

WHERE WE STAND..... ON REDISTRICTING REFORM

REDRAWING PENNSYLVANIA'S CONGRESSIONAL AND LEGISLATIVE DISTRICTS

Every 10 years, after the decennial census, states redraw the boundaries of their congressional and legislative districts in order to meet the federal constitutional requirement of one person, one vote. The League fully supports this principle which mandates that districts be substantially equal in population. We also believe that redistricting should advance the fundamental purposes of representative democracy by giving the people a meaningful choice in electing their representatives and by holding government accountable to the people. District boundaries should meet the following standards:

- Protect the voting rights of minorities.
- Promote competitiveness and partisan fairness.
- Respect political subdivisions and communities of interest.
- Encourage geographical compactness and respect for natural geographic features and barriers.

With the exception of compliance with one person one vote and compliance with the Voting Rights Act which protects the voting rights of minorities, the redistricting process as currently practiced in Pennsylvania results in districts that meet none of these standards. Instead districts are tortuously gerrymandered (see “What is Gerrymandering?”) by self-interested politicians solely for the purpose of protecting incumbents and advancing the power of whichever party happens to be in the majority at the time. Compactness standards and respect for county and municipal boundaries are routinely ignored. Uncompetitive elections and lack of meaningful choices results in unaccountable government and low voter turnout. Gerrymandering is a cause of the hyper-partisanship which has contributed to the recent gridlock in Congress the Pa legislature (See [“What is Wrong with Gerrymandering?”](#))

Making any fundamental change in the way redistricting is done in Pennsylvania means amending the state constitution. Proposed amendments must be passed in two consecutive sessions of the General Assembly and then go to the voters for approval at the first primary or general election that occurs at least three months after the bill proposing the amendment is passed. This means that it takes two to four years to enact any reform proposal.

The League believes that the redistricting process should:

- Assign both legislative and congressional redistricting power to an independent commission.
- Prohibit districts from being drawn for the purpose of favoring or discriminating against a political party or candidate.
- Mandate strict compliance with constitutional, well defined anti-gerrymandering standards to be enforced by the courts.
- Ensure transparency of the process and a meaningful opportunity for interested parties and for the public to participate effectively.

- Allow redistricting to be conducted only once each decade, following the census, unless otherwise ordered by a court, with a strict timeline for completion.

THE LEAGUES PROPOSAL FOR TRANSPARENCY AND PUBLIC INPUT

The League believes that public input should begin at the start of the process when stakeholders can alert the redistricting body to their various concerns including communities of interest that should be considered in preparing a plan. The public could also be invited to submit redistricting plans for consideration. In the public comment period following submission of a plan, interested groups and individuals should also be able to submit alternate plans for consideration by the commission. Redistricting amendments to the Constitution should be drafted in such a way that additional provision for public input and other redistricting parameters could be accomplished by the regular legislative process.

HOW REDISTRICTING WORKS NOW

Right now there are two separate and distinct systems for redrawing legislative and congressional district boundaries. The legislative system is controlled by the Pennsylvania Constitution. The congressional system is controlled by the same legislative process used to enact laws.

The Legislative Process

Article II, Section 17 of the PA Constitution provides that PA House and Senate districts be drawn by a five-member redistricting commission. Four of these are the majority and minority leaders of the Pennsylvania House and Senate. These four then select a fifth member to serve as the commission chair. If the four cannot agree then the PA Supreme Court appoints a chair. The Commission has exclusive authority to draw the maps. The legislature does not vote on the plans and the governor has no power to sign or veto them. Any citizen can appeal the plans. Appeals go straight to the Pennsylvania Supreme Court.

Article II, Section 16 of the PA Constitution says that House and Senate districts “shall be composed of compact and contiguous territory as nearly equal in population as practicable” and that “(un)less absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.” Yet, a private citizen, Amada Holt, has drawn an alternative to the current 2012 legislative district map showing that numerous counties, municipalities and wards have been needlessly split (<http://amandae.com/>).

Pennsylvania’s legislative redistricting process is flawed for three reasons.

- First, the Supreme Court usually ends up appointing the chair. The members of the Supreme Court are chosen in partisan elections and the court’s majority appoints a reliably loyal member of their party.
- Second, the party leaders can and do collude to create districts that protect incumbents of their respective parties. Even if the chair is inclined to be evenhanded, he or she can be outvoted. Because the Commission’s original plan was successfully challenged in the PA

Supreme Court (*Holt v. Legislative Reapportionment Commission*), adoption of a final court approved plan was delayed until it was too late to be used in the 2012 election. In the 2014 general election, the first held under the new plan 97 out of 203 candidates for the Pennsylvania House were unopposed (42 Democrats and 55 Republicans). Of the 25 Senate seats up for election 10 were unopposed (6 Republican and 4 Democratic).

- Third, the process gives the party leaders enormous power over rank and file members of their respective caucuses. Redistricting is a tool by which a member who proves to be too independent may be punished, usually by drawing him or her out of a safe district in to one dominated by the other party.

