

THE BROOKINGS INSTITUTION

A STATUS REPORT ON CONGRESSIONAL REDISTRICTING

Washington, D.C.
Monday, July 18, 2011

PARTICIPANTS:

Moderator:

THOMAS MANN
W. Averell Harriman Chair and Senior Fellow
The Brookings Institution

Panelists:

NORMAN ORNSTEIN
Resident Scholar
American Enterprise Institute

ANITA EARLS
Executive Director
Southern Coalition for Social Justice

DAVID WASSERMAN
House Editor
The Cook Political Report

MICHAEL McDONALD
Nonresident Senior Fellow, The Brookings Institution
Associate Professor of Government and Policies,
George Mason University

* * * * *

P R O C E E D I N G S

MR. MANN: The witching hour has arrived. It's 10 a.m. I'm Tom Mann, a senior fellow here at Brookings, and I'm delighted to welcome all of you with us here at Brookings this morning and to our live C-SPAN audience to a session entitled "A Status Report on Congressional Redistricting."

Now, you may have noticed on the screens, "Redistricting BI," wondering why that's there. We understand some of you are compelled to Tweet wherever you are and if you do we want you to know that is the event hashtag. I know you're shocked that I actually said that, Norm, but there it is.

MR. ORNSTEIN: It was written down for you, I know.

MR. MANN: I'm a well-known Tweeter. Six months ago we had a session here; it's almost to the day that was a preview of the redistricting session. Today we're going to take stock of how that process is unfolding and with what consequences we can detect, at least now.

Why do people pay so much attention to redistricting? Good question. First of all, it's a fascinating game. Political junkies simply can't resist. We can start talking about it at the midterm election before and continue on for years after as we try to discern the consequences of it. But much more importantly, there are genuinely high stakes involved in redistricting. Certainly, it's relevant to party control of the House, where Democrats now need 24 additional seat gains to regain the majority.

Obviously as it plays out in state legislatures and local governments, it has a bearing on partisan control there as well. It's certainly important as far as minority representation; a substantial majority of the population gains since the last decennial Census had been among minorities. And the question now becomes will those population gains be reflected in seats in the House and at other levels of office?

Finally, redistricting has some bearing, disputed to be sure, not dominant of course, but nonetheless important for competitiveness, for responsiveness, and for polarization. I think for all of these reasons, one has to acknowledge the stakes of this process are unusually high.

It's also important to reemphasize the fact that the U.S. is truly an outlier in the democratic world when it comes to the political control of the administration of elections. We won't today talk about the FEC or the EAC. We won't be talking about new state laws on voter IDs, early voting registration. All of those are caught up and shaped very much by the political and partisan struggles that exist in this country. Instead we'll be focusing on one aspect of that, namely redistricting.

I think it's also important this round because of some of the new initiatives that have been taken on the redistricting process. Perhaps the most interesting and visible is the switch to an independent citizens' commission in the state of California, which is unfolding as we speak.

David Wasserman, among others, has reminded us how little turnover there has been in the California U.S. House delegation over the last decade. When we had three truly dramatic electoral swings between the parties, it simply was -- the state of California was insulated from that process. The question becomes does that gain change now?

Florida passed a couple of initiatives that have tried to impose some discipline on that process. Right now, the swing state of Florida has 19 Republican members of the House and 5 Democrats as I recall. It may be the sharpest, strongest, partisan gerrymander in the country. Will these new requirements approved by the initiative process have any bearing?

We also have ongoing efforts to really increase the transparency of the redistricting process and in particular an effort to try to get citizens involved in map making themselves. We, fortunately, have a wonderful panel to talk about all of these matters and others today.

Our plan this morning is to begin with initial presentations, then we'll have discussion among our panelists, and finally we'll take questions from all of you. I'm going to introduce our panelists in the order in which they will speak.

We'll begin with David Wasserman, who is down here to my left. David is the house editor for The Cook Political Report. He's responsible for handicapping and analyzing House districts. Last year David wrote, authored, put together a volume called *Better Know a District*, which is the Bible for this round of redistricting.

It's a wonderful piece of work, David, and we've all come to rely on it. David is going to get us off with an overview of where we stand and how the process is unfolding.

Then we're going to turn to my colleague immediately on my right, Anita Earls, who is the founder and executive director of the Southern Coalition for Social Justice, a nonprofit organization in Durham, North Carolina. Anita has been a civil rights lawyer. She's been deeply involved in voting rights and in redistricting and she will speak on a topic of enormous interests.

