

Quantifying the Impact of Partisan Gerrymandering: Uncompetitive, Unresponsive, and Unaccountable American Democracy

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In pursuit of electoral advantage, legislators create custom-designed congressional and legislative districts. Gerrymandering turns democracy on its head by permitting legislators to hand-pick their constituents - threatening the democratic ideals of electoral choice and officeholder accountability. The result is declining electoral competition and increasing partisanship in Congress as elections are frequently decided in party primaries and officeholders represent increasingly partisan districts. The 2006 elections brought dramatic change, yet 87% of congressional elections were won by more than 10%. Some argue that gerrymanders in red states balance gerrymanders in blue states, but injustice equally spread is equally unjust and the resulting rise in partisanship in Congress is eroding deliberation and compromise. Despite ruling in 1986 that partisan gerrymandering was justiciable, the U.S. Supreme Court has upheld even the most partisan plans. The recent failure of the Court to invalidate the Texas redistricting plan demonstrates the urgent need to prevent this partisan abuse from occurring multiple times each decade.

The 2001-2002 round of congressional and state legislative redistricting strained the fabric of American democracy in unprecedented ways. In the name of gaining marginal electoral advantages, legislators and their allied partisan officers systematically fragmented, packed, cracked, stacked, dislocated, overpopulated, and underpopulated congressional and state legislative districts. Where partisan advantage is not feasible, legislators reach across the aisle in order to create "safe" districts that protect the interests and incumbents of both parties. The result is often bizarre shaped districts with finger-like extensions, tentacles, and spindly legs.

Few states have escaped the recent rounds of redistricting without suffering through partisan gerrymanders. Utah is one such state where citizens have been shuffled to and fro in the name of partisan gain. Most recently in Utah, the 2001 redistricting intended to severely limit Representative Jim Matheson's chance of re-election was called a "scam" by the *Wall Street Journal* and even Senator Robert Bennett (R-UT) remarked that it was "the worst case of political gerrymandering" that he had seen (Burton, 2002). With the lingering prospect that Utah will gain a fourth congressional seat prior to the 2010 round of congressional reapportionment, and the rapidly-approaching 2011 redistricting cycle commencing in

only four years, the time is ripe for a thorough analysis of the effects of legislative-controlled redistricting.

This paper offers a brief glimpse into the contemporary research that has sought to quantify the effects of partisan gerrymandering on American democracy and demonstrates how the current legal framework for addressing partisan gerrymandering not only fails to curb the most partisan redistricting plans, but in many cases allows partisan intent to shield plans from successful legal challenge. The paper accomplishes this by showing how gerrymandering distorts a fair representation model characterized by fairness, responsiveness, and accountability. Once the impact of gerrymandering is explained, the paper argues that it is both urgent and necessary for states to reform their redistricting practices.

FAIR REPRESENTATION MODEL

To understand the effects of gerrymandering, one must start with a conception of a fair or ideal representation model. Brookings Institution scholar Tom Mann wrote that, "The legitimacy of the American electoral system depends on sustaining reasonable levels of *fairness, accountability, and responsiveness*" (Mann & Cain, 2005, italics added). Defining these traits further is vital to understanding the parameters within which our electoral system is intended to operate. It is impor-

tant to note that some limitations on electoral fairness in America are due purely to the structure of the American electoral system, i.e. single member, simple plurality districts. The purpose of this section is to articulate and define electoral fairness within the restraints of the American electoral system rather than argue for broad electoral principles that would warrant the adoption of a new system, such as proportional representation, in the United States.

FAIRNESS

The beauty and value of democracy is that it simultaneously empowers the individual and equalizes everyone (Harris, 2006). Thus, electoral fairness means that once an individual has satisfied the legal requirements established in their respective states regarding voter eligibility and registration, he or she has the right to cast a ballot that will be *counted correctly*, *weighed equally*, and not be subject to *vote dilution*. Equally weighed votes are present when electoral districts are equally populated. Vote dilution takes the form of packing (incorporating all or most of a certain group into one district) and cracking (splinting a group into multiple districts where their votes will not control the outcome of an election), and can be targeted against any group within society united by a common characteristic such as race, religion, income level, or political party affiliation. As Douglas Rae noted in *The Political Consequences of Electoral Laws*, an undiluted vote will result in a proportionate share of seats for a party as the total votes the party or group received. For example, if Republicans receive 60% of the vote they should receive roughly 60% of the seats (Rae, 1971). While the courts have gone to great lengths to protect minority groups from vote dilution, states remain free to dilute the votes of other groups.

RESPONSIVENESS

Responsiveness is the quality of an elected body that leads it to accurately reflect popular will. As originally designed, the United States Constitution provides for the direct expression of the public will in only one half of one of the three branches of government, the House of Representatives. It is only in this body that the public finds the constitutional right of direct election. While the President was insulated from the public by the Electoral College and the Senate elected by a vote of the various state legislatures, the House was designed not only to embody the public's "free and fair contest of ideas" (Mann, 2005a), but mirror the ever-changing nature of those views by being subject to election every second year. As James Madison, the Father of the Constitution wrote in *Federalist Paper No. 52*, the House of Representatives was intended to have "an immediate dependence on, and an intimate sympathy with, the people." As Sam Hirsch noted:

"The Framers had a vision for the United States House of Representatives. It was to stand apart from the Senate, the Presidency, and the Supreme Court as our one truly majoritarian national institution, as the body most responsive to popular sentiment, with no intermediary between it and the

people. It is not a mistake that Representatives were given two-year terms while other federal officials were given four years or six or life tenure. The Framers named it the House of Representatives for good reason" (Hirsch, 2003, p. 215).

