

**Testimony of J.H. Snider, President of iSolon.org,
before Maryland's Redistricting Reform Commission,
Laurel, Maryland, October 13, 2015**

Earlier this evening Delegate Robert Flanagan said in his public testimony that “citizens picked at random could do a better job than the current system.” My testimony relates to implementing that idea in a surprisingly practical way.

Politically Realistic Premises

It is important to attempt to address Maryland's legislative redistricting problem in a politically realistic way. The politics of redistricting in Maryland are such that you are very unlikely to get the Maryland General Assembly to pass meaningful independent redistricting reform in Maryland. If you do get independent redistricting reform passed, the result would likely be the replacement of partisan with pro-incumbent gerrymanders, which would be a dubious victory for democracy, although it would surely be touted as a great victory in the press.

As for meaningful pro-competitive redistricting for Maryland General Assembly as opposed to Congressional seats: it is inconceivable, based on the redistricting history of both Republican and Democratic dominated legislatures in all fifty states, that the General Assembly would alleviate pro-incumbent gerrymanders. On the contrary, in response to the popular call to eliminate partisan gerrymanders, it would undoubtedly aggravate pro-incumbent gerrymanders, which I and many other political scientists view as a much more harmful type of gerrymander for democracy.

The Redistricting Jury

What I propose for those seeking a good faith solution to Maryland's legislative gerrymander problem is a type of independent redistricting mechanism that doesn't require legislation. That solution is what I call a “redistricting jury.” What I mean by a “jury” in this context is a randomly selected group of citizens of a larger size than a typical American jury or grand jury, which is no more than 25 individuals and thus too small a number to be broadly representative of the public.

A redistricting jury would be a remedy chosen by the courts for a blatantly political gerrymander, which the U.S. Supreme Court has determined are justiciable. Convening such a jury is already within a court's power; that is, a court can implement such a jury without additional enabling legislation or constitutional amendment under its existing equitable authority to implement a remedy to a justiciable gerrymander.

Consider the recent redistricting situation in Florida. The legislature was sued for violating the legislative redistricting requirements in Florida's Constitution. The Court then struck down the legislature's redistricting plan. After giving the legislature another opportunity to come up with a reasonable plan, the court took control of the process. It solicited a new round of redistricting plans: three from the legislature and three from good government groups including the Florida chapters of Common Cause and the League of Women Voters. It also announced that it would take the additional step of choosing one of those six plans.

With a redistricting jury, the final decision about fair legislative districts is still made by the courts, but the redistricting jury rather than the court makes the final decision about which legislative redistricting plan to choose.

The Redistricting Jury Process

Here is the basic outline of the redistricting jury process:

- 1) The legislature passes legislation creating an impermissible political gerrymander.
- 2) A suit is filed alleging the legislation creates an impermissible political gerrymander.
- 3) The court decides the suit has merit.
- 4) The court solicits redistricting plans and publishes them online with ample time for public review and comment.
- 5) Depending on the number of submissions, the court convenes either a single or multi-stage redistricting jury.
- 6) The jury is geographically and gender stratified so that at least four randomly selected individuals (two males and females) are chosen from every Maryland General Assembly Senate district. The members of the jury meet in their local district court and use advanced telecommunications technology to convene as a single jury.
- 7) A judge selected by the court moderates a debate among the proponents of the various redistricting plans. Each proponent is given time to make an initial presentation, rebut opponents' arguments, and make closing comments.
- 8) The jurors choose among the plans.
- 9) In a multi-stage redistricting jury, a sequence of juries successively filter the submitted redistricting plans. In a two-stage redistricting jury, the first one is a nominating jury and the second a final selection jury.

Such a jury would have many high quality redistricting plans from which to choose because, with today's software that automates what was previously a very difficult redistricting design process, drawing professional redistricting plans has become a trivial process, sometimes requiring no more than the push of a few buttons. Some political scientists have even argued that high school students with minimal training and effort have designed redistricting plans that are more democratic than those designed by legislatures at great taxpayer expense.

A redistricting jury should be able to accomplish its filtering task within a single day. Designing and evaluating redistricting plans should not be viewed as rocket science.

Conclusion

A meaningfully independent redistricting process would prevent the legislative fox from guarding the redistricting henhouse. Most so-called independent redistricting processes fail to do that. In a meaningfully independent process, the citizens get to choose their representatives rather than vice versa. The process I've outlined would not only put the citizens back in charge but not require legislative approval. It would thus serve as an ideal checks & balances solution to the legislature's redistricting conflict of interest.

I hope that Maryland judges who recognize the terrible consequences of political gerrymanders to our democratic system of government will seriously consider this proposal when their courts are next faced with the consequences of the legislature's self-interested gerrymanders.

I also hope at least one of you will pass this proposal on to Governor Hogan.

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