

116TH CONGRESS  
1ST SESSION

# S. 1972

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) Democracy in the United States is rooted in the notion of actual representation and a rejection of the earlier British concept of virtual representation. In 1776, in *Thoughts on Government*, John Adams wrote that a legislative assembly “should be in miniature, an exact portrait of the people at large.”. Thomas Paine argued in *Common Sense* that a legislature should act “in the same manner as the whole body [of the people] would [act] were they present.”. At the Constitutional Convention, both Federalists and Anti-Federalists agreed. Federalist James Wilson declared, for example, that the new House of Representatives “ought to be the most exact transcript of the whole Society”, while his counterpart George Mason argued that the “requisites in actual representation are that the Reps. should sympathize with their constituents; shd. think as they think, & feel as they feel.”.

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.”.

### 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.

### 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.—**

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

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

(C) in connection with an asserted claim of a violation of section 4, may consider, among other things, statistical evidence of the extent and durability of partisan bias, electoral responsiveness, and the ability of each party to translate 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:

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.

○