The Congressional Process

There is nothing in Pennsylvania law that mandates how Congressional districts should be redrawn or what criteria should be applied to creating district boundaries. Currently redistricting is done through the regular legislative process. A bill defining the district boundaries is passed by both the House and Senate and signed by the governor. Although the process is potentially bipartisan, if one party controls both the PA House and Senate and the governorship, that party has exclusive control over how the district boundaries are drawn. In 2011, Pennsylvania's Congressional District map was drawn by the Republican Party. In the 2012 General Election Republican candidates won thirteen of PA's 18 Congressional seats even though collectively, the Democratic candidates received more votes. Only one incumbent, Democratic Rep. Mark Critz, lost his bid for reelection. The ratio of Republicans to Democrats remained unchanged after the 2014 General Election.

Current Status of Redistricting Reform

Reforming the redistricting process in Pennsylvania requires amending the PA Constitution. Proposed amendments must be passed in identical form in two successive two year legislative sessions and then be ratified by the voters.

Senator Lisa Boscola (D-18) and a bipartisan list of cosponsors have introduced Senate Bill 484*. It is patterned on the League supported reforms adopted by California voters and used in the 2011 California redistricting process. SB484 would amend the PA Constitution to take redistricting out of the hands of self-interested politicians and assign the job to an independent Legislative and Congressional Redistricting Commission composed of a politically diverse group of qualified members of the voting public chosen to assure the fairness of the process. The commission's work would be guided by strict anti-gerrymandering standards under a transparent process that maximizes opportunities for public participation.

To be ready for use in the 2021 redistricting, a proposed amendment must ideally be passed by the end of June, 2016 to meet public advertising requirement and then be passed again by June 2018 and then ratified by the voters.

In 2011 legislative districts in Arizona, California and Florida were redrawn under new rules approved by voters in League backed ballot initiatives. In the last election Ohio voters overwhelmingly approved a redistricting reform ballot measure put there by its citizens. In 2016 South Dakota voters will have the

opportunity to pass a reform proposed by a ballot initiative. Since Pennsylvania does not have the initiative process for citizens to use as a reform tool we must rely on the legislature to place a proposed amendment on the ballot.

Will PA legislators give Keystone state voters the same opportunity as voters in Ohio, Florida, California, South Dakota and elsewhere?

****Summary of Senate Bill 484***

SB484 would amend Article II, Section 17 of the Pennsylvania Constitution to create an eleven member independent Legislative and Congressional Redistricting Commission for the purpose of redrawing Pennsylvania's Legislative and Congressional district boundaries.

The commission would be composed of persons who, for at least the three years immediately prior to appointment, have been registered voters in Pennsylvania. They are randomly selected from a pool of volunteer applicants in a manner to ensure partisan political balance, and to reflect the state's racial, geographic and gender diversity. Prior to acceptance in the pool, applicants will be vetted to ensure they and members of their immediate families are not and do not have recent past or present ties to federal, state or local elected officials or officials in political parties, political action committees, registered lobbyists and other parts of the partisan political establishment. They must also agree not to establish such ties for at least five years after the expiration of their term on the commission.

The proposed amendment sets a timetable for the commission to complete its work. It mandates procedures for transparency, public participation and public hearings. If the Commission fails to approve a final plan by the specified final deadline the PA Supreme Court will appoint a special master to develop and complete a final plan. The final plan will become law unless successfully appealed to the Pennsylvania Supreme Court. Any citizen can file an appeal. The Commission has sole legal standing to defend the plan.

The proposed amendment also describes criteria the commission must use in drawing district boundaries. The criteria are clearly defined to promote partisan fairness and discourage partisan gerrymandering.

To become law the proposed amendment must be passed in identical form by both houses of the General Assembly in two successive legislative sessions and approved by the voters. The governor's signature is not required.

HISTORY OF LWVPA ACTION ON REDISTRICTING

Following the 1990 census, LWV testified at Legislative Reapportionment Commission hearings before and after the commission began its work, stressing the importance of meeting constitutional criteria of compactness and contiguity and further urging respect for municipal boundaries. Similar testimony was given to the Senate Government Committee regarding congressional reapportionment.

In 1992, after the failure of both the Legislative Reapportionment Commission (General Assembly districts) and the legislative process (U.S. congressional districts) to resolve disputes, the PA Supreme Court had to make final rulings to set election district lines. Several local Leagues joined in challenges to redistricting decisions that violated the criterion of “respect for municipal boundaries,” – in some cases, by dividing townships and even voting precincts.

In December 2003 the U.S. Supreme Court heard arguments in a challenge to Pennsylvania’s congressional reapportionment plan following the 2000 census. The case involved the division of one township in Montgomery County into four Congressional districts. It tested whether state legislatures can consider politics in defining congressional boundaries. The US Supreme Court upheld the redistricting plan in a 5 to 4 vote. The nine justices issued five different opinions in the case. The dissenting opinion by Justice Stevens said that such a redistricting was paramount to partisan discrimination and should have been decided on the same basis as racial discrimination.