As I said, the population growth has been among minorities but it isn't yet clear that that growth will be reflected in seats. She will give us an overview of how that's playing out in a number of states and how quickly we have or will be moving into the courts on that process.

We'll then turn to Michael McDonald, who is a nonresident senior fellow here at Brookings, associate professor of political science at George Mason University;

someone who has been a consultant to redistricting authorities, including the Arizona Redistricting Commission; who has launched through Brookings and AEI, as well, the public mapping project, and will tell us of the efforts to really increase public participation and transparency in this entire process.

We'll then end with my colleague Norm Ornstein, a resident scholar at AEI, who everyone knows. Appropriately, Norm is going to tell us, after hearing from our other three colleagues, what it all means for politics and policies.

So that's the game plan. David, kick us off.

MR. WASSERMAN: Thank you very much, Tom. Thank you to Brookings for giving so much love to an often under-loved topic, but I often call redistricting a once in a decade nerd fest for politicians, pundits, academics, lawyers, demographers, cartographers, you name it, and so I'm please to see so many nerds out here in the audience. I definitely am one, God knows.

But redistricting is really one of the only arenas, if not the only arena, in which it's fair to compare LeBron James and Dennis Kucinich. I really don't think that Dennis Kucinich, even if he decides to take his talents elsewhere, perhaps to Washington State, will do any better in terms of winning.

But I really think that examples of how redistricting effects our politics are everywhere around us even if they're not necessarily a part of the news articles that we read on major issues at stake these days. During the Medicare fight, for example, I don't think last year any of us could have predicted that Paul Ryan or the State of Wisconsin would generate so much attention and coverage this year in terms of the fiscal vote facing the state and Paul Ryan's budget.

And I think a lot of the attention on his district has been misplaced because Democrats are saying well, we've got this candidate, Rob Zerban, who's the

Kenosha County supervisor. And a lot of pundits, a lot of people you talk to in the consulting world, very few of them who are credible would give him a chance of really taking it to Paul Ryan.

But I do find significance in his district in that if you plot out all 435 House seats on a scale of the most Republican district to the most Democratic district in the country, on our scale of the partisan voting index of the Cook Political Report, guess which one is the 218th District, the fulcrum of the House? It's Paul Ryan's district.

And I think for me it's the perfect illustration of why it's going to be so difficult for Democrats to get to that magic number of 218 in the House, not only because of his personal appeal, but before these recall elections in Wisconsin, Republicans are trying to engineer a plan that will make his seat, in addition to several others, a couple points more Republican.

Redistricting is a game of moving goal posts. And another goal post that's moving right now is the ability of Republican leaders in the House to corral a lot of their members to get behind any kind of deal on the debt ceiling.

Now, how does redistricting factor into this equation? Well, it's not just as difficult to pass any kind of package thanks to the line in the sand drawn by 60 members of the Tea Party Caucus in the House, that's only one out of every four Republicans in the House.

But if you take a look at what's happening in redistricting, just about everyone is going to have to take on new voters and that means we have a whole slew of Republican incumbents in the House, beyond just those in the Tea Party Caucus, who are affected by taking on new voters and looking over their shoulders for potential primary challenges. And I think that is really making it more difficult for anyone to break from a hard line on that subject.

But today's subject is a status report on congressional redistricting. We're done in 10 states, which means we have 33 to go; 7 states don't need to redistrict because they only have 1 district. And if we're keeping score of which party is more likely to gain or lose seats in certain states where the writing is basically on the wall by this point, even though only 10 have completed congressional redistricting, we can really say a lot more about what's likely to happen in the rest of the states that have kind of shown their hand thus far.

Democrats are likely to pick up a seat or Republicans are likely to lose a seat in Louisiana, Maryland, Nevada, Washington. Republicans are likely to gain a seat or Democrats are likely to lose a seat in Georgia, Indiana, Massachusetts, Michigan, Missouri, Pennsylvania, South Carolina, Utah. And I'm leaving out North Carolina and Illinois because those are kind of the big jackpot states that are really driving each party's potential for gains.

And then I have a question mark as far as which party is going to gain a seat or lose a seat. It could be a fair fight in states like Iowa, New Jersey, and Arizona. But I'm sure the five states we'll be talking a lot about this morning, and I'll stop short from going in depth on them, are Illinois, North Carolina, which are both parties' opportunities for partisan capitalization on this redistricting. Illinois for Democrats, picking up, you know, potentially five or six seats or four or five seats; Republicans losing five or six in Illinois. North Carolina where I put Republican gains at possibly three seats depending on the legal challenge to the map that Republicans are proposing.