ACCOUNTABILITY

Accountability is the result of responsiveness at the individual officeholder level. Just like responsiveness, accountability largely boils down to electoral competition, and how "accountable" a particular representative is can be predicted to a large degree by how likely she is to be ousted from office in an approaching election. As mentioned above, the House of Representatives derives its power directly from the people. Thus, Members of the House should act as delegates in representing the views of their constituents. Furthermore, the electorate, upon finding they are being inadequately or undesirably represented, retains the right to replace the officeholder. The benefits of electoral accountability are many, ranging from the lowest level of accountability in the form of prompt responses to constituent correspondence to the highest level in the form of constituent-desired policy outcomes. Elected officials who represent closely contested districts behave differently than their colleagues from districts insulated from competition.

Before demonstrating how gerrymandering distorts the fair representation model, we must first define gerrymandering and briefly discuss its history.

DEFINITION AND EVOLUTION OF GERRYMANDERING

Political scientists Dudley and Gitelson defined gerrymandering as "the intentional manipulation of electoral districts for political purpose" (Dudley and Gitelson, 2002). More specifically, and for the purposes of this paper, I have chosen to use a more narrow and detailed view of gerrymandering and defined it as the calculated arranging of electoral districts in a way that favors one political party's interests, incumbents or challengers, or insulates a particular officeholder from immediate and/or future electoral competition.

Gerrymandering is not a new phenomenon in American politics. Its use dates back to the founding of the United States and its name dates back to about two decades of the signing of the Constitution. The very term gerrymandering reminds us of the practice's deeply embedded roots in American democracy. It was on February 11, 1812, that Massachusetts Governor Elbridge Gerry approved a redistricting plan that would help his party retake control of the state legislature (Dudley and Gitelson, 2002). The resulting shape of one of the districts looked like a salamander to some, leading Gilbert Stuart to label it and other similarly-shaped districts as "gerrymanders" (Shultz, 2006).

Contrary to many reports, even mid-decade redistricting – the redrawing of districts multiple times in a single decade – is not a recent phenomenon. As Carson, Engstrom, and Roberts (2006) pointed out, "while the case of Texas may strike the modern observer as a sign that partisanship in the

contemporary era has reached a fever pitch level, this type of off-cycle redistricting actually has analogs in an earlier historical era" (p. 283). Most notably, they pointed to the frequent re-redistricting of congressional districts that took place in the final three decades of the nineteenth century such as Ohio redrawing its boundaries before each congressional election for twelve years (Carson et al., 2006).

Prior to the technological revolution of the 1980s and 90s, legislators redrew lines using large maps and calculators. The advent of personal computers with expanded capabilities has made it possible for legislators to not only make instantaneous redistricting calculations, but to consider several demographic factors including voting information consecutively with population counts. With the advent the Census Bureau's TIGER (Topologically Integrated Geographic Encoding and Referencing) database in the 1990s, color-coded maps showing levels of concentration for any data item can be easily generated (Brace, 2004). In the last twenty years, redistricting an entire state has evolved from being an intricate manual process lasting weeks to a highly-sophisticated process that, even in the early 90s, could be completed in less than an hour.

As the hardware capabilities of PCs have increased, the number of criteria that state legislatures use in redistricting has greatly increased - from 12 available criteria in 1990 to 256 in 2000 (Brace, 2004). Even in such states as Utah, where official state-owned computers used in redistricting do not factor in political data such as past voting behavior, the state parties, using programs such as Autbound™ and Maptitude™, incorporate such data and transfer completed maps to the state legislative staff. Where in the past legislators were using a hammer to conduct redistricting, they are now using scalpels.

HOW GERRYMANDERING PERVERTS THE FAIR REPRESENTATION MODEL

After the 2001 Utah redistricting cycle, Senator Robert Bennett (R-UT) called political gerrymandering the "greatest threat to democracy in the United States; greater than soft money in political campaigns" (Burton, 2002, p. B2). Senator Bennett is not the only person to voice concern. In reflection on his years presiding over the greatest era of expansion of civil liberties, Chief Justice Earl Warren offered his opinion that redistricting, and more specifically, *Baker v. Carr* (1962) was "the most important case of his tenure on the Court" (Warren, 1977, p. 306). While the intricacies of redistricting are complex and difficult to understand, the impact of gerrymandering of American politics is familiar to the novice observer. In fact, many consider redistricting to place considerable limits on the ability of the United States to be considered a truly democratic nation. This claim has been echoed by organizations such as *Freedom House* who, in its 2005 annual report, expressed concern over "the widespread use of sophisticated forms of gerrymandering" (Freedom House, 2005).

