

Redistricting wars have again broken out in California. Recently redistricting reform proposals have been offered by Governor Schwarzenegger as well as Democratic legislators. All these proposals embrace redistricting by an independent commission.

Background

Despite its sordid reputation, reapportionment and redistricting are central to American democracy. The Framers of our Constitution wanted one house of Congress to have, as James Madison wrote in the 52nd *Federalist*, “an immediate dependence on, and an intimate sympathy with, the people.” The solution was to base membership in the House of Representatives on population. The larger a state’s population, the more seats it had in the House. The Constitution mandates a federal decennial census so that representation in the House would be adjusted to reflect population changes. This process is *reapportionment* while the process of redrawing district lines to insure equal population is *redistricting*.

California’s modern redistricting wars started in 1971 redistricting. Governor Ronald Reagan twice vetoed plans passed by the Legislature and, in 1973, sent the issue to the state Supreme Court. The Court appointed three retired judges who drew Congressional and legislative maps that were used until 1982. Republican losses in 1974 led some to condemn the Court’s plans as a stealth gerrymander but Watergate was the real explanation. In 1981, Democrats controlled the Legislature plus the governorship. Congressman Phil Burton drew what is regarded as one of the worst partisan gerrymanders in American history. The redistricting plans for the Assembly and Senate, while not as bad, were also denounced as gerrymanders. Those plans were subject to a successful referendum in June 1982, but in December the Legislature passed new Burton plans with a bipartisan two-thirds vote. Governor Jerry Brown signed the bills as one of his last official acts. In early 1983, Republicans qualified an initiative which would have impose new maps. Republican Governor George Deukmejian called a special election for December 1983 but the state Supreme Court ruled the initiative unconstitutional and voided the election.

These events lead Republicans and various reform groups to qualify four different redistricting reform initiatives. Propositions 14 (1982), 39 (1984) and 119 (1990) would have created redistricting commissions while Proposition 118 (1990) would have required a two-thirds vote and voter approval for redistricting plans. None of these measures got more than 45% of the vote. In 1999, Proposition 24, which would have created a commission and cut legislative pay, was thrown off the ballot by the Supreme Court for violating the single-subject rule.

In 1991, the Democrats again held legislative majorities but the governor was Republican Pete Wilson. Not surprisingly, Governor Wilson vetoed the plans and immediately petitioned the Supreme Court to intervene. As in 1973, the Court appointed three retired appellate judges to develop redistricting plans. Those plans were in effect through the 2000 elections. In 2001, Democrats and Republicans came together to

develop plans that have been both praised as an exemplar of bipartisan cooperation and condemned as an incumbent gerrymander.

Redistricting Commissions: What

There are nineteen states with one of three types of redistricting commission.

Advisory Commissions develop plans which are submitted to the legislature which can then adopt or reject the commission's plans. Maine and Vermont have advisory commissions

Back-Up Commissions meet only if the legislature fails to enact a redistricting plan. The commission then has the authority to draw new districts. Connecticut, Illinois, Mississippi, Oklahoma and Texas have back-up commissions.

Primary Commissions have the authority to independently develop and adopt redistricting plans. The most recently created commissions and all those currently proposed in California are primary commissions. States with primary commissions are Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Missouri, Montana, New Jersey, Ohio, Pennsylvania and Washington.

Redistricting Commissions: Who

The use of retired judges, as envisioned by the California proposals, would be unique among commission states. Of the 12 primary commission states, all but Arizona have political appointment processes. Commissions in Arkansas, Missouri, and Ohio consist either of elected partisan officials or the appointees of elected or party officials. Eight states have commissions have a mix of partisan and non-partisan appointees. Hawaii, Idaho, Montana, New Jersey, Pennsylvania and Washington have tie-breaker schemes wherein partisan leaders appoint an equal number of commissioners who then select the final, tie-breaker member. New Jersey, Pennsylvania and Washington have a back-up mechanism of judicial appointment if the political appointees cannot select the last member. Alaska and Colorado provide for the state Supreme Court to appoint commission members, a single tie-breaker in Alaska and four of eleven members in Colorado. The Arizona commission, adopted by an initiative in 2000, has a unique process. The two largest parties nominate a total of 25, five of whom cannot be registered with either party. From this pool, the legislature's four majority and minority leaders each select one commissioner; these four select a fifth from the pool and if the four cannot decide, a judicial commission makes the appointment.

