



## MEMO: The Folmer Redistricting Commission: Neither Independent Nor Nonpartisan

Pennsylvania Budget and Policy Center • 412 N. 3<sup>rd</sup> St, Harrisburg, PA 17101 • [www.pennbpc.org](http://www.pennbpc.org) • 717-255-7156

---

**To:** Editorial Page Editors, Editorial Board Members, Columnists, and Other Interested Parties

**From:** Marc Stier, Director, PA Budget and Policy Center

**Date:** May 30, 2018

**Re:** Analysis of the PA Senate Redistricting Commission Plan and the Folmer Amendment

---

There is no question that Pennsylvania has to find a better way to draw legislative districts for both Congressional and state legislative races. This is shown by both the extreme pro-Republican gerrymandering put in place in 2012 and the contentious process by which Congressional district lines were redrawn this year.

The redistricting process created by Senator Mike Folmer's version of SB 22 passed by the Senate State Government Committee last week does initially look like a move toward nonpartisan redistricting, and for that reason some reform groups have said it is a step forward. But while we at the Pennsylvania Budget and Policy Center support the goal of a nonpartisan system of drawing Congressional and state legislative districts lines, the process that would be put in place by the Folmer plan is so far from desirable that we urge the full Senate to reject it and start over. The Folmer proposal is worse than the process we have now in four important respects.

- 1. The commission created by the Folmer plan is not independent at all.**
- 2. The Folmer proposal gives the General Assembly far too much control over the redistricting process, weakening the checks and balances on its power found under the current procedures for drawing Congressional and state legislative districts.** At best, this is likely to lead to Congressional and state legislative redistricting plans that go too far in protecting incumbents.
- 3. The Folmer plan might lead to an even worse result as it will often give the majority party in the General Assembly the ability to draw partisan district lines that benefit itself.**
- 4. The Folmer proposal has no finality. It creates a process that might not lead to new districts at all.**

Let's consider each of these problems in turn.

The first problem with the Folmer plan is that it does not create an independent commission at all. Designing such a plan is difficult. But the process established in California gives us a guide to the kinds of provisions that can give a redistricting commission some real independence from the political establishment. The California plan creates an independent process by which a pool of potential commissioners is vetted. It introduces random elements into the selection process after the legislative leaders reduce the size of the pool by striking (but not adding) people. And it creates a two-stage process in which the first eight commissioners, who are chosen by lot, choose the last six members from the same pool.

The Folmer plan has none of these features. The process by which the pool of commissioners is vetted is not specified at all but left to later legislation. There is no guarantee that people with connections to the political establishment – legislative staff members, political consultants and their family members – will be excluded from the commission. And there is no guarantee that there will be geographic, demographic, or gender balance in the pool.

The Folmer plan includes neither a random or two-stage selection process for redistricting commissioners. And it makes every commissioner subject to legislative approval. Two partisan members of the commission are proposed by Democratic and Republican House and Senate leaders and are then approved by a two-thirds vote in each legislative chamber. The three independent members of the commission are put forward by the governor but must be approved by a two-thirds vote in both legislative chambers. It takes seven votes out of the eleven members of the commission to approve a redistricting plan, however. Among those seven votes, there must be at least two Democrats, two Republicans, and two independents.

Thus, far from proposing an independent commission, the Folmer plan creates a commission ultimately chosen by the General Assembly which, as the General Assembly currently operates, means it is likely to be chosen by the party leaders in the General Assembly.

This is an independent commission in name only.

Not only does the Folmer plan fail to create an independent commission but it gives the General Assembly far too much power to approve district lines. The members of the so-called independent commission are chosen by the General Assembly and if the commission can't reach an agreement, the final redistricting plan must be approved by two-thirds of both houses of the General Assembly from among three proposals put forward by the commission. And while one might think that it would be rare for the commission to be unable to reach agreement, if all of the Democrats or Republican members of the commission decide to reject every proposal, the final redistricting proposal will be made by the General Assembly.

In California, on the other hand, the truly independent commission draws the lines and no approval by the legislature is required. Thus, Congressional and state legislative lines are *far more subject to control by the General Assembly under the Folmer plan than under the current system*. Under the current system, the governor must approve the Congressional districting plan drafted by the General Assembly. And the four party leaders each appoints one member of the commission that draws state legislative

lines while the Supreme Court typically appoints the fifth member when the four partisan members can't agree on a chair for the commission. The checks and balances that are part of the current process of drawing Congressional and state legislative districts lines are practically eliminated. The independent role for the governor, in drawing Congressional districts lines, and the Supreme Court, in drawing state legislative lines, are eliminated.

The dominance of the General Assembly in the redistricting process should worry us. While we have recently been focused on the problem of legislative district lines that are gerrymandered to benefit one party or another, we should be equally concerned about district lines that are drawn to benefit incumbents in either the General Assembly or among Pennsylvania's members of Congress. Protecting incumbents by reducing the number of competitive legislative elections makes legislatures less responsive to changes in public opinion. And district lines that protect themselves and their friends in Congress is what one would expect the members of the General Assembly to create if left to their own devices.

