

Report on Common Cause Conference, October 7, 2015
Redistricting reform, Mapping our future: a Symposium
George Washington University

Please read this review while referencing the symposium program which accompanied this report as an attachment.

The program included a set of Redistricting Principles agreed to by a number of organizations as a reference point. These are the principles.

Redistricting Principles For a More Perfect Union

Throughout our history, Americans have aspired to "form a more perfect union." We as a people have sought to achieve a fair, representational democracy where the citizens fairly select their representatives; where our elected officials are responsive to the needs and concerns of their constituents; and where the vestiges of historic and ongoing racial discrimination are removed.

Yet even now, current redistricting practices too often pose new and daunting threats to our democracy's vibrancy, inclusiveness, transparency and accountability of its elected officials. Instead, in many cases, the process is used as a means for those with disproportionate political power to maintain that clout. Closed-door processes exacerbate the disconnect between the self-interested and the ideal of representative democracy. The public is cut out of the process and disillusioned as entrenched forces draw lines to maintain the status quo. The resulting district lines can ignore changes in U.S. demographics, which results in disenfranchisement of communities of color and others. Citizens lose a true sense of ownership of our democracy.

Improved redistricting practices can enhance and expand civic participation, help restore public confidence and participation in elections and governance, and build a modern democracy that serves as a beacon of inclusion and representation.

The undersigned organizations, which are committed to defending our democracy, agree on the following baseline principles to inform redistricting in this decade and future decades, as well as to present a framework upon which to build possible reforms in coming years as we as a nation move toward that more perfect union.

1. Consistent with the requirements of the Constitution, all persons who reside in a state or local jurisdiction -- regardless of age, citizenship, immigration status, ability or eligibility to vote -- should be counted for purposes of reapportionment and redistricting. Districts should be populated equally, as defined by law, counting all residents as constituents to be represented by elected officials.
2. The Census Bureau should continue to improve its outreach and data collection to ensure as full and accurate a count of all communities as possible, including a full and accurate count of the population by race, ethnicity, and national origin. Redistricting decision-makers should use legally-permitted population deviation among districts in state and local redistricting to serve legitimate redistricting considerations, including underpopulation of districts to ensure adequate representation of undercounted communities.
3. Incarcerated or detained persons should be considered residents of their immediate pre-incarceration location or their family residence for purposes of reapportionment and redistricting. The Census Bureau should collect and release the data necessary to implement this principle in all jurisdictions.
4. Compliance with the letter and spirit of the federal Voting Rights Act and its prohibition of vote dilution and of retrogression must remain a primary consideration in redistricting. While the elimination of racial discrimination in voting is a critical goal, that goal and the protection of civil rights are undermined by decision-makers who deny, without sufficient evidentiary proof, the continued existence of factors, including racially polarized voting, that support the creation of remedial districts under the Voting Rights Act. In light of long-established historical pattern, the prudent course, absent compelling evidence of changed circumstances, is for decision-makers to preserve extant remedial districts under the Voting Rights Act and to create new opportunity districts consistent with growth in relevant populations. Moreover, the requirements of the Voting Rights Act should be viewed as a floor, and not a ceiling, with respect to the voting rights of voters of color in redistricting. To advance these foundational goals, redistricting decision-makers should always make it a priority to exercise their considerable latitude within the law to create coalition and/or influence districts for voters of color where the creation of Voting Rights Act-compliant opportunity districts, in which voters of color comprise the majority of the voting-age population in a district, is not possible.

5. Consideration of communities of interest is essential to successful redistricting. Maintaining communities of interest intact in redistricting maps should be second only to compliance with the United States Constitution and the federal Voting Rights Act as a consideration in redistricting.
6. Transparency in redistricting is essential to a successful process. Meetings of decision-makers, among themselves or with legal and mapping consultants, must be open and accessible to the public in all but the most limited of circumstances.
7. Full access requires the development and implementation of measures to facilitate public attendance and meaningful participation. This includes outreach, informational materials, and interpretation services provided in languages other than English where the constituency involved warrants the provision of such services. This also includes means to permit the participation of constituents in remote locations. All efforts must recognize that certain communities face greater barriers to full participation, and outreach, education, and weighting of input should reflect this recognition. Full access to the redistricting process must also include maximized opportunity for input and participation. This requires facilitating participation through the availability of data and equipment well in advance of the consideration of specific proposals. This also requires timely disclosure of proposed maps being voted upon to allow ample opportunity for public input before adoption. Finally, meaningful participation requires that the decision-making body demonstrate its due consideration of the public input provided.
8. Public confidence in redistricting requires the decision-makers to reflect a broad range of viewpoints and be representative and appreciative of the full diversity of the population. Public confidence is furthered when relevant financial and other information about decision-makers and their paid retained consultants is disclosed. Fairness requires the development of clear conflict-of-interest criteria for disqualification of decision-makers and consultants.
9. Public trust in redistricting requires disclosure of information about any relationships between decision-makers and significant non-decision-making participants. Transparency requires the avoidance of rules that provide an incentive for outside participants to conceal their relationship to incumbents or candidates for the offices being redistricted. Rules that require participants in the redistricting process to disclose information must be applied evenly.
10. Accountability in redistricting requires public access to information about any non-public discussions of redistricting between redistricting decision-makers. This requires advance abrogation of any statutory or common-law legislative privilege that would protect such discussions of redistricting by decision-makers from disclosure during or after conclusion of the process.