And then California, where I think Democrats at the end of the day will probably pick up two or three seats as a result of the untangling of California's uncompetitive lines at the moment. Texas, where you know, I expect it to either be a draw or Republicans netting two seats depending on the legal challenges that we'll be

talking about. And then the big wild card being Florida and I'm sure we'll make that a big part of our discussion.

But there are really two ways to measure how redistricting affects the big picture in the House. You can look at it in terms of the scorecard that I just went over. Which seat, if you add up all of those columns, is going to end up ahead at the end of the day?

Well, I think it's going to be very, very close to a wash depending on Florida. I think it's possible Democrats could pick up a handful from the process, which is surprising given that Republicans earned so many state legislative chambers and picked up so much control in 2010.

But then the other side of the equation is really how much can Republicans shore up the gains that they made in 2010. And that's a part of the equation that's been more difficult for a lot of us in the pundit world to quantify.

But one measurement that was kind of suggested at RealClearPolitics.com, and I appreciate this more than a lot of other metrics that have been thrown out there, is take the median seat in the House and how far to the right does it move as a result of Republicans in Pennsylvania and Ohio and Michigan, states where they have control, shoring up a lot of the gains that they already made in 2010.

I think the answer is that on balance, that 218th seat in the House, that seat that Democrats would need to win on average to pick up the majority in the House, will move two points to the right of where it is today. It may be from a district that's two points more Republican than the national average to a district that's four points more Republican than the national average, and would probably get one or two points wider as well because of the trend we're seeing in so many states, is for underpopulated minority districts to expand into the suburbs and rob a lot of very competitive suburban seats of

the Democratic voters that make them competitive or have made them competitive in the last few years.

But at the end of the day candidates and campaigns still matter and that's why even after this process is completed, even after we have these new district lines, there are going to be plenty of unintended consequences for us to talk about more than a year and a half from now. So I look forward to hearing what others have to say.

MR. MANN: Terrific, David. Thank you for getting us off to such a good start. Anita.

MS. EARLS: Thank you and good morning. I'm really honored to be here. I want to thank the Brookings Institution for inviting me and giving me an opportunity to talk about what I've been focusing on through the redistricting process is what is the impact on minority communities. And so I want to talk a little bit about that, talk about how the legal standards are playing a role, but then also say a quick word about the impact of technology on the process, what we're seeing, and community involvement.

But to start with how are things shaping up so far for the interest of minority voters, it's very important to consider Latino populations, and they're looking differently than what's happening with African-American populations. I think across the country it's fair to say that there are real concerns about the fact that the huge growth in the Latino population is not being reflected in the states where there are new congressional districts being drawn. And those populations feel that their voting strength is not being fairly reflected in those maps that have been proposed and drawn.

So in Texas, the MALDEF and several other Latino organizations have filed suit. Last count there were five cases in state court and seven in federal court already filed, challenging how the congressional districts have been drawn. Some of

those claims are based on the fact that the increase in Latino population in that state wasn't reflected in the maps that were passed.

Similarly, the plans that have been put forward in California, you may have read in the news, the head of NALEO talking about his extreme frustration and disappointment that those maps are actually hurting Latino districts and not reflecting the strength in that state.

So I think that with the Latino population I think it's fair to say that they are very concerned and ready to go to court because the plans that are passed are not reflecting their voting strength.

With the African-American population, I think the situation is a little different. Their growth is not across the board as great in the states and they also, I think, possibly to a larger degree, have a little more history of having majority-minority districts drawn and being able to elect candidates of their choice. So it's harder to say nationally what's happening.

A lot depends on whether they're in a state that's gaining or losing districts, which party is in control in that state, and how the Voting Rights Act works in that state. So we have states that are covered by parts of the Voting Rights Act and states that are not covered.

I will give two examples, though, that show some of the nuances when you're looking at the impact of the Voting Rights Act and this round of redistricting. And let me talk about North Carolina for a minute because the first congressional maps that were proposed by our Republican controlled legislature in North Carolina, actually increased the minority percentage in both of the state's two congressional districts. And throughout the state African-American leaders were unhappy about that and the reason is because they felt that that was actually draining their influence from other

congressional districts in the state, and so where they had a history of being able to elect a candidate of choice in a district that was 42 percent African-American, they don't want that district to be packed, what they would call packed, into a 50 percent black district.