(And remember that the process of selecting the commission is left to enabling legislation that the General Assembly will itself enact. Outside the glare of publicity that accompanies consideration of a constitutional amendment, we can expect the process to become even more dominated by the General Assembly.)

The third problem with the Folmer plan is that it is not even likely to minimize partisan gerrymandering. Partisan gerrymandering could occur in two different ways.

First, the so-called independent commission could be controlled by members appointed to benefit one party or another. When one party dominates the General Assembly, as the Republicans do today, we are likely to find that an incumbent protection plan benefits the party in power because it has more incumbents to protect. And this dynamic is made worse by the Folmer plan's requirement that the proposed members of the commission of both parties be approved by two-thirds of the House or Senate or, in the case of independent commissioners, of two-thirds of both houses of the General Assembly. On the surface, the two-thirds requirement might seem to be a guarantee that both parties are protected. But what it really does is give the majority party far greater control over who serves on the commission than a process that allows majority and minority party leaders to choose their own members. Minority party leaders might be concerned with picking up more seats for their party. But the individual members of the minority party are likely to be more concerned with protecting their own seats. So, under the Folmer process, the majority party need only secure the support of a portion of the minority party – and when one party has a large majority, perhaps few or no members of the minority party – to approve members of the commission who will be chosen to carry out a partisan redistricting plan that serves the majority party and the few members of the minority party, if any, needed to reach a two-thirds majority in the House and the Senate.

Second, because two Democrats and two Republicans must be among the seven commissioners to approve a redistricting plan, the members of either party could block an agreement simply by voting against any plan. That would give the power to draw district lines to two-thirds of the General Assembly who would choose from among three plans proposed by the commission – presumably one by Democrats, one by Republicans and one by independents. The result, again, is likely to be a plan that

benefits the majority party and the few members of the minority party, if any, needed to reach a two-thirds majority in the House and the Senate.

Far from eliminating the possibility of partisan gerrymandering, the Folmer process will make it as easy to accomplish as it is under the current process. And it is no answer to the possibility of partisan redistricting to say that the political parties would not go to the trouble to use these new rules to accomplish a partisan end. At a time when partisan division is high and both political parties in Harrisburg, as well as Washington, seem to be willing to go to any lengths to accomplish their partisan ends, this is precisely the kind of action we should expect. James Madison pointed out in Federalist Paper No. 51 that we should not create governmental institutions on the assumption men are angels. We need a truly independent process precisely because we cannot trust either party to put the good of the whole community above their own ends.

A fourth problem with the Folmer plan is that it has no finality. The requirement that any plan be approved by two-thirds of both houses of the General Assembly makes it more likely that no plan will be adopted at all. Even though the current system requires only a majority, not a two-thirds vote, in both houses of the General Assembly, the General Assembly has twice failed to enact a congressional redistricting plan – this year and in 1992. In both cases the Pennsylvania Supreme Court stepped in to do what the General Assembly and governor could not or would not do. Under the Folmer plan a two-thirds vote is needed both to approve commissioners and to approve a final plan. It is not at all clear what would happen under the Folmer amendment if the General Assembly could not accomplish either of those tasks.

Beyond these four major flaws, there are other difficulties as well. The Folmer plan does not provide a process for removing a commissioner for cause. Presumably this is left to the enabling legislation. But we have no guarantee that the enabling legislation will create a fair process. And controversies about the removal of commissioners have created major partisan battles in others states such as [Arizona](#).

Supporters of the Folmer plan praise it for requiring transparency in the process of redistricting by insisting on open meetings and a prohibition against communication with members of the redistricting commission outside those meetings. But as we see, time and again, at every level of government, open meeting requirements are easy for political officials to evade. Those requirements are reminiscent of the “parchment barriers” protecting the separation of powers that James Madison ridiculed in Federalist No. 10. Madison argued there that we need checks and balances – that is, a property-designed government structure – to ensure that no branch of government oversteps its bounds.

Much the same is true when it comes to designing a nonpartisan process to draw Congressional and state legislative lines. Public meetings and high-minded principles alone won't create fair districts in the absence of an independent commission structured to prevent political leaders from designing districts that suit their purposes. The Folmer plan not only gives us no such structure, it creates a structure that is likely to increase, rather than diminish, the control of the majority party in the General Assembly over district lines.

Giving the General Assembly more power over redistricting is a bad idea at any time. Doing so now, when the current members of the General Assembly are the product of districts that were drawn on a

partisan basis, is unconscionable. We need a clear break from partisan redistricting, and that can only happen if we create a truly independent commission rather than one whose initial product will be controlled by a General Assembly elected under current district lines.

The citizens of Pennsylvania deserve a truly independent redistricting commission. The Folmer plan is a classic bait and switch, promising such a commission but not delivering on that promise.

Once we amend the Pennsylvania Constitution to change the process by which we draw legislative lines, we will likely be stuck with it for a long time. So, citizens of our state need to speak up strongly to demand that the Senate reject the Folmer version of SB 22 now and tell the committee to come back with a sound plan for an independent redistricting commission. And should the Folmer plan pass the Senate, we must insist that the House reject it.