WHO CHOOSES WHOM? GERRYMANDERING U.S. CONGRESSIONAL DISTRICTS AND THE EROSION OF THE DEMOCRATIC IDEAL IN THE PEOPLE’S HOUSE

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ABSTRACT

The decline in electoral competition in the United States House of Representatives and the increase in polarization in the House are widely considered to be caused, in part, by redistricting. Redistricting is playing a lead role in denigrating the ideal set forth by our Founding Fathers in the “People’s House,” the House of Representatives. This thesis seeks to study this issue further by examining the decline in electoral competition and the increase in House polarization and attempts to explain whether redistricting is in fact playing a role and if so, what should be done about it.

The thesis first examines the history of redistricting in the United States. Analyzing numerous studies of Congressional competition, this paper finds that redistricting does in fact play a role in the increase in Congressional districts safe from electoral competition. Evaluating data on Congressional polarization, this paper also demonstrates that the House has become increasingly polarized due in large part to redistricting. This paper then establishes what constitutes an ideal Congressional district and suggests means to reform redistricting processes to produce model districts to better protect the democratic ideal of the U.S. House of Representatives.
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CHAPTER ONE
INTRODUCTION

The “People’s House” was established by the framers of the U.S. Constitution to be the body closest to the American people. Perhaps best describing the “founding fathers” ideal for the House is the oft quoted statement by George Mason that the House shall be “the grand repository of the democratic principle of government.”¹ Though characterized as the “lower chamber,” the House was the only chamber initially to be directly elected by the people. As expressed in a sentiment by James Madison, it was believed that the House should be “immediately reflective of the people.”² This vision translated the House into the body endowed with rights that the “upper chamber,” the United States Senate, lacked: where all revenue bills must originate, where the President is selected if no candidate emerges with an electoral vote majority (as the House did in 1801 selecting Thomas Jefferson and 1825 selecting John Quincy Adams), and where a President can be impeached (as the House impeached President Andrew Johnson in 1868 and President William Jefferson Clinton in 1998). Robert V. Remini, the Historian of the United States House of Representatives, labeled the body he serves as “an extraordinary instrument for legislating the will of the American people.”³


As noted above, Members of the U.S. House are elected directly by the people by popular vote, unlike U.S Senators, whom until the Seventeenth Amendment was ratified in 1913, were elected by state legislators. Article I of the Constitution sets forth that each state shall have at least one Representative in the House and the Representatives would be “apportioned” among the states as follows:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons … … The actual Enumeration shall be made within three years after the first meeting of the Congress and within every subsequent term of ten years in such manner as they shall by law direct.  

The passage of the Fourteenth Amendment in 1868 superseded the “three fifths” language and inserted language into the Constitution to give full representation to all residents:

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 process of apportionment, and reapportionment, determines the breakdown of how many seats in the House each state will have. As the Constitution is silent on the matter, the states were then left to draw their own Congressional districts through the process known as redistricting.

4 United States Constitution, Article I, Section II
5 United States Constitution, Amendment Fourteen, Section II
6 David Butler and Bruce Cain, Congressional Redistricting Comparative and Theoretical Perspectives (New York: Macmillan, 1992), 44.
The process of redistricting occurs every ten years after a new census is completed, and the states are apportioned their proper number of Representatives by Congress according to their population in comparison to the other states. States then redraw their districts accordingly to equalize the population of each Congressional district. Until 1911, the process used by Congress to apportion seats to the states changed often and was fraught with political fights between political parties and states that stood to gain or lose representation depending on the method used.\(^7\) This was especially challenging as the size of the House continued to grow as new states were added to the Union and the country grew rapidly in population. In 1911, Congress fixed the number of seats in the House to four hundred and thirty-five, where it still currently stands.\(^8\) Today, each state is apportioned one seat, and then the remaining three hundred and eighty-five seats are apportioned among the states based on population.

There are many methods that may be employed to redraw district boundaries and the means vary from state to state. The Constitution is silent on the matter, and Congress has provided only limited regulation of redistricting, specifically by banning multimember and at-large districts and prescribing that districts have a relative equal population; laws which were not passed until 1842 and 1872, respectively.\(^9\) Most states left the task of redistricting to their state legislatures, leaving the process open to control by the majority party or compromise in states with divided government. Other states set


\(^8\) Ibid.

\(^9\) Ibid., 16.
up commissions, sometimes partisan and others independent, and a few states delegated redistricting responsibility to state courts.

Today, redistricting has become such a powerful political tool for states that the two major national political parties “coach” Members of the U.S. House on “how to cultivate and maintain good relations” with those controlling redistricting in their respective states.\(^\text{10}\) The goal for incumbents is to protect their Congressional seat and work with the state redistricting legislatures, commissions or courts to draw districts that benefit their re-election by packing in favorable voters. This leads to the question posed by this paper: who is choosing whom? Are voters really getting an honest choice for their representative or are the representatives choosing the voters who will most likely send them to Congress? To examine this question further, we need to first understand the history behind redistricting in the United States.

Redistricting has been politicized from the beginning of the United States’ history under the Constitution. The first well-known and perhaps best-known case of redistricting used as a political tool was in Massachusetts in 1812 when Governor Elbridge Gerry approved a redistricting plan that advantaged his party, the Democratic-Republicans. The *Boston Gazette* labeled one of the oddly shaped redrawn state senate districts a “gerrymander” in light of its shape, that of a salamander, and the Governor’s last name, as illustrated in the figure below.\(^\text{11}\)


\(^{11}\) Ibid., 2
Governor Gerry and his party packed a large number Federalists into the “gerrymander” district, splitting Essex County and conceding that district as a safe Federalist seat, while the other Massachusetts seats would favor the Democratic-Republicans and consequently provide more overall seats from Massachusetts to the Governor’s party. 12 This process of packing became very popular and a successful means of limiting and expanding political power, and is still frequently used in redistricting today. Bias in redistricting Congressional districts is synonymous with “gerrymandering,” referencing Governor Gerry’s original salamander shaped district.

12 Ibid.
Despite numerous glaring examples like the “gerrymander” district of redistricting used as a political tool to favor one political party over another, there was little federal oversight of the process for nearly two hundred years. In fact, as recently as 1946, the Supreme Court rejected the notion that the Court could involve itself in malapportionment cases stating that it would be inappropriate for the Court to get involved in “the politics of the people” and therefore the Court would not concern itself in a gerrymandering dispute.\textsuperscript{13} In the 1960’s, however, the opinion of the Supreme Court, under Chief Justice Earl Warren, on federal involvement in redistricting began to change.

In the 1962 Supreme Court case \textit{Baker v. Carr}, the Court used the “equal protection” clause of the Fourteenth Amendment and Article I, Section II of the Constitution to subject redistricting to legal scrutiny for the first time, overturning the previous precedent of non-intervention in federal redistricting matters.\textsuperscript{14} Although the decision did not deal directly with the way districts were determined, but instead prevented states from postponing redistricting and thus intentionally or unintentionally creating malapportionment in districts, the legal precedent was set for the Court’s intervention in redistricting. Congressional district mapmakers now had federal courts “looking over their shoulder” as they redrew district lines every ten years.\textsuperscript{15}

\begin{itemize}
\item \textsuperscript{13} Colegrove v. Green, 328 U.S. 549 (1946)
\item \textsuperscript{14} Bruce E. Cain, Karin MacDonald, and Michael McDonald, "From Equality to Fairness: The Path of Political Reform since Baker v Carr," http://www.brookings.edu/gs/crc_Cain_MacDonald.pdf (accessed June 5, 2009).
\item \textsuperscript{15} Thomas E. Mann, and Bruce E. Cain, \textit{Party Lines Competition, Partisanship, and Congressional Redistricting} (New York: Brookings Institution Press, 2005), 9.
\end{itemize}
The *Baker* ruling set the stage for *Gray v. Sanders* in 1963 and 1964 case *Reynolds v. Sims*, which dealt with equalizing population among state legislative districts. Ultimately these cases provided the basis for the holding in the 1964 case, *Wesberry v. Sanders*, where the Supreme Court determined that population equality among Congressional districts was to be the highest priority in determining the boundaries of a new district. Justice Hugo Black wrote in his majority opinion in *Wesberry* as follows:

… while it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution’s plain objective of making equal representation of equal number of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.16

The *Gray*, *Reynolds* and *Wesberry* decisions set forth the principle known commonly as “one-person, one-vote” for state legislative and Congressional districts, respectively, and were the first of many federal court cases that would follow examining the fairness of district boundaries in the wake of politicized redistricting. Going forward, mapmakers would have to follow the Court’s guidance to “make districts as nearly equal as possible so everyone’s vote counts the same.”17

The Warren Court finally began to protect the democratic ideal of the “People’s House.” In *Reynolds v. Sims*, Chief Justice Warren wrote for the Court holding that our nation’s representative democracy is established by “the medium of elected representatives of the people” and because all citizens of the United States have “an

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inalienable right to full and effective participation,” it is essential to the democratic ideal of our nation that “each citizen have an equally effective voice” in the election process.\footnote{Reynolds v. Sims, 377 U.S. 533 (1964)} The democratic ideal set forth by the nation’s Founding Fathers, that the House would be closest to the people and a model of democracy, was to be protected by ensuring that every vote counted the same as every other vote. The Court upheld this principle in 1983, overturning a New Jersey redistricting map that had a population deviation among Congressional districts of less than one percent – 0.6984 percent – setting a strict standard for “one-person, one-vote.”\footnote{Karcher v. Daggett, 462 U.S. 725 (1983)}

The Warren Court’s decisions focused largely on the principle of fairness, entrenching population parity as the chief priority of redistricting, and less about the political outcome of elections. In the years since \textit{Baker, Reynolds} and \textit{Wesberry}, the cases brought before the courts have focused increasingly on partisan redistricting, and whether gerrymandering of Congressional districts is justifiable, and if so, how. While it was certainly important that the Court maintained the democratic ideal of representative government in the House with the “one person, one vote” standard, the subsequent issue of gerrymandering and its potential negative impact on the House was also in need of examination by federal courts.

In \textit{Davis v. Bandemer}, the 1987 case regarding Indiana’s disputed district boundaries after the 1981 redistricting, the Court ruled that political malrepresentation – a term used by the Court to describe the result of redistricting when votes are not accorded
the same weight on the basis of a political party for discriminatory purposes and as a result the redistricting “consistently degrade(s)” a group of voters’ “influence on the political process on a whole” – could be found unjustified. This definition of malrepresentation set the standard to more precisely define gerrymandering for legal purposes. In its decision, the Court upheld the 1981 Indiana redistricting map in Davis, finding that while the Republican map may have had a discriminatory effect on the Democrats, that effect was not "sufficiently adverse" to violate the Equal Protection Clause. The Court therefore set forth a precedent that partisan gerrymandering could also be permissible, and in this particular case was, but there would be limits on malrepresentation, or gerrymandering. The Court did not, however, define the terms that gerrymandering could be justiciable, and therefore this vague and ostensibly conflicting decision, and others that would follow, gave political parties a green-light to pursue partisan maps, while only cautioning those drawing the maps against going too far with political discrimination so not to have a “sufficiently adverse” effect on a set of political party voters.

The Supreme Court muddied the legal waters of redistricting in further in the 2004 case Vieth v. Jubelirer, when the Court held that a Pennsylvania redistricting map drawn by Republicans to allegedly discriminate against Democrats was not unconstitutional. The ruling itself is notable not just because of the outcome, but because the Court could not define a standard for "adjudicating political gerrymandering

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21 Ibid.
claims.” While not overturning Davis, and in fact against explicitly stating that standards could be developed to determine whether particular partisan redistricting maps are justiciable or not, the Court has not set any such standards to date.

