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The gerrymandering orgy begins
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It is almost time for the decennial assault on U.S. democracy to begin: a great gerrymandering orgy in which voters will be “packed” and “cracked,” incumbents “kidnapped” and new electoral districts devised using computer programs that can distinguish between voters on the same block.

The result: a bizarre menagerie of electoral districts shaped like snakes, dragons and other exotic creatures that make a travesty of democracy. This year, the Democrats will be the big losers.

In a true democracy, people choose their rulers. Gerrymandering turns that upside down, so instead of government “by the people and for the people,” it becomes “by the politicians and for the politicians.”

We are the only major country that puts virtually its entire electoral process, including drawing districts, in the hands of partisan politicians like former Rep. Katherine Harris of Florida or her Democratic counterparts. In almost every other major democracy, elections are run by independent commissions and politics are expressly excluded from any role in the line-drawing.

True, the Constitution allows congressional oversight. But members of Congress are among the prime beneficiaries now. Why would they make changes?

There are two kinds of political gerrymandering and both are common. One is bipartisan or “sweetheart” gerrymandering, by which neither party fully controls the redistricting process. To protect powerful incumbents, friends and allies, the two parties divide the electoral districts, generally in proportion to their relative share of the electorate. In 2004,
for example, only 13 House seats in the nation switched parties and four incumbents were defeated.

The other type is partisan gerrymandering, by which one party controls both the state Legislature and the governorship and redraws the state’s districts to grab a disproportionately large share of the Legislature and Congress. In some states, like North Carolina, Florida and Michigan, control of the Legislature is enough.

The 2003 Texas redistricting is usually cited as the most notorious recent example: Though the GOP won by 17-to-15 in the 2002 congressional elections under a court-drawn plan, former Texas Rep. Tom DeLay’s gerrymander gave the party a 21-to-11 margin in 2004.

Neither kind of gerrymandering belongs in a democracy.

The bipartisan variety eliminates competition for most districts between the two parties, excludes third parties from contention and encourages extremist candidates. Voters wind up with no say in who represents them.

Instead of voters choosing their lawmakers, “representatives” choose their voters. Unfortunately, the Supreme Court has given its seal of approval to this sham democracy, and it’s probably immune to challenge.

Partisan gerrymandering has all these defects and more. While a bipartisan gerrymander may represent the relative electoral strength of the two parties, in the partisan variety, the party that controls redistricting uses its position to obtain more power than it received from the electorate to shape state and national policy.

One strategy is to “pack” as many minority voters as possible into a single district to...
eliminate their ability to influence the outcome in other districts. The other strategy, “cracking,” removes minority voters from a district in which they hold the majority and scatters them among other districts where they will be too few to make a difference. And if a state loses seats in Congress, the party in power will often pit two minority-party incumbents against each other in one district, which is known as “kidnapping.”

Using a mix of these techniques in the 2002 elections, Republican gerrymanders produced a 12-to-7 congressional majority for the GOP in Pennsylvania and an 18-to-7 advantage in Florida — though Democrats had an equal or higher share of both state votes.

Where they could, Democrats have also gerrymandered, such as in California, Georgia and Texas. But those days are gone. Georgia and Texas are now solidly Republican. The four states that just became entirely Democratic in their governments, like Connecticut, were already heavily Democratic, except California, but that state now has an independent redistricting commission and cannot be gerrymandered.

Nobody has a good word for partisan gerrymandering, and about eight states have taken redistricting away from politicians. Even the Supreme Court unanimously condemned it as unconstitutional in its 2004 decision for Vieth v. Jubelirer, which involved the 2002 Pennsylvania gerrymander. The five-member conservative majority, led by Justice Antonin Scalia, refused to do anything about it, however. The majority ruled that it could find no “judicially manageable standards” for determining whether the politicians who adopted the gerrymander intended to underrepresent the other side and whether they were, in fact, able to do so. Justice Anthony...
Kennedy, however, left the door slightly open that he might one day find a standard.

Yet the four Supreme Court dissenters, other federal judges and state courts have had no trouble with “judicially managing” these problems. The intent is always blatant, though not usually expressed as forcefully as by one Illinois Democrat who told an opponent, “We are going to shove [this map] up your f——— ass and you are going to like it, and I will f—— any Republican I can.”

The effect of a successful gerrymander is equally obvious — as seen by electoral outcomes in Pennsylvania, Florida and everywhere else.

The upcoming round of gerrymandering may well be devastating for the Democrats until the next census — and after. Democratic losses this November were cataclysmic: More than 690 of 7,382 state legislative seats went to Republicans, which produced 19 all-GOP state legislatures and switched 11 state governments to the all-Republican column. The GOP now has 20 such all-red states, plus North Carolina — which has a Democratic governor who has no role in redistricting.

The worst losses were in Wisconsin and Maine, where both legislative chambers and the governorship went from all Democratic to all Republican. In Ohio, Pennsylvania and Michigan, Democrats lost both the state House of Representatives and the governorship, and in Alabama and North Carolina, Democrats lost both legislative houses, making Alabama all Republican.

Of the 21 states where the GOP now controls the redistricting, five have either independent commissions or only one member of Congress — so gerrymandering is either not possible or unnecessary. This leaves Republicans with an opportunity to
gerrymander 16 states, accounting for 191 seats in Congress. They include presidential battleground states like Indiana, Michigan, Ohio, Wisconsin and Pennsylvania, three of which — Michigan, Ohio and Pennsylvania — are projected to lose seats in Congress. Those losses are certain to be at the Democrats’ expense. They also include Texas and Florida, which gained four and two congressional seats, respectively. Most of those new seats are likely to be Republican. All in all, gerrymandering may yield the GOP an extra 10 to 15 seats.

Unless and until Kennedy comes up with what he considers a “judicially manageable” standard for deciding when a gerrymander is unconstitutional, we have to live with this continuing perversion of the popular will.

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