffany Williams Brewer was formally recused from this matter and did not participate in any aspect of the inquiry.

Executive Summary

Once a decade, the boundary lines on a map of New Jersey are reconfigured to establish the districts for the election of New Jersey's delegation in the United States House of Representatives. Redistricting is mandated under the Constitution of the United States to provide fair representation and equal voting power for all citizens – fundamental principles that underpin our nation's system of democracy.

In April 2022, the State Commission of Investigation (SCI) received a complaint questioning the integrity of this system in its latest cycle. More specifically, the complaint called on the SCI to probe alleged manipulation of the most recent New Jersey Congressional Redistricting Commission's process that created the voting map that will serve the state in federal congressional elections for the next decade.

New Jersey is among a select group of states that relies on a commission consisting of political appointees to draw the lines of the state's congressional voting map.¹ The state's process allows for a 13-member commission comprised of six Democratic delegates, six Republican delegates and one independent member who is selected by a majority vote of the 12 commission members, or by the New Jersey Supreme Court in the event of a tie vote.²

Following the completion of the most recent New Jersey redistricting commission's process, the SCI received allegations suggesting impropriety in the development of the final map and that it failed to provide equal and fair representation to the state's voting public. Among the most serious of the claims was the improper manipulation of the data used by the commission to carry out its mapmaking work.

The following report details the SCI's review of the allegations and its fact-finding. The SCI's objective in this investigation was twofold: (1) To determine if the mapmaking process in 2021 was fair and free of improper manipulation of data, and (2) To make recommendations to ensure both fairness and transparency in the state's redistricting process going forward.

Following the review of hundreds of pages of subpoenaed documents, a detailed examination of the congressional redistricting process in New Jersey and other states, plus sworn testimony obtained from more than a dozen individuals directly involved in the state's latest redistricting cycle, the SCI found there was no merit to the unspecified claims that data gathered and relied upon by the redistricting commission was improperly manipulated during New Jersey's 2021 congressional redistricting process. However, the SCI also found that the current redistricting process lacks specific statutory guidance for the effective, transparent, uniform and

¹ N.J. Const. art. II, § II.

² Each of the following appoint two delegates to the commission: The President of the Senate, the Speaker of the General Assembly, the minority leaders of each house, and the chairs of the Republican and Democratic State committees.

trustworthy operation of the commission, its duties and the mapmaking responsibilities assigned to it. Among the SCI's key findings:

- New Jersey lacks clear legal directives for the specific duties and powers of the congressional redistricting commission chair responsible for overseeing an inherently political process.
- New Jersey lacks necessary consistency and transparency in its congressional district mapmaking process because it does not have codified standards for the criteria that drive the creation of voting districts.
- New Jersey's congressional redistricting commission lacks clear legal guidance for the retention and use of outside consultants called on to assist in the redistricting process, a gap that is contributing to conflict and mistrust in its work.

Collectively, these findings demonstrate that New Jersey's system for congressional redistricting – an undertaking that cost state taxpayers \$1.4 million in the last cycle – has ample room for improvement. A series of reform recommendations to make the process more transparent, accountable and consistent can be found at the end of this report.

The Congressional Redistricting Process

In a democracy, citizens need to have confidence that their voting system is fair and equitable so that they may have trust in the outcomes of elections for public office.

To ensure each state and the citizens within those states are appropriately represented, once every 10 years a congressional redistricting process is undertaken in the states with more than one voting district to recognize and realign demographic shifts that have occurred in the population. This process, known as redistricting, is mandated by the United States Constitution and occurs in the year following the federal census.

As part of this effort, each state is responsible for redrawing the boundary lines of voting districts after the federal government reallocates the 435 Congressional seats among the 50 states.³ New Jersey is currently allocated 12 congressional seats.

The states are empowered to create their own process for congressional redistricting. In most states, the state legislature redraws the congressional voting districts. The lawmaker-developed maps are usually subject to gubernatorial veto, but in a few states, they are not. Meanwhile, other states leave the redistricting decision to a non-partisan independent commission, which typically fully controls developing and adopting voting maps. A handful of states use a hybrid system in which a legislature shares redistricting authority with a commission.