FAIRNESS

Redistricting directly infringes on electoral fairness in two ways: the unequal weighing of votes and the spreading and packing of populations in order to dilute the voting power of certain targeted groups within society. While significant progress has been made in the area of population equality and racial vote dilution, ample room for partisan tinkering still remains in the arena of partisan vote dilution.

THE "ONE PERSON, ONE VOTE," OR POPULATION EQUALITY STANDARD

Article I, Section 2 of the United States Constitution stipulates that "The House of Representatives shall be composed of members chosen every second year by the people of the several states" and that "Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers" (U.S. Constitution Art I § 2). Prior to the 1960s it was common for states to draw districts with unequally populated districts, and in some cases, states went for more than 50 years without changing district boundaries. With the United States Supreme Court's decision in *Baker v. Carr* (1962), which ruled that redistricting and reapportionment were subject to challenges under Article 1, section 2, and the Equal Protection Clause of the U.S. Constitution, and the subsequent rulings in *Wesberry v. Sanders* (1964), *Reynolds v. Sims* (1964), and *Avery v. Midland County* (1968), the Supreme Court applied the one-person, one-vote standard to congressional, state legislative, and local government elections, respectively. As political scientist Bruce Cain noted, these cases have made population equality the highest redistricting priority for all states (Mann & Cain, 2005).

The "one-person, one-vote" standard was further defined in *Karcher v. Daggett* (1983), which required states to make a "good-faith effort" to ensure that populations be distributed evenly throughout all districts of a redistricting plan. In determining that populations are distributed equally, two standards are applied: a strict standard for congressional plans and a more lenient standard for state legislative and other plans. According to the stricter standard for congressional districts, total population deviations are most likely to be upheld if well under one percent, though this is not guaranteed. However, a state may employ larger total population deviations in order to achieve a compelling state interest such as district compactness, respect for county, municipal, and precinct boundaries, preserving the cores of prior districts, and avoiding contests between incumbents (*Abrams v. Johnson*, 1997). As was the case in *Karcher*, even total deviations of less than one percent, that are not adequately defended, will be found unconstitutional. For example, "a federal district court in Kansas in 1992 rejected a plan whose 0.94% total deviation was justified only by the goal of retaining the integrity of county lines" (Hebert, Verrilli, Smith, & Hirsch, 2000).

State legislative plans are also required by the Equal Protection Clause of the Fourteenth Amendment to have equally populated districts. However, despite similar language from the court, state redistricting plans are not required to be as equally-populated as congressional plans. In *White v. Regester* (1973), the Supreme Court stated that “we cannot glean an equal protection violation from the single fact that two legislative districts in Texas differ from one another by as much as 9.9%” (*White v. Regester*, 1973). Thus, state district plans with population deviations of less than 10% require no special justification. This does not mean, however, that states are given free reign to vary populations within the 10% range. As Hebert, Verilli, Smith, and Hirsch (2000) explained, a deviation of less than 10% “might be challenged if it was a product of some unconstitutional, irrational, or arbitrary state policy.”

Nor does the 10% standard mean that total population deviations above 10% will always be rejected. In these cases, states must show a legitimate, longstanding, and consistently applied state policy in order to justify such deviations. In one such instance in 1983, the Court upheld a Wyoming state legislative plan with a total population deviation of 89% - the largest district having a population of 9,453, and the smallest, Niobarra County, having a population of 2,924. The population deviation was tolerated because the Court found that “Wyoming’s constitutional policy - followed since statehood - of using counties as representative districts and ensuring that each county has one representative is supported by substantial and legitimate state concerns” (*Brown v. Thomson*, 1983).

RACIAL VOTE DILUTION: THE VOTING RIGHTS ACT AT WORK

Since the early 1980s, challenges to redistricting plans have increasingly focused on racial vote dilution. Section 5 of the Voting Rights Act of 1965, which applies to Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, as well as sections of California, Florida Michigan, New Hampshire, New York, North Carolina, and South Dakota, requires that states receive preclearance from the Attorney General of the United States or the United States District Court for the District of Columbia for “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” (Voting Rights Act of 1965). As applied to redistricting, this means that proposed plans must satisfy two “prongs” – that the plan will not have the effect of worsening the voting power of minority voters, known as “retrogression,” and that the plan does not have the purpose of “denying or abridging the right to vote” (Hebert et al., 2000).

While Section 5 of the Voting Rights Act of 1965 only applies to certain areas, Section 2 of the Voting Rights Act precludes all states and jurisdictions from diluting the voting power of minorities. In determining if minority vote dilution has occurred, Section 2 stipulates the following:

“the political processes leading to nomination or election...are not equally open to participation by members of a racial or language minority group in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice” (Voting Rights Act of 1965).

As applied to redistricting, Section 2 has been interpreted to require the creation of “majority-minority districts” (yet to be fully defined by the Court) when certain criteria, set forth in *Thornburg v. Gingles* (1986), are met. The “Gingles test” requires 1) that the minority group is “sufficiently large and geographically compact to constitute a majority” in a single-member district (*Growe v. Emison*, 1993), 2) that the minority group be “politically cohesive,” and 3) that the white majority votes “sufficiently as a bloc to enable it...usually to defeat the minority’s preferred candidate” (*Thornburg v. Gingles*, 1986).