Today, as in Governor Gerry’s day, the two major political parties are using the constitutionally mandated redistricting process to shape congressional districts for political gain, dancing around the imperfect, and at times seemingly inconsistent guidance from the Supreme Court. Through the use of widely available geographic information software (GSI), it has become increasingly uncomplicated to draw very specific and targeted districts that can be deemed “safe” for a political party, as they are populated by an overwhelming majority of constituents who favor one political party over the other. According to some academics that study redistricting, the use of GSI technology is responsible for “a significant portion of the polarization we are observing in Congress” today.

Election lawyer Sam Hirsch, a prominent redistricting expert, believes “redistricting has helped to transform” the People’s House into “a body that will no longer accurately reflect majority will.” This common thesis is very straightforward: the decrease in competition allows Members of the U.S. House to not take into account their constituents’ concerns and instead vote as they wish, because there is little chance

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they can be defeated. Others have taken this a step further, arguing that Members in safe seats don’t necessarily disregard their constituents entirely, but instead place a much larger premium on their constituents from the district’s prevailing political party. David G. Oedel said that these “safe-seat” Members of the House are as stated below:

. . . less concerned with the awkward political job of appealing to cross-party-leaning constituents, and more concerned with appealing to the core constituents of the district’s dominant party so as to defend against potential challengers in a primary.25

This is obviously troubling for the democratic ideal of the House if it is in fact true. While population equality is certainly a vital component of representative government, if segments of the population’s votes are being made essentially irrelevant because of redistricting, this could have serious consequences for the “People’s House.” Could Members of Congress become so isolated from their constituents that they ignore the will of the people? As Thomas Brunell and Harold Clarke pointed out,

Without competition, representatives have no incentive other than their desire to adhere to the precepts of democracy to be responsible to the wishes of the electorate.26

Does redistricting and safe seats lead to increased partisanship and polarization within Congress? One analysis of partisanship linked to redistricting found that there may be a negative correlation between partisanship and “serious problems” for Congress


and this issue certainly demand further analysis. This paper will study these problems further to examine whether the U.S. House and the democratic ideal it was founded upon has in fact denigrated by partisan gerrymandering, and whether voters really have a legitimate choice for their U.S. Representative, or if the process of redistricting has insulated incumbents to the point where they are choosing their voters rather than the other way around.

Using electoral data and numerous studies of Congressional redistricting’s impact on elections, this paper will first examine the issue of electoral competitiveness and whether there is in fact a correlation between redistricting and the competitiveness of General Election races at the Congressional level. Then the paper will explore the issue of whether if in fact there is reduced competitiveness due to redistricting, are these safe seats impacting the partisanship of the House. This problem will be explored by comparing the election results of Members of the House that won re-election by large margins and Members of the House that won re-election by narrow margins and their voting records on key partisan issues.

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As discussed in the previous chapter, the ideal of our nation’s Founding Fathers for the U.S. House of Representatives was that the body would be the closest to and most responsive to the people. The lower chamber would represent the passions of the people as their direct voice in Congress, with representatives elected directly by popular vote. If the representatives of the people became isolated from those that they serve by a lack of competition for re-election, however, this could have a negative impact on the democratic ideal on the “People’s House.” As Robert Dahl observed, “competition is a necessary condition for the existence of democracy.”

Further, Thomas Brunell and Harold Clarke state as follow:

Without competition, representatives have no incentive other than their desire to adhere to the precepts of democracy to be responsive to the wishes of the electorate.

Competition in elections for the U.S. House is therefore necessary for the responsive model of the “People’s House” to be effective.

In recent years, it is has been widely studied and often commented on how competition in House races is on the decline and redistricting is oft mentioned as a major

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factor in this decline in competition.³ This was particularly true at the beginning of the twenty-first century after the 2000 census redistricting and the 2002 elections, the first Congressional election after the districts were redrawn.⁴ It has been assumed that the “decline in competitive Congressional elections” directly corresponds to the “decline of competitive districts resulting from redistricting.”⁵ Washington Post columnist David Broder wrote in 2004 that the post-2000 census redistricting created districts to “protect incumbents of both parties from the inconvenience of competition.”⁶ The New York Times Editorial Board argued that the objective of both Democrats and Republicans is now simply to “cement their current power by eliminating contested elections.”⁷ This chapter will use electoral data and numerous studies of Congressional redistricting to examine whether there is a correlation between redistricting and the competitiveness of General Election Congressional races and how this may impact the democratic ideal behind the U.S. House of Representatives.

For the purpose of this paper, we will examine competition in House elections from 1962-2006. The examination begins in 1962 because the Baker v. Carr Supreme


⁴ Ibid.


Court decision ushered in a new era for politicized redistricting, and subsequent Court decisions helped solidify that politics are and would remain a factor in redistricting Congressional districts. Furthermore, the 1960s brought forward the concept of using a computer as a redistricting tool, a factor this paper will discuss later.8

To study competition in Congressional races, we first need to define “competition.” For the purpose of this study we will utilize and compare several definitions, as there is no consensus on what truly constitutes a “competitive” election. Alan Abramowitz, Brad Alexander and Matt Gunning set forth that a good measure of competitions is “relatively close contests – those decided by less than 10 percentage points” (40%-60%).9 For our purposes will we call this the “broad” range of competition. Andrew Gelman and Gary King set forth that competitive races should be judged by two different and more narrow standards – races decided by less then five percent (45%-55%), deemed the “wide” range, and an additional smaller margin for races decided by only two percent or less (48%-52%), defined as the “narrow” range.10

Brunell and Grofman studied House election competitiveness using the broader definition of competition and confirmed the assumption that the level of competition in House races has declined dramatically since 1962. In 1962, forty percent of all House

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elections were competitive using the broad sixty percent or less win standard.\textsuperscript{11} In 2002, only twenty percent of Congressional races were won with 60\% or less of the vote.\textsuperscript{12}

When studying the impact of redistricting on competitiveness, interestingly, Brunell and Grofman found that in most decades, the number of competitive districts increased after each redistricting. By comparing the election results in years immediately before a redistricting (ending in a “0”) against elections immediately following a redistricting (ending in “2”), they found that in 1962, 1972, 1982 and 1992, the number of competitive House races increased compared to the immediately preceding election.\textsuperscript{13} The margin of increased competitiveness was not particularly large in 1962, 1972 or 1982; however, from 1990 to 1992 they found “a substantial increase in the number of competitive seats, from 109 to 162.”\textsuperscript{14} In 2002, conversely, the number of competitive seats actually reversed the trend of the previous four decades, and fell after the 2001 districting. In 2002, only thirty-six House races fell into the broad range of competition, down from fifty-two in 2000.\textsuperscript{15}

The Brunell and Grofman examination of House elections is particularly interesting because they demonstrated that there was a steep decline in the number of

\begin{itemize}
\item \textsuperscript{12} Ibid.
\item \textsuperscript{13} Ibid.
\item \textsuperscript{14} Ibid.
\end{itemize}
competitive House races from 1962 through 2002, however, this decline did not occur in elections immediately after the redistricting took place in each decade, except in 2002. Instead, the decline in competition took place mid-decade after the first election following redistricting when the number of competitive seats actually increased.

Using the more narrow methodology of defining competitive elections, Bruce Cain, Karin MacDonald and Michael McDonald found the same decline in House competition overall, but when the declines occurred was not always the same as in the broad range of competition. They demonstrated that in 1962, 1972 and 1982, there was little or no decline in the number of competitive House races using either the wide or narrow competition margins of victory.\(^\text{16}\) This finding is not all that different from Brunell and Grofman’s finding of only minor increases in competition in the same years. Both studies found that statistically, the increases or declines in competition were on the whole very minor. In 1991 and 2001, however, the number of competitive races declined significantly in both the wide range and narrow range. In 1990, there were 305 House seats in the 45%-55% range. After the 1991 redistricting, that number fell by fifteen seats to 290 in the 1992 election.\(^\text{17}\) Looking at races in the 48%-52% narrow range, Cain, MacDonald and McDonald found a similar decline in competition from 144 narrowly competitive races in 1990 to 126 in 1992, a decline of eighteen fewer competitive


\(^{17}\) Ibid.
districts.\textsuperscript{18} Similarly, after the 2001 redistricting, the number of competitive seats in the wide range declined from 223 to 206 and from 88 to 81 in the narrow range.\textsuperscript{19}

Comparing the two different studies that use different definitions of “competition,” we can see that using the Abramowitz, Alexander and Gunning definition of competitive races as those decided 10 percentage points or less, it does not appear as though redistricting had a significant abrupt impact on House electoral competition except in 1992, when there was a dramatic increase in the number of competitive races. That is assuming however, that the effects of redistricting are always immediate, which is a concept I will come back to shortly. Using the more narrow Gelman and King standards, McDonald showed that not only in 1992 was there a significant decline in the number competitive House races compared to 1990, but the same held true for the 2002 House elections compared to 2000. The different methodology – the definition of competition – therefore determines the outcome of the test of competition. Using the broader definition allowing competitive House races to be defined by a ten percent victory margin, we see that there was not a decline in competition immediately after redistricting, but instead more often there was an increase in competition within that victory range in the years immediately following redistricting. Interestingly though, the more competitive races in the House, those falling in the five percent and two percent margins, did decline in number after a redistricting, especially in 1992 and 2002.

\textsuperscript{18} Ibid.

\textsuperscript{19} Ibid.
Comparing these two different studies leads to the conclusion that redistricting does impact House competitiveness, but in two different ways. After a redistricting takes place, the number of broad competitive races, those decided by ten percent or less, is likely to increase. According to Brunell and Grofman, redistricting “shakes up the lines” and puts incumbents in new districts that may not have as many familiar voters, “thus harming that incumbents re-election chances.”

This is a plausible explanation for why competition increased immediately after a redistricting within the broad range in four of the five decades studied here, but then fell mid-decade. The new district lines made incumbents Members in new districts more susceptible to competition, at least temporarily, because the districts were at least to some extent new. After the first election in the new district, however, we know the number of competitive districts declined mid-decade, ultimately leading to the number of competitive races in the broad range declining by twenty percent from 1962 to 2002. It is reasonable to suggest that redistricting played a major factor in this decline in competition, especially knowing that the number of wide and narrow competitive races also declined dramatically during the same time period, because once incumbents got past the first election in the new district, they frequently settled into their largely non-competitive districts.

The second way redistricting impacts House elections is to reduce races that are extremely competitive, decided by five percent margins of victory or less. This lends
credibility to the assumption that the goal of redistricting is often to insulate incumbents from difficult re-election bids, or what Broder called the “inconvenience of competition.”

House competition declined gradually but dramatically from 1962 through 2004, however, as we know, the decline did not always occur immediately following the redistricting in each decade. Instead, the decline in competition also occurred mid-decade and accounts for much of the overall drop in competition over four decades. It is notable that there was a dramatic decline in competitive seats in all three competitive ranges studied from 1992 to 2000. While redistricting appears to have played a role in the decline of extremely competitive races immediately following the 1991 and 2001 redistricting, and an increase in the broader definition of ten percent margin of victory or less competitive races in 1992, there was a significant decline in competition in House races mid-decade as well. At the end of the decade, from 1992 to 2000, twenty eight less seats had become competitive in the wide narrow range and a dramatic sixty-seven less House seats were competitive in the narrow range.21 The largest decline came from the broad range of competition, with seventy-four less competitive seats in 2000 compared to 1992.