³ Alaska, Delaware, North Dakota, South Dakota, Vermont and Wyoming only have one congressional district.

In 2023, New Jersey and Hawaii remain the only states that use a bipartisan commission where political appointees conduct congressional redistricting.

In New Jersey, a bipartisan commission has redrawn the congressional voting districts since 1991. After a majority of state voters agreed to amend the constitution, the commission and its redistricting process became permanent in 1995.⁴ Under this system, only the state Supreme Court has jurisdiction over legal matters concerning redistricting, although the scope of its authority is narrow. Since then, the New Jersey Congressional Redistricting Commission has convened three times, meeting in 2001, 2011 and 2021.

The 2021 New Jersey Congressional Redistricting Cycle

In the latest congressional redistricting cycle, as in the prior sessions, the state's political and legislative leaders launched the congressional redistricting process in the year following the federal census by appointing the commission's partisan members. Those political appointees, six Democrats and six Republicans, were charged with selecting, by majority vote, the independent 13th member who would also serve as the panel's chair. In 2021, the bipartisan delegates could not reach a majority vote for the independent member, which required the New Jersey Supreme Court to fill the position.

On August 6, 2021, New Jersey's top court appointed John E. Wallace Jr., a former Supreme Court Justice, to chair the 2021 congressional redistricting commission.

The redistricting commission held its first organizational meeting with all 13 members on September 1, 2021. Subsequently, the commission held 10 public hearings across the state between October 23 and December 9, 2021, including both in-person and virtual meetings.

For four days in mid-December 2021, the two delegations gathered separately inside a Cherry Hill hotel for a New Jersey redistricting tradition known as "hotel week." During this time, the main mapmaking work occurred as the two contingents – one Democratic and one Republican – assembled separately behind closed doors with their respective teams of experts to draw voter map proposals. Over these four days, each partisan delegation then submitted multiple map proposals to Chair Wallace for his evaluation and feedback on their compliance with a series of mapmaking standards adopted when the commission first convened. During this process, both partisan delegations agreed that they would not reveal their respective maps to the other delegation. Chair Wallace acceded to their wishes.

To assist in the technical evaluation of each delegation's maps, Wallace hired the Princeton Gerrymandering Project (PGP), led by Princeton University neuroscience professor

⁴ N.J. Const. art. II, § II. A temporary commission was established in 1991 to create congressional districts for the 1990s.

Samuel Wang as an expert outside consultant.⁵ PGP's business is to perform complex legal and statistical analyses to detect indications of improper gerrymandering – the manipulation of voting district boundaries to favor a particular party or group.

At the conclusion of hotel week, each party delegation submitted its final map proposal to Wallace. On December 22, 2021, the commission as a whole held a public meeting to vote on adopting a map to serve New Jersey in congressional elections for the next decade. Predictably when the vote deadlocked 6-6 along party lines, Chair Wallace was required to break the tie. He selected the Democratic proposal.

Eight days later, the Republican delegation filed a legal challenge to the adopted map with the New Jersey Supreme Court, claiming the redistricting process had been tainted and unfair. Along with contending that Wallace had based his decision on “an arbitrary, capricious, and unreasonable vote and reasoning,” the Republican complaint was later amended to include allegations PGP had breached confidentiality in the process.⁶

The Supreme Court – which has minimal jurisdiction over redistricting unless it finds a map unlawful – dismissed the Republican challenge on February 3, 2022.⁷ In the wake of the Supreme Court's dismissal, and following further allegations that the improper manipulation of certain data used in the process may have influenced the end result, the SCI commenced its fact-finding investigation, the results of which are described in detail below.

Key Findings

- **No Merit to Allegations of Improper Data Manipulation**

In the weeks following the final New Jersey congressional redistricting map vote, additional questions were raised publicly about the integrity of PGP and its work, including specific claims that someone had improperly manipulated the data relied on by the commission to redraw the state's congressional voting boundary lines.