Redistricting Commissions: Pro's & Con's

Redistricting reforms tend to be over-sold. For example, a writer in the *New Republic* said redistricting reform in California could result in an "explosion of contested House races." A major California newspaper, editorialized that redistricting reforms would produce competitive seats, the election of moderates, and the on-time enactment of

reasonable budgets. The record of other states and California's own experience with judge-drawn plans are more modest.

Redistricting reform cannot create a political nirvana because gerrymandering is not the only cause of hyper-partisanship and political gridlock, in California or nationally. The U.S. Senate is not subject to redistricting yet is far more divided now than in 1985. The Court redistricting plans of the 1990 produced a legislature widely criticized for partisan gridlock and passing seven of ten budgets late.

Many of the current California proposals promise increased electoral competition. But electoral competition is complicated by human geography and definitional problems.

California has a surfeit of political regions which are solidly Democratic or Republican. To make San Francisco or Newport Beach competitive would require districts that would make Phil Burton's look positively symmetrical and which would despoil any standards of local boundaries and communities of interest. Again, the experience of the Court's 1990 redistricting is illustrative. Using the *California Journal's* assessment of legislative races and taking the most generous definition of a competitive district (i.e., any district not defined by the *Journal* as safe), the maximum number of competitive races occurred in 1998 with 26 Assembly seats and 7 Senate seats that were not deemed safe. Of these, however, only 17 Assembly and 5 Senate races were considered "hot" or truly competitive. Term limits, of course, had significant affects on competition. A fair estimate would be that the maximum number of competitive legislative districts possible in California is about 20 Assembly and 5-8 Senate seats.

Defining electoral competitiveness is also problematic. For example, defining as competitive any district in which the major party registration is within five or seven percent of each other does not reflect actual voting patterns and thus would be flawed. In the 1990s, districts with a Republican registration plurality were safe Republican (between 1992-2000 there were 261 House and legislative districts with GOP plurality; of these the GOP candidates won in 249 districts or 95.4%). Districts with a Democratic registration plurality but also where Republican registration was within 5% of the Democrats also favored Republicans (between 1992-2000 there were 80 such districts with GOP candidates winning 49 or 61.2%). Additionally, using partisan registration misses independent or Decline to State (DTS) voters with potentially serious distorting affects. The challenge of defining competitiveness lead the Arizona commission to adopt regulations specifying the use of a complicated formula developed by two Harvard professors (see <http://gking.harvard.edu/judgeit/>).

Conclusion

The record of the twelve primary commission states is mixed. Arkansas, New Jersey, Ohio and Pennsylvania commissions have produced plans widely regarded as partisan or incumbent gerrymanders. Hawaii, Missouri, and Montana have had debilitating stalemates over selecting tie breakers. Commission plans have been subject to legal challenges as often as legislative plans. The Arizona commission had specific

competitive criteria yet the plans it's adopted in 2001 had fewer competitive seats than the legislatively adopted plans of the 1990s.

However, the majority of the commission states have not experienced extreme partisan gerrymanders. For example, the 2001 congressional redistricting in Pennsylvania, done by the state legislature, could be the poster child of partisan gerrymandering. But the legislative redistricting, done by a commission comprised of partisan appointees, was less egregious. The consensus of political scientists in many commission states is that commissions are less prone to partisan gerrymandering and achieve modest improvements in the number of competitive seats.

The strengths and weaknesses of redistricting commissions can be illustrated by the new Idaho Commission. The commission experienced partisan conflict but less partisan than regional conflict. The commission's first plans were struck down by the state Supreme Court but the second set was approved. Whether electoral competition was enhanced is subject to debate, but most observers agreed there was a slight increase. The press and the public generally approved of the process. In short, the commission did not eliminate partisanship nor insured judicially acceptable plans but in the end it worked.