Beginning in 1993, the U. S. Supreme Court has retreated from its strong support of minority-majority districts. In *Shaw v. Reno* (1993) the Court ruled that the “excessive and unjustified use of race in redistricting is prohibited by the Equal Protection Clause of the Fourteenth Amendment” (Hebert et al., 2000. p. 50). The *Shaw* doctrine has had a profound effect as “courts have invoked *Shaw* to strike down districting plans in Alabama, Florida, Georgia, Louisiana, New York, North Carolina, South Carolina, Texas, and Virginia” (Hebert et al., 2000, p. 50). In defining when the use of race in redistricting plans exceeds allowable limits, the Court stepped back from the potentially broad reading in *Shaw* by finding in *Miller v. Johnson*, (1995) that race must be found to be the “predominant factor” in determining district lines, and redistricters must have “subordinated traditional race-neutral districting principles...to racial considerations” (*Miller v. Johnson*, 1995). Despite this weakening trend, the legal protections against minority vote dilution are strong.

PARTISAN VOTE DILUTION

The limits on partisan gerrymandering are few and seldom enforced. Political or partisan motivations in drawing lines are acceptable, and there is no requirement that lines be drawn neutrally. In fact, the Supreme Court, in *Gaffney v. Cummings* (1973), condoned both partisan and incumbency-protection gerrymanders, as it asserted that “politics and political considerations are inseparable from districting and apportionment,” and warned against “politically mindless” approaches to redistricting – arguing that they “may produce, whether intended or not, the most grossly gerrymandered results.” Furthermore, under the “*Shaw* doctrine” mentioned previously, proving that a partisan gerrymander was adopted in order to protect an incumbent or to further a party’s partisan interests shields it from challenges that race was used as the “predominant” factor in drawing district lines. Such was the case in *Hunt v. Cromartie*, (1999) where an expert witness convincingly testified that political party affiliation was the predominate motivation for districting rather than race.

In the landmark case *Davis v. Bandemer* (1986), the U.S. Supreme Court ruled for the first time that partisan gerrymandering was justiciable, basing its ruling in the Equal Protection Clause of the Fourteenth Amendment. However, the plurality opinion, which established the criteria for identifying a partisan gerrymander, wrote that in order for a district plan to be “sufficiently adverse” to warrant invalidation, challengers were required to prove both discriminatory intent and effect. The Court wrote, “unconstitutional discrimination occurs *only* when the electoral system is arranged in a manner that will *consistently* degrade a voter’s or a group of voters’ influence on the political process as a whole” (*Davis v. Bandemer*, 1986, italics added). As Hebert, Verilli, Smith, and Hirsch (2000) noted, “the doctrine has had little real bite.” The way in which the *Bandemer* standard has been interpreted by the U.S. Supreme Court and lower courts constitutes a very narrow judicial approach. In one such case, California Republicans were ruled not to have been the victim of an unconstitutional gerrymander because there were “no allegations that California Republicans have been ‘shut out’ of the political process,” and the Court wrote further that “Republicans remain free to speak out on issues of public concern” (*Badham v. EU*, 1988). More recently, challenges to plans based on partisan vote dilution have met similar fates.

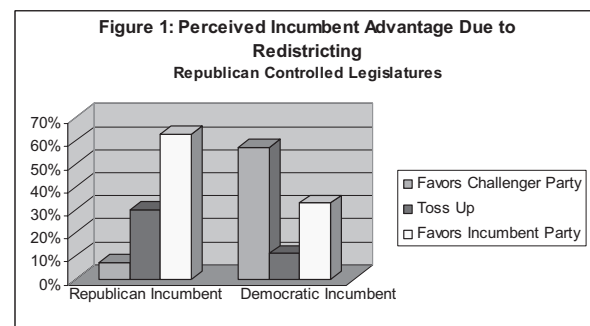
Several cases challenging the constitutionality of partisan gerrymanders emerged following the 2001 round of redistricting. In *Veith v. Jubelirer* (2004), the Court upheld a Republican redistricting plan that “ignored all traditional redistricting criteria, including preservation of local government boundaries, solely for the sake of partisan advantage,” and created “meandering” and “irregular” districts designed to maximize partisan electoral outcomes. While all nine justices agreed that excessive partisanship in redistricting is unconstitutional, Justice Antonin Scalia, writing for a four-member plurality asserted that all political gerrymandering claims should be declared nonjusticiable because no court had been able to find a fitting remedy in the 17 years since *Bandemer*. According to Scalia, it was time to recognize that the solution to political gerrymandering simply did not exist. Justice Kennedy, however, wrote in his concurring opinion that while no judicially manageable standards had been found, the Court should not give up on eventually finding such standards (*Veith v. Jubelirer*, 2004).