Based on this information, it might lead one to the mistaken conclusion that redistricting does not actually have a role in the decline in competitive House races because of the dramatic declines mid-decade, however, I do not believe that is the case. Instead, it is my thesis that redistricting is just one of many factors leading to the decline

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in House competition, but it is unquestionably a cause for concern. In fact, it is my belief that redistricting is responsible for much of the decline in competition that occurs mid-decade too.

When examining the decline in competition mid-decade, it is worth noting that many redistricting experts believe that the effects of redistricting are not always immediately apparent in the first election after the new maps are in place. Brunell and Grofman speculate that “the effects of redistricting do not necessarily manifest themselves immediately.”22 This would explain why competition increased in the broader range of competition, as discussed earlier, and why competition continued to decline mid-decade in all three competition ranges, especially after 1992. Gelman and King state as follows:

Partisans drawing district lines face a fundamental tension between incumbent protection and maximizing their party’s electoral potential. More often than not, the only way to shift marginal districts toward the party is to cut the safety margins of incumbents by moving reliable partisans out of their districts. For this reason, it is often the case that partisan redistricting has the effect of reducing the safety of incumbents, thereby making elections more competitive.23

This theory matches the findings comparing Brunell and Grofman and Cain, McDonald and MacDonald’s studies. We know the increase in the broad competition range of House elections is only temporary; this is because of the immediate consequence of redistricting and the shifting of district lines which leads to a marginal and momentary

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decline in the shelter of incumbents from competition. Gelman and King also help to explain why there is an immediate decline in competitive races within the five percent margin of victory. As voters are moved out of districts held by safe incumbents making their elections more marginal, in turn, new partisan voters are moved into districts held by more vulnerable incumbents to make their races that were previously competitive, less so, resulting in less competitive races overall in the wide and narrow ranges and more elections temporarily in the broad range.

Delays in the effect of redistricting and the decline in competition mid-decade can also be attributed to advantages incumbent Members of Congress have over challengers, including the “personal vote” many incumbents have with their constituents that gives them an advantage over challengers.24 The personal vote with constituents is built up over time by incumbents utilizing institutional advantages provided to Members of the U.S. House, including bringing home “pork,” or appropriations for district projects, district offices and staff that provide casework services to constituents, the use of the Congressional franking privilege to send responsive and proactive mail to constituents, and the free media coverage and name recognition that comes with being an elected official in the public eye.

Further, the role of fundraising undoubtedly advantages incumbents, who can build up “war chests” over time. Comparing competitive districts and the fundraising results of incumbents and challengers, Abramowitz, Alexander and Gunning found that

24 Bruce E. Cain, Karin MacDonald, and Michael McDonald, "From Equality to Fairness: The Path of Political Reform since Baker v Carr," [accessed June 5, 2009].
even in what they deem “high-risk districts” – districts where the percentage of the major party vote for presidential candidate of the incumbents party is less than national percentage – the fundraising advantage of incumbent Members of Congress gives them “the ability to dominate challengers financially” and “shield” them from “defeat or even from close calls.”

Without campaign finance reform, this is not likely to change.

Looking at recent House election outcomes, it is clear that incumbents are likely to continue to dominate challengers in fundraising, as for business Political Action Committees (PACs), which account for nearly fifty-percent of dollars raised by Congressional campaign committees; contributing only the incumbent is clearly a good investment. Given that only four incumbents lost re-election in 2002 and only five in 2004, contributing to challengers appears to be a very bad investment for PACs.

Brunell and Grofman speculate that when taking into account the personal vote, fundraising advantages and other factors, the overall “incumbent advantage” may be worth “as much as 8-10 percentage votes of the vote share”; giving incumbents a considerable head-start in elections, even in races immediately preceding a redistricting when a district has been redrawn. The incumbency advantage helps to explain why

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incumbents who may be temporarily more vulnerable after a redistricting become less so over time.

Other factors certainly play a role in the decline of House electoral competition as well. In addition to the advantages that incumbents have over challengers, Abramowitz, Alexander and Gunning identify “population movement, immigration, and ideological realignment within the electorate” as factors that impact Congressional districts’ competitiveness, especially mid-decade. After a redistricting takes place and new lines are drawn, constituents continue to move around and new people move into districts, which is why a new census is taken every ten years. This undoubtedly has at least a minimal, and in some cases potential large impact on Congressional elections.

Additionally, there are countless intangible factors that take place within each Congressional district that are impracticable to quantify. Scandals involving incumbents, national and local political tides, and even the weather can impact Congressional elections. While redistricting plays an important factor in the level of competitiveness in House races, it is not accurate to label redistricting as the sole reason for any electoral outcome.

**Marginal and Safe Congressional Districts**

It is also important to understand what should be labeled as a “marginal” Congressional district or a “safe” Congressional district, as these districts can often predict whether there is likely to be a competitive Congressional race or not. This paper

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employs election attorney and redistricting authority Sam Hirsch’s definition for labeling marginal Congressional districts. Using the Presidential vote as a measuring stick, Hirsch deems those with a Presidential vote for one of the parties “within 5 percentage points of the national average” as a “marginal” Congressional districts and “safe” Congressional seats to be “more than 10 percentage points above or below the national average” of the Presidential vote.29

According to Abramowitz, Alexander and Gunning, the decline in House competition that we earlier proved can be explained largely by the fact that “there are fewer marginal House districts than in the past.”30 When seats are drawn to favor one party over another, the seats are made “safe” by packing in voters of a political party to create an overwhelming majority of voters of like mind, and therefore potential challengers to incumbents of the majority political party are often unwilling or unable to mount a serious challenge due to the partisan inequality of a district’s makeup.

According to a study by Thomas Mann and Bruce Cain, U.S. House General Election outcomes “can be forecast with reasonable accuracy” when one understands the “partisan makeup” and “party of the incumbent” within a given Congressional district.31

The ability to forecast elections by looking at the partisan makeup of the voters is a factor in the decline in House electoral competition. A 2004 study by Sandy Maisel,


Cherie Maestas, and Walter Stone, found that potential candidates for Congress tend to look at redistricting as a potential impediment to even running for office in the first place. Potential candidates view safe seats as a hindrance to their chance of winning, adding to the overall decline in competition, as potential candidates often chose not to run as competitors to an incumbent because they know they the partisan makeup of the districts is against them.

When potential candidates for Congress are inclined to not even try to compete and give voters a choice because the deck is stacked against them before they even begin a campaign, it is clear that redistricting’s impact on the decline in competitive House races is negatively impacting the democratic ideal of the House. To examine this problem further, I will explore in greater depth the House elections following the 2001 redistricting, which are our most recent elections to study and provide a clear illustration of how redistricting is impacting the U.S. House of Representatives.

**A Closer Look at Post-2001 Redistricting**

After the 2000 census redistricting, nearly half of the 435 House seats could be labeled as safe from competition using Hirsch’s definition. Less than a quarter of the

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House seats – around 100 districts – were at all marginal in makeup.\textsuperscript{33} The result was stunning in terms of the electoral outcome and the overall lack of competition.

In 2002, only thirty-six House races fell into the broad range of competition.\textsuperscript{34} Only four challengers defeated incumbent Members of Congress in 2002.\textsuperscript{35} According to Hirsch, the 108\textsuperscript{th} Congress that began in 2003 had only fifty-four House freshman, including the new members who took over open seats, making the 2002 House elections “the most incumbent friendly in modern history” with only “about one-fifth as many successful challengers as in a normal year.”\textsuperscript{36}

Hirsch further elaborated on his analysis of the 2002 House elections, stating that on average, the Members of the 108\textsuperscript{th} Congress “won a higher percentage of the popular vote than in any House election in more than half a century.” It would seem then that the goal of the post-2000 redistricting for both the Democratic and the Republican parties was to “place a premium on shoring up its most vulnerable incumbents,” and with only four incumbents losing in 2002, it would appear the goal was achieved for both political parties.\textsuperscript{37}

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It is important to also note that 2002 was not a year in which competitive races were lacking throughout the United States. In fact, it was quite the opposite. While only a small number of House election outcomes were within the three competitive ranges and ninety-six percent of incumbent Members of the House who ran for reelection won, an examination of electoral data from the United States Senate, which does not redistrict as the elections are always state-wide, shows that more than half the Senate races were decided by less than ten percentage points in the broad range. 38 Further, a smaller percentage compared to the 2002 House races – eighty-five percent – of the Senate incumbents won re-election. 39 Further, the 2002 Governor’s races were largely competitive, with more than half of the gubernatorial races also decided by a margin of less than ten percent. 40 The high-level of competitiveness in the state-wide races and the lack of competition in the House races suggests that the post-2000 census redistricting of the Congressional Districts negatively impacted the level of competition in the 2002 House elections.

The 2004 House elections were overall even less competitive than in 2002. In 2004, President George W. Bush defeated Senator John Kerry by a narrow three percent


39 Ibid.

margin for the United States Presidency.\textsuperscript{41} The Senate elections were less competitive than the race for the White House, with only six of thirty-three seats decided by five percent or less, with one additional Senator elected with just under a ten percent margin of victory. \textsuperscript{42} Yet, the House was noticeably less competitive than the Senate and dramatically less competitive than the race for the White House race; in fact the House races in 2004 were the least competitive of the postwar era.\textsuperscript{43} Four-hundred and one Members of the House ran for re-election in 2004, and only five lost their election. Of those five, two were Texas Democratic incumbents defeated in new districts created through a Republican controlled politically charged mid-decade 2003 redistricting of Texas Congressional districts.\textsuperscript{44} Using the broad range of competition, only twenty three seats, roughly five percent of the House races, were competitive races with a margin of victory less than ten percent, and of those twenty three, only ten were within the wide competitive range, decided by five percent of the vote or less.\textsuperscript{45} Further, the average margin of victory for House races was forty percent, and eighty-six percent of

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incumbents won re-election by more than twenty percent.\textsuperscript{46} As in 2002, there was competition nationwide between the two political parties, however, because of the 2001 redistricting, at least in part, the House was largely isolated from competitive elections in 2004.

In 2006, Democrats won back control of the House for the first time since 1994. Twenty-two House Republican incumbents lost re-election, and while this was considered a bellwether year for the Democratic Party, this represented only a 5.5% rate of defeat for the House.\textsuperscript{47} Twenty-two races were within the narrow margin of victory and thirty-eight races were decided in the wide margin of victory.\textsuperscript{48} In total, seventy-five percent of House elections were won by a candidate with more than sixty percent of the vote demonstrating that while there was significantly more competition in 2006 compared to 2002 and 2004, overall, a vast majority of House elections were insulated from a competitive.\textsuperscript{49}

In 2008, the election results were similar. Democrats picked up an additional twenty seats in the House and there were more competitive elections in comparison to earlier races in the decade. Sixty-five House races were decided in the broad range of


\textsuperscript{48} Ibid.

competition, another indication that while in 2008, like 2006, House races were more competitive than in 2002 and 2004, on the whole most Members of the House were again free from genuine opposition.\textsuperscript{50}

Looking more closely at the election results in the House since the 2001 redistricting, we find that the 2002 and 2004 House races were the least competitive in the history of the House. In 2006 and 2008, overall House races became marginally more competitive, in part because of factors unrelated to redistricting, including scandals in individual races, local and national political tides shifting towards the Democratic party, and other factors beyond the scope of this paper. Given the analysis of the role of redistricting in this chapter, however, it is clear that redistricting in 2001 helped insulate incumbents from competition more than at any other period in history.

**Electoral Competition in the United States Senate**

The United States House of Representatives is not the sole chamber of Congress elected directly by the people. Since 1917, U.S. Senators have also been elected by popular vote. Therefore, it is necessary to examine levels of competition in Senate elections to compare with House elections, as the Senate does not face redistricting.

