



Restoring Public Confidence That Every Vote Matters The Redistricting Reform Act

In many states, the process of drawing and approving electoral districts – known as redistricting – is carried out by state legislators. This poses an obvious conflict of interest and has led to manipulation of the redistricting process for partisan advantage – a problem exacerbated by the ability of modern technology to allow legislators to target voters with surgical precision. Partisan gerrymandering harms the American people, stripping them of the right to have their votes count equally and their ability to elect candidates of their choice.

The For the People Act's Redistricting Reform Act provides for Independent Redistricting Commissions ("IRCs") – a voter-centric reform to ensure that district boundaries are not beholden to any political party. IRCs create a fairer process by taking redistricting out of the hands of legislators and establishing standards for commission membership and for drawing district maps.

DECLARATION FOR
**AMERICAN
DEMOCRACY**





The Challenge

States' requirements to place an initiative on the ballot are difficult under the best of circumstances. For example, in Arkansas and North Dakota, proponents of ballot initiatives that would have created IRCs were required to collect tens of thousands of signatures in person in the middle of a global pandemic. These requirements –necessitating close in-person contact among thousands of people – became nearly impossible to satisfy safely in 2020, in light of COVID-19 and the guidelines limiting social gatherings. As a result, in the lead up to the November 2020 election, citizens in Arkansas and North Dakota seeking to establish IRCs through voter-approved constitutional amendments were limited in their options and unable to fully exercise their First and Fourteenth Amendment rights to access the ballot and organize in support of IRCs. It should not be so difficult for voters to ensure that elections are determined by the people, not politicians drawing electoral maps. To add insult to injury, even though citizens in both states risked their health to express their fundamental rights, the respective state supreme courts ultimately removed the measures from the ballot.

Almost all current IRCs exist because of citizen-initiated ballot measures. However, many states do not allow citizens to initiate ballot measures. Even where voters have successfully changed the redistricting process through initiative, hostile state legislatures have successfully rolled back reforms. In Utah, for example, the state legislature repealed a 2018 voter-approved measure that created an advisory redistricting commission but a recent act by legislature took the teeth out of their advisory power. Similarly in Missouri, voters successfully won a 2018 ballot initiative to create an independent commission but that was repealed in a legislature-sponsored ballot initiative that amended the state constitution to eliminate the nonpartisan demographer and use a bipartisan commission appointed by the Governor.

There are currently no rules against partisan gerrymandering. A 2015 study of partisan gerrymandering in state and congressional elections from 1972 to 2014 found that “the scale and skew of today’s gerrymandering are unprecedented in modern history.” Yet, in June 2019, months ahead of the 2020 census launch that will determine electoral districts for the next decade, the U.S. Supreme Court ruled that federal courts may not intervene to block partisan election maps, no matter how unfair they may be.

The Supreme Court’s ruling has allowed partisan gerrymandering to continue unabated. It has also left the door open for racial gerrymandering - which the Court has ruled unconstitutional - to occur under the guise of partisan gerrymandering, disproportionately limiting the voice of and resources to communities of color.

The Solution

The For the People Act includes the Redistricting Reform Act, which requires the establishment of an independent redistricting commission in each state, responsible for developing and enacting congressional redistricting plans. Part 2 of the Act sets forth criteria and rules for appointment to the commission, procedures for commission business, and standards for developing a redistricting plan, including avenues for public input.

By automatically creating IRCs in every state, the For the People Act would guarantee uniformity in congressional redistricting, ensuring that the process no longer depends on state ballot initiative procedures where available – and strengthens the effectiveness of citizen advocacy. By establishing qualification criteria for IRC commissioners, H.R. 1 identifies individuals who would not be eligible for participation – including public office holders and candidates, their immediate family members, paid consultants, registered lobbyists, government contractors, and foreign agents – whose conflicts of interest could jeopardize the fairness of the redistricting process. Creation of IRCs in every state would protect congressional redistricting reforms from hostile state legislatures and promote a path toward impartiality of electoral maps, a reform essential to restoring public confidence that every vote matters.

The For the People Act expressly prohibits redistricting plans that “unduly favor or disfavor any political party.” It identifies factors that IRCs may not consider when developing electoral maps, including the party affiliation or voting history of a district’s population. The Act also provides that, if certain triggering events occur, a federal district court for the applicable venue, acting through a 3-judge panel, may develop and publish the congressional redistricting plan for the state. Triggering events are limited to: (1) a state failing to establish the nonpartisan legislative agency and select committee responsible for appointing and approving members of the IRC; (2) the select committee failing to approve IRC members; or (3) an IRC failing to approve a final redistricting plan.

The For the People Act not only expressly prohibits partisan gerrymandering but restores the backstop of federal judicial involvement in narrow cases where the actors responsible for redistricting—under the Act, IRCs and the bodies that appoint them—fail to act. The For the People Act binds courts to the same data, terms, and conditions applied to the development of a redistricting plan by an IRC and requires courts to hold at least one evidentiary hearing where members of the public may testify.

By creating a system of uniformity for the process of redistricting, the For the People Act directly addresses the current problem of partisan gerrymandering and reinvigorates our democratic system of checks-and-balances, providing a renewed role for courts when the process of fair redistricting requires it.