Given the serious nature of these charges, SCI investigators thoroughly probed these allegations to determine whether New Jersey's redistricting process had been corrupted by improper data manipulation, or had otherwise been tainted by unreliable data. The SCI

⁵ PGP performs work *pro bono*; however, Wang was paid \$15,375 for working with the congressional redistricting commission by money allocated to the commission through the nonpartisan Office of Legislative Services.

⁶ Wallace stated at the public meeting to vote on the map: "In summary, both delegations aptly applied our standards to their map. In the end, I decided to vote for the Democratic map simply because in the last Redistricting map, it was drawn by the Republicans. Thus, I conclude that fairness dictates that the Democrats have the opportunity to have their map used for the next Redistricting cycle."

⁷ The Supreme Court only considers whether the adopted map “suffers from invidious discrimination or is otherwise unlawful,” Matter of Congressional Districts by New Jersey Redistricting Com'n, 249 N.J. 561, 576 (2022).

uncovered no evidence to support the allegations of improper data manipulation during the 2021 New Jersey congressional redistricting process.

During sworn testimony before the Commission, no witnesses brought forward any specific incidents, nor did any witness provide factual information bolstering those allegations. Further, the allegations regarding data manipulation were vehemently denied by all of the Princeton Gerrymandering Project employees, including Wang, who had worked on the New Jersey redistricting project and had appeared before the SCI under oath. A PGP staff member testified to the following:

I will say that the system that we use for New Jersey was the same system we used for every other state that we worked in, and received significant public scrutiny of the analysis we provided and nobody made allegations that the data was inaccurate, like, that just wasn't a concern.

Additionally, SCI investigators reviewed revisions made to the penultimate draft of the PGP report prepared for Chair Wallace to assist him in evaluating the final maps proposed by the two delegations. Although modifications were then made throughout the document and incorporated into the final report, the changes made during the final editing phase were not substantive and did not change any data appearing in prior versions. The report also did not appear to reflect any bias or favoritism toward one partisan group or the other.

- **Unclear Role and Authority of 13th Member/Chair**

New Jersey's state constitution requires the independent 13th member of the New Jersey Congressional Redistricting Commission to serve as commission chair; however, no meaningful guidance exists regarding the chair's specific responsibilities or the scope of his or her authority. The only explicit statutory authority provided to the chair is the power to call a meeting.

The SCI found a lack of specificity regarding the powers of the commission chair prevented Wallace from taking actions that could have been beneficial to the panel's work in developing the best voting map for New Jersey, such as requiring the delegations to meet jointly and to share their various map proposals with each other before those maps were presented to Wallace. Wallace told the SCI he was reluctant to compel the delegates to engage in those activities absent legal guidance. There also was resistance to those efforts from the chairs of the Democratic and Republican delegations, who had not agreed to share maps. There was also a lack of clarity among the parties regarding whether Wallace had the power to compel them to do so.

As a result, the Democratic and Republican delegations never shared maps, even when it became time for the commission to vote on a final map. Aside from virtually guaranteeing no

delegate would vote for a map other than that of his or her own partisan delegation, the process also deprived the parties of the opportunity to work together, to assess the other contingent's proposal and offer critiques, practices deemed valuable to previous commissions in developing a final map. The process further deprived the chair of potentially valuable input from both delegations before he chose the Democratic map.

Comparing the practices of the 2021 commission with past panels, the SCI found the willingness of the partisan delegations to work collaboratively and share maps has diminished in successive decades. In 2001, the first commission to operate under New Jersey's then-new constitutionally-mandated system unanimously approved a consensus map by a 13-0 vote. At the time, chair Alan Rosenthal, the late Rutgers University political scientist who led the Eagleton Institute of Politics for two decades, said this about the process: "Things have gone back and forth. They have been partisan, and they have also been bipartisan."⁸

When the next redistricting commission met in 2011, the panel contended with the additional challenge of New Jersey losing a congressional seat and the need to realign the state's voters into 12 districts instead of 13. During the 2011 process, instead of a consensus map, each delegation developed and submitted separate proposals for consideration in a final vote. Then-commission chair John J. Farmer Jr. – a former New Jersey State Attorney General and Rutgers Law School Dean – broke the tie between the delegations by choosing the GOP map. Unsurprisingly, Democrats were unhappy with the outcome, believing their proposal was the better option. They also complained the Republican map was not shared with them until shortly before the vote. Farmer said during the final vote that, in his view, the chair's role was to attempt to bring the parties together and then, in the end, to make a judgment call. He also emphasized the value of the two sides viewing and offering feedback on the other delegation's maps, noting the Republican map ultimately chosen "benefitted in fundamental ways from close criticism" by Democratic delegates.