There are notable differences between the Senate and the House that may also impact the variances in competition, chiefly the length of term. The entire House faces re-election every two years, whereas Senate terms are six years in length and rotate every two years with a third of the one-hundred person body facing election at a time.

Nevertheless, despite their differences from 1962 through 2002, the Senate, like the House, experienced a decline in competitive elections. The decline in competitive Senate races is not as dramatic as the decline in House races however, and according to Burnell and Grofman, they believe as follows:

. . . the Senate experiences significantly more competitive elections in terms of sheer proportion that are close, compared to the House.\(^{51}\)

As stated earlier, in 1962, forty percent of all House elections were competitive using the broad sixty percent or less win standard. In the Senate, however, nearly sixty-five percent of elections were decided within the broad range of competition.\(^{52}\) This trend continues. Consistently throughout the decline in competition in both chambers, the level of competition in the Senate is consistently higher when compared to the House. In 1982, the percentage of competitive races in the broad range was thirty-two percent in the House and fifty-eight percent in the Senate.\(^{53}\) In 2004, less than twenty percent of House races were competitive in the broad range and more than forty-percent of the Senate elections were competitive.\(^{54}\) The linear trend in electoral competition decline is similar, but the House is far less competitive than the Senate overall.

The fact that the Senate does not redistrict but has faced a decline in competitive elections does not disprove the thesis that redistricting impacts House elections. Instead,


\(^{52}\) Ibid.

\(^{53}\) Ibid.

\(^{54}\) Ibid.
it lends to the idea that redistricting is one of many factors impacting electoral competitiveness – including fundraising, the incumbency advantage, ideological realignment and population shifts, and others – and the more dramatic electoral competitive decline witnessed in the House is exacerbated by redistricting.

GIS Software

From 1994 through 2008 we have witnessed the sharpest decline in competition in House races since 1962, with the decline accelerating early in the twenty-first century. Further, according to Brunell and Grofman, paralleling this rapid decline in House electoral competition is “an increase in the number of truly lop-sided seats.”55 Certainly the green-light from the Supreme Court to pursue partisan maps has played a factor in the continued gerrymandering of Congressional districts and the subsequent decline of competitive House elections. Political parties know the federal courts are looking over their shoulder, but the courts have been largely unwilling to take action to overturn or prevent partisan gerrymandering. Further, the widespread use of geographic information systems (GIS) software is another probable explanation for the rapid decline in competition.

GIS software and its earlier more rudimentary fore-fathers have been in use since the 1960s when the Census Bureau first began to use computers for population data. The widespread availability of the Internet and the relatively low cost of GIS software since the early 1990s, however, has broadened the availability of the software and allowed amateur and professional mapmakers alike to participate in the redistricting process.

55 Ibid.
GIS technology allows mapmakers to draw redistricting lines with near-exact precision, block-by-block and precinct-by-precinct, to accomplish redistricting goals. The technology allows mapmakers – amateur and professional alike – to draw maps with relative ease, yet remarkable precision, and immediately analyze anticipated election results based on past census and election data. According to Benjamin Forest, GIS software has “turned gerrymandering from an art into a science.”

The software is also used by the Department of Justice and federal and state courts to oversee redistricting maps. The two major political parties, however, are the major beneficiaries of GIS technology, using the software to gerrymander maps to meet their redistricting goals. The New York Times Editorial Board opined the following:

Using powerful computers, line-drawers can now determine with nearly scientific precision, how many loyal party voters need to be stuffed into any given district to make it impregnable.

Given the dramatic decrease in competition in House races since 1992, around the time that GIS software became more widespread, it is reasonable to conclude that the technology is leading to more precise redistricting results, and as a result, less competition in House elections as envisioned by those drawing the maps.

**Impact on the Democratic Ideal of the “People’s House”**

Mann and Cain ask an important question as follows:

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If competition has lessened because of redistricting, what are the implications for American democracy?\textsuperscript{58}

This chapter has shown that redistricting is in fact lessening competition in elections for Representatives to the United States House of Representatives. While redistricting is not the only factor in the decline in House electoral competition, clearly it is playing a significant role, especially in the past decade as the redistricting has become even more precise utilizing modern GIS software. As quoted earlier by Dahl, the House needs competition to fulfill its democratic ideal. Incumbents isolated from their constituencies by lack of competition can become less responsiveness to their people, as there is little fear of electoral consequences, at least in the General Election. Mann and Ornstein state as follows:

> With the overwhelming Majority of House seats safe for one party or the other, new and returning members are naturally more 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.\textsuperscript{59}

This is troubling for the House of Representatives, leading Thomas Mann and Norman Ornstein to label Congress as the “Broken Branch” of government.\textsuperscript{60}

To study the isolation of incumbents shielded from competition by “successive waves of incumbent-friendly redistricting”, the next chapter will explore the impact redistricting has on polarization in Congress and the voting patterns of Members of the


\textsuperscript{59} Thomas E. Mann and Norman J. Ornstein, \textit{The Broken Branch How Congress Is Failing America and How to Get It Back on Track} (New York: Oxford University Press, 2006), 12.

\textsuperscript{60} Ibid., 229.
U.S. House. 61 We know that modern gerrymandering – incumbents choosing their constituents rather than constituents choosing their representatives – is impacting the electoral competitiveness of the House and negatively impacting the Democratic ideal of our Founding Fathers, but it is also worth exploring the impact redistricting has on Representatives’ votes, and therefore, the impact on their responsiveness to their constituents.

61 Ibid.
In the previous chapter, this paper discussed how redistricting is a factor in the
decline of competitive U.S. House elections. The decline in competition negatively
impacts the democratic ideal of the House by effectively taking away a voters choice for
their representative by making Congressional seats safe from competition for one party or
the other. Redistricting is now a tool used by the two major political parties to insulate
their incumbents from competition. Without electoral competition, the democratic ideal
of the House is negatively impacted by denying many people a real choice for their
federal Representative. This educes the question of whether the day-to-day operations of
the institution are impacted, further harming the ideal of the “People’s House?”

Robin Toner of the New York Times wrote in 2004 that gerrymandering is
creating “fewer swing districts in the House, thus fewer lawmakers in the middle.”\footnote{1} If
Members of Congress are largely uninhibited by the threat of competitive General
Elections due to an overwhelming majority of constituents from the same political party,
their only threat to defeat is a Primary Election. Alan Abramowitz, Brad Alexander and
Matt Gunning state as follows:

The increasing polarization of Democratic and Republican districts has
important implications for governance and for congressional elections. The
decreasing proportion of Democrats and Republicans representing marginal or
high-risk districts means that there are fewer members who have an incentive
to cross party lines on issues in order to appeal to supporters of the opposing

\footnote{1 Robin Toner, "Good-Will Is Low for Social Security Talks," The New York Times, December 19,
2004, http://www.nytimes.com/2004/12/19/politics/19memo.html?_r=1&adxnnl=1&adxnnlx=1257012082-
7QCFLoIZUoQlZbL7cJIFSw (accessed October 10, 2009).}
party in their districts. The result is increased party-line voting and reduced bipartisan cooperation on major issues.\textsuperscript{2}

With fewer lawmakers in the middle of the ideological spectrum and a decrease in bipartisan cooperation, polarization in the House and its potential consequences requires further study.

This chapter will explore the increasingly polarized U.S. House and examine the reasons for the increased ideological voting of its representatives, with a particular emphasis on the affects of redistricting. The chapter will also compare trends in polarization in the U.S. House and U.S. Senate to examine how polarization trends differ in each chamber and why. Finally, the chapter will examine whether polarization is in fact negatively impacting democratic ideal of the House, and if so, how.

It has been widely studied and established that the U.S. House of Representatives is becoming increasingly polarized. David Brady and Hahrie Han explored polarization in the House using a very broad historical methodology, studying Americans for Democratic Action (ADA) data, which tracks the percentage of times Representatives vote on the “liberal” side of issues before the House, from 1867 through 1999. When looking at polarization in a broader historical context, Brady and Han found the following:

\ldots polarization in the late twentieth century is essentially a return to historical patterns of polarization that have prevailed for most of U.S. history.\textsuperscript{3}


\textsuperscript{3} David W. Brady and Hahrie Han, "An Extended Historical View of Congressional Party Polarization," www.princeton.edu/~csdp/events/ pdfs/colloquia/BradyHan12022004.pdf (accessed October 15, 2009).
Their study demonstrated that polarization in Congress actually “peaked in 1895 and plummeted to its lowest level in 1947.”\textsuperscript{4} They attribute the low levels of polarization in the middle of the twentieth century to the bipartisan harmony that swept the nation during and immediately after World War II. Beginning in the 1940s and extending into the 1950s and 1960s, unlike any other time in history that they studied from 1867 through 1999, there was a large degree of “partisan overlap,” meaning that there were numerous House Democrats that voted more conservatively than some House Republicans, and vice versa. In the 1970s and 1980s, there was an increase in the level of polarization in the House, and the increasing levels of polarization accelerated in the 1990s. Brady and Han conclude that the increasing polarization in Congress that we are viewing now “does not look as unusual” in the larger “historical context” of Congress.\textsuperscript{5} The rapid decline of bipartisanship and the subsequent increase in polarization since the 1970s, however, merits further examination.

Sean Theriault further explored the issue of Congressional polarization, reviewing and analyzing various Congressional voting data sets and the work of others before him that studied Congressional polarization. Theriault shows that utilizing any of the numerous databases that track Congressional voting and ideology, including data compiled in the NOMINATE database of Keith Poole and Howard Rosenthal which tracks Congressional ideology, ADA data, American Conservative Union (ACU) scores

\footnote{Ibid., 4.} 

\footnote{Ibid., 5.}
and others, the same results are again confirmed: the level of polarization in the House has increased dramatically since the 1970s, especially in recent years.

The House as a whole has become significantly more polarized than it was just a few decades ago. In 1968, two hundred and thirty-five Members of the House were in the “middle” of the ideological spectrum. That number fell to only eight-five Members in 1998, thirty years later. In 2008, there were only forty House moderates according to ADA data. There is no disagreement in the literature studying polarization that the House has become increasingly polarized, especially in the last decades of the twentieth century and continuing into the twenty-first century. The reasons for the rapid increase of polarization in the House since the 1970s, however, require further examination.

**The Impact of Redistricting on Polarization in the U.S. House**

Josh Ryan started with the assumption that polarization exists in the House and Members of Congress are therefore “less willing to work together”; he then sought to explain why that is the case. Ryan studied whether redistricting impacts the ideology of Members of the U.S. House by comparing redrawn districts before and after redistricting in 1991 and the voting scores of the Member of Congress in each respective seat for the Congressional session before and after the redistricting and the subsequent election. To

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7 Ibid., 3.


track voting scores and ideological extremity, Ryan employed ADA data. What he found is that indeed redistricting made members more extreme in their voting, both on the right and the left, depending on which political party they belonged to.

Ryan found that from 1991 to 1993, the ideological extremity average among Democrats increased by seventy-five percent.\textsuperscript{10} In that same time period, Republicans, whom started with a higher level of extremity to begin with – almost eighty percent higher than Democrats on average – increased in ideological extremity by a mean of nearly sixty-eight percent.\textsuperscript{11} Ryan’s study unmistakably shows that after the 1991 redistricting and the subsequent 1992 election, Members of the House in both political parties became significantly more extreme in their voting.

