

116TH CONGRESS
1ST SESSION

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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.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2019

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

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 2019”.

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 (re-
3 ferred to in this Act as a “districting plan”) in accordance
4 with each of the following criteria:

5 (1) Districts shall comply with the United
6 States Constitution, including the requirement that
7 they equalize total population.

8 (2) Districts shall comply with the Voting
9 Rights Act of 1965 (52 U.S.C. 10301 et seq.).

10 (3) Districts shall provide racial, ethnic, and
11 language minorities with an equal opportunity to
12 participate in the political process and to elect can-
13 didates of choice and shall not dilute or diminish
14 their ability to elect candidates of choice whether
15 alone or in coalition with others.

16 (4) Districts shall respect communities of inter-
17 est, neighborhoods, and political subdivisions to the
18 extent practicable. A community of interest is de-
19 fined as an area with recognized similarities of inter-
20 ests, including ethnic, racial, economic, social, cul-
21 tural, geographic, or historic identities. Communities
22 of interest may, in certain circumstances, include po-
23 litical subdivisions such as counties, municipalities,
24 or school districts, but shall not include common re-

1 lationships with political parties or political can-
2 didates.

3 (b) PROHIBITED CRITERIA.—Except to the extent
4 necessary to comply with subsection (a)(2) and (3) and
5 section 4, in establishing or altering the boundaries of any
6 congressional district of a State, the State may not con-
7 sider the following criteria:

8 (1) The political party registration or affiliation
9 of the residents of the State.

10 (2) The voting history of the residents of the
11 State.

12 (3) The election results of the precincts of the
13 State.

14 (4) The place of residence of any incumbent,
15 political candidate, or potential political candidate.

16 (c) PERMISSIBLE CRITERIA.—A State may consider
17 other criteria, in addition to the required criteria under
18 subsection (a), in establishing or altering the boundaries
19 of its congressional districts, to the extent such other cri-
20 teria do not conflict with the requirements of this section
21 or result in a violation of section 4. The permissible cri-
22 teria under this subsection may include any of the fol-
23 lowing:

24 (1) Geographic contiguity and compactness.

1 (2) Respect for counties, cities, and other polit-
2 ical subdivisions.

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

4 A State shall not establish a districting plan that has
5 the purpose or, except as necessary to comply with para-
6 graphs (1) through (3) of section 3(a), will have the effect
7 of unduly favoring or disfavoring any political party.

8 **SEC. 5. ENFORCEMENT AND REMEDIES.**

9 (a) RIGHT OF ACTION.—

10 (1) IN GENERAL.—Any eligible voter of a State
11 may bring a civil action before a 3-judge court con-
12 vened in accordance with section 2284 of title 28,
13 United States Code, for a violation of section 3 or
14 4.

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

17 (A) may issue an order—

18 (i) invalidating the districting plan of
19 such State on the grounds that the plan
20 violates section 3 or 4; and

21 (ii) enjoining the use of that dis-
22 tricting plan and requiring the State to de-
23 velop a remedial districting plan that does
24 not violate section 3 or 4 in accordance
25 with subsection (b);

1 (B) shall consider any violation of section
 2 3 to be probative evidence that the districting
 3 plan has the purpose of unduly favoring or
 4 disfavoring a political party in contravention of
 5 section 4; and

6 (C) in connection with an asserted claim of
 7 a violation of section 4, may consider, among
 8 other things, statistical evidence of the extent
 9 and durability of partisan bias, electoral respon-
 10 siveness, and the ability of each party to trans-
 11 late votes into seat share.

12 (b) REMEDIES RELATED TO PROHIBITED PARTISAN
 13 GERRYMANDERING.—In remedying a violation of section
 14 4, a court shall apply the following:

15 (1) If the court finds that the State has estab-
 16 lished a districting plan with the purpose of unduly
 17 favoring or disfavoring a political party, the court
 18 shall appoint a special master or panel of special
 19 masters to develop a remedial districting plan, which
 20 shall be approved by the court before taking effect.

21 (2) If the court finds that the State has estab-
 22 lished a districting plan that will have the effect, but
 23 does not have the purpose, of unduly favoring or
 24 disfavoring a political party, the court may, in its
 25 discretion—

1 (A) appoint a special master or panel of
 2 special masters to develop a remedial districting
 3 plan, which shall be approved by the court be-
 4 fore taking effect; or

5 (B) allow the State the opportunity to de-
 6 velop a remedial districting plan, which shall be
 7 approved by the court before taking effect.

