Fair Representation in Congressional Elections

FairVote supports efforts to promote fair representation in Maryland congressional elections, especially through a vehicle that both (1) escapes the standoff caused by no state accepting “unilateral disarmament” by entering into an agreement with one or more other states and (2) permits and encourages states to think beyond the use of winner-take-all, single-winner districts.

Accordingly, FairVote supports and commends the approach taken by Senate Bill 762, the “Potomac Compact for Fair Representation.” We do not oppose other approaches, but we will explain why the approach taken in S.B. 762 is the best approach on the table today.

Why Change is Needed

By some measures, Maryland is the nation’s most gerrymandered state. None of its eight districts is meaningfully competitive between the two major parties, and seven are safely controlled by Democrats. Maryland’s Republican governor has made redistricting reform a public issue by prominently including it in his State of the State address and in other communications. He is right to do so: abuse of the districting process hurts Maryland’s voters, both by denying them a meaningfully contested general election and by denying them election results reflective of the sorts of candidates they support.

At the same time, we must acknowledge that many other states engage in unfair redistricting practices. For example, Pennsylvania’s 18 districts ensure that Republicans will win between 11 and 14 seats, even if a majority of voters statewide vote for Democratic candidates. If Maryland were to adopt a fairer system while allowing other states to continue wielding redistricting as a partisan weapon, it would only make blatant gerrymanders like those in Pennsylvania even more potent. Consequently, even if Maryland adopting a fair system unilaterally would be better for Maryland voters, the partisan consequences nationwide would be too severely one-sided to accept.

Ultimately, we need a national solution. FairVote has consistently made the case that Congress should be elected in a fair way by voters in every state. Congress has the constitutional power to require that, and they should act on that power. In the interim, efforts that allow states to adopt fairer practices by coordinating with other states can improve the process and should be supported.

Why We Support the Interstate Compact Model

An interstate compact is a binding agreement between states. Maryland is already a party to interstate compacts that allow it to engage in cooperative arrangements with other states. Because interstate compacts allow cooperative arrangements that actually bind each party state, they are an ideal way to accomplish interstate reform of the redistricting process. When party to an interstate compact, no state need worry that the others will find a way to unilaterally avoid their obligations, because the compact will bind them in exactly the same way as a binding contract.
Some proposals being heard today are not interstate compacts, but rather are state laws that are contingent on similar state laws being passed elsewhere. The sponsors of these proposals should be commended for recognizing the need for a multi-state approach. However, contingent legislation does not actually bind other states. For example, one state may have an opportunity to repeal their law while the other does not. Because the repealing state would not have actually breached any agreement, there would be no legal recourse for the state that does not have the opportunity to repeal.

Under an interstate compact, no state could repeal their process without breaching the agreement and nullifying it for the other party states. As the only proposal utilizing the interstate compact approach, S.B. 762 provides more assurance that a fairer redistricting process will actually be complied with by every party state.

**Why States Should Consider Fair Representation Voting and Not Merely New Districts**

Fair representation voting consists of the use of American, candidate-based forms of proportional voting in multi-winner elections. Under fair representation voting, representatives win election in a multi-winner district based on how fairly they reflect voters overall in that district. For example, in a three-winner district, the majority group will have the power to elect two representatives, but another group will be able to elect one provided they can achieve more than 25% of votes. That means that representatives will fairly reflect voters without any need to draw districts with that as a goal. Examples of fair representation voting include ranked choice voting, cumulative voting, and the open ticket system, each of which FairVote has researched and can provide additional resources on.

Every proposal except S.B. 762 maintains the current system of exclusive use of single-winner districts. Even when drawn without partisan intent, single-winner districts often fail to accurately reflect voters statewide. That is, it is still a realistic possibility for a majority of voters to favor one party while the opposite party wins more seats, as in Pennsylvania today. That makes reliance on single-winner districts unreliable in use in an interstate agreement, since the actual tradeoffs made by the states become contingent on where district lines are actually drawn. Single-winner districts are also almost universally uncompetitive, even when drawn without partisan intent. For example, California has the same number of competitive congressional districts under its independent redistricting process today as it had prior to 2012, when districts were drawn by partisan members of the legislature.

Fair representation voting in multi-winner elections would mean that results would be fair, period. It would not allow district lines to govern representation over the preferences of actual voters. The use of multi-winner districts would also ensure a competitive general election in every part of the state. Finally, fair representation has been shown to improve representation of women and racial minorities.

As the only proposal to combine an interstate compact approach with the possibility of fair representation voting, S.B. 762 is the best approach under consideration today.