



Subject: Gerrymandering

Text:

“Boundaries of Congressional districts shall be delineated by a commission established by the legislature of that state. The leaders of the two largest parties in each of the state’s legislative bodies shall appoint three Commissioners each.

“No one can serve as Commissioner who has run for or served in an elected federal or state position. No one can serve as Commissioner who has acted, or been registered, as a lobbyist.

“Commission decisions shall be made by majority vote.

“If a Commission is unable to approve district boundaries within six months of the national census, all Commissioners and the leaders of the two largest parties in each legislative body shall be removed with immediate effect. None, once removed, is eligible to hold federal or state office thereafter.

“After a Commission is dissolved, new members shall be appointed and district boundaries must be approved within six months or the dissolution and ineligibility provisions of the fourth paragraph shall be implemented again.”

Reform Category(ies):

- ☒ Anti-Corruption, Transparency, Accountability
- ☒ Counter-Majoritarian Requirements
- ☒ Democratic Processes
- ☐ Enhanced Rights/Protections
- ☐ Limits to Political Power/Immunities
- ☒ Necessary Clarifications
- ☐ Responsible Government
- ☐ Separation of Powers/Check and balances

Branch(es) or non-federal entity targeted:

- ☐ Legislative ☐ Executive ☐ Judicial ☒ State Legislatures

Justification:

Political insiders sometimes speak of gerrymandering as if it was a victimless crime, indulged in by both major parties and part of the ordinary rough-and-tumble of competitive politics in a democratic system.

In fact, the pernicious consequences of politicized Congressional redistricting include:

- 1) disproportionately large representation for majority parties (not only contrary to the spirit of “one person, one vote” in those states, but also injurious to respect for the political system nationally);
- 2) creating “safe seats” for individual House members (adding to the temptations of corruption for long-serving Members and limiting the introduction of fresh political ideas);
- 3) favoring extremist candidates, who capture single party primaries and do not have to compete for independent voters; and
- 4) fostering a corrosive “winner take all” competition, not between political philosophies or platforms but between rival political machines.

Smart gerrymandering reforms will concentrate not on drawing districts, but on establishing mechanisms that promote technocratic, bipartisan agreement and levy consequences for the failure to agree. It is important that those penalized include not just redistricting commissioners but the politicians who appointed them. Those who maintain that gerrymandering should be beyond the reach of federal courts argue it is a necessarily political process. We agree. What is missing now, however, is political accountability to go with political responsibility.

(Important note: We acknowledge one counter-argument that gerrymandering helps preserve Congressional representation by ethnic minorities, especially African-Americans, where amalgamations of discrete local communities can be made relatively homogenous but where a more randomized redistricting would enforce perpetual ethnic minority status. The counter-counter argument, however – which we think has merit – is that the current system ensures safe seats for certain ethnic minority candidates at the cost of isolating such communities politically, to their ultimate detriment.)

We would note that, while both parties have engaged in gerrymandering, Republicans appear to be better at it (or at least more enthusiastic practitioners) at the present time. We do not propose this amendment to hurt Republicans and help Democrats, and would still support it if the parties’ fortunes were reversed (as they may be at some future time).

Alternatives to Amendment?

As with so many structural problems in American politics, the simplest solution to politicized redistricting would be for public officials to act with restraint and fairness. There have been successful state efforts to combat gerrymandering, and we hope other states will make similar commitments. But it would be foolish to pin our hopes on politics’ “better angels,” when we know that its “worse angels” will not refrain from mischief.

There is no short-term likelihood of a judicial check on gerrymandering, now that the Roberts Court has decided that federal courts shall have no role.