

Redistricting Reform to Fix a Broken System and Restore Competition

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Redistricting reform is vital in Minnesota for three reasons. First, the current system – as former Senate Majority Leader Roger Moe explains – is “broken.” The legislature is no longer drawing legislative maps, thrusting the Supreme Court into the role of designing the maps. Reform can create a process that reliably generates legislative boundaries that abide by constitutional protections for fair and representative districts. Second, reform can contribute to strengthening competitive legislative elections, removing the current conflict of interest in which incumbents draw their own districts. Third, there is an urgent need to create a fair redistricting process in case Minnesota loses a congressional seat as a result of the 2010 federal census. According to the most recent predictions from the state’s demographer, we are within .04 percent, or a thin margin of 2,200 residents, of losing one of our representatives in Congress. Even the best census estimate comes with a margin of error of one to two percent.

The Current Broken Process

According to the statutory process in Minnesota, the speaker in the state house and majority leader in the state senate appoint a redistricting committee that introduces bills, holds hearings, designs a bill, and works to enact it. If the legislature passes a redistricting bill, the governor can choose to sign or veto it. (In 1991, the legislative plan for redistricting became law after a ruling that the governor improperly vetoed it.)

Minnesota's legislative approach to redistricting has not worked. According to current state law, the important job of redistricting then falls to the Chief Justice of the Minnesota Supreme Court – as it has during the last two redistricting cycles in 1991 and 2001. The Chief Justice has appointed a special redistricting panel that – under great time pressure – designs plans for state legislative districts and congressional districts. The plan designed by the Chief Justice's panel can be appealed in the judicial process, though it was not in 2001 because the major parties accepted it. One perverse effect of the Court's role is to reinforce legislative paralysis: the legislative process was neglected by each party during the last redistricting cycle because they were looking ahead to the judicial process. Why negotiate in earnest if the courts are going to draw legislative maps and make the final decisions?

Minnesota's current approach to redistricting is limited in three troubling respects. First, relying on the legislative branch to draw districts for its members poses a conflict of interest. Second, gridlock and lawsuits overwhelm the process when different parties control the governor and legislature – the situation during last four redistricting cycles. Litigiousness and political horse trading make it all but impossible to engage in what should be a process of careful study and planning to create districts that are competitive and meet constitutional standards. Third, Minnesota's current process misuses the State's Supreme Court; instead of serving as an arbiter of due process, the Court has been thrust into the role of formulator. The Court is institutionally hard wired to avoid disrupting established arrangements and inviting charges of activism. The drawing of legislative districts often requires the very approach that the Court prefers to avoid – namely, the formulation of new districts that change the existing legislative map and ignite fierce political criticism. In addition, the Minnesota Courts have been reluctant to use competitiveness as a guiding principle.

Minnesota should reform its process for redistricting.

Reforming Minnesota's Redistricting Approach

Reworking Minnesota's approach to redistricting will require balancing a set of competing pressures – integrating the U.S. Supreme Court requirements with the State's interest in strengthening competition, and incorporating an awareness of political realities with a process that is not controlled and guided by party leaders and sitting legislators. Well-known traps in Minnesota and around the country challenge pulling off this balancing act. When parties split control over the lawmaking branches (the most common situation), bipartisan collusion invariably result. When one party controls both branches, the drawing of districts is often biased against the “out” party.

There are several approaches to redistricting that offer Minnesota a roadmap for restoring democratic accountability and breaking out of a process that had rigged elections for incumbents and party loyalists. One approach is to use independent commissions. Redistricting commissions have been created in six states for federal redistricting and approximately a dozen states for the drawing of state legislative districts. They end the conflict of interest inherent in sitting legislators drawing their own districts. Arizona, for instance, recently reworked its approach to redistricting; voters decided in 2000 to replace the state legislature as the key decision maker with a five-member commission that acts independently of the legislature – the Independent Redistricting Commission.

A second approach – typified by Iowa – uses a nonpartisan legislative support staff agency (the Legislative Services Agency) that makes proposals to the legislature, which decides by majority vote. The agency proposes up to three maps to the legislature; only technical aspects of the first two maps can be altered while the third and final map is open to modification. Although

this approach has been hailed by some as removing politics from the redistricting process, our analysis demonstrates that the competitiveness of Iowa's legislative races are not impressive compared to other Upper Midwestern states. Iowa may be handicapped by the fact that its staff agency is not permitted to look at politically important information such as political affiliation and previous election results when devising new plans.

Minnesotans must address four factors in designing new processes for drawing legislative districts: appointment of personnel, criteria for decision making, information that guides decisions, and the rules for reaching decisions.

1. **Appointment of Personnel:** Many redistricting processes rely on legislative leaders to appoint members to bodies that draw legislative districts. The challenge is to structure this process to make it difficult for legislative leaders to stack the deck toward protecting incumbents or securing partisan advantage.

Iowa's Legislative Services Agency (LSA) is staffed with independent, non-partisan civil servants who are chosen based on professional training and experience. The LSA can request advice from a commission composed of 5 members: the majority and minority leaders in the House and Senate each select one member and a fifth member is selected by the four members appointed by legislative leaders. Iowa's use of non-political career bureaucrats to draw district boundaries is modeled on the "boundary commissions" used in other countries.