I think an interesting contrast is with the situation with Latino voters in Nevada where there's a question of whether or not they're going to make this tradeoff between being a majority in a single district or having a greater influence in more than one district.

But I said I wanted to say a word about the impact of technology, because I think as we're looking -- as this redistricting process is unfolding, I expected that technology would make it easier for folks to draw maps, but I think it's making it easier for public involvement in a lot of different ways. I would have never thought you could Tweet about redistricting, but apparently you can. You can sum it up. But also, all the websites, they not only give you the opportunity to draw maps, but to really get a lot of information about the process and to stay up to date very easily about what's happening.

In North Carolina they did this process of having simultaneous public hearings throughout the state, so for the first time you could go to one location and hear from citizens -- I think they had six or seven different video conferenced sites, and so it was a very long public hearing, 3:00 to 9:00 p.m. in the evening, but they were using technology to really facilitate and increase public involvement.

So, my third point is about public input and there I would say what I'm seeing is that what's most impactful is where you have groups coming together and trying to draw unity plans or really trying to coalesce behind a plan that simply having individuals submit something in the legislative process is not as much of a check on some of the excesses as when you have nonprofit organizations and groups coming

together behind a single plan and really working through the process. So, that's something I've seen this time that I haven't seen before.

MR. MANN: Thank you, Anita. Michael?

MR. McDONALD: All right. My name's Michael. I'm a recovering gerrymanderer. I've been involved in redistricting since the late 1980s and I've been a redistricting consultant now in nine states, and the experience of being in the room and talking to legislators about their districts and hearing a lot of gripes about what we were doing to their districts led me to realize that this is a very arcane process that the public is not engaged in and really, at the time, in the '80s and '90s and last decade, really couldn't be involved in because the decisions were being made using technology that cost a substantial amount of money, databases that were very difficult to use, and just the technology then was an impediment to greater public participation within the process and also as a consequence of having restricted public participation, less transparency as well. So, people couldn't really understand what the tradeoffs were of different redistricting plans that were being offered by state legislatures and the media basically had to take the state legislature's word that that was the only plan that was feasible and there were no other alternatives that were available and this is the way the world had to be.

And so over the last decade, working with a partner of mine at Harvard, Micah Altman, Tom and Norm through Brookings, a really wonderful advisory board of good government groups and bipartisan, by the way, as well, so there are people on both sides, both Democrats and Republicans, who see this process and know that it's not a good system that we have in place here, we moved forward in providing this technology to the public. Now, something else that's changed over the last 10 years -- and we're talking about Tweeting and other things -- is this -- the Internet, the speed of the Internet, the penetration of the Internet. And so it's possible now to actually run redistricting

software through web browsers, and that's what we've done. We've created software, it's available on publicmapping.org, and it allows the public to draw their own redistricting plans. And we infused the software with the data necessary to evaluate the plans that are being drawn as well, so you can actually see what the political consequences are. Now, it's a very complicated process because there's a lot of data to be managed and software, and so it's -- still there's a big hill to be climbed here, but we're trying to shoulder that burden as much as possible so that the public can be more engaged in this process.

And so what have we done up to this point? We've supported redistricting competitions in Virginia, Michigan, those have concluded; there's one in Arizona which is going to conclude this week; there's one in Ohio which is going to start this week; and we're discussing potentially doing another competition in the state of New York. So, one of the ideas that we've had is, let's get the public involved and offer prizes to the best districts that people can draw, have a panel of judges, and again Tom and Norm were very gracious in agreeing to be the judges for Virginia competition.

So, that's one of the ideas. So, at a very high level we could have a competition and, again, you have to have organization that's involved with that. Another level, you could just open up the process so that either individuals or groups would have the same software and data that the redistricting experts have and we've been helping groups or individuals and states, like Massachusetts and New Mexico, among other places, to draw maps and make some advocacy efforts based on the maps that they've been able to draw. So, lower level would be the sort of, let's open up the process and allow the public to draw some plans.

