

How district boundaries are drawn is on the line

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October 17, 2005

One in an occasional series

LOS ANGELES – Four times in recent decades, California voters have been asked to referee the ultimate political insider contact sport – redrawing congressional and legislative district boundaries.

Four times they have said, "We're not interested."

In the Nov. 8 special election, they will be asked a fifth time to fundamentally change redistricting.

Proposition 77, which would take away the power to redraw district boundaries from the Legislature and give it to a panel of retired judges, is one of the central elements of what Gov. Arnold Schwarzenegger calls his "year of reform" agenda.

"Take the power away from the politicians when it comes to redistricting," Schwarzenegger said at a recent campaign event in Escondido. "Take it away and give it back to the people."

The U.S. Supreme Court's "one-man, one-vote" ruling requires redrawing political districts after every census to ensure they are as equal in population as possible.

Historically, this has afforded a once-a-decade opportunity for gerrymandering, a process in which the majority party in the Legislature redraws the boundary lines to maximize the number of seats it can win by packing the opposing party's voters into as few districts as possible.

Twice in the 1980s and twice in the 1990s, ballot propositions to overhaul the system were put before voters. All were partisan measures in that they were efforts by Republicans to thwart a possible Democratic gerrymander. All were decisively rejected.

A Field Poll released early last month showed Proposition 77 was opposed by 46 percent of likely voters and favored by 32 percent.

Incumbent insurance

In what has been widely condemned as an egregious overreach, congressional and legislative leaders of both parties agreed to a gerrymander in 2001 in which lines were drawn to shield incumbents from serious challengers.

"They drew the district lines to protect themselves, to protect the incumbents, rather than the people of California," Schwarzenegger said.

None of the 100 legislative and 53 congressional seats contested in the November 2004 election changed

parties.

The Republican governor views Proposition 77 as a means to inject some badly needed competition into a stacked system. As a result, he hopes that some of the Legislature's ideologues would be replaced by the kind of flexible moderates he is more comfortable dealing with.

Proposition 77 is the handiwork of Ted Costa, president of the anti-tax organization People's Advocate. It was Costa who in 2003 started the drive to recall Gov. Gray Davis that resulted in Schwarzenegger's election.

The initiative has proven problematic on several fronts.

"The issue is not whether we can do a better job of drawing congressional and legislative lines, but whether Prop. 77 is the best way," Assemblyman Tom Umberg, a Santa Ana Democrat who chairs the Assembly Elections and Redistricting Committee, said at a recent legislative hearing.

Proposition 77 nearly got thrown off the ballot because the version Costa circulated for voter signatures was different from the one submitted to the state Attorney General's Office for the official title and summary. Although the discrepancies were minor, Attorney General Bill Lockyer sued to remove the measure from the ballot. Two lower courts sided with Lockyer, a Democrat, but California's Supreme Court ruled that Proposition 77 should stay on the ballot.

The most controversial feature of the initiative is that it would require lines to be redrawn before the 2006 elections rather than waiting until after the 2010 census.

"We think the system is broken," Costa said. "It needs repairing, and we can't wait another six years to do it."

Democrats have accused Republicans of trying to change the rules in the middle of the game because of the GOP's inability to gain any ground last year.

"If you can't win, you blame the rules of the game. Right?" said Sen. Debra Bowen, a Marina del Rey Democrat who chairs the Senate Elections, Reapportionment and Constitutional Amendments Committee. "Their guys voted for these things. The vote on the lines was nonpartisan, but now all of a sudden they think they're unfair."

Although Proposition 77 is supported by most Republicans in the Legislature, some congressional Republicans have joined Democrats in opposing it. Some congressional incumbents of both parties fear they could lose their seats and say the redistricting process should remain with the Legislature.

Bowen voted against the 2001 redistricting plans. She said she is open to switching to an independent commission after the 2010 census.

"Mid-census redistricting is a terrible idea and starting to do a redistricting that is for political reasons rather than to assign one vote to one person just invites more of the same kind of shenanigans," she said.

Technical difficulties

Many question redrawing the lines before the next census for other reasons.

For starters, they say, the existing data is out of date because of population increases and shifts within California since the 2000 census.

"If you're talking about redistricting right now, we have a big problem and that is there is no reliable data," said Karin Mac Donald, director of the Statewide Database at the University of California Berkeley.

Mac Donald said estimates of population growth suggest that 40,000 people would have to be added to each congressional district and about 28,000 to each Assembly district.

"The problem is we don't know where these people are," she said.

The other impediment is time. The Nov. 8 election results will not be certified until several weeks later. Boundary lines must be in place by Dec. 31, when the secretary of state's office is scheduled to begin issuing candidacy papers.

"It would be incredibly difficult if not impossible to get this done by December 30," Mac Donald said.

Proposition 77 also sets up a complicated process for creating the panel of three retired judges who would preside over redistricting.

The state Judicial Council would select 24 retired judges at random from a list of those who agree to serve. Then the Democratic and Republican leaders of the Senate and Assembly would each choose three of those judges from a political party other than their own. Each legislative leader could veto one of the 12 in contention.

Commissioners would be chosen at random from the remaining eight judges. There would have to be at least one Democrat and one Republican. They would have to approve redistricting plans unanimously.

Twelve states have commissions that draw district lines, but California's would be the only one that relies exclusively on retired judges, said Tim Storey, an analyst for the National Conference of State Legislatures.

Critics say retired judges are hardly representative of California's diverse population.

"The vast majority of retired judges in California are old white males," said Morgan Kousser, a professor of history and social science at Caltech.

Supporters of Proposition 77 note that retired judges presided over redistricting in the 1970s and 1990s after Republican governors vetoed Democratic plans on redrawing boundaries.

"We've done it in the '70s. We've done it in the '90s and we had competitive seats," Assembly Republican Leader Kevin McCarthy of Bakersfield said.

Although increased competitiveness is a central objective of Proposition 77 supporters, the initiative's chief aim is to avoid drawing districts that unnecessarily divide cities and counties.

Even so, the conservative Rose Institute at Claremont McKenna College conducted a mock redistricting using Proposition 77 criteria and found it would produce 10 highly competitive congressional districts and 15 competitive legislative seats (assuming no incumbents were running). There are only five competitive legislative districts and no competitive House districts.

Another novel feature of Proposition 77 is that it requires statewide voter approval of new district lines.

If new districts could be created for the 2006 elections, they would take effect immediately. The 2006 elections would be conducted in those districts, which would simultaneously be subject to voter approval. If voters reject the redistricting plan, those districts would remain in place until new lines are drawn for the subsequent election.

"It's the biggest single check and balance that there won't be any skullduggery," said Costa of People's Advocate.

Polls show this provision to be superficially appealing, but critics point out that voters tend to vote against propositions they find uninteresting or confusing.

"It's completely unruly and it would not be unlikely that the voters, when confronted with a 173-page sample ballot outlining various districts, would conclude that this is such a mess they're going to vote 'no,' " Umberg said. "So we will be perpetually drawing new districts."

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