Most recently, in *LULAC et. al v. Perry* (2006), Texas Democrats and minority organizations challenged the mid-decade redistricting plan masterminded by Rep. Tom Delay (R-TX) that solidified Republican control of the Texas Legislature and added to the party’s domination of Congress by yielding a net gain of six Republican seats. Plaintiffs argued that the plan was unconstitutional because it discriminated on the basis of race, was a blatant partisan gerrymander, violated the Voting Rights Act of 1965 by diluting the voting strength of minorities, and was adopted via an unconstitutional mid-decade redistricting process. On June 28,

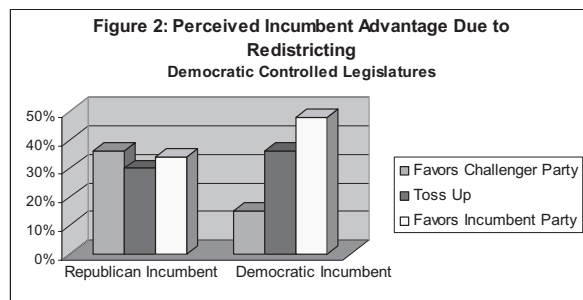
2006, the Supreme Court issued its six-part, 132 page opinion largely upholding the mid-decade redistricting plan. The Court rejected the claim that the plan constituted an unconstitutional political gerrymander, restating its opinion that no judicially manageable standards for dealing with partisan gerrymandering had been found.

The U.S. Supreme Court in both *Veith* and *LULAC* has hinted that such a standard may be found within the First Amendment’s guarantee of free speech, and legal scholars are in hot pursuit of a workable standard that the Court will accept. However, such a standard is not likely to emerge given the current composition of the Supreme Court. As Jeffrey Rosen (2006) of George Washington Law School has indicated, “political gerrymandering, at least for the foreseeable future, may be a problem without an obvious judicial or political solution” (p. 1). This warning has also been reiterated by other scholars such as Bruce Cain (2006) of Berkeley, who wrote that while “partisan gerrymandering is theoretically justiciable, there is nothing much for line-drawers to worry about” (p. 1).

As shown in the figures below, the impact of partisan gerrymandering is readily recognized as an influencing factor in electoral outcomes. Figures one and two are the result of a survey of several hundred “potential political candidates” conducted by political scientists L. Sandy Maisel, Cherie Maestas, and Walter Stone. The survey strongly indicates that in both Republican and Democratic controlled states, potential candidates see the redistricting process as having a negative impact on the minority party. In Republican controlled states, more than 60% of potential candidates indicated that redistricting helps Republican incumbents and nearly 57% indicated that redistricting hurts Democratic incumbents by favoring Republican challengers. The survey indicated similar, though not as dramatic, results in Democratic controlled states, where 48% of potential candidates indicated that redistricting favors Democratic incumbents and 36% say that redistricting hurts Republican challengers to those incumbents (Maisel, Maestas, and Stone, 2004).



Source: Maisel, Maestas, and Stone, 2004.



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RESPONSIVENESS

As noted earlier, responsiveness is the ability of an electoral system to accurately reflect public opinion and mirror both the short-term and long-term changes in public sentiment. Gerrymandering limits the responsiveness of the American electoral system in three ways: 1) by moving the main arena of the candidate selection process from the general elections to the party primaries, 2) by limiting the electoral influence of the “moderate middle,” then increasing the partisan polarization in Congress, and 3) by severely reducing the ability of the electorate to change the partisan composition of elected bodies.

DISTORTING THE CANDIDATE SELECTION PROCESS

In February of 2006, the Associated Press published a guide for prospective Pennsylvania legislative candidates. The advice it offered underscores the impact that gerrymandering has had on the candidate-selection process. It read, “House districts contain about 60,000 people each, but a primary can be won with just a few thousand votes if the turnout is low. Because of gerrymandering, the primary is often the only real contest” (Associated Press, 2006). With the general election threat largely removed, candidates have compelling incentives to focus the majority of their time, energy, and funds on appeasing party loyalists in primary elections. As Thomas Mann and Norman Ornstein (2006) write in their recent book *The Broken Branch*, “new and returning members are naturally most reflective of and responsive to their primary constituencies, the only realistic locus of potential opposition, which usually are dominated by those at the ideological extreme. This phenomenon has tended to move Democrats in the House left and Republicans right” (Mann and Ornstein, 2006, p. 12). Where in a competitive election primary voters are more likely to favor moderate candidates with widespread appeal, uncompetitive elections produce elected officials that appease the most partisan factions of their political party. Hence the “moderate middle” is quickly becoming the “vanishing middle.”

Gerrymandering has also been shown to have a significant impact on the candidate entry process. Potential candidates are well aware of the effect that gerrymandering has on their prospects of electoral success. Research also suggests that qualified candidates are less likely to run in districts that

have been adversely gerrymandered and more likely to run in districts that have been favorably gerrymandered (Krasno and Green, 1988). As will be explained later in this paper, redistricting decreases the competitiveness of congressional and state legislative elections. This lack of competition dramatically affects the willingness of qualified candidates to run for elected office. Specifically, large margins of victory for incumbents in previous elections deter qualified challengers (Hetherington, Larson, and Globetti, 2003). This trend has been documented not only in contemporary American politics (Hetherington, Larson, and Globetti, 2003) but also in the intensely polarized and gerrymandered era at the end of the nineteenth century (Carson, Engstrom, and Roberts, 2006).