Ryan also compared the different types of redistricting methods employed by states to his results and found that the method of redistricting used to draw district lines – state legislature, court or commission – impacted the level of extremity in voting. Ryan found that “members of both parties are ideologically more extreme” after their district lines were redrawn by a commission.\textsuperscript{12} Redistricting maps drawn by state legislatures or courts had slightly less of an impact on the extremity of voting by the Members of Congress, a phenomenon that this paper will explore later.

Jamie Carson, Michael Crespin, Charles Finocchiaro, and David Rohde also observed that the increasing “pattern of polarization” in the U.S. House is “not

\textsuperscript{10} Ibid.

\textsuperscript{11} Ibid.

\textsuperscript{12} Ibid.
disputed."  Therefore they sought to study whether redistricting impacted this trend of polarization by examining data from 1962 through 2002. Carson, Crespin, Finocchiaro, and Rohde reviewed Congressional districts that were altered by a redrawing of district boundaries in redistricting and compared those districts with those that remained contiguous over time. Utilizing the NOMINATE database of Poole and Rosenthal, they compared voting scores and ideology in the two types of districts, those that were redrawn and those that were continuous.

For all Congressional districts, Carson, Crespin, Finocchiaro, and Rohde found that there is a “general increase in polarization over time” from 1962 through 2002, confirming the findings of Theriault, as well as Brady and Han’s demonstration that polarization levels are returning to pre-World War II highs. Notably, however, like Ryan, they found that redistricting impacts the degree of polarization. Representatives in districts that were redrawn were found to be “more extreme compared to members in continuous districts.” They found that immediately after a post-redistricting election (years ending in “3”), representatives in newly redrawn districts tended to be more extreme in their voting in comparison to representatives in the same district before redistricting (years ending in “1” and “2”). In all but one year that they studied, “new districts are always represented by more extreme members” of the House, even if


14 Ibid.

15 Ibid.
represented by the same incumbent Member of Congress.16 This was especially apparent after the 1992 and 2002 elections; redistricting cycles that we know from the last chapter also significantly impacted the level of competitiveness in House elections.

Carson, Crespin, Finocchiaro, and Rohde’s findings, particularly as they relate to the 1991 and 2001 redistricting cycles, are consistent with what we found in the previous chapter: As redistricting increasingly becomes a tool for political parties and gerrymandered district maps become more precise due to sophisticated computer technology, the impact of redistricting on the House is greater. This is true for both the decreased competitiveness of House seats as well as the polarization in the House as a whole and in individual House Members’ voting. This is in part because the impact of redistricting on competitiveness in House districts is linked to the polarization of Congress. Carson, Crespin, Finocchiaro, and Rohde deduce the following:

. . . a significant portion of the polarization we are observing in Congress is being artificially generated by the “mapmakers” responsible for drawing district boundaries at the state level.17

The decrease in electoral competition in the House, as this paper shows is caused in part caused by redistricting, leads to more extreme Members of the House replacing less ideological Members. Theriault found that “the numerous conversions and replacements” of Members of Congress “decimated the ideological middle” of the U.S. House.18 Analyzing Member replacement – through electoral defeats or retirements –

16 Ibid.
17 Ibid.
Theriault’s findings and the work of Brady and Han demonstrate that the House has become increasingly polarized in the last thirty years. The Carson, Crespin, Finocchiaro, and Rohde and Josh Ryan studies demonstrate that redistricting has an impact on the level of polarization in the House. Immediately after a redistricting cycle,

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19 Ibid.

20 Ibid.

21 Ibid.
the House as a whole is more polarized and individual Members in districts that have been redrawn vote more partisan. Theriault appropriately links the decline in competitive House seats, which the previous chapter linked in part to redistricting, to the increase in polarization in the House.\textsuperscript{22} While Brady and Han demonstrate that polarization levels in the House are returning to pre-World War II levels, it appears as though redistricting is accelerating the trend towards a more polarized House of Representatives.

**Polarization in the U.S. Senate**

Brady and Han found that the House and Senate have largely tracked together in terms polarization. They deemed the “patterns of polarization” as “markedly similar.”\textsuperscript{23} Theriault likewise found the pattern of polarization, but not necessarily the levels of polarization, reflect “almost perfectly” in the two chambers.\textsuperscript{24} This was true both during the period of partisan overlap in the 1940s through the 1960s when polarization declined and remained low, and in the years beginning in the 1970s when polarization increased in both chambers. The level of polarization in the House, however, has been and continues to be greater than the Senate.\textsuperscript{25} Brunell and Grofman show that the House and Senate patterns of polarization “closely track” one another, but the “amount of movement is far

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\textsuperscript{22} Ibid.

\textsuperscript{23} David W. Brady and Hahrie Han,” An Extended Historical View of Congressional Party Polarization,” www.princeton.edu/~csdp/events/pdfs/colloquia/BradyHan12022004.pdf (accessed October 15, 2009).


\textsuperscript{25} Ibid.
less in the Senate” when examining partisan voting trends.26  Further, Carson, Crespin, Finocchiaro, and Rohde found that House Congressional districts that “underwent significant change” in a redistricting process are “more extreme than the Senate,” indicating that redistricting does in fact influence polarization levels in the House, especially when districts are radically altered.27  Theriault also found that the redistricting patterns in the two chambers often digressed in the first two elections immediately after a redistricting, with the House becoming significantly more polarized at a quicker pace compared to the Senate, which does not face redistricting.28

Knowing the research findings of Theriault on the divergence in polarization patterns between the two chambers after a redistricting, and the Cason, Crespin, Finocchiaro, and Rohde and Josh Ryan studies which found that redistricting impacted the voting of the House as a whole as well as individual members; the overall increased amount of polarization in the House compared to the Senate can therefore be attributed, at least in part, to redistricting.

Additional Potential Congressional Polarization Factors

There are other issues that cannot be overlooked that some argue are factors in the increasing polarization and partisanship in Congress.  First, the internal workings of the


House, as well as the rules and management styles of the political parties and leadership, may impact the polarization levels of the House. Barbara Sinclair argues that the increased use of restrictive rules in the House – primarily closed rules that do not allow for amendments to be offered on the House Floor or restrictive rules that allow for a limited number of amendments only – limit the ability of moderate Members of the House to demonstrate their moderate principles.29

When a bill comes to the House Floor, it has become increasingly common for the majority party to control the amendments allowed to be offered to ensure that the underlying bill does not change by amendment to the dissatisfaction of the leadership.30 This resistance to amendments protects the base bill, which is often to the liking of only the majority party leadership, but not necessarily to a wider and bipartisan swath of lawmakers in the middle. Roberts and Smith argue that the restrictive rules put forward are one consequence of an increasingly partisan party leadership in the House.31 As the political parties in the House put forward more ideological leaders, the subsequent impact is more ideological legislation that closely tracks with the ideology of the party leaders. This creates more party-line votes and less opportunity for bipartisan compromise on the House Floor.


30 Ibid.

The use of restrictive rules, consequently, may actually be artificially creating the appearance of polarization, when in fact the House as a whole is actually more moderate than it appears. Individual Members in the middle of the ideological spectrum, however, are not afforded many opportunities to demonstrate their moderate ideologies, other than voting against their own party leadership, due to the use of restrictive rules that limit moderate amendments. Under this theory the House is polarized because of the increased number of party-line votes. The polarization is driven not by individual Members’ extremity but rather by the party leadership and their desire to adhere to a strict party ideology and limit amendments and party dissent.

Conversely, the Senate does not use restrictive rules, instead utilizing unanimous consent agreements. Therefore while the increasingly ideological party leadership may be a factor in Senate polarization, the use restrictive rules would not play a role in the Senate. Additionally, the Senate has the Filibuster rule, which allows any Member to procedurally hold-up or obstruct a piece of legislation. For the Senate to overcome the Filibuster, the Senate must invoke cloture, a vote which requires sixty votes. This typically breeds more bipartisan cooperation and less ideological legislation. These are likely additional reasons why the Senate is overall less polarized than the House.

**Impact on the Democratic Ideal of the “People’s House”**

In the last chapter we established that due in part to redistricting, there are increasingly less marginal races in the House; competition is down overall for House elections, and as a result Members of Congress are less concerned with electoral challengers in General Elections. Thus, Incumbents can be less inhibited about voting to
please only their base of support in the district – the majority party voters packed in to make their district safe for their party. As this chapter establishes, while redistricting is likely only one factor contributing to increased polarization in the House and polarization is historically present throughout the history of the House, modern redistricting does in fact lead to more extreme voting in districts that have been redrawn increasing polarization in the House as a whole.

When examining how Members of Congress vote in the House, it is clear that polarization leads to an “equal and opposite reduction in bipartisanship.” Nolan McCarty demonstrates that polarization and the decline in bipartisan cooperation in the House leads to a decline in legislative output. The Washington Post opined that polarization “can condemn Congress to gridlock.” Polarization’s impact on the ability of the House to conduct its legislative business has negative consequences not only for the nation’s public policy demands and for constituents who seek legislative action, but also for the House as an institution. McCarty showed that during times of high polarization in the House and subsequent legislative inaction, the executive and judicial branches exert more autonomy. Polarization, caused in part by redistricting, is having a


negative impact on the operations of the U.S. House, and as a result, a negative effect on the institution as a whole.

Members impacted by redistricting are, however, in theory, responding to the changes in their district and the increased density of partisan voters, and are therefore voting more liberally or conservatively to appeal to their base of constituents. Josh Ryan states as follows:

No Representative will consistently take more extreme ideological and policy positions that do not match their district constituency ideology because Members fear losing their seat. Members’ ideological and policy positions are not independent of their constituency and in fact are generally assumed to accurately reflect their constituency.  

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While the ideological polarization and extremity of Members of Congress has a negative impact on the U.S. House as a whole, leaving little room for compromise and bipartisan legislation leading to legislative stalemates, individual Members of Congress are upholding the ideal representative-democracy government and the ideal of the House by responding to the will of the majority of their constituents. It can be argued that the House as an institution and the nation as a whole are suffering because of the polarization of Congress, caused in part by redistricting; conversely it appears that the will of the majority of constituents in individual districts is still being well served. Looking at this trend in a broader context, however, leads to the question of whether this is truly in the best interest of the House and the democratic principles set forth by our Founding Fathers. This requires further examination.

CHAPTER FOUR
REDISTRICTING METHODS

In the last two chapters, this paper found that the U.S. House of Representatives is becoming increasingly influenced by redistricting and that the democratic ideal of the House is negatively impacted as a consequence. The House has fewer marginal Congressional districts resulting in more Representatives safe from competitive elections. Thus the House is increasingly polarized due, in part, to modern redistricting methods. This chapter will explore the different types of contemporary redistricting methods employed by the states and examine their respective impacts on competitiveness and polarization to provide a better understanding of how each means of redistricting affects the democratic ideal of the U.S. House.

To understand which methods of redistricting best meets the goals of our Founding Fathers in preserving the ideal of a democratic House of Representatives, it is important to first understand the different methods employed by the states. The Constitution delegates redistricting authority to the states – what David Butler and Bruce Cain call “an exercise in federalism” – without dictating the method to be employed to redraw district lines.1 Each of the fifty states employs a unique approach to redistricting based on their constitutional structure and population size. David Oedel undertook a study known as the Mercer Study – named after the Mercer University Law School where he teaches – to examine the fifty redistricting methods used by each state. After his

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1 David Butler and Bruce Cain, Congressional Redistricting Comparative and Theoretical Perspectives (New York: Macmillan, 1992), 114.
examination of the fifty states’ constitutional language on redistricting, Professor Oedel pared the methods down to ten defined types of redistricting methods that generally encompass all fifty states’ approach.

