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THE LEGISLATIVE REAPPORTIONMENT PREDICAMENT

The method by which state legislative districts are drawn is fundamental to representative democracy. A 1980 Research Council report on reapportionment stated: "In view of the inadequacies in Michigan's basic law, an amendment to the state constitution would be required to provide for workable, constitutionally valid redistricting standards and process." The U.S. Supreme Court in 1964 in a "one person-one vote" case had declared unconstitutional some of the state constitutional provisions that established standards to be followed in reapportionment. Also, the eight-member bipartisan apportionment commission had failed in its two previous attempts (1964 and 1972) to reach agreement on a plan, which forced the state supreme court to assume this responsibility.

These inadequacies were again apparent in the 1982 reapportionment effort when the apportionment commission once again deadlocked and turned the matter over to the Michigan Supreme Court. This time the Michigan Supreme Court ruled that all apportionment provisions of the Michigan constitution became null and void with the 1964 U.S. Supreme Court decision. The court found that both standards and process are "inextricably intertwined" and the apportionment commission cannot survive without apportionment rules. This decision means that rather than merely having inadequacies in the basic law, Michigan is without basic law to govern this vital concern. Clearly, a new reapportionment process designed to produce legislative districts that are fairly drawn in conformance with specific standards is imperative – the fair and effective representation of Michigan citizens is at stake.

Absent basic law to govern apportionment, the court, through its general responsibility to provide for the continuity of government, assumed control over the process. A special master was appointed to draw election districts in compliance with the federal constitutional requirement of population equality and in a manner most consistent with Michigan constitutional history. The court identified this history to include a dominant commitment to contiguous, single-member districts, which follow the boundary lines of local units of government to the extent possible and which are as compact as feasible. In order to allow district lines to follow the boundaries of local units, the court permitted a maximum of 16.4 percentage points deviation between the most and least populous district. No district could have a population greater than 108.2 percent or less than 91.8 percent of the ideal district. (The U.S. Supreme Court had permitted an identical deviation in another state so as to achieve other rational, legitimate state goals including preserving the integrity of political subdivisions of the state.)

The legislature was offered the opportunity to adopt a reapportionment plan by statute prior to the filing deadline for the 1982 primary election and submit it for the court's consideration. A legislatively drawn plan would be subject to federal and state constitutional requirements. Although the court was not explicit regarding what state constitutional requirements (i.e.,

Michigan's constitutional history) would apply to a statutory plan, the court said that the requirements might well be precisely the criteria to be followed by the special master. In any event, the legislature failed to adopt a plan in the allotted time and the court approved a plan drawn by the special master based on the standards decreed by the court. State senators and representatives were elected in 1982 from the districts established in that plan. The court said the plan would remain in effect until the legislature and the governor or the people provide by law an alternative plan.

The Importance of Legislative Apportionment

Apportionment underlies much of the political process. While reapportionment normally occurs only once every ten years following the decennial census, the effects of apportionment are felt throughout the entire decade. The intent of the one-person one-vote principle is to provide fair and effective representation for all citizens in the making and administration of the laws. A malapportioned legislature denies equal representation each time a law is proposed or enacted.

Population equality is not the only criterion to be used for legislative apportionment since strict adherence to that standard leaves the door open to gerrymandering. The U.S. Supreme Court requires each state to make an honest and good faith effort to draw legislative districts as nearly equal in population as is practicable, but permits divergences that are based on legitimate state policy goals. State goals ultimately serve two purposes: (1) to insure that legislative districts are drawn to meet specific objectives, such as the representation of specific communities of interest; and, (2) to restrict the formation of gerrymandered districts. State policy goals are generally detailed in the form of standards that govern the apportionment process.

Standards

The principal purpose of a state constitution is to define and limit governmental power and structure and to guarantee the rights of the governed. As such, the state constitution is the appropriate place to delineate apportionment standards as well as to specify an apportionment process. The constitutions of all but three states (Arizona, Delaware and Michigan) have provisions controlling legislative reapportionment. Constitutional apportionment standards are designed to prevent state legislative bodies, through statutory means, of thwarting the goals of fair and effective representation.