THE RISE OF PARTISAN POLARIZATION

Of increasing concern to many reformers is the rise in partisan polarization in Congress and many state legislatures since the 1980s (Mann and Cain, 2005). As Tom Mann recently noted, “a healthy degree of party unity among Democrats and Republicans has deteriorated into bitter partisan warfare” (Mann, 2005a). The partisan warfare is the result of a decline of ideologically moderate members and an increase in the number of fiercely partisan elected officials who are less willing to compromise and less likely to engage in deliberative legislative processes. As Norm Ornstein noted, the rise in polarization in Congress has been accompanied by a sharp decline in the number of committee meetings and days spent in deliberative session (Mann and Ornstein, 2006). The rise in polarization leads to policy outcomes that fail to represent public opinion, or as one political scientist has noted, the current climate leaves a large portion of the electorate with moderate policy preferences stuck with choices that are simultaneously too liberal and too conservative (Masket et al., 2006).

There is no question that partisanship has substantially increased over the past thirty years. However, there is a great deal of debate as to what has caused this polarization. Political scientists point to several factors including the movement of Southern conservative Democrats to the Republican Party and the decline in electoral competition due to “increasing geographical segregation of voters and successive waves of incumbent-friendly redistricting” (Mann, 2006).

While the impact of gerrymandering on polarization is generally accepted, the extent of that impact is hotly debated. Political scientists such as Abramowitz, Alexander, and Gunning (2006) have argued that redistricting has a minimal impact on political partisanship – pointing out that most of the increases in partisanship have occurred between redistricting cycles, not immediately following redistricting. On the other side, political scientists such as McDonald (1999) and Carson, Crespino, Finocchiaro, and Rohde (2004) have shown that roll-call voting of Members from newly-redrawn congressional districts is more polarized than roll-call voting of Members from unaltered districts. Most recently, political sci-

entists Masket, Winburn, and Wright (2006) found that “districting will almost invariably involve packing like-minded voters together. The result is districts that are more homogeneously liberal and conservative than the districts from which they were created.” This view has been echoed by Bruce Cain (2006) of Berkeley who pointed out that “as districts get more safe, the need to attract independent and centrist cross-over votes lessens. This allows a shift to the extremes of the ideological continuum. As more members represent the extremes, Congressional politics becomes more polarized and uncivil.” (Cain, 2006)

DISTRIBUTIONAL BIAS

The third way in which gerrymandering perverts the responsiveness of the American electoral system is by embedding an advantage, often referred to as a distributional bias, into the district maps, making it difficult for a party that receives a majority of votes to receive a majority of seats. The distributional bias of the current 2001 redistricting map is well documented. Samuel Issacharoff (2004) of New York University has shown that this bias occurs in both Democratic and Republican controlled states. By comparing the percentage of the vote that states gave to George W. Bush and Al Gore in the 2000 election to the percentage of congressional seats that each party received in the 2002 congressional elections, he found that “in those states where Democrats controlled the last redistricting process, Al Gore won 51.5% of the vote, while Democrats won 57.1% of the Congressional seats... in states where Republicans controlled redistricting, George Bush won 53.1% of the vote, while Republicans won congressional elections in 66.7% of districts” (Issacharoff, 2004). Issacharoff’s results are significant, showing that both parties have crafted favorable plans - giving a 5.5% advantage to Democrats in blue states and a 13.6% advantage to Republicans in red states. These findings dispel the notion that the distributional bias of the current electoral map is due to natural “social sorting” – a common argument of many redistricting reform opponents.

While distributional bias is present, it has been common for left-leaning reformers to exaggerate the severity of the distributional bias. One such reformer, Sam Hirsch (2003), has claimed that a Democratic takeover of Congress is impossible “unless the Democrats receive close to 60% of the national congressional votes” (Hirsch, 2003). The 2006 midterm elections silenced such claims. What remains, however, is the reality that some of the distributional bias favoring the Republicans in Republican-controlled states and Democrats in Democrat-controlled states is due to redistricting. Thus, redistricting acts like an intricate system of levees designed to save the political party in power from short-term, and to a lesser extent long-term, changes in public opinion. While a gerrymandered map may not impede an outraged public from expressing their electoral desires, it effectively turns the roar of an angry electorate into a mere whisper.

OFFICEHOLDER ACCOUNTABILITY

To this point it has been shown that gerrymandering limits the fairness and responsiveness of the American electoral system. The third and final quality of a fair representation model, accountability, is also strongly impacted by redistricting. Gerrymandering reduces officeholder accountability by limiting the ability of constituents to elect their candidates of choice. This is done by implementing what are known as “incumbency protection” gerrymanders – redrawing an incumbent’s district to shield the officeholder from electoral competition or remove potential challengers from the district boundaries. With the ability to redraw district lines at will, incumbents no longer fear electoral defeat and are faced with few incentives to act as a delegate in the representation of their constituents. As many have stated, politicians are choosing their voters when voters should be electing their representatives.