The ten categories of redistricting methods range dramatically in approach. On one extreme, some states’ undertake redistricting by “primary, binding, independent redistricting commissions” that remain relatively free of politics because the “memberships include a non-political tie breaker.”2 Under this approach, the developed plan is subsequently adopted or rejected by the state legislature with no opportunity to modify the plan and no gubernatorial veto. This system of redistricting is, in theory, the most independent from outside political influences, or “de-politicized”, as Oedel terms these commissions.3 States that utilize this form of redistricting include New Jersey, Arizona, Washington and Hawaii.4

On the other end of the Mercer Study spectrum, Oedel defined the redistricting method tied closest to states’ politics as those with “legislative authority subject to gubernatorial veto.”5 According to Jamie Carson and Michael Crespin, state legislatures are inherently concerned with “their own personal reelection goals” and are therefore more closely connected to “the political parties that have perhaps conflicting goals” for

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3 Ibid.

4 Ibid.

5 Ibid.
Partisan state government politics can play the largest role in gerrymandering as the opportunity exists for a majority party to dictate the terms of redistricting and gerrymander the districts to its political advantage, with little opportunity for the minority party to play a role in the redistricting process. Additionally, in instances of divided state government, leaving redistricting in the hands of the legislature subject to gubernatorial veto power can produce bipartisan maps that are non-competitive, and designed to shelter incumbents. This chapter will explore this phenomenon more later. Arkansas, Ohio, Massachusetts, Maryland are some of the states which fall in this Mercer Study category that are the most vulnerable to political influences in the redistricting process.

In the middle of the Mercer Study spectrum are an assortment of other redistricting methods that authorize diverse bodies, including various forms of independent, semi-independent and “back-up” commissions, state courts, advisory panels and legislative committees to draw district lines. Iowa is an oft cited example, as the state employs a semi-independent redistricting commission made up of non-partisan legislative staffers that submit proposals to the state legislature, but the plans are not binding and can be altered.

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Presently no state delegates its redistricting authority to the courts as a first option. Instead, courts are empowered in certain states, including Alabama, California and Florida, to intervene in the redistricting process if the state legislature is unable to pass a redistricting plan by a set deadline. In Colorado, the courts immediately review redistricting plans after they are enacted by the legislature to ensure fairness, and as Thomas Mann states, “obviating the need for others to file suit.” Courts, however, are not entirely immune from politics as some states have partisan elections for state judges, and in other states, judges are appointed by partisan elected officials. According to David Butler and Bruce Cain, thirty-six states’ courts are subject to elections or political appointments. Nevertheless, Butler and Cain found that generally state courts “select plans that rock the boat the least”, thus ensuring comparatively fair plans.

Independent commissions are not all constructed the same way. Some states, such as Idaho and Washington, appoint an equal number of partisans from both parties that then must agree to a map by a two-thirds super-majority vote. Other states, including Arizona and Hawaii, appoint an equal number of partisans who then by super-majority elect a tie-breaking commission member who is deemed independent and not a member of any political party. Illinois and Indiana employ “back-up” commissions structured

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9 David Butler and Bruce Cain, Congressional Redistricting Comparative and Theoretical Perspectives (New York: Macmillan, 1992), 148.

10 Ibid., 111.
similar to those of Arizona and Hawaii, however, the commission only becomes active if
the state legislature first fails to enact a plan of its own.

In total, courts or commissions were responsible for producing sixteen
redistricting maps in 1992 and seventeen state maps in 2002.\footnote{Jamie Carson, Michael Crespin, Charles Finocchiaro, and David Rohde, "Linking Congressional Districts Across Time: Redistricting and Party Polarization in Congress," http://www.allacademic.com/meta/p60266_index.html (accessed October 6, 2009).} There are also, of course, states that do not redistrict at the Congressional because they have only one federal, at-large Representative.

Despite their differences, state commissions are all modeled on the ideal that they
will better serve the people in their respective states because they are, to a certain extent, de-politicized and more likely to produce a map that is just and fair to the people. Yet, as this chapter will further explore, this is not always the case.

\textbf{Partisan Redistricting’s Impact on the U.S. House}

States that delegate redistricting to the legislature tend to produce the most partisan maps, as the opportunity exists for a unified state government where the majority party can unilaterally control the process without input from the minority party. When one party has complete control of a state’s redistricting process, the opportunity for partisan gerrymandering is at its greatest. Partisan redistricting can and often leads to the majority party drawing district maps that allows for “a share of seats significantly above” what the majority party might otherwise obtain based on “its share of votes” overall statewide according to David Butler and Bruce Cain.\footnote{David Butler and Bruce Cain, \textit{Congressional Redistricting Comparative and Theoretical Perspectives} (New York: Macmillan, 1992), 143.} The same is true for the minority
party receiving fewer seats than its share of votes in the state would otherwise produce without partisan gerrymandering. As we know from Chapter Two, gerrymandering leads to a decline in Congressional competition. Furthermore, partisan redistricting also drives more extreme partisan voting and a more polarized House overall. Abramowitz, Alexander and Gunning point out the following:

Democratic districts have become more Democratic, Republican districts have become more Republican, and marginal districts have been disappearing ….\textsuperscript{13}

It is clear that redistricting controlled by one party has can lead to a negative impact on the House as it allows the majority party to dictate the terms entirely, with little or no input from the minority party. Further, Sam Hirsch demonstrated that partisan gerrymandering has in the past “altered party control” of the U.S. House by allowing one party to gain more seats in the election than they otherwise would have received based on national partisan voting patterns.\textsuperscript{14} Unmerited partisan take-over’s of the House due to gerrymandering are certainly not what the Founding Fathers would have envisioned for the body meant to be responsive to the will of the people.

The Growth of Bipartisan Redistricting in the U.S. House

While it is clear that redistricting processes controlled entirely by one party can lead to negative consequences for the House; it is important to also understand the impact bipartisan redistricting has on the House. Bipartisan redistricting maps are often the product of states that delegate redistricting authority to the state legislature and the


\textsuperscript{14} Ibid.
legislature is politically divided or there is a unified state legislature with a gubernatorial
office from a different party with veto power that cannot be overridden by super-
majority. This requires the parties to work together to produce a bipartisan map, as
divided government “gives each party at least one veto point in the process” according to
Carson and Crespin.15 Additionally, bipartisan maps are also commonly the product of
states with independent commissions that to varying degrees attempt to remove politics
from the redistricting process, but are still subject to political influences.

Bruce Cain, Karin MacDonald and Michael McDonald show that there are more
Congressional districts affected by bipartisan redistricting now, resulting from maps
adopted by states with divided government and those with independent bipartisan
commissions, than ever before. In 1971, fifteen states adopted bipartisan plans impacting
one hundred and fifty-three districts.16 By 1981, while the number of districts impacted
remained the same, twenty states adopted bipartisan plans.17 The reason for the increase
in states adopting bipartisan plans corresponds to the change in the impacted states
themselves. The states that adopted bipartisan plans in 1981 tended to have smaller
populations and therefore less Congressional districts. In 1991, there was little change
from 1981 in the number of Congressional districts impacted, down only six districts to

15 Jamie Carson, Michael Crespin, Charles Finocchiaro, and David Rohde, "Linking Congressional
Districts Across Time: Redistricting and Party Polarization in Congress,"

16 Bruce E. Cain, Karin MacDonald, and Michael McDonald, "From Equality to Fairness: The
(accessed June 5, 2009).

17 Ibid.
one hundred and forty-seven Congressional seats in nineteen states. In 2001, however, two hundred and thirty-three districts in twenty states were impacted by redistricting. Today, more than any other time in the modern redistricting era, bipartisan redistricting impacts the House, affecting more than half the Congressional districts in this decade.

**The Impact of Bipartisan Redistricting on House Polarization**

Given the increase in the number of bipartisan plans adopted in recent decades, it is important to also understand the impact bipartisan redistricting has on the House. To study the impact of bipartisan redistricting on Congressional polarization, David Oedel, Allen Lynch, Sean Mulholland and Neil Edwards sought to test the degree of partisanship in the voting records of states’ Congressional delegations before and after implementation of new bipartisan and independent systems of drawing lines. They hypothesized the following:

. . . if politicized methods of redistricting exacerbate partisanship in broader political contexts, then it is possible that de-politicizing the methods of redistricting may reduce broader examples of partisanship.

Oedel, Lynch, Mulholland and Edwards narrowed the Mercer Study to six states – Alabama, Arizona, Connecticut, Hawaii, Idaho, Maine – as those states changed their method of redistricting from control by a partisan state legislature to being managed by a de-politicized independent commission for the 2002 redistricting cycle. The assumption

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18 Ibid.

19 Ibid.

was that the independent commissions would produce Members of the U.S. House that were subject to more competition and therefore would be less extreme in their voting, thereby also reducing polarization in the House overall.

To test voting scores, Oedel, Lynch, Mulholland and Edwards employed *National Journal* voting data for “liberal” and “conservative” scores. For the pre-redistricting years, they employed voting data from Congressional Members in the years 1996 through 2002. For the post-redistricting analysis, Oedel, Lynch, Mulholland and Edwards examined the Members’ voting behavior from 2003 through 2006. In the six states they studied, Oedel, Lynch, Mulholland and Edwards found that the overall “degree of partisanship voting behavior” of the Members of Congress in the six states studied changed after the redistricting cycle occurred.21 Oedel, Lynch, Mulholland and Edwards established the following:

. . . the degree of partisanship in the aggregate meaningfully declined after the introduction of relatively independent redistricting after late 2002.22

In total, among the six states’ federal Representatives, Oedel, Lynch, Mulholland and Edwards found an aggregate thirteen percent decline in partisan voting after the years when an independent commission was used in their respective states’ redistricting as compared to the years before the 2000 census redistricting when the states used a more politicized redistricting method controlled by state legislatures.23 While allowing for the likelihood that other factors beyond the scope of their research also may have played a

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21 Ibid.
22 Ibid.
23 Ibid.
role in the decline in partisanship, Oedel, Lynch, Mulholland and Edwards nevertheless concluded that politically independent bipartisan redistricting does lead to a decline in partisan voting behavior.

The findings of Oedel, Lynch, Mulholland and Edwards run contrary to the findings in Chapter Three, in which it was said that Josh Ryan established that in 2002 “members of both parties are ideologically more extreme” after their district lines were redrawn by a commission, opposed to lines drawn by a state legislature or the courts.24 The difference between the two conclusions is that Oedel, Lynch, Mulholland and Edwards examined only six de-politicized commission states in their modeling whereas Ryan’s study encompassed all twelve states that utilized any form of a redistricting commission. As the Mercer Study demonstrated, there are many structures of commissions and they are not created equal. Oedel, Lynch, Mulholland and Edwards studied only the commissions that Oedel deemed de-politicized and theoretically independent from politics. These states’ commissions’ plans were drawn by a panel that was chaired by an independent tie-breaking vote and their plan was virtually binding once complete. By contrast, Ryan included states in his study that employed commissions that were less independent from state politics – they had to submit their plans to the state legislature for modification and approval and in some cases also submit the plan to the governor for consent. Therefore, the role of politics was greater in the process leading to a different result than the conclusions of the Oedel, Lynch, Mulholland and Edwards’ study. Ryan also included commissions that were bipartisan in structure;

however, because they lacked a non-partisan tie-breaking member, the outcome was simply to protect the status quo which frequently led to incumbent protection and a decline in Congressional electoral competition.

