

Recommendation on Changing the Current System for Maryland Redistricting
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Introduction

Starting in 2016 and every year thereafter, the Governor of Maryland introduced legislation that would submit to the voters of the state a constitutional amendment that would change how federal and state legislative districts are drawn. This paper summarizes the arguments pro and con for changing the current system and makes recommendations for the 2019 MD legislative session.

Current System in Maryland

Article 3 of the State Constitution (Appendix 1) provides for redistricting to occur after each decennial census of the United States. The Governor prepares a plan for new maps of districts and submits to the Maryland Senate and House of Delegates for approval. Any member of the legislature can submit an alternate plan. If the Senate and House do not approve a plan, the Governor's plan becomes law. The state constitution on state legislative districts provides that "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions." The state constitution does not address criteria for Congressional districts.

Maryland is dominated by voters registered as Democrats (55.0% in 2018) with minorities registered as Republicans (25.5% in 2018) and Unaffiliated (17.9% in 2018). The split by County is not uniform, with 13 out of 23 Counties plus Baltimore City (24 total) with registered Republicans outnumbering Democrats in 2018.¹ Regionally, the western and eastern parts of the state are more Republican and the central part of the state is more Democratic. From 2003 - 2014, 2 of the state's 8 US Congressmen were Republican. Redistricting approved in 2012 resulted in a change in District 6 that shifted the balance of party registrations in favor of Democrats, and in the 2014 Congressional election a Democrat ousted an incumbent Republican. In 2018, the Democratic candidate was elected.

The 2012 redistricting is currently subject to a lawsuit filed by Republican voters in MD-6 to cause the district boundary to be redrawn. The case is currently before the US Supreme Court with arguments to be heard in March 2019. A ruling is expected in late summer/early fall of 2019.

¹ Maryland Board of Elections, Eligible Active Voters by County as of November 6, 2018 Election, https://www.elections.maryland.gov/press_room/2018_stats/GG18_Eligible_Active_Voters_by_County.pdf

Arguments to Change the Current System

1. The current system results in unfair representation of Maryland voters. Because MD was controlled by a Democratic Governor and both houses of the legislature in 2012 when the last redistricting was done, we have partisan gerrymandering that has resulted in a continuance of Democratic domination of political offices out of proportion to votes cast.

In the 2018 Congressional election for 8 MD seats, the Democrats won 87.5% of the seats with 61.8% of total votes cast. The Republicans won 12.5% of the seats with 35.5% of total votes cast.² A more fair representation would have been a split of 5 Democratic seats (62.5%) and 3 Republican seats (37.5%) based on state-wide vote tallies.

In the 2018 MD legislature election, the Democrats won 68% of the MD Senate seats and 70% of the MD House of Delegates seats. Voter registration in the state was 55.0% Democratic, 25.5% Republican, and 19.5% unaffiliated or other parties.³ Vote tallies by candidate's party are a better measure of voter preference, but harder to calculate. If the vote tally for US Congress is used as a proxy, Democrats should have gotten 61.8% of the MD legislature, with Republicans at 35.5%.

2. Partisan gerrymandering moves political power from the voters to the majority political leadership where the candidates choose their voters rather than voter choosing their candidates. Districts are set up to be "safe" for re-election by the majority party candidates and voter choice is restricted to the run-off in the primary election.
3. National level Democratic officials are calling for national level reform in elections. HR-1 is a bill introduced by Democrats in the Congress that would remove partisan bias from redistricting, along with other reforms. Every member of the MD delegation to the House and Senate supports this bill. Maryland state officials should be willing to implement this locally to remedy our past partisan gerrymandering.