In 2007-08, LWVPA unsuccessfully lobbied for an amendment to the Pennsylvania Constitution that would put reapportionment of both Congressional and General Assembly districts into the hands of a nonpartisan bureau. Districts would be determined in line with the League position, and no consideration would be allowed for incumbency, party registration, or other political agendas. The bill had 96 cosponsors in the PA House and was unanimously voted out of the House State Government Committee. However, the House leadership blocked it from coming to a vote in the full House.

Following this defeat LWVPA proposed legislation that would have some of the reforms that were in the proposed constitutional amendment. The Redistricting Openness and Fairness Act of 2010 was voted unanimously out of the House State Government Committee but never made it to the House floor for a vote.

In January 2011, the League kicked off an aggressive campaign demanding transparency and fairness in the redistricting process which was about to commence. As a result, the process was somewhat more open. The 2011 Legislative Reapportionment Commission established a website with information on the redistricting process, meeting notices, copies of written testimony, videos of meetings and hearings, and interactive maps. The Commission held hearings before and after adoption of a preliminary legislative redistricting plan. The House and Senate State Government Committees which oversees congressional redistricting held joint public hearings as well. However, both plans were crafted largely in secret. The Congressional plan was made public and adopted by the state legislature in less than three legislative days under a procedure that circumvented the PA Constitution’s requirement that bills be considered on three separate days in each chamber.

The legislative plan was successfully appealed to the PA Supreme Court (*Holt v. Legislative Redistricting Commission*) which remanded it to the Commission for revision after finding it “contrary to law.” The Court said it violated Article II, Section 16 of the Pennsylvania Constitution that says: “Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or a representative district.” The appeal was successful because the Holt appeal proved that a statewide map could be drawn that made fewer splits than the Commission map and still

comply with requirements that districts be substantially equal in population and that the plan comply with the federal Voting Right Act requirement on majority-minority districts.

The Commission's revised plan was also appealed to the Supreme Court on the basis that it inadequately corrected the problems in the original plan but the court rejected this appeal and the plan went into effect for the 2014 elections in races for the state legislature. For an analysis and critique of the court's decision go to (<http://amandae.com/>).

REAPPORTIONMENT V. REDISTRICTING What Is the Difference?

The "reapportionment" and "redistricting" are often used interchangeably. The two are related but quite different.

As used in the U.S political system, reapportionment refers to the once per decade reallocation of seats in the U.S. House of Representatives among the states based on the relative population of each state to the total population of the country as determined by the decennial census. Because the number of seats is fixed at no more than 435, the number of seats must be reapportioned according to population changes determined by the decennial census. Some states gain seats, others lose seats. For example, after the 2010 census Pennsylvania lost one seat reducing its representation in the House from 19 to 18. Even though the Commonwealth's overall population increased, it did not increase as much as several other states, mostly in the south and west. Their representation in Congress increased.

Redistricting refers to the changing of boundaries of representative district in a legislative body. Pennsylvania has 18 Congressional Districts, 203 State Representative Districts and 50 State Senate Districts.

Local Redistricting

Some municipalities must also conduct redistricting if representation on their legislative bodies is done by district as opposed to at large representation where all the members are elected by the entire voting population of the political entity. Local redistricting is covered by Article IX, Section 11 of the Pa Constitution which says:

"Within the year following that in which the Federal decennial census is officially reported and as required by Federal law, and at such other times as the governing body of any municipality shall deem necessary, each municipality having a governing body not entirely elected at large shall be reapportioned by its governing body or as shall otherwise be provided by uniform law, into districts which shall be composed of compact and contiguous territory as nearly equal in population as practicable, for the purpose of describing the districts for those not elected at large."

Some local governing bodies have delegated redistricting to outside entities but retain final authority to approve any redistricting plan.

Resources

Pennsylvania Redistricting, The Legislative Guide to Redistricting in Pennsylvania

<http://www.redistricting.state.pa.us/>

All About Redistricting. Loyola Law School. <http://redistricting.lls.edu/cases-PA.php#PA>

Redistricting Updates by Senator Dominic Pileggi , <http://www.senatorpileggi.com/news/redistricting-updates/>

A Citizen's Guide to Redistricting 2010 Edition by the Brennan Center

<http://www.brennancenter.org/sites/default/files/legacy/CGR%20Reprint%20Single%20Page.pdf>

Ballotopedia Redistricting in PA https://ballotpedia.org/Redistricting_in_Pennsylvania

National Conference of State Legislatures <http://www.ncsl.org/research/redistricting.aspx>

Redistricting Hearings by the PA Bar Association Constitutional Review Commission

<http://pabarcrc.org/mo/lrsubmissions.asp>

Public Mapping Project <http://www.publicmapping.org/>

Redistricting the Nation <http://www.redistrictingthenation.com/>