This paper concludes that while some independent bipartisan commissions are able to achieve a reduction in partisan voting among the Representatives of their respective states, commissions that are not sufficiently removed from politics or are ineffectually structured are ineffective and may actually increase partisanship by protecting incumbents from competition. Cain, MacDonald and McDonald state as follows:

...some of these well-intentioned commission reforms ironically institutionalize bipartisan compromise and have a negative effect on electoral competition. 25

When comparing Oedel, Lynch, Mulholland and Edwards’ study to Josh Ryan’s findings, we can see that it is a false assumption to presume that all independent commissions produce redistricting maps that decrease partisan polarization, even if that is a commission’s stated intent. Sometimes redistricting commissions are independent in construction; however, because they are divided between the two political parties and do not have a tie-breaking vote, or the commission’s plan is subject to alteration by partisan state legislatures or governors, the result is simply to protect each party’s incumbents, preserving the status quo and existing political power and subsequently furthering

Congressional polarization, rather than ineffectually seeking to gain an electoral advantage over the other party.

**Redistricting Methods’ Impact on Competition**

Bipartisan redistricting as a product solely of state legislatures can lead to greater incumbent protection and less Congressional electoral competition. As Cain, MacDonald and McDonald point out, particularly when there is divided government and the two political parties are “forced to work together” the state legislature and Members of Congress “collude to secure the reelection of their incumbents” and subsequently this leads to the “least competitive of maps.”26 This is as result of the ability of both parties to have a veto in the process, and therefore in order for a map to be produced in divided government, according to Carson and Crespin, “both parties need to be satisfied.”27 Cain, MacDonald and McDonald conclude that bipartisan redistricting can be a “recipe for incumbent protection.”28 This is the case for bipartisan redistricting that occurred both in states with divided government – state legislature divided, or unified state legislature with gubernatorial office from a different party with veto power that cannot be overridden by super-majority – and in states that adopted bipartisan commissions that were not sufficiently removed from political influences or lacked a non-partisan tie-breaking vote.

26 Ibid.


Jamie Carson and Michael Crespin’s study of electoral competition determined that the type of redistricting structure employed by the states impacts individual House districts’ electoral competition levels. Examining competition using the sixty percent or less margin of victory – the broad range of competition – Carson and Crespin established that in states where the redistricting map was drawn by courts or commissions, there was more likely to be competitive Congressional elections compared to states where the districts were drawn by legislatures. Additionally, Carson and Crespin declare the following:

Redistricting commissions and courts are not subject to the same electoral and institutional constraints in the redistricting process as are state legislatures.

Specifically, Carson and Crespin found that in 1992, state legislatures drew one hundred and ninety-four Congressional districts, and of those districts, only slightly more than thirty-three percent were competitive in the broad range. Only slightly more competitive were the one hundred and fifteen districts drawn by state courts, of which more than thirty-six percent were competitive, whereas more than forty three percent of the one hundred and nineteen districts drawn by commissions in 1992 were competitive. In 2002, Carson and Crespin’s research showed a dramatic decline in competition overall, consistent with what we learned in Chapter Two. In the two hundred

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30 Ibid.

31 Ibid.

32 Ibid.
and ninety-five districts drawn by state legislatures, only sixteen percent were competitive races. Of the sixty House districts drawn by a court, more than twenty-three were competitive and thirty-one percent of the seventy-one districts drawn by a commission were competitive.

Carson and Crespin’s study illustrates that as the method employed for drawing Congressional districts is further removed from politics, the greater the level of electoral competition. Independent commissions, when structured properly, can be the furthest removed from state politics, and therefore can produce the most competitive maps. State legislatures, which are the most susceptible to politics, draw the least competitive Congressional district maps. Courts, seeking to “preserve the status quo”, will often not alter the current lines greatly, which can further entrench incumbents from competition, although without furthering partisan gains for either political party.

This chapter has established that when one political party entirely controls the redistricting process, the maps produced are often very partisan and lead to negative results for the House by reducing electoral competition and increasing partisan polarization. Partisan maps also tend to unfairly benefit the majority party in instances of a unified state government. Additionally, redistricting maps that are produced in a bipartisan fashion also run the risk of negatively impacting the House. Bipartisan maps tend to produce Congressional districts that reduce electoral competition and increase

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33 Ibid.
34 Ibid.
35 David Butler and Bruce Cain, Congressional Redistricting Comparative and Theoretical Perspectives (New York: Macmillan, 1992), 112.
partisan polarization in the House when they are not sufficiently independent from 
politics. Instead, the maps that result in the best outcome for the House – increased 
Congressional competition and decreased polarization and subsequently increased 
bipartisanship – are those maps crafted in manners devoid of politics. What, therefore, 
must be done to reform redistricting systems to protect the House of Representatives 
from the apparent negative effects of redistricting? How to best draw Congressional 
district lines to meet these goals will be discussed further in the next chapter.
The previous chapters have established that redistricting is playing a role, although it is indubitably not the only factor, in the decline in competitive U.S. House elections and the increased polarization of the House. Modern redistricting is helping to lead to a decline in the effectiveness of the body, by slowing the legislative process and reducing the House’s status, and the standing of the Legislative Branch as a whole relative to the other two branches of federal government. The previous chapter explored the various methods states employ to redraw district lines and found that not all redistricting methods are created equal. Clearly, the means employed by states can largely pre-determine the outcome of the redistricting process. From that understanding, we can deduce that there are ways to draw district lines to better meet the democratic ideal of the House. This chapter will explore the question of what is an ideal Congressional District and what must be done to reform redistricting systems to protect the House of Representatives from the apparent negative effects of redistricting.

What is the Ideal Congressional District?

Using American National Election Study (ANES) survey data from 1948 through 2000, Thomas Brunell studied voters’ opinions about their trust in government, particularly their trust in their elected U.S. Representative. Not surprisingly he found that a voters opinion on the federal government, Congress, and their particular Member of Congress is based largely on whether the candidates they voted for at the federal level won or lost. Brunell showed that voters’ “evaluations of the government depend, in part,
on election outcomes.\textsuperscript{1} Brunell demonstrated that in individual districts where the incumbent Member of Congress won re-election, less than three percent of voters who chose the winning candidate disapproved of the incumbent; however, over thirty-eight percent of the voters who voted for the losing challenger disapproved of the incumbent.\textsuperscript{2} Similarly, more than eighty-six percent of the voters who supported the winning incumbent approve of their candidate and only thirty-seven percent of those who voted against the incumbent approved of the candidate they voted against.\textsuperscript{3} Brunell showed that a voters’ ballot decision will largely determine their level of satisfaction with their federal Representative.

Additionally, Brunell’s analysis of the cumulative ANES data from 1984 through 2000 showed that the voters’ choice of candidate also impacted their overall view of Congress, again with those choosing the winning candidate giving Congress a higher approval rating than those who backed the losing candidate. The results were not as stark compared to the findings of voters’ opinions of their own Representative. The voters who chose the losing candidate gave Congress a negative rating (“very poor job” or “poor job”) more than fifty-five percent of the time and only gave Congress a positive rating (“good job” or “very good job”) nine percent of the time.\textsuperscript{4} The winning candidates’ voters gave Congress a positive rating of only twelve percent and a negative rating of just


\textsuperscript{2} Ibid.

\textsuperscript{3} Ibid.

\textsuperscript{4} Ibid.
under fifty-percent. The number of voters giving Congress a “fair” job rating was statistically similar too. This finding shows that while Brunell may be accurate that a voter who chooses the winning House candidate is more likely to approve of their individual representative by a large margin, the voters’ overall view of Congress does not deviate statistically to a great degree based upon whether they chose the winning candidate in their congressional district or not.

Based on the findings of his ANES data examination, Brunell concludes that competitive districts and close House elections are actually harmful to Congress, democracy and to individual voters. He argues that in competitive districts drawn to encompass a diverse set of people, Representatives are forced to the middle of the ideological spectrum and are not as responsive to either the right or the left. Further, he contends “the ideal congressional district” should be drawn to maximize “people all of whom have similar political preferences.” In his model, packing like-minded homogenous voters into a district makes it extraordinarily likely that the Representative in that district will be extremely responsive to the needs of her or his constituents, as the Representative will largely be of the same thinking on many issues. Additionally, as he demonstrates with his ANES examination, homogenous districts typically elect Members with large margins of victory because there is little competition, and therefore a larger number of people are happy with Representative’s work. Brunell conclude as follows:

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5 Ibid.
6 Ibid.
Drawing competitive districts or systematically “cracking” one party or the other is not beneficial and ought not to be present in redistricting plans.7

Brunell’s thesis is flawed in many ways. Correctly, he states that the House “ought to be the closest of our national institutions to the people.”8 Nevertheless, his premise ignores people in the middle of the ideological spectrum leaving them with no voice at all. Brunell would structure his districts so they would either be extremely liberal or extremely conservative, so the district produces a federal Representative who is responsive to one majority set of people. This model would isolate all others in the district, marginalizing their voice in government. Additionally, if all the Representatives elected were either very liberal or very conservative, the vast middle of independent swing voters in the U.S. would have no voice in the House.

Further, under Brunell’s model, virtually no Congressional districts would face competitive General Elections, rendering the first Tuesday after the first Monday in November in even numbered years moot for the House. All the emphasis would be on Primary Elections. In twenty-six states Primary Elections are closed elections open only to voters registered to a political party, leaving independents with no real voice in the electoral process.9

As this paper has already shown, safe seats for one political party over another are already a problem in many Congressional districts as a consequence of, at least in part,

7 Ibid.
8 Ibid.
gerrymandering. Speciously, Brunell would institutionalize the practice of drawing safe
seats, encouraging only “intra-party competition rather than inter-party competition.”

The consequence of his model for ideal districts would be an even further polarized
House of Representatives than it is today, with Members catering to the ideological
extremes, and with little or no appetite for bipartisan compromise. As this paper has
shown, this leads to partisan gridlock, a sluggish legislative process and a weakening of
the Legislative Branch’s power in respect to the other two branches of the federal
government.

Instead, the ideal Congressional district should be drawn to further the democratic
principles of the House of Representatives. Members of Congress must be responsive to
all the people they serve in their district and all American people deserve a voice in the
electoral and legislative process. The House also needs to function efficiently, and as this
paper has shown, this requires a degree of bipartisanship. U.S. Representatives therefore
should be balanced and thoughtful in their consideration of legislation, not deliberately
partisan. We know from the previous chapters that fostering electoral competition for
House elections keeps Members responsive to a wider swath of people and therefore the
goal of redistricting should be, in part, to encourage competitive House elections.