8 (c) ADOPTION OF REMEDIAL MAPS.—Any remedial
 9 districting plan shall comply with the requirements of sec-
 10 tion 3 and 4 and shall not become effective until approved
 11 by the court after an evidentiary hearing at which mem-
 12 bers of the public may appear and present evidence, in-
 13 cluding expert testimony with respect to the compliance
 14 of the remedial plan with all of the provisions of the Act.

15 (d) REMEDY PENDING APPEAL.—Notwithstanding
 16 the pendency of any appeal of an order finding a violation
 17 of section 3 or 4, no stay shall be issued which shall bar
 18 the development and adoption of a remedial districting
 19 plan, whether developed by the State or by the special
 20 master or panel of special masters (as the case may be),
 21 pending such appeal.

22 (e) INTERIM PLAN.—In the event that an upcoming
 23 Federal election requires an interim districting plan to be
 24 used in such election, nothing shall be construed to limit
 25 the authority of the court to modify such interim dis-

1 tricting plan in the future or shall be interpreted as lim-
 2 iting the right of citizens of the State to obtain other or
 3 further relief in connection with the State's enacted plan.
 4 The agreement of a State to interim relief or the adoption
 5 by a State of an alternative plan shall not—

6 (1) moot or invalidate a finding that a dis-
 7 tricting plan is the result of intentional discrimina-
 8 tion against voters on the basis of race, ethnicity, or
 9 partisan affiliation; or

10 (2) impair the right of voters to seek other re-
 11 lief under applicable law for such discriminatory ac-
 12 tion, including under section 3(c) of the Voting
 13 Rights Act of 1965 (52 U.S.C. 10302(c)).

14 (f) **LEGISLATIVE PRIVILEGE.**—No person, legisla-
 15 ture, or State may claim legislative privilege under either
 16 State or Federal law in a civil action brought under this
 17 section or in any other legal challenge, under either State
 18 or Federal law, to a districting plan.

19 **SEC. 6. SAFE HARBOR.**

20 With respect to any claim under section 4, a State's
 21 enacted congressional districting plan shall have a rebutta-
 22 ble presumption of validity if that plan was created by a
 23 nonpartisan or bipartisan redistricting commission, where
 24 support from members of more than one political party

1 and, if applicable, nonaffiliated members, is required to
2 approve a districting plan.

3 **SEC. 7. TRANSPARENCY AND REPORTING.**

4 (a) DATA.—Each State shall provide public access,
5 in an easily useable format, to the demographic data and
6 shape files used by the State to develop and analyze pro-
7 posed districting plans.

8 (b) NOTICE.—Prior to considering a congressional
9 districting plan, the mapdrawing authority of a State shall
10 hold one or more public hearings on such plan after giving
11 notice of not less than 10 days, including on a website
12 maintained by the State, of the mapdrawing authority's
13 intent to hold such hearings. The mapdrawing authority
14 of a State shall accept comments on all congressional dis-
15 tricting plans so noticed as well as alternative map pro-
16 posals covering all or part of a State and make all such
17 comments and alternative map proposals publicly available
18 on a website maintained by the State.

19 (c) REPORT.—Any proposed congressional districting
20 plan to be voted on by the mapdrawing authority of a
21 State shall be accompanied by a written report, made
22 available to the public not less than 72 hours before any
23 initial vote, describing how the proposed plan satisfies the
24 requirements of section 3 and 4, including an evaluation

1 of the districting plan under multiple accepted measures
2 of partisan fairness.

3 **SEC. 8. PROHIBITION ON MID-DECADE DISTRICTING.**

4 A State that has an approved remedial districting
5 plan in accordance with section 5 may not be redistricted
6 again until after the next apportionment of Representa-
7 tives under section 22(a) of the Act entitled “An Act to
8 provide for the fifteenth and subsequent decennial cen-
9 suses and to provide for an apportionment of Representa-
10 tives in Congress”, approved June 18, 1929 (2 U.S.C. 2a),
11 unless a court requires the State to conduct such subse-
12 quent redistricting to comply with the Constitution of the
13 United States, the Voting Rights Act of 1965 (52 U.S.C.
14 10301 et seq.), the Constitution of the State, or the terms
15 or conditions of this Act.

16 **SEC. 9. OTHER LAWS.**

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

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

1 **SEC. 10. SEVERABILITY.**

2 If any provision of this Act or the application of such
3 provision to any person or circumstance is held to be un-
4 constitutional, the remainder of this Act and the applica-
5 tion of the provision to any other person or circumstance
6 shall not be affected.

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