

115TH CONGRESS  
2D SESSION

# S. 3123

To create a more representative and accountable Congress by prohibiting partisan gerrymandering and ensuring that any redistricting of congressional district boundaries results in fair, effective, and accountable representation for all people.

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## IN THE SENATE OF THE UNITED STATES

JUNE 25, 2018

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To create a more representative and accountable Congress by prohibiting partisan gerrymandering and ensuring that any redistricting of congressional district boundaries results in fair, effective, and accountable representation for all people.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Maps Act of  
5 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Democracy in the United States is rooted in  
2           the notion of actual representation and a rejection of  
3           the earlier British concept of virtual representation.  
4           In 1776, in *Thoughts on Government*, John Adams  
5           wrote that a legislative assembly “should be in mini-  
6           ature, an exact portrait of the people at large.”.  
7           Thomas Paine argued in *Common Sense* that a leg-  
8           islature should act “in the same manner as the  
9           whole body [of the people] would [act] were they  
10          present.”. At the Constitutional Convention, both  
11          Federalists and Anti-Federalists agreed. Federalist  
12          James Wilson declared, for example, that the new  
13          House of Representatives “ought to be the most  
14          exact transcript of the whole Society”, while his  
15          counterpart George Mason argued that the “req-  
16          uisites in actual representation are that the Reps.  
17          should sympathize with their constituents; shd. think  
18          as they think, & feel as they feel.”.

19          (2) The Supreme Court made clear in *Reynolds*  
20          v. *Sims*, 377 U.S. 533 (1964), that the objective of  
21          redistricting is to achieve “fair and effective rep-  
22          resentation for all”, that legislatures “should be bod-  
23          ies which are collectively responsive to the popular  
24          will”, and that the Constitution “guarantees the op-  
25          portunity for equal participation by all voters”.

1           (3) Partisan gerrymandering is incompatible  
2           with democratic principles at the foundation of the  
3           Republic. The drawing of electoral districts to ben-  
4           efit or disadvantage certain political parties denies  
5           people fair, effective, and accountable representation  
6           by allowing representatives to choose their voters  
7           rather than voters to choose their representatives.

8           (4) In *Davis v. Bandemer*, 478 U.S. 109  
9           (1986), the Supreme Court explained that it has  
10          “repeatedly stated that districting that would ‘oper-  
11          ate to minimize or cancel out the voting strength of  
12          racial or political elements of the voting population’  
13          would raise a constitutional question”.

14          (5) The Constitution of the United States em-  
15          powers Congress to ensure that congressional dis-  
16          tricting promotes fair, effective, and accountable  
17          representation for all people, as demonstrated in—

18                (A) article I, section 2, clause 1, of the  
19                Constitution of the United States;

20                (B) article I, section 4, clause 1, of the  
21                Constitution of the United States;

22                (C) article I, section 5, clause 1, of the  
23                Constitution of the United States;

1 (D) section 5 of the Fourteenth Amend-  
 2 ment to the Constitution of the United States;  
 3 and

4 (E) section 2 of the Fifteenth Amendment  
 5 to the Constitution of the United States.

6 (6) In *Vieth v. Jubelirer*, 541 U.S. 267 (2004),  
 7 the Supreme Court recognized that “the Framers  
 8 provided a remedy” for partisan gerrymandering “in  
 9 the Constitution” through the “power bestowed on  
 10 Congress to regulate elections, and . . . to restrain  
 11 the practice of political gerrymandering.”.

12 (7) This power “has not lain dormant,” as Con-  
 13 gress has repeatedly exercised its authority under  
 14 article I, section 4 to regulate congressional dis-  
 15 tricting criteria when Congress passed the Appor-  
 16 tionment Act of 1842 (5 Stat. 491), the Apportion-  
 17 ment Act of 1862 (12 Stat. 572), the Apportionment  
 18 Act of 1872 (17 Stat. 28), the Apportionment Act  
 19 of 1901 (31 Stat. 733), the Apportionment Act of  
 20 1911 (37 Stat. 13), the Apportionment Act of 1941  
 21 (55 Stat. 761), and the 1967 amendment to the Ap-  
 22 portionment Act of 1929 (Public Law 90–196).

23 **SEC. 3. DISTRICTING CRITERIA.**

24 (a) **REQUIRED CRITERIA.**—Following each Federal  
 25 decennial census of population, each State with more than

1 one congressional district shall establish or alter the  
2 boundaries of each congressional district of the State in  
3 accordance with each of the following criteria:

4 (1) Compliance with the Constitution of the  
5 United States, including the requirement of equal  
6 population.

7 (2) Compliance with the Voting Rights Act of  
8 1965 (52 U.S.C. 10301 et seq.).