Thomas Mann and Norman Ornstein state as follows:

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10 Thomas L Burnell, "Rethinking Redistricting: How Drawing Districts Packed with Partisans
Improves Representation and Attitudes Towards Congress,"
Competitive districts and states tend to produce more moderate elected officials, ones less driven by ideological agendas and more inclined to listen to voters and groups on both sides of the partisan divide.\textsuperscript{11}

Rather than packing districts with homogenous voters to create safe seats as Brunell erroneously suggests, as this paper has established, competition in House elections is desirable because it ensures responsiveness to the people by making incumbents act in response to the will of the people, not just because of their democratic principles, but also because of fear of electoral defeat if they do not. Additionally, competition ensures accountability. If Members of the House are acting against the interest of their constituents, or engaging in behavior that is unsuitable for a U.S. Representative, they can be defeated and thereby rebuked for their transgressions. If Representatives are in safe Congressional seats, it is hard for the voters to oust the incumbent. Competition also ensures fairness to all people. Safe seats inevitably lead incumbents and their challengers to cater to the ideological extremes rather than the middle, as the only threat to defeat comes from a Primary Election challenge, rather than a General Election challenge. This leaves voters in the middle of the ideological spectrum, as well as those on the other side of the majority ideological spectrum, without a voice in Congress. By ensuring competition, Representatives must instead appeal to as many voters as possible in the middle, as well as the right and the left, to broaden their electoral coalition. Mann and Orstein assert that “increasing competition is a worthy

\textsuperscript{11} Thomas E. Mann and Norman J. Ornstein, \textit{The Broken Branch How Congress Is Failing America and How to Get It Back on Track} (New York: Oxford University Press, 2006), 229.
objective” as a means to reform redistricting with the purpose of mending problems in Congress, which they deem the “broken branch” of government.\(^\text{12}\)

The ideal Congressional district, therefore, should be competitive for General Elections so that candidates have to take balanced views and if elected, balanced votes. The goal should be to foster competition to reduce partisanship, and subsequently increase bipartisanship. What then is the best method to draw Congressional district lines to best protect the Democratic ideal of the House, and as Thomas Mann states, adhere to the “principles of fairness, responsiveness and accountability?”\(^\text{13}\)

**How Best to Reform Redistricting Practices**

This paper has established what an ideal Congressional district might look like, but now comes the question of what is the best way to ensure redistricting produces districts that are competitive and elect responsive Members of Congress? Mandating competitiveness, utilizing blind redistricting procedures, and ensuring transparency in the process are all reforms that are worthy of exploration to achieve the goal of producing ideal Congressional districts.

Cain, MacDonald and McDonald contend that the best way to achieve the goal of competitive Congressional districts is to mandate competition through law.\(^\text{14}\) Districts that must be drawn with a goal of including an equal number of Democratic voters,

\(^{12}\) Ibid.


Republican voters, and independent swing voters would ensure that most elections have a degree of electoral competitiveness. This would thereby force candidates towards the ideological middle so that they appeal to the largest scope of voters. Congressional districts that are marginal in structure for incumbents would not discourage potential challengers from running for Congress based solely on the way district lines are drawn. Further, intentionally drawn marginal districts would more often give most voters a real choice for their U.S. Representative in the General Election, instead of allowing incumbents to essentially pick their own voters in redistricting. According to Sam Hirsch, mandating competition would effectively end the practice of undercutting electoral competition and “insulating ineffective lawmakers from serious challengers.”

It is important to note, still, that not all elections would necessarily be competitive as other factors such as the incumbency advantage, including the personal vote and campaign finances, would still play significant role in campaigns.

Hirsch further argues that redistricting efforts should balance partisan fairness along with competitiveness in a way that discourages both partisan and incumbent-protection gerrymanders. Hirsch contends that the goal of discouraging partisan gerrymandering would be to reduce “biases that favor either major political party over the other,” which have a negative impact on the House as this paper has already shown.

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16 Ibid.

17 Ibid.
Further, as Hirsch makes clear, partisan gerrymandering has, “at times altered party control” of Congress in a way that does not represent the broader voting patterns of the public, because the lines were drawn purposefully skewed to unduly advantage one political party over another.\textsuperscript{18} Mandating partisan fairness is also a worthwhile reform to redistricting practices.

According to Mann, making the redistricting process more transparent and open to public input helps states avoid “some of the more obvious redistricting traps.”\textsuperscript{19} To that end, the public should be allowed to submit plans of their own for consideration by official map makers and the public should be able to review plans being drafted by a state’s designated map making entity. Entities designated to draw redistricting maps should operate in the open, with sessions televised and available for Internet viewing. Additionally, Colorado’s law which requires immediate review of an enacted redistricting plan by the state courts is a sensible reform, as it avoids litigation and ensures a role for the courts in the constitutional assessment process. As we know from the study by Carson and Crespin, when the courts are involved, the maps produced result in an increase in electoral competition.

For states that wish to utilize an independent commission to engage in redistricting, it is very important that commissions be structured correctly. As Thomas Mann points out, reiterated from the study by Oedel, Lynch, Mulholland and Edwards,

\textsuperscript{18} Ibid.

redistricting commissions with “partisan majorities and simple majority rules tend to produce partisan plans” for redistricting maps. Additionally, plans are most likely to protect incumbents and party interests when commissions are structured with “evenly divided bipartisan memberships or supermajority rules,” as it is harder for either party to gain an advantage over the other so they instead simply protect what they already have, further insulating incumbents. Conversely, the best structure for a commission is to set the membership with an odd number of members, with an equal number of members from each political party and then those members selecting a non-partisan tie-breaking member, likely by super-majority vote. As we know from the study by Oedel, Lynch, Mulholland and Edwards, the six states they studied that utilized a commission model like this saw declines in polarization, and Carson and Crespin found increased electoral competition.

Cain, MacDonald and McDonald argue that redistricting reforms should remove the role of incumbents by disallowing the use of incumbents’ home addresses. In theory, this would prevent map makers from taking incumbency into account when drawing lines. Mann calls these “blind procedures,” as map makers are denied information that might otherwise be used to protect incumbents by isolating them from competition or for partisan gerrymandering. Another blind procedure would be to deny map makers certain election data, including prohibiting those drawing redistricting maps

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20 Ibid., 101.
21 Ibid.
22 Ibid.
from considering data on partisan affiliation, voting patterns, previous voting history, and other political data when drawing new districts. Map making entities would be instead required to consider only objective criteria, like territorial boundaries, in the redistricting process. Butler and Cain call this the “handcuff” approach as it limits the information that map makers can use to only neutral sets of data.23

Blind or handcuff approaches to redistricting lead to questions of whether maps can then be made compliant with the Voting Rights Act, which requires consideration of minority representation to be a factor in the redistricting process.24 Without electoral and political data, maps may run afoul of the Voting Rights Act and would have to be redrawn. Additionally, given the homogenous self-sorting that has taken place across America, Sam Hirsch makes the case that “geographic distribution” of voters is “neither random nor symmetrical.”25 He concludes that politics-blind districts are “a cure that may prove to be worse than the disease.”26

Further, instead of removing political information from the redistricting process, this paper reasons that map makers should be required to take political data into account to ensure partisan fairness and competitiveness. Hirsch argues as follows:

23 David Butler and Bruce Cain, Congressional Redistricting Comparative and Theoretical Perspectives (New York: Macmillan, 1992), 148.


26 Ibid.
. . . states should require redistricting commissions to engage in an iterative process that forces each major political party to compete by presenting a plan with more geographic integrity, more competitive districts, and less partisan bias than the plan last proposed by the other party.\textsuperscript{27}

Mandating competitiveness and partisan fairness in Congressional districts, as well as ensuring transparency and a role for court review in the redistricting process are reforms that would serve states, voters and the U.S. House of Representatives well. Additionally, should states consider establishing independent redistricting commissions; they must be structured effectively, with an equal number of members from each political party with a non-partisan tie-breaking member.

\textbf{Challenges to Redistricting Reform}

Cain, MacDonald and McDonald show that as states with a large population, and consequently an above average number of Congressional districts, become subject to bipartisan redistricting, the impact on competitiveness is greater. In states with a larger number of districts, there is more opportunity to manipulate the district lines across the state. They found that the larger states “diverse populations can be strategically grouped for political purposes.”\textsuperscript{28} Further, they find that “smaller states tend to be politically homogeneous” making it harder for map makers to gerrymander seats when much of the state is largely dominated by one political party.\textsuperscript{29} They went on to explain how in states that are dominated by one political party over the other it can be “theoretically impossible

\textsuperscript{27} Ibid.

\textsuperscript{28} Ibid.

\textsuperscript{29} Ibid.
to draw every district to be competitive.” Of course there are states that don’t redistrict at all - those with only one Member of Congress serving an at-large district.

Additionally, Hirsch points out the following:

Large, heavily Democratic concentrations in urban areas make it easier for Republicans to gerrymander successfully, while the absence of similarly large, heavily Republican concentrations make it relatively harder for Democrats to gerrymander successfully.

This leads to the conclusion that not all four hundred and thirty-five Congressional districts can be drawn so that they are competitive. In larger states, while it should be easier to produce districts that are for the most part more competitive, there will also be pockets of homogenous voters that simply cannot be made competitive.

While there are fifty-three Congressional districts in California, not all of them can be made competitive if they are all to be equal in population. Drawing a Congressional district in the Bay Area or in the City of Los Angeles will result in a Democratic Congressional district. No matter how the lines are drawn in and around San Francisco and Oakland or Los Angeles, the partisan result will always be the same simply because of the homogenous nature of the area. The same can be said of certain small states which cannot help but produce largely Democratic or Republican districts.

Clearly, even with redistricting reforms in place, there will likely always be a number of Congressional districts where there is a dearth of electoral competition simply

\[30\] Ibid.


due to the homogenous sorting of people in many areas around the country. 
Nevertheless, as this chapter establishes, there are relatively straightforward ways to 
address the ills of redistricting. Through clear-cut modifications to the redistricting 
models employed by states as put forward in this chapter, it would be possible to increase 
electoral competition in Congressional districts and subsequently reduce the level of 
partisan polarization in the House.
CHAPTER SIX

CONCLUSION

This paper has established that the democratic ideal of the U.S. House of Representatives is being eroded by modern redistricting practices which too often lead to partisan gerrymandering or bipartisan fortification of incumbents. Redistricting is a direct factor in the rise in the number of safe Congressional districts and the decline in electoral competition in the House. Through the use of sophisticated GIS technology and little interference from the Supreme Court, political parties and Congressional incumbents are picking their constituents, rather than letting the voters have a real choice for their federal Representative. Further, the increasingly partisan and polarized House can be attributed, at least in part, to the affect of redistricting. The decrease in bipartisan cooperation has led to a decrease in legislative output in the House, weakening the institution as a whole. The ideal of the “People’s House” has been to denigrated from what the Founding Father’s envisioned. Thomas Mann states:

James Madison, who had to overcome a district gerrymandered against him in his first run for Congress, would nonetheless be appalled to see how those in power are able to perpetuate their standing by manipulating the electoral rules of the game – and to see how blatantly they ignore this conflict of interest.¹

The Founding Fathers, like Madison, did not intend for the chamber of Congress closest to the people to be made up of Representatives isolated from electoral challenges and increasingly polarized and gridlocked. The Legislative Branch is mentioned first in the Constitution, before the Executive and Judicial Branches, because it is the branch of

government that belongs directly to the people. Yet in recent years, the voice of the people has not been heard, as many Members of Congress only had to appeal to one small set of voters with no fear of electoral competition in General Elections. As discussed, this has led Congressional scholars like Mann and Ornstein to label Congress the “broken branch.”

Redistricting reform is not a universal remedy for all that plagues the U.S. House of Representatives. There are other reforms to be considered that might have an equal or greater impact on the House’s levels of electoral competition and partisan polarization, including campaign finance reform and changes to House rules. Nevertheless, this paper has shown that redistricting impacts the competitiveness of many House elections. Additionally, redistricting impacts individual Members’ voting records, driving Representatives to partisan extremes after a redistricting cycle and affecting the overall polarization levels of the House. Finally, this paper further established that the decline in electoral competition and the increase in party polarization are having a negative impact on the democratic ideal of the House.

It would be prudent for states, and perhaps Congress, to pursue redistricting reforms to protect the U.S. House of Representatives and individual voters. Reforms should ensure that map makers are mandated to draw districts that are competitive and free from partisan bias, to the greatest extent possible. Additional transparency in the redistricting process would ensure that the public has a voice in the process and would bring about a level of populist fairness to redistricting. Moreover, when independent commissions are employed, they must be structured properly to achieve positive results.
Redistricting reform is a necessary and proper step towards re-establishing the U.S. House of Representatives to the title it deserves – the “People’s House.”
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