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| <i>Advancement Project</i> | <i>Lawyers' Committee for Civil Rights Under Law</i> |
| <i>American Civil Liberties Union</i> | <i>Lawyers' Committee for Civil Rights, San Francisco</i> |
| <i>Asian American Legal Defense and Education Fund</i> | <i>LatinoJustice PRLDEF</i> |
| <i>Asian Americans Advancing Justice</i> | <i>Mexican American Legal Defense and Educational Fund</i> |
| <i>Brennan Center for Justice</i> | <i>NAACP LDF</i> |
| <i>Campaign Legal Center</i> | <i>NALDO Educational Fund</i> |
| <i>CHANGE Illinois</i> | <i>Prison Policy Initiative</i> |
| <i>Common Cause</i> | <i>Sierra Club</i> |
| <i>Demos</i> | <i>Southern Coalition for Social Justice</i> |

The forum provided an opportunity to hear the winners of the Common Cause Gerrymander Standard Writing Contest make their cases. The contest is a response to the Supreme Court's recognition that partisan and political gerrymandering are serious and justiciable issues, but claims to have the need for a standard which can be used to

identify and measure when a redistricting crosses the line and becomes a gerrymander. The papers will be published in the Election Law Journal. <http://moritzlaw.osu.edu/electionlaw/elj.php> (which is probably a journal to be followed more closely).

These are the papers and the authors who presented:

- *Unfair Partisan Gerrymanders in Politics and Law: A Diagnostic Applied to Six Cases*
 - Michael D. McDonald and robin E. Best
- *Cutting through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders*
 - Jowei Chen and Jonathan Rodden
- *A Discernible and Manageable Standard for Partisan Gerrymandering*
 - Anthony McGann, Charles Anthony Smith, Michael Latner and Alex Keena

The essence of my understanding of the issue is that Justice Stephens stated that the SCUSA is not able to rule on gerrymandering cases because there is no objective standard by which to measure a gerrymander. These papers take the position that computer based analysis can provide a standard (a set of algorithms) which can be used with real election results and projected election results to measure the degree to which elections meet the standard of Partisan Symmetry, the idea that district plans should treat the parties equally. Another way to state this is that the results meet the Partisan Symmetry test if the party that wins the most votes also wins the most seats, it is symmetrical. If the party that wins the most votes does not win the most seats, it fails the test and gerrymandering is likely to be the cause. Partisan Symmetry alone is not considered enough of a standard test to win at the Supreme Court. The computer formulae developed by these three entries use different approaches, but arrive at a mathematical proof that can make the case that one set of districts and the actual votes case can produce a symmetrical result and the same votes cast in another set of districts with different boundaries can produce a very different result. The winning paper, presented by McDonald and Best of SUNY Binghamton, seemed to reduce the analysis to a hard to dispute result.

In addition to the presentation and discussion based on these papers, the forum provided a number of panels representing efforts that are being made to overcome the current situation in which one party has created, through gerrymandering a major block in state legislatures which control the process of defining legislative districts with the result in keeping one party in control of both the state and national legislatures. Panels talked about efforts to overcome entrenched interests, the Supreme Court rulings, strategies for making change through the court process, litigating at the state level, and how to build effective coalitions to regain fair districts.

There is one strategy I want to highlight. The project is You Draw The Lines 2021. <http://www.youdrawthelines2021.org/home/> At the head are two former US Congressmen, Ellen Tauscher (D-CA) and Tom Davis (R-VA). This is a relatively new initiative and I invite you to check our their web page. They are both effective spokesman for the crisis, highly motivated and I believe they can reach out to the broader population.

The role of the League of Women Voters in all of this effort is very important. The panel dealing with overcoming entrenched interests was led by Chris Carson, Chair of the Advocacy Committee and LWVUS Board Member. She was very involved in leading the California initiative. Time and time again it was clear across the country the League was the citizens group that played a key role in the successes. League members should be proud of this.

Preston Shimer
October 12, 2015