9 (b) PROHIBITED CRITERIA.—Except to the extent  
10 necessary to comply with subsection (a) and section 4, in  
11 establishing or altering the boundaries of any congres-  
12 sional district of a State, the State may not consider the  
13 following criteria:

14 (1) The political party registration or affiliation  
15 of the residents of the State.

16 (2) The voting history of the residents of the  
17 State.

18 (3) The election results of the precincts of the  
19 State.

20 (4) The place of residence of any incumbent,  
21 political candidate, or potential political candidate.

22 (c) PERMISSIBLE CRITERIA.—A State may consider  
23 other criteria, in addition to the required criteria under  
24 subsection (a), in establishing or altering the boundaries  
25 of its congressional districts, to the extent such other cri-

1   teria do not conflict with the requirements of this section  
 2   or violate section 4. The permissible criteria under this  
 3   subsection may include any of the following:

4           (1) Geographic contiguity and compactness.

5           (2) Respect for communities of interest. Such  
 6   communities of interest—

7               (A) may be based on factors including  
 8               shared cultural or historical characteristics or  
 9               economic interests; and

10            (B) may not be based on associations with  
 11            any political party, incumbent, or political can-  
 12            didate, or potential political candidate.

13           (3) Respect for counties, cities, and other polit-  
 14   ical subdivisions.

15   **SEC. 4. PROHIBITION ON PARTISAN GERRYMANDERING.**

16       (a) PROHIBITION.—Except as necessary to comply  
 17   with section 3(a), a State shall not establish a congres-  
 18   sional districting plan that has the purpose or will have  
 19   the effect of unduly favoring or disfavoring any political  
 20   party.

21       (b) ENFORCEMENT.—

22           (1) IN GENERAL.—Any eligible voter of a State  
 23   may bring a civil action before a 3-judge court con-  
 24   vened in accordance with section 2284 of title 28,  
 25   United States Code, for a violation of subsection (a).

1           (2) COURT ORDER.—A court in a civil action  
2     under this subsection—

3           (A) may issue an order invalidating the  
4     congressional districting plan of such State on  
5     the grounds that the plan violates subsection  
6     (a);

7           (B) shall consider any violation of section  
8     3 to be probative evidence that the districting  
9     plan has the purpose of unduly favoring or  
10    disfavoring a political party; and

11          (C) may consider, among other things, sta-  
12    tistical evidence of the extent and durability of  
13    partisan bias, electoral responsiveness, and the  
14    ability of each party to translate votes into seat  
15    share.

16    (c) REMEDIES.—In remedying a violation of sub-  
17    section (a), a court shall apply the following:

18          (1) If the court finds that the State has estab-  
19    lished a congressional districting plan with the pur-  
20    pose of unduly favoring or disfavoring a political  
21    party, the court shall appoint a special master or  
22    panel of special masters to propose a remedy to the  
23    court for the violation.

24          (2) If the court finds that the State has estab-  
25    lished a congressional districting plan that will have

1 the effect, but does not have the purpose, of unduly  
2 favoring or disfavoring a political party, the court  
3 may, in its discretion, appoint a special master or  
4 panel of special masters to propose a remedy to the  
5 court for the violation.

6 (d) LEGISLATIVE PRIVILEGE.—No person, legisla-  
7 ture, or State may claim legislative privilege under either  
8 State or Federal law in a civil action brought under this  
9 section or in any other legal challenge, under either State  
10 or Federal law, to a congressional districting plan.

11 **SEC. 5. SAFE HARBOR.**

12 With respect to any claim under section 4, a State's  
13 enacted congressional districting plan shall have a rebutta-  
14 ble presumption of validity if that plan was created by a  
15 nonpartisan or bipartisan redistricting commission, where  
16 support from members of more than one political party  
17 and, if applicable, nonaffiliated members, is required to  
18 approve a congressional districting plan.

19 **SEC. 6. OTHER LAWS.**

20 (a) NO PREEMPTION.—Nothing in this Act shall be  
21 construed to preempt any cause of action under State law,  
22 or limit or abrogate any cause of action under Federal  
23 law.

24 (b) OTHER DISTRICTING CRITERIA.—Nothing in this  
25 Act shall be construed to prevent a State from adopting



1 congressional districting criteria or procedures that do not  
2 conflict with this Act and that serve to limit potential ex-  
3 posure to liability under section 4(a).

4 (c) VOTING RIGHTS ACT.—Nothing in this Act shall  
5 be construed to preempt or alter any provision of the Vot-  
6 ing Rights Act of 1965 (52 U.S.C. 10301 et seq.).

7 **SEC. 7. SEVERABILITY.**

8 If any provision of this Act or the application of such  
9 provision to any person or circumstance is held to be un-  
10 constitutional, the remainder of this Act and the applica-  
11 tion of the provision to any other person or circumstance  
12 shall not be affected.

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