- **No Map Drawing Standards**

All state-led congressional redistricting must comply with a range of redistricting principles established over time through federal constitutional provisions and laws. These include the Voting Rights Act of 1965, which prohibits discriminatory voting practices, as well as other federal and state court decisions. Yet there is nothing within New Jersey state law to precisely guide mapmakers in creating the congressional voting districts they are charged with developing every decade.

⁸ Transcript of the New Jersey Redistricting Commission Meeting on Oct. 26, 2001.

In lieu of clear statutory guidance to steer the mapmaking process, each New Jersey congressional redistricting commission has chosen to adopt a new set of criteria when it convenes every 10 years.

In 2021, the congressional redistricting commission adopted the following seven standards:⁹

1. Mapmakers shall establish 12 congressional districts that shall be geographically contiguous. In counting the total population for each district to be formed, incarcerated prisoners should be counted at their prior addresses. Districts must be as equal in population as possible to the ideal district population of 773,585.
2. Mapmakers shall comply with the Voting Rights Act and all relevant Supreme Court decisions applying the Equal Protection Clause and the Apportionment Clause. The map should include sufficient numbers of minority/majority districts and provide the racial and/or language minorities with reasonable opportunity to participate in the political processes and elect representatives of their choice whether alone or in coalition with others. Furthermore, any consideration of race shall be only as necessary to avoid a violation of the Voting Rights Act and shall be narrowly tailored to satisfy the Act's requirements.
3. Political subdivision boundaries and communities of interest (cultural, ethnic, linguistic, economic, and religious) should be respected. Mapmakers shall not split political subdivision boundaries and communities of interest unless necessary to achieve compliance with standards 1 or 2.
4. Competitive districts are favored so long as compliance with standards 1, 2, or 3 would not be significantly hindered or impaired.
5. No district may be formed solely to favor or disfavor any political party or the election of any person.
6. To assist voters in assessing incumbents and minimizing voter confusion, districts may include the cores of existing districts, provided the new district to be formed will substantially comply with all of the preceding standards.
7. All districts shall be as compact and regularly shaped as possible unless deviation is required to comply with any of the above standards.

⁹ Wallace outlined the standards used by the commission at the Dec. 22, 2021 meeting where the final map was selected.

Although the seven standards adopted by New Jersey's commission in 2021 essentially mirror the guiding principles followed by most states, the absence of any codified criteria leaves them subject to change each decade, and renders the process vulnerable to inconsistent application and subject to the political climate of the moment.

An SCI review found nearly a third of the 50 states have formalized their congressional redistricting criteria through either state law or state constitutions. New Jersey's constitution already contains guidance on redrawing voting districts for legislative elections, but neither the constitution nor any state law provides standards for congressional redistricting.

Codification of the mapmaking principles into law would enable New Jersey to establish a set number of criteria to be considered in choosing a congressional redistricting map so the next redistricting commission can be better equipped to undertake and execute its mapmaking responsibilities in a manner that best serves the state's citizens. It would also eliminate any ambiguity about what specific standards are used to evaluate the proposed maps.

- **A Lack of Transparency in the Process**

Redistricting has evolved into a complex digitized process requiring assistance from outside consultants with technical expertise in a highly specialized form of data analysis. Facts gathered during the SCI's fact-finding review show New Jersey has failed to keep pace with the technological advancement of the nationwide process and has no rules in place for hiring and managing these experts and others now deemed necessary to complete the redistricting process.