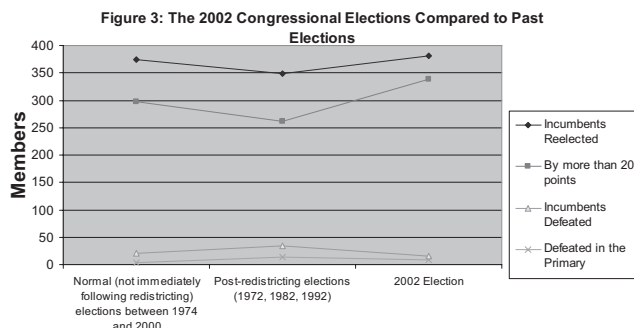
THE DECLINE OF ELECTORAL COMPETITION

Over the last quarter century the number of competitive House seats has been on average 58, or 13% percent of all seats. However, this number plummeted after the 2001 redistricting cycle, when in 2002 less than 10% of congressional elections were competitive, and in 2004 when only 27 seats, or 6% were decided within a 10 percent margin- an all-time low in American history (Mann, 2006a). The 2006 elections brought dramatic change, yet 87% of congressional elections were won by more than 10%. While many attribute the decline in competition to campaign finance laws, which are thought to favor incumbents, Professor Michael MacDonald estimates that even if there were no incumbents running, the number of races in the 48-52% range would be about 81 (Cain, 2006). This trend is likely to continue. When asked what his impressions of the 2002 and 2004 elections in which 98% of incumbents were re-elected were, conservative commentator George Will remarked that “incumbents are working to eliminate that awful 2 percent” (Will, 2006). Michael McDonald posed a sobering question; “How can the country regarded as leader of the free world host legislative elections whose competitiveness is nearly on par with one-political party dictatorships such as Cuba, old Iraq, Libya, and the old Soviet Union?” (McDonald, 2006b).

Redistricting is closely tied to this decline in competition. Masket, Winburn, and Wright’s (2006) studies showed that there is a strong correlation to partisan-controlled redistricting and a decline in competition in state legislative races. There is also considerable evidence that the 2001 round of redistricting has been the worst on record. In the past, the election cycles immediately following a redistricting cycle – typically those election in the years ending in “2” – were characterized by increased electoral competition and increased quality of electoral challengers (Hetherington et al., 2003). However, the 2002 congressional elections were notably uncompetitive. As Tom Mann wrote, “less than 50 of the 435

seats were seriously contested in 2002, many fewer than the number of targets in 1972, 1982, and 1992, the first elections after the previous rounds of redistricting” (Mann, 2005a, P. 4).

In a study of the impact of the 2001 round of redistricting on competition, Sam Hirsch (2003) reveals that of the 108 Members of Congress considered to be “at-risk” in the 2002 election (Republicans representing districts in which Al Gore won the 2000 Presidential election, Democrats representing districts in which Bush won the 2000 election, and incumbents who won with less than a 10% margin in the 2000 election), “20 at-risk Democrats and 25 at-risk Republicans” were the beneficiaries of significant boundary shifts “that made their districts more secure —and not surprisingly, none of them was defeated in November 2002” (p. 188). These findings have been echoed by Michael McDonald, who has calculated that “incumbency protection maps were adopted in twenty states, which affected 231 districts, due to bipartisan plans adopted in larger states such as California and Texas” (McDonald, 2006a). The graph below, taken from Hirsch’s analysis, compares the 2001 redistricting cycle to those of past years. Note that the 2002 congressional elections were less competitive than “normal” elections between 1974 and 2000, but uncharacteristically uncompetitive when compared to previous post-redistricting elections.



Source: Hirsch, 2003

What has evolved in the United States is very much a system of one-party domination in individual districts. As Steven Hill (2006), an advocate of election reform, stated in a speech in the summer of 2006, the United States does not have a two-party system, but rather that the United States is an aggregation of several one party districts. One-party dominance of politics in a district is comparable to corporate monopolies. As Rep. Rahm Emanuel (D-IL) wrote:

“Monopolies are as harmful in politics as they are in business. Competition keeps everyone honest, while the concentration of power and barriers to entry lead to inefficiencies and corruption. One of the common threads running through the scandals involving Members of Congress from both parties — such as former Reps. Duke Cunningham (R-CA) and Tom DeLay (R-TX) and current Reps. Bob Ney (R-OH) and William Jefferson (D-LA.) — is that they each came from gerrymandered districts where they never have faced an opponent who can effectively challenge their actions” (Emanuel, 2006).

CONCLUSION: AN URGENT NEED FOR REFORM

We have shown that redistricting perverts the fair representation model by diluting votes, distorting the candidate selection process resulting in more partisan politicians, embedding a distributional bias within the electoral map that prevents elected bodies from reflecting public opinion, and insulating officials from competition. There are three main reasons why it is urgent and necessary to reform our nation’s redistricting practices. The impact of gerrymandering on our electoral system is better understood now more than ever before. Gerrymandering has been strongly tied to the decline in congressional election competition, changes in candidate emergence, and the increased polarization of Congress. Secondly, new technology allows legislators to express their partisan gerrymandering desires in unprecedented ways. As Justice Breyer stated, “the availability of enhanced computer technology allows the parties to redraw boundaries in ways that target individual neighborhoods and homes, carving out safe but slim victory margins in the maximum number of districts, with little risk of cutting their margins too thin” (*Vieth v. Jubelirer*, 2004).