In Arizona, the state's commission for making appellate court selections assembles a pool of twenty-five candidates to serve on its independent commission. Of the 25 candidates, 10 are expected to be Democrat and 10 Republican with the remaining 5 not registered as a member of either major party. The four legislative leaders -- the majority

and minority in the state house and senate -- each select one member of the Commission from the pool of 25 candidates. Their selection must meet certain requirements aimed at moderating partisanship (only 2 of the Commission's five members can be from the same political party), regional bias (only two members can reside in the same county), and direct political interests (appointees cannot have been elected, served, or run for public office within three years of serving on the Commission nor served as a party official). The Commission's members are informed that they are responsible to serve in an "honest, independent and impartial fashion and to uphol[d] public confidence in the integrity of the redistricting process." To further instill independence, Commissioners are barred from serving in Arizona public office or working as a lobbyist while they are on the Commission and for three years *after* they leave it.

2. **Criteria for Decision Making:** Processes for redistricting are guided by U.S. Supreme Court rulings that require legislative districts to have equal populations and uphold the requirements of the U.S. Voting Rights Act, as well as by federal and state requirements to achieve geographic compactness and contiguity to avoid bizarrely shaped districts and to continue the boundaries of existing counties and towns.

One of the distinctive decisions of Arizona was to amend its state Constitution to list competition as a criterion to guide redistricting, though it stipulated that the competition criteria should not cause "significant detriment" to statutory and U.S. Supreme Court requirements of population equality, voting rights, compactness and contiguity, and maintaining existing counties and towns. The Independent Redistricting Commission defined competition to mean that "either party or other parties would have an opportunity

to prevail in an election,” with the expectation that candidates should be within 7 percentage points of each other.

Arizona’s decision to amend its state constitution illustrates the challenge of balancing the desire to improve electoral competition and the protection of constitutionally protected considerations. Although states like Arizona have recognized competition as an important criterion, the U.S. Supreme Court does not recognize it as a constitutional requirement.

In addition to introducing competition as a standard into the drawing of legislative maps, partisan fairness should also be considered as a criterion. The distortion between votes cast and legislative representation found in Minnesota recently hurt Democrats; but future rounds of redistricting could well distort support for Republican candidates.

3. **Information that Guides Decisions:** Decisions over redistricting are guided by the information available to policy makers. Iowa takes a restrictive approach, barring its Legislative Service Agency from considering election results – an essential body of data for tracking the competitiveness of legislative districts. Arizona takes a more expansive approach. Elections results and party registration are not allowed during the initial phase of drawing districts but can be used to test compliance with the Commission’s goals including competitiveness. (Arizona and Iowa both bar information about the residence of incumbents.)
4. **Rules for Reaching Decisions:** The rules for designing legislative maps can invite delay and gridlock or encourage cooperation and timely action. The process in Minnesota

during the two most recent redistricting cycles fostered deadlock and delay, as the legislature stalled and waited for the judiciary to take over.

The process in Iowa is more effective and timely than Minnesota's approach but is cumbersome. LSA can submit up to three plans to the Iowa legislature. The legislature can only make minor technical changes to the first two plans. If either passes and is signed by Governor, it becomes law. If the legislature rejects LSA's first two plans, it can make substantial changes to the third plan; this has not yet happened.

The Arizona process is least cumbersome. A majority of three is sufficient to establish the new legislative map.

What Works?

Arizona's commission process and Iowa's staff agency approach to redistricting offer attractive ideas for Minnesota to consider. Both processes have completed their redistricting maps in a timely manner and have fended off blatant schemes to protect incumbents and advantage one party.

There is certainly room for additional planning, however. Our analysis of competitiveness in the Upper Midwest shows that Iowa has the lowest margin of victory (around 16 points) for races that had two major party candidates on the ballot. (Nearly two fifths of races were uncontested by one major party presumably because the outcome appeared close to certain). In Arizona, the Commission's work has faced court challenges (which were struck down but were nonetheless taxing) and the expected gains in competitiveness have so far been less than observers anticipated.

Recommendations for Future Action

Minnesota should reform its redistricting process to create a workable process. The prospect of losing a congressional seat and then depending on a trusted process to redraw legislative boundaries makes reform urgent.

Redistricting reform that incorporates competition as a consideration along with constitutional requirements would strengthen democratic accountability and moderation. Weak and declining legislative competitiveness compromises democratic representation by locking in an unfair advantage for incumbents and partisans, shielding them from the healthy threat of losing their seats in the face of constituent discontent. Insulating representatives from the prospect of genuine constituent pressure frees incumbents to pursue uncompromising positions and hard-line party doctrine. Biased redistricting also contributes to partisan polarization. The reality is that many legislative districts have been designed to be ideologically extreme; for legislators in these districts who are intent on winning reelection, taking extreme positions is a “smart” strategy. For American democracy, however, the country is best served by legislators who face the real prospect of losing their seats.