Judge Steven LeFelt, a former state Appellate Court Judge and associate dean at Rutgers Law School in Newark, who served as Wallace's consultant counsel, noted this lack of codified guidance in retaining and managing the work of outside consultants hired to assist in the redistricting process. Lefelt told the SCI he used his best judgment in helping Wallace search for a technical consultant that was impartial and "wouldn't ring bells in either the Republican contingent or the Democratic contingent." Despite the lack of any formalized hiring process, Wallace retained Princeton Gerrymandering Project (PGP), which had examined voting issues nationwide, to provide nonpartisan analysis of state redistricting maps and voting laws.

Without a formal written selection and management process for outside consultants, PGP's work and that of future consultants are subject to greater challenges for trustworthiness and impartiality. In 2021, a lack of process transparency and the failure to disclose to the two partisan redistricting delegations how PGP specifically used legal and statistical analysis to detect evidence of partisan gerrymandering fueled mistrust among some. As the chairman of the Republican delegation Douglas Steinhardt told the SCI, "We were never afforded an opportunity to understand from the 13th member's perspective how the two sides' submissions were being evaluated for compliance with those seven standards."

The type of analytical work performed by PGP requires some technological knowledge many laypeople do not possess. In basic terms, what PGP does is use a process known as the ensemble method to instruct a computer software program to generate a large number of statewide voting district maps based on specific redistricting standards. During the 2021 redistricting cycle, PGP instructed its software program to generate a million different hypothetical voting maps of New Jersey. Once those maps were created, prior election return results were overlaid onto the maps to show which party would have won based on those voting district boundary lines. These maps created a bell curve by which PGP could measure which maps produced by the delegations suggested partisan intent.

The most significant gap in this effort was that apparently no one provided a simplified explanation of PGP's highly technical analysis to the delegates, leaving mapmakers without a clear understanding of exactly how the maps submitted by each delegation were being evaluated against the mapmaking standards. The absence of this critical information about the process fueled a sense of mistrust, particularly within the Republican delegation.

The parties' lack of familiarity with PGP and Wang, also fed into the delegations' skepticism concerning the fairness of the entire process. For example, delegates from the two partisan groups did not meet Wang or PGP staff until the groups gathered separately with their own data professionals, legal counsel and other staff inside a Cherry Hill hotel to draw their maps during hotel week. There was also a claim that Wang had improperly met with Democratic members for lunch, thus causing the Republicans to question Wang's impartiality. During Hotel Week, each of the delegations separately created and submitted maps for Chair Wallace and his team to review. Subsequently, Chair Wallace, Wang and other PGP staff met separately with each group to critique that particular group's maps and to offer suggestions for improving that delegation's map proposals to align with the redistricting standards set forth.

Having such private meetings outside the presence of the other delegation necessarily meant that the critique and suggestions given by PGP or Chair Wallace as to one delegation's maps would differ at least slightly from the critique and suggestions they gave to the opposing delegation. Once again, although the SCI finds that the process used was fair to both sides, the absence of one delegation during these critical meetings feeds the concern that one of the delegations may have received "better" information than the other during the meetings. Chair Wallace, Wang and PGP staff all testified that during the sessions with each delegation, everything they discussed in those separate group sessions remained confidential. No information was provided to either group regarding the other side's mapmaking.

Recommendations

An individual's right to vote and a community's right to representation by elected officials of their choosing are core tenets of a democratic society. Public elections provide a means for a community's citizens to choose their leaders and hold them accountable for their actions. Ensuring the voting process is fair and that all members of the public have equal access to the polls are fundamental rights protected under the Constitution of the United States.

The SCI's investigation into New Jersey's congressional redistricting system found that while the state's political by-design method of redrawing voting boundary lines each decade generally works as it should, there are modest, yet crucial reforms that are needed to make the process more effective, transparent, consistent and less subject to charges of manipulation for political purposes.

Any proposition to significantly alter the operations of the New Jersey Redistricting Commission would require an amendment to the state constitution that must be authorized through a public ballot question by the voters of the state. However, it is up to the legislative leadership and the Governor to consider whether particular reforms proposed in this report can be achieved through statutory changes or other regulatory methods.

It is worth noting that despite the intensely political environment in which redistricting takes place, the SCI found there was significant common ground shared by the Democrat and Republican delegates about how the process could be improved to make it better for all voting citizens. The input from delegates and others involved in the most recent congressional redistricting process was invaluable in assisting the SCI to develop the recommendations presented in detail below.