What have we seen from this? Well, we've seen that it's actually possible for people to draw a legal redistricting plan. At the outset, one of the criticisms

that we had even before we attempted this was to say, you can't do this, people -- it's such a complex enterprise that it's not possible for somebody in the public to do it, only experts have the ability and the skills to draw legal redistricting plans. Well, I can tell you from our experience in Michigan, the second place congressional map in Michigan was drawn by a 10-year-old, and a lot of the editorial boards in the state of Michigan said that 10-year-old did a much better job than the state legislature did in drawing a congressional plan. It was more compact, it had more political fairness, more competitive districts, split more county boundaries so it didn't quite do as well on the county boundaries, but still, it showed that a 10-year-old can do this. In fact, that's what we found is that younger people really do engage in this. It's like a video game for political junkies to draw these redistricting plans, and in Virginia we had -- it was more of a student competition led by faculty members across the state. We had 15 student teams at 13 of the state's colleges and universities draw redistricting plans. We had 55 plans that were drawn and some of those plans actually were submitted as bills.

So, again, it's actually possible that a college freshman, a 10-year-old, a senior citizen who's an advocate -- it's possible for the public to be engaged in this process.

What did we learn from this is that there are alternatives to what the legislature is putting forward that do better on some of even the better Constitutional requirements in some of these states. For example, in Virginia, there's a compactness requirement. Many of the student maps in Virginia did much better than the legislature's maps on compactness, for example. We also learned that by opening up the process very broadly and having lots of eyes look at this problem, you can see new ways of approaching some of the issues that are very involved and important in redistricting, such as minority representation. So, one of the student plans in Virginia showed an alternative

way of drawing the congressional districts that enhanced minority representation and essentially the black caucus within the state legislature took that map and said: this is a good idea. And they implemented that and that became the concept for their proposed map for -- congressional map in Virginia.

Now, Virginia has a divided state legislature, we actually haven't seen a map that can pass the state legislature, so it's possible even that one of these student maps may be adopted by a judge or elements of a plan may be adopted by a judge, so there's even the possibility here that we may cross that magical threshold, which I would have never dreamed possible, that we could actually see some of these ideas really put into effect. And it's a whole different way of even thinking about how we can do democracy in the U.S. where you can have the public participating and engaging, offering real policy alternatives and having those implemented.

Two other things that we learned, very quickly, one, as I already alluded to, we informed policymakers, because they learned about these alternatives and they took some of these ideas to heart in the way in which they were drawing their districts. And then we also educated the public quite a bit, because it's one thing for the media to come and ask one of us talking heads about redistricting, it's quite a different thing for them to go to a student or 10-year-old and ask them about how they approached redistricting. So, it changes the story from being something about process to putting a human face on it. And we've had really wonderful media coverage of these efforts, both local and national media.

And finally, as I said, we've shown that there's these alternatives and that we can inform the policymaking and show that there's a better way of doing this, and as we come out of this experience, I'm hopeful that seeing how we've opened up this process, that we can have a real discussion about what these policy tradeoffs are and

how we might go about implementing them ten years from now.

MR. MANN: Thank you, Michael. Norm?

MR. ORNSTEIN: Thanks, Tom. It's been a real pleasure working with Michael and his colleague Micah Altman. Tom and I had quite an experience judging those Virginia plans. Tom is the Simon Cowell of --

MR. MANN: And you were?

MR. ORNSTEIN: Unfortunately that makes me the Paula Abdul, I guess. I'll have to recover from that.

I want to step back a bit to start and look at or think about a couple of bigger questions.

This really does become -- I call it more of a wonk fest, which is, I think, a better characterization than nerd. Wonk, perhaps you know, is "know" spelled backward. It has a little more positive connotation to it. But really at the root of this, beyond the competitions, the viciousness, what it means for partisan balance, is a broader concept of representation. And one of the worrisome elements of the way we've been doing redistricting -- this was amplified a few years ago when Texas, under Tom Delay, went at this twice in a decade creating a different precedent, but if you think about links between voters and their representatives, even beyond what's now become the most powerful critique of redistricting as we have it -- that voters should choose their representatives rather than the representatives choosing their voters -- is it becomes much more difficult for voters to develop any kind of a tie or a link to a representative. When there's turmoil from one round of redistricting to the next, you really don't know where you're going to end up, what kind of representative you're going to have, whether you'll have the same one, and whether you're going to feel any sense of a community around you of people who are represented by a person because of some of the convoluted lines that are

drawn.

So, that's become, I think, a more significant problem. At the same time, it really is interesting to reflect on how the redistricting process in many ways has changed to reflect the changes in our politics. The last four waves -- the '80s, the '90s, the oughts, and now -- are somewhat different from what we saw in the past. Politicians naturally always want to maximize their own advantage. In the pre-permanent campaign era, the theme was much more the incumbent protection one. The two parties would tend more to get together and say, you protect your guys, we'll protect ours.