"In recent years, the Greater Baltimore Committee commissioned Gonzales Research and Marketing Strategies to include a question about redistricting in a statewide poll. The results showed that 73 percent of Marylanders favored an independent

² Maryland Board of Elections, data file on votes cast for each Congressional seat in 2018 election, https://www.elections.maryland.gov/elections/2018/election_data/index.html

³ Maryland Board of Elections, data file on total eligible and active voters for November 6, 2018 election, https://www.elections.maryland.gov/press_room/2018_stats/GG18_Eligible_Active_Voters_by_County.pdf

redistricting commission. A Goucher Poll on the same issue found the same strong sentiment.”⁴

The national-level Indivisible organization lists the following national organizations who are partnered to lobby for fair redistricting: Brennan Center for Justice, Common Cause, League of Women Voters, Campaign Legal Center, and National Democratic Redistricting Committee.⁵

4. MD Democrats proposal to require parity in the NY-PA-NJ-MD-VA-NC Region (The Mid-Atlantic Compact), has already been met by the court-ordered redistricting in PA. This redistricting resulted in 5 Republican majority districts to be made more competitive according to the Brennan Center for Justice.⁶ In the Philadelphia region, 3 of these more competitive Districts resulted in electing Democratic members of Congress: PA-5, PA-6, and PA-7.⁷

Arguments to Retain the Current System

1. The process followed in 2012 follows Maryland law. While courts have ruled in the past that drawing district boundaries to minimize the political power of racial minorities is illegal, nothing in law prevents the drawing of boundaries to minimize the political power of minority political parties.

There are no national standards for redistricting that address party affiliation. Each state selects its own criteria for redistricting and approves its own maps. Any state that adopts non-partisan processes risks unilateral disarmament by Democrats in the face of Republican gerrymandering on partisan lines.

2. Republicans frequently use partisan map-drawing to enhance their control of state government and therefore it would be irresponsible for Democrats to unilaterally disarm. In North Carolina, Republicans retain 10 of 13 Congressional seats despite a near 50-50 statewide vote split since redistricting in 2012.⁸ In Wisconsin, partisan gerrymandering for the state legislature resulted in lopsided victories for Republicans. In 2012, they won 60 of the 99 seats in the Wisconsin Assembly despite winning only 48.6% of the two-party state-wide vote; in 2014, they won 63

⁴ Greater Baltimore Commission, “THE DAILY RECORD: MARYLAND VOTERS DESERVE REDISTRICTING REFORM”, November 16, 2018, <https://gbc.org/the-daily-record-maryland-voters-deserve-redistricting-reform/>

⁵ Indivisible website, “Fighting Gerrymandering in the States”, https://indivisible.org/resource/fighting-gerrymandering-states?akid=43366.4302.lxnLgD&rd=1&t=23&utm_medium=link1&utm_source=email

⁶ Brennan Center for Justice, “Extreme Gerrymandering and the 2018 Midterm”, by Laura Royden, Michael Li, and Yuij Rudensky, 2018.

⁷ “Pennsylvania Election Results 2018” Politico website, by Andrew Briz, Tyler Fisher, Beatrice Jin, Jon McClure, Lily Mihalik, updated as of Feb. 26, 2018, <https://www.politico.com/election-results/2018/pennsylvania/>

⁸ The Daily Tar Heel, Supreme Court accepts NC gerrymandering lawsuit, by Julia Masters, January 13, 2019. <https://www.dailytarheel.com/article/2019/01/update-on-gerrymandering-lawsuit-0113>

seats with only 52% of the state-wide vote.⁹ In a report by the Brennan Center for Justice at New York University Law School, the authors calculated that in 4 highly partisan gerrymandered states (MI, NC, OH, and TX) Republicans hold 8 – 12 extra seats due to partisan bias in the 2018 election.¹⁰

3. Maryland should wait until the Supreme Court rules on 2 cases involving MD and NC in the summer/fall of 2019. That may produce guidelines that all states will be required to follow for redistricting following the 2020 census. Changing MD laws now would be premature and may result in a second change after the Supreme Court rules. This argument proposes the following sequence of events:
 - 2019 – summer/fall - US Supreme Court rulings on NC and MD cases expected
 - 2020 - January – April MD legislative session could pass laws allowing for vote on MD constitutional amendment to change the process
 - 2020 – November - MD voters approve/disapprove constitutional changes if proposed, otherwise new maps drawn under current system
 - 2020 – US conducts decennial census
 - 2021 – Results of census available (date uncertain)
 - 2021 – New legislative district maps are drawn
 - 2022 – January – April MD legislative session to approve the new map
 - 2022 – First elections impacted by redistricting

Recommendations

Eliminating partisan criteria from redistricting is important to ensure more fair representation of Maryland voters. The following bills are pending in the 2019 MD legislature:

HB0043/SB0090 is an amendment to MD election law, would establish an independent redistricting commission and allows the drawing of maps by the commission. The state legislature continues to approve new maps. The bills do not define criteria for drawing maps other than to point to the MD Constitution. These bills are an improvement on the current system and should be supported.

