

TWO PATHS TO REDISTRICTING?

BY JEFF BRINDLE | 12/28/15 8:32 am

In the Legislature, a bill is moving that would propose a constitutional amendment that would change the way the state's legislative districts are configured.

Rather than basing redistricting on ten-year, census-driven population changes, the amendment would base redistricting on polling data measuring the average vote statewide over nine legislative election cycles.

Democratic proponents of the amendment maintain that it would ensure that ten legislative districts would be competitive, in turn contributing to higher voter turnout. But Republican opponents counter that it could undermine democracy by indefinitely locking in the current Democratic majorities in both legislative houses.

The proposed amendment is being introduced at a time when the U.S. Supreme Court is considering a case that well might affect state legislative redistricting, but in a different way.

The divergent paths of these two actions may clash at some future time, depending on the outcome of the ballot question and the decision of the high court.

In a column published by PolitickerNJ in June, I wrote about the U.S. Supreme court case named [Evenwell vs. Abbott](#).

That case challenges the way state senate districts were drawn in Texas using 2010 census information. Texas officials followed tradition by relying on total population.

But Sue Evenwell and Edwin Pfenninger call this method unfair, stating that redistricting based on total population waters down their vote.

They say that redistricting should be based on "vote eligible population" (VEP) rather than on total population.

Plaintiffs argue that the votes of individuals in districts with large numbers of ineligible voters (mainly, non-citizens and children) count more than those of voters in districts with more eligible voters.

The previous column concluded that if the court found for Evenwell, New Jersey's urban districts would have to add eligible voters whereas suburban and rural districts would have to give up eligible voters.

In other words, urban districts may pick up more independent and even Republican voters while suburban and rural districts may pick up additional Democratic voters.

A decision for Evenwell potentially would make the state's legislative elections more competitive. Advocates of the NJ constitutional amendment make the same argument.

But the likelihood of the high court ruling in Evenwell's favor seems low given wording of the Fourteenth Amendment to the U.S. Constitution. Section II states that "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."

The above section refers specifically to the redistricting of congressional districts, and not directly to how state legislative districts are to be apportioned.

However, chances are the U.S. Supreme Court will continue to apply the total population method articulated in the 14th Amendment to state legislative redistricting and reject the Evenwell challenge.

In the off chance that the Court finds for Evenwell using some creative legal logic and NJ voters approve the proposed constitutional amendment, redistricting will be an interesting puzzle for the Legislature to sort out.

In any event, redistricting suddenly has become topical. It will be increasingly on the voters' minds in the coming year.

If the outcome is more competitive legislative elections, it may drive up voter interest, turnout and campaign spending.

Jeff Brindle is the Executive Director of the New Jersey Election Law Enforcement Commission. The opinions presented here are his own and not necessarily those of the Commission.