Now, of course, there's some of that depending on the state and the dynamics and who's got control, but it's become much more vicious. I think of it in this way, in an earlier era it was more about solidifying the goal posts, and now it is, as David said, about moving them, and moving them as much as you can. And all of that, it's not just the permanent campaign and the high stakes -- the stakes growing higher as we've seen more turmoil in our politics, it's all been amplified by the Supreme Court, which is clueless, to be truthful, about the real world, especially when it comes to this area, as they have, through a succession of decisions, basically monomaniacally focused on one person, one vote. And the way in which they focused on one person, one vote, is the height of absurdity because they have rejected districts that get down to a tiny number, little more than a handful of variation out of 600,000 people, but all based on Census data that is antiquated before the ink is dry on the Census forms because of population movement.

So, by doing so, especially in this era of powerful computing, they've made it much, much easier to do vengeance to communities of interest, to county and other kinds of lines, to compactness and other things. And it's becoming even more absurd because, of course, from the beginning we have drawn House district lines within

states and because of the wide population variations now, and particularly because we're having more and more states, smaller states that are losing population, the one person, one vote doesn't work very well. If you have a state that has a representative but has a population of 300,000 and then as you try and move the districts around, we're going to end up with districts that are a million in population.

Now, how you can reject a plan because it varies by 100 people out of 600,000, but sit back blithely while you have one district that has a representative three times as powerful in terms of the number of voters as another is? Something that only Anthony Kennedy knows in his own mind, I guess, but it adds to our challenges.

And let me add, one result of the way we're doing the redistricting now and the way some of these states are playing out, and the wide kinds of variations that we're seeing, even as we're seeing some interesting developments in places like California and Florida that are trying to move it out of some of the vicious politics that occur between the parties is I'm afraid whichever party gains or loses this time, pushed to the side, one result will be more polarization. If you look, for example, at what's likely to happen in North Carolina, you've got three representatives, Democratic representatives, who are in very serious jeopardy right now -- Kissel, Shuler, McIntyre -- all of whom are among the remaining dwindling group of moderate to conservative blue dog Democrats, and that, if you look through a lot of these states, they're often the ones who are going to be on the chopping block in states where Republicans are going to be able to gain a little bit more leverage.

Now, it's not as if we've got moderate Republicans left who can move under the chopping block, but as we see the kind of solidification of party control that David has been talking about, what it's going to do in many of these districts is put even more of a premium on the primary as the one place where a challenge can occur, and it's

in those places that we see this kind of electoral magnate that either nominates more conservative candidates or takes the representatives who are there and pushes them in a different direction because they've got to respond to a smaller group of purer votes, and at the same time, we're going to end up with many fewer heterogeneous districts. The process that we've been describing here is far more that of moving, as David said, many of these Republican districts to be even more white than they have been, which is whiter and whiter over the last few waves anyhow, and pack minority voters, more often than not, although there are some exceptions of this, into their districts. Homogeneous districts mean that representatives hear an echo chamber when they go back home and as we can see with the dynamics now on the debt limit, that echo chamber, which means that you tend not to share a common set of facts or feel any fiduciary responsibility to represent people whose views may be different from your own because they're not a part of your district, makes it harder to find a center or to come to an agreement.

So, those are some of the reasons why Tom and I have joined with Michael and Micah to try and create at least a little bit different dynamic in this process, to raise some of these other areas that the Court has basically pushed to the side from compactness to communities of interest, to even competitiveness, to try and figure out a way to alter the dynamic or to get the public thinking a little bit more so that we can have whatever occurs, in a fight in which political figures are naturally going to try to maximize their own advantage either personally or for their parties -- that's just the nature of the beast -- but to try and keep from having some of the worst other elements that can emerge from this process taking over even more.

MR. MANN: Thanks, Norm. That last point he was making sort of underscores an important distinction that I think we all should keep in mind. You will oftentimes hear people argue that the reason we have such extreme partisan polarization

is because that's wrong. It's contributed, but it's not been the dominant factor, but ironically, gerrymandering has become more of a consequence of polarization. That is that it sets up the stakes in a way that leads to an exacerbation of an underlying condition, and so the efforts at reform are trying to break that dynamic in some way.

In that spirit, I'd like to turn our conversation to California and Florida, if we could. These are sort of two experiments in reform: one with new criteria imposed on our process, the other with a new process replacing the old one. David, would you kick us off on that, give us -- you've been watching sort of California. Earlier he said it's like watching paint dry to see the commission at work. Share that with us.