HB0044/SB0091 is an Amendment to the MD Constitution and defines criteria to be used in drawing new maps, adding new criteria to prohibit considering party affiliation, past voting records, and the domicile of an incumbent or potential candidate. It also requires each MD legislative district to be divided into 3 single-member districts. There does not appear to be good rationale to support these bills over other options and should be opposed.

⁹ Brennan Center for Justice, “5 Things to Know About the Wisconsin Partisan Gerrymandering Case”, by Michael Li and Thomas Wolfe, June 19, 2017. <https://www.brennancenter.org/blog/5-things-know-about-wisconsin-partisan-gerrymandering-case>

¹⁰ Brennan Center for Justice, “Extreme Gerrymandering and the 2018 Midterm”, by Laura Royden, Michael Li, and Yuij Rudensky, 2018.

HB0463/SB0110 is an Amendment to the MD Constitution that defines criteria to be used in drawing maps for the Congressional representatives from MD. The MD Constitution is currently silent on this topic. The criteria defined are identical to current criteria for MD legislative districts, which do not include a prohibition on considering party affiliation, past voting records, and the domicile of an incumbent or potential candidate. These bills are an improvement on the current MD Constitution and should be supported.

HB1048 is an Amendment to the MD Constitution that defines criteria to be used in drawing maps for the MD legislature, adding new criteria to prohibit considering party affiliation, past voting records, and the domicile of an incumbent or potential candidate. While this bill has merit, and would be an improvement on the current system, the Supreme Court rulings on the cases involving MD and NC during 2019 may have a substantial impact on what changes would be considered in compliance with law. Pre-empting the Supreme Court is likely to incur considerable cost to taxpayers and create considerable confusion which could be avoided simply by waiting a few months for the Supreme Court. For this reason, this bill should be opposed.

We do support bills to remove partisan redistricting in the 2020 legislative session to comply with law and enable the redistricting changes that must be in place to support the 2022 elections.

Appendix 1: Excerpt from the Maryland Constitution, Sections 1 – 5 of Article III:

Article III Legislative Department

Section 1.

The Legislature shall consist of two distinct branches; a Senate, and a House of Delegates, and shall be styled the General Assembly of Maryland.

Section 2.

The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates. (1900, ch. 469, ratified Nov. 5, 1901; 1910, ch. 303, rejected Nov. 7, 1911; 1922, ch. 7, ratified Nov. 7, 1922; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972.)

Section 3.

The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or 25 Maryland Constitution Article III one (1) single-member delegate district and one (1) multi-member delegate district. (1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972.)

Section 4.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions. (1900, ch. 432, ratified Nov. 5, 1901; 1910, ch. 318, rejected Nov. 7, 1911; 1922, ch. 20, ratified Nov. 7, 1922; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972.)

Section 5.

Following each decennial census of the United States and after public hearings, the Governor shall prepare a plan setting forth the boundaries of the legislative districts for electing of the members of the Senate and the House of Delegates.

The Governor shall present the plan to the President of the Senate and Speaker of the House of Delegates who shall introduce the Governor's plan as a joint resolution to the General Assembly, not later than the first day of its regular session in the second year following every census, and the Governor may call a special session for the presentation of his plan prior to the regular session. The plan shall conform to Sections 2, 3 and 4 of this Article. Following each decennial census the General Assembly may by joint resolution adopt a plan setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates, which plan shall conform to Sections 2, 3 and 4 of this Article. If a plan has been adopted by the General Assembly by the 45th day after the opening of the regular session of the General Assembly in the second year following every census, the plan adopted by the General Assembly shall become law. If no plan has been adopted by the General Assembly for these purposes by the 45th day after the opening of the regular session of the General Assembly in the second year following every census, the Governor's plan presented to the General Assembly shall become law.

Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland. (1949, ch. 226, ratified Nov. 7, 1950; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)