Manipulation of legislative district lines for personal and partisan purposes ultimately reduces electoral competition and undermines the system of representative democracy. Political gerrymandering is generally an attempt by the majority party to draw district lines to produce the greatest number of legislative victories for the majority party by wasting minority party votes. One technique is to concentrate minority party strength in as few districts as possible, conceding these districts to the minority by wide margins in order to prevent the minority party from competing in other districts. Another technique is to diffuse minority party strength to make it difficult for the minority party to win the number of seats representative of its popular support. In another form of gerrymandering, both parties may work in concert to protect

incumbents of each party. The ultimate consequences of gerrymandering are minimized competition and predetermined election results.

Most state constitutions require legislative districts to be compact, contiguous and observe the boundary lines of local governments. These broad goals, in and of themselves, are insufficient to eliminate gerrymandering. Apportionment standards must include specific criteria to implement these goals. The criteria would specify that priority is to be placed on preserving county, city and township lines. Additionally, the manner in which compactness is to be measured should be specified. Adherence to strict criteria reduces the exercise of discretion inherent in legislative redistricting.

Process

The responsibility for drawing legislative district can be assigned to the legislature, the executive, the judiciary, or an apportionment commission. Historically, apportionment has been a legislative function and currently 38 states provide for apportionment by the legislature. In two states the governor is responsible for apportionment. Nine states have apportionment commissions. Despite the fact that all of the states except Michigan have constitutional or statutory assignment of responsibility for apportionment, the 1982 election districts of one or both houses of six state legislature were drawn or selected by the courts.

There does not appear to be any failsafe apportionment process and each has distinct negative characteristics. A conflict of interest exists when districts are drawn by the legislature. Gubernatorial responsibility for redistricting raises the issues of partisanship and separation of powers. Apportionment plans drawn by courts raise concerns about separation of powers, interjecting the courts into politics, and objectivity of the courts in reviewing court-drawn plans. Finally, allegiance of commission members may influence apportionment results. Ultimately, the standards brought to bear on the process are more important than the process itself.

Conclusion

The current apportionment plan will remain in effect until the people or the legislature acts. Standards are needed to ensure:

1. Equal representation (one person-one vote);
2. Competitive elections (compact, contiguous districts); and,
3. Representation of communities of interest (district lines that follow local government boundaries).

These are basic components of a representative system and are normally contained in a state constitution. Since its admission to the union in 1837, Michigan has had four state constitutions, each containing standards to govern legislative reapportionment. Regarding the provisions of the 1963 constitution the Michigan Supreme Court last year said: "The formulae

which this court has twice implemented are not what the people approved. What they approved they cannot have. And what they have, we cannot approve.”

The state legislature could redistrict the state absent standards. Such action would force the Michigan Supreme Court to, once again, articulate and defend the wishes of the people without the people having definitively spoken through the state constitution. In the 1982 apportionment decision the court said: “The notion that the people of this state confided to an apportionment commission and thereby reallocate political power in this state limited only by human ingenuity and by no federal constitutional standard that a computer cannot circumvent is unthinkable.” Similarly, given the fact that Michigan constitutions have always provided standards governing reapportionment, it is clear that the people of this state have not chosen to confide absolute discretion in the legislature.

Unless valid constitutional standards are adopted, any redistricting action by the legislature would occur in a legislatively-devised framework that could be adjusted by the legislature. It is doubtful that the public interest is served by a situation in which basic standards of legislative apportionment are subject to manipulation by the very body that is to be guided by those standards and the constitution is the ultimate solution. Any change in the state constitution must be approved by the voters. An amendment can be placed on the ballot by either a joint resolution of the legislature (requires 2/3 approval of both houses) or an initiative petition. A constitutional amendment should provide a workable apportionment process with strict standards to minimize political gerrymandering and facilitate electoral competition. The absence of a constitutional process and standards invites the manipulation of legislative district lines for partisan advantage.

“A constitutional democracy cannot exist, however, without a legislature that represents the people, freely and popularly elected in accordance with a process upon which they have agreed.”

In Re Apportionment – 1982
Michigan Supreme Court – March 1982
413 Mich 96 p. 136