MR. WASSERMAN: Well, last Tuesday we had, as some of you know, a special election, California's 36th District to replace Jane Harmon. The winner was Janice Hahn, a former L.A. councilwoman, and she won that election Tuesday night.

On Wednesday, the commission put out a visualization of a hypothetical district or a perspective district that would throw Janice Hahn into a district with Henry Waxman. So welcome to Congress on Tuesday, now run against Henry Waxman on Wednesday, and welcome to California.

So watching California's commission has been really, really amazing for, you know, someone who focuses on insider congressional baseball, if only because this is really a brave new world. It's the large laboratory of reform in the country in redistricting right now, and redistricting California is like trying to partition a melting pot.

The perhaps most complex redistricting job in America, to a group of people who were selected, in part by lottery, in part by sending in their resumes of how non-political they were, and the result has been a, you know, 14-member citizen commission that has earned plenty of criticism from the outside for, you know, example,

picking a mapping firm that Republicans argued had ties before to Democratic-leaning perspectives.

But I give the commission, in watching their meetings, even if it is like paint dry, higher marks than most people would have guessed they would give them early on in the process, because watching them work together as a group of 14 in very tedious meetings to come up with new maps is impressive in terms of the tone of collaboration since we have other commissions across the country. We have seven congressional redistricting commissions, but this is really the only one out of the seven that doesn't have some political component in the process watching over their shoulder or appointing the commissioners, and they really are accountable to no partisan overlord in this process.

And so, in part, their cooperation I think is very, very refreshing. If they succeed in untangling California's very uncompetitive line and generating even 5 or 10 congressional elections, yes, there will be 53 very, very scared incumbents at the end of the day, but I think California could be held up as a model of reform, to speak nothing of the potential political sway in Democrats' or Republicans' favor as a result.

Now, Norm said earlier that he thinks that cooperation may be un-American given the climate in Washington these days, but I think it will be a very useful example of how putting the power to redistrict into the hands of people who are closer to being average citizens could really have beneficial effects for both the competitiveness of congressional elections, but putting the power back in the hands of people to select their politicians and so the other way around.

MR. MANN: Michael, what do you think of the criteria they're using in California that is politically blind in many respects? They don't know where the incumbent resides, presumably can't use past electoral data or party registration data. Some have argued, well, that's the way to go, that ignorance is bliss, and, you know, if

you don't take politics into account, it won't distort the process. Others say that to achieve political fairness, you need to take politics into account.

MR. McDONALD: Right. Well, I'm an academic, so I can argue with myself, and one of the -- so I will take the argument against the commission just for a second, so that we can have that voice here.

And what this commission is and what David set up by his example at the very beginning of discussing it is that it's turned when it's by another name. So you're just going to shake it up quite a bit and you're going to see where the seats fall. And if you're lucky enough at the end of the music to be able to sit in a seat, great, you get to serve another term in office; if not, well, here's your exit. So there are people who say that if you really want to have term limits, you should have term limits rather than do it through redistricting. And they also say that these legislators, these members' best -- they are the people who best know their district, and so they're the ones who are best capable of drawing a district that's going to reflect the interest of communities for their districts.

Now, since, again, I'm an academic, I can argue with myself. The counter that I would say to that is that if we can just get one good set of districts that follow some good criteria, then we aren't going to have this problem again, because if you're following political boundaries and respecting communities and doing other things, that's going to be the baseline 10 years from now, where the incumbents are going to want the districts to be drawn.

And so if we can just get over this hump once of putting in place good criteria, then I think in the future there will be much less politics involved in this because it'll just be sort of a mechanical process and this is how many other countries around the world do this. There's much less politics because they're just following these criteria.

Now, the criteria themselves, I'm more of an advocate, if you want partisan fairness to be one of your goals, you ought to have that explicitly in your criteria, and you shouldn't just blindly say, if I'm following county boundaries or other communities or drawing compact districts, that somehow magically fairness or competition is going to emerge from that, that may not happen.

In fact, there's probably really good evidence to suggest that if you follow these sort of mutual criteria, you get a slightly Republican gerrymander in most states, because of the fact that Democrats are inefficiently concentrated into urban areas.