1. Define the Role and Authority of the 13th Member/Chair

The SCI's investigation found a need to establish clear legal authority for the commission chair to effectively steer the redistricting process and ensure the mapmaking efforts produce the best possible map for New Jersey voters.

The absence of clear legal directives regarding the role of the chair, and the scope of the chair's authority prevented Chair Wallace from compelling the two partisan delegations to engage in certain activities that could have been beneficial to the mapmaking process, such as reviewing and critiquing each other's maps. To improve the commission's operation, the SCI recommends the adoption of legal language vesting the chair with complete authority over the procedures to be used in all proceedings.

Further, to dispel any concerns of bias or special treatment, all meetings with the chair or his/her representatives should include both delegations to ensure that both groups receive the exact same information. Holding separate meetings raises the possibility of one delegation

receiving more complete or direct information than the other. Joint sessions would put all delegates on equal footing regarding access to the chair and receipt of information.

2. Require Delegations to Share and Critique Maps Before Final Vote

The SCI recommends that the congressional redistricting process include a mandate compelling the two delegations to share maps and offer critiques on the other side's proposal before the commission votes on a final map.

Without sharing maps, neither delegation can make a fully informed decision concerning whether its own map, or the other party delegation's map, is more "fair." Similarly, by not sharing maps, the parties are effectively prevented from agreeing to a compromise map that might retain the best qualities of each delegation's map while rejecting those that undermine equal access to voting. Finally, the failure of the delegations to share their maps with each other results in the chair being deprived of potentially valuable criticism that would expose flaws in each party's maps.

3. Improve Transparency for Data and Other Outside Consultants

Considering that modern mapmaking work has evolved into a highly technical digitized endeavor requiring specialized data analysis and expertise, it is now essential that the commission chair, as well as the two delegations, hire professional firms to assist them in the redistricting process. However, there are no regulations governing the hiring, duties, management and oversight of outside consultants, which currently provide essential assistance in redistricting.

The SCI recommends the creation of state guidelines to clearly outline the hiring parameters, scope of responsibilities and other relevant information for data consultants utilized during redistricting. Of particular importance is the need for such consultants to disclose the methodologies, including the data sets, standards and other metrics used as part of the firm's analytical assessment of voting maps.

To further promote transparency and agreement on the statistical data that is analyzed and used to create voting districts, the Legislature and Governor should also consider assigning a New Jersey public institution to compile such demographic, election and other relevant records on an ongoing basis in preparation for the next redistricting cycle. Collection of this information will ensure the information is easily accessible to the next commission and their respective professionals and that both delegations utilize the same data set. This information should also be made readily available to the public.

4. Codify Redistricting Mapmaking Standards

The SCI recommends the creation of codified standards to guide the congressional redistricting commission in conducting its mapmaking work. Under the current process,

mapmaking standards are adopted by the commission during each congressional redistricting cycle. This system is arbitrary and leaves the criteria that guide map drawing subject to change every decade.

Establishing statutory guidance for creating congressional districts would provide clear and consistent values guiding mapmakers in their duties to draw voting maps that provide fair representation for all citizens. The codification of the standards will also aid future commissions by ensuring that New Jersey's redistricting rules are constant, uniform and not subject to variation.

5. Post Final Maps Online

New Jersey voters would be well served by the opportunity to view and comment on the statewide voting district maps prior to the commission's final vote and adoption. While the commission held 10 public hearings across the state – more than tripling its constitutional requirement – during the early stages of the redistricting process, no other effort to inform the public occurred after that point.

The SCI recommends the commission follow the lead of New Jersey's Legislative Apportionment Commission, which in 2021 posted unlabeled maps proposed by the Republican and Democratic delegations – referred to as the Turnpike and Parkway plans – online for public review and comment before voting on a final map. The 11-member apportionment commission subsequently approved a bipartisan map by a vote of 9-2 in a process publicly praised by delegates as collaborative.

To encourage public participation in the congressional redistricting process and potentially obtain valuable feedback, the commission should post any final maps online at least five days prior to the panel's final vote.



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