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Gerrymandering and the high court

The nation's economy is floundering, global warming threatens our future, and our infrastructure is deteriorating. So why are members of Congress bickering instead of making the much-needed compromises to move our country forward?

Some say one reason for this divisiveness is the partisan gerrymandering of congressional districts by state legislatures. That's not a problem in Delaware, which has only one House. But look across the Pennsylvania border and you'll find the Republican-controlled legislature crafting Rorschach-shaped districts to maximize the number of safe Republican congressional seats.

This political gerrymandering is a time-honored tradition. But it results in districts that are not competitive in general elections. If Democrats control a state legislature, for example, they will try to create as many safe Democratic districts as possible. Along the way, they might also create safe Republican seats by concentrating Republican voters in a few districts to minimize their influence in others.

When congressional districts are safely Democratic or Republican, the competitive elections are not the general elections but the primaries. And American voters — who are frightfully lax about voting in general elections — are even more lax about voting in primaries. Those who do vote tend to be hardcore members of each party with the most partisan views.

So, if you're an incumbent and you want to keep your job (and doesn't the fight against unemployment always start with one's own job?), you must be careful not to alienate the party's base. Otherwise, you open yourself up to a primary challenger who claims greater fidelity to the party's core principles.

If you're a Republican, that might mean opposing tax increases, fiercely supporting gun rights, and expressing doubts about global warming. If you're a Democrat, it might mean rejecting any entitlements cuts, standing unquestioningly by unions, and defending a woman's right to choose.

The result is a Congress with extremists on both sides of the aisle. Some might be true believers (like the freshman class of tea partiers), and some might be moderates who are afraid of alienating their hardcore constituents. But either way, we have politicians who are incapable of making the compromises needed for our government to function.

So how do we get out of this mess? Surely, the obvious solution would be to have nonpartisan decision-makers drawing district lines. Some states have done this. California voters in 2010 passed a referendum that turned congressional redistricting over to a special commission.

But most states still leave it to their legislatures. And while state legislators could opt for a more neutral system, they often have a vested interest in sticking with the status quo.

This system currently benefits Republicans, who were tremendously successful in winning state legislatures and governorships in the 2010 elections, just in time for the post-decennial census redistricting. Tim Storey of the National Conference of State Legislatures estimated that Republicans could unilaterally draw the lines for 190 congressional districts whereas Democrats could at best do so for 70.

The Constitution does allow Congress to override state congressional boundaries, but most members benefit from state redistricting. Indeed, former congressional Rep. Tom Davis of Virginia estimated that, even in the 2010 election which marked the largest midterm swing in House seats in 72 years, almost 75 percent of the Congressional seats were still in safe districts designed to protect incumbents.

So should the Supreme Court do some-

thing? A slim majority of the court has said it is willing to consider challenges to extreme partisan gerrymandering as a possible "equal protection" violation. But the court has yet to declare a partisan gerrymander unconstitutional, and some conservative justices are pushing for the court to stop hearing these challenges.

Of course, whenever unelected judges overturn the actions of elected representatives, it raises a question of why our democracy should accept such intervention. But some scholars say that the court needs to intervene when legislation prevents the democratic political process from functioning properly. So, for example, while the court should ordinarily leave policymaking to the people and their representatives, it needs to intervene when laws interfere with freedom of speech or assembly or the right to vote, because a healthy democratic process cannot exist without protection of these rights.

Does this same logic suggest that the court should strike down crass partisan gerrymandering because it, too, undermines our democracy's ability to function properly? Or should the court stay out of this political thicket? If you were on the court, what would you do?

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