

In Response: Schultz's redistricting bill has stronger protections

By Peter S. Wattson

I share the desire expressed in an April 8 commentary to transfer responsibility for drawing congressional and legislative district lines from the Legislature to a bipartisan commission — and I want that commission to be both independent and guided by districting principles that have proved workable for decades in Minnesota and in other states.

A Minnesota House measure, HF 1855, authored by Rep. Jennifer Schultz of Duluth, is just such a bill. Its development began a decade before the bill touted in the commentary by Gary C. Fifield of the Minnesota Let People Vote Coalition. (The "Statewide View" commentary was headlined, "Legislation's goal is fairness in drawing district maps.")

In 2007, a coalition led by former Vice President Walter F. Mondale and former Gov. Arne H. Carlson recommended a commission of five retired judges draw the plans. A Minnesota Senate bill was introduced in 2007 to implement that recommendation, and a successor bill passed the Senate in 2009. As Minnesota Senate counsel with experience drafting bills and litigating legislative and congressional redistricting plans since 1971, I was the principal drafter of both the 2007 and 2009 bills.

In 2017, Rep. Schultz worked diligently to build support for a new bill, modeled on those earlier bills.

This year, Rep. Schultz added to her five-judge bill a dozen public members, using the same process as contained in Fifield's preferred bill. She has language available in HF 1855 to establish the advisory commission Fifield said he seeks, starting this summer, well ahead of the 2021 session. If the constitutional amendment is adopted in November 2020, the advisory commission would become independent with no need to secure legislative approval of its plans.

A weakness of the advisory commission is that its work is so easily undone. Created by law, it can be changed or abolished by law. Without a constitutional amendment to bind the Legislature, the same forces Fifield fears might draw partisan gerrymanders in 2021 could abolish the commission or ignore its principles.

Fifield asserted that Schultz's HF 1855 has no current pathway to approval in the Senate. I disagree. The Senate committee responsible for elections, chaired by Sen. Mary Kiffmeyer, already has passed SF 2255, a constitutional amendment to create a redistricting commission. Rep. Schultz is the author of Sen. Kiffmeyer's companion bill in the House. With their shared desire to put a constitutional amendment on the ballot, they can negotiate the differences between the House and Senate bills — if they can each get a bill through their respective houses.

Fifield asserted that the principles in Schultz's HF 1855 were "weak" compared to those in HF 1605. I believe the reverse is true. HF 1855 includes principles that are absent from HF 1605, including prohibiting districts from being drawn with the intent of protecting or defeating an incumbent, promoting districts that encourage electoral competition, attempting to achieve rough proportionality between a political party's statewide vote and the number of seats it is likely to win, and avoiding plans where a party that has historically received a minority of the statewide vote is likely to win a majority of the districts.

Of the principles the bills have in common, HF 1855 gives them the right priority. For example, HF 1855 places compactness nearer the top, which is where the Minnesota Legislature and courts historically have placed it. HF 1605 places it near the bottom, for the expressed partisan reason that compact districts tend to favor Republicans.

Avoiding the division of counties, cities, and towns is a principle for congressional or legislative plans in 46 states. Preserving "communities of interest" is a principle used by only 26 states. In Minnesota, when either the Legislature or the courts have drawn plans, preserving political subdivisions always has been placed ahead of preserving communities of interest. Of all pending bills, only HF 1605 would demote it below communities of interest.

As you learn the truth about HF 1855, I trust you will see that Rep. Schultz has crafted a bill that has stronger protections against partisan gerrymandering, is more likely to be enacted, and is less likely to be undone in 2021 than any other bill now under consideration by the Legislature. I hope you will support its passage.

Peter S. Wattson of Shorewood, Minn., served as counsel to the Minnesota Senate from 1971 to 2011 and as general counsel to Gov. Mark Dayton from January to June 2011. He assisted with drawing, attacking, and defending redistricting plans throughout that time. From 1973 to 2010, as counsel to the Rules Committee, he reviewed every constitutional amendment before it was placed on the ballot.