Lastly, in the deeply and almost evenly divided American political climate, redistricting is emerging as the electoral tactic of choice for political parties seeking to either maintain or retake control of the House of Representatives. The 2003 mid-decade redistricting plan engineered by Tom Delay and other national Republican leaders such as Karl Rove illustrates the growing importance of redistricting in modern party warfare. The Texas plan gave six seats to the GOP, more than double the gains the party made in the 2004 election (Mann, 2005a). As some have noted, the future is likely to be a “redistricting arms race.” According to Tom Mann, “changing conditions have elevated redistricting as a weapon of choice for party leaders and incumbents to advance their political interests” (Mann, 2005b). An astute national party committee that faces the option of either pouring millions of hard-earned funds into a single congressional election with the hopes of gaining one seat, or spending a fraction of the cost to draw a favorable district plan in a large state such as Florida, California, New York, or Texas that will result in winning multiple seats can be expected to employ gerrymandering as a major campaign tool.

Furthermore, the Supreme Court’s ruling in *LULAC* which has given the green light to parties to redistrict as often as they like “could open the floodgates for partisan redistricting” (Vicini, 2006). As Mary Wilson, President of the League of Women Voters, warned, “we now can expect an even more vicious battle between the political parties as they redraw district lines every two years for partisan gain” (Vicini, 2006). If the Court refused to invalidate the Texas mid-decade redistricting plan that was admittedly drawn for partisan purposes, then when would they? As one editorial in the *Washington Post* noted, “from this cacophony of shifting majorities, concurrences and dissents, one thing emerges clearly: The

Supreme Court will do nothing to rein in even the worst excesses of partisan gerrymandering" (Washington Post, 2006, p. A12).

There are a few states that are more likely than others to see partisan mid-decade redistricting plans emerge before the end of the decade. The most likely states are those in which one party controls both chambers and the governor's office. According to the National Conference of State Legislatures, there are 12 states – Alaska, Florida, Georgia, Idaho, Indiana, Missouri, North Dakota, Ohio, South Carolina, South Dakota, Texas, and Utah where both chambers of the state legislature and the governor's office are under control by Republicans, and eight states – Illinois, Louisiana, Maine, New Jersey, New Mexico, North Carolina, Washington, and West Virginia in which the Democrats control both chambers and the governor's office (NCSL, 2006). This means that the Republicans are in direct control of 124 seats and the Democrats are in control of 71 seats, for a total of 195 seats that are vulnerable to partisan gerrymandering. With as tightly divided as Congress currently is and appears likely to remain in the foreseeable future, either party could potentially gain control of Congress by simply adjusting congressional maps. If Democrats are able to take control of the governorships in large states such as California and New York, they will have significantly more area to work with in redrawing lines to net a gain in Congress.

In challenging the 2000 redistricting cycle, more than 175 lawsuits were filed, including nineteen cases in Texas and Maryland, twelve in Colorado, ten in New York and Illinois, nine in Georgia, and eight in North Carolina and Minnesota (NCSL, 2006). On average, more than three lawsuits were filed in each state. In order to restore public faith in our electoral system, reinstate partisan fairness, and reduce the amount of wasteful redistricting litigation, it is both urgent and necessary that comprehensive redistricting reform is passed on a state-by-state basis. Many states have already removed the redistricting process out of legislators' hands and into the control of independent bipartisan redistricting commissions guided by clearly defined redistricting standards and designed to minimize partisan abuses. Such reform is desperately needed in Utah before the rapidly-approaching 2011 redistricting cycle arrives. Without such reform, the Utah legislative districts will continue to be severely biased against Democrats – bias that currently results in Democrats controlling only 28 out of 104 legislative seats.

Due to the reluctance of Congress to address gerrymandering, achieving reform will require the passage of state constitutional amendments. Independent redistricting commissions have been successfully implemented by Utah's neighbors to the north and south. However, significant obstacles stand in the way of achieving such reform in Utah. In particular, the state constitutional amendment process requires that amendments be referred to the ballot by a two-thirds vote of each house of the state legislature. Reformers will need

to persuade legislators to forfeit their control over the redistricting process, which will require intense pressure from the public and media. Once referred to the ballot, persuading the public to pass redistricting reform will also be a difficult task. Past reform efforts in 2005 in California and Ohio demonstrated that raising awareness about redistricting is an extremely difficult task and opponents will portray the reform as a minority party power grab.

To be successful, reformers will need the support of a broad coalition of organizations including minority community organizations, good-government advocacy groups and the business community. Reformers will also need to raise significant sums of money in order to conduct extensive public-opinion research and execute a thorough voter-education campaign. While reforming redistricting is only one of many reforms needed to address the systemic problems of the American electoral system, it is the one that is most urgent. As Tom Mann has said, "redistricting reform is no panacea, but it's a start" (Mann and Cain, 2005).

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