But still I think if you look at the case of Florida, what's likely going to happen, if you do get a plan that is respecting these state constitutional requirements that voters adopted in 2010 -- by the way, they had to get 60 percent majority. The legislature actually changed the bars trying to avoid having these initiatives pass, and they still got over that magic 60 instead of 50 percent, and so they've been put into effect in a very pro-Republican year. The voters of Florida want to have some limits on what that Republican legislature in Florida can do.

And so we're going to -- it's a really great experiment there to see what -- if those limits can be enforced and if they can be meaningful. The one thing that we would say that -- why we might have some expectation, at least for the state legislative redistricting that they may be enforced is that the State Supreme Court in Florida has an automatic review of the legislative plans.

There's no governor's veto in the legislative plans in Florida. It's a State Supreme Court review, and so they can look at the state constitution, they can look at the will of the voters, and that State Supreme Court can make a judgment as to whether or not the state legislature did uphold to the standards that the voters imposed.

MR. MANN: Interesting. Anita, would you pick up on the Florida case? I mean, this has been interesting. It's one of those cases where I believe two African-American members of the House really were opposed to this change, and it reminded one of a coalition in the past of minorities and sort of Republicans resisting, creating some safe majority-minority districts, but in the process, costing the Democrats overall some districts. How is that played out down there?

MS. EARLS: Well, there's litigation, and I think that it --

MR. MANN: That's the American way.

MS. EARLS: -- it is an example of sometimes this quest for competition coming in conflict with a quest to fairly reflect and empower minority voters. But I would also lay some of this in the lap of the Supreme Court, not so much because of the one person, one vote jurisprudence, but because of their failure to implement some meaningful standards on partisan gerrymandering, which if they had -- I mean, that's maybe one of the big differences.

At least in the last round of redistricting there was *Davis v. Bandemer* still out there. There was still a sense that maybe if we went too far extreme on partisan gerrymandering; a court will rein us back in.

But now the court's inability to reach agreement on what a standard should be and that it should be implemented I think has just left line draws, whether they're commissioners or legislators, open field to kind of do whatever they want to.

But what I would say about Florida is that while I think the instincts about saying this should not be partisan driven, I think that voters around the country will generally agree that there should be fairness to everyone, and that that kind of encapsulates a general sense that people have about what our democracy should embody. They didn't -- I think they kind of went about it the wrong way. So I think saying

you have to be blind to the data that's out there doesn't help, and I think they needed to be much more specific about how you meet this, you know, what is fairness, what measure do you use.

And so there I think the example of the one person, one vote jurisprudence is helpful, because, yes, the Census is a fiction the day after it's taken, and, yes, getting down to one person is kind of meaningless, but it's a standard, and it's clear. It's a bright line, you can follow it, and you can approximate fairness.

And I think that in the partisan gerrymandering arena, we need to do the same thing. We're not going to find a perfect measure of what the balance should be or what data we should use, but we should have a standard that's clear and implementable and use that to constrain what's happening.

And I will say what I see in many states is the Voting Rights Act is kind of being used to try to rein in partisan gerrymandering, and that's not its purpose, and it's not working very well.

MR. MANN: All right. You know, one of the difficulties of reform state-by-state is that you may get change in some states that reduce the amount of partisan gerrymandering, but its national net effects may be to work against the other party, or that the Republican Party itself admits that it's exceedingly difficult to approach all of this with a sort of good government perspective state by state, because the fact is the real serious ideological policy partisan interests that are shaped by all of this. David, do you agree with that?

MR. WASSERMAN: Well, I think what Anita just said about the Voting Rights Act, you know, being used to justify a reigning in partisan gerrymandering, I think in many cases the Voting Rights Act has actually been used as justification for partisan gerrymandering.

And what we're seeing at least in the Democratic Party is a split that we've seen for the past couple decades, for example, between African Americans and Democratic strategists who want to maximize the number of Democratic leaning seats, not necessarily the number of African-American majority seats, and that's, I think, a really fascinating part of the equation here.

We've already seen in Missouri, I think, a perfect example of this, where Republicans needed a couple last remaining votes from Democratic state legislators in the State House to pass the Republican redistricting plan to eliminate a suburban St. Louis Democrat, Russ Carnahan. And the chairman of the Congressional Black Caucus, Emanuel Cleaver, leaned on a couple of African-American state representatives from his House district to vote for the Republican plan so that he could get a better district on the other end of the state.

And so there have been conflicts between Democratic strategists in Washington and African-American lawmakers, and I think that's particularly going to play out in Florida.

So when you have these instances of reform, it's not always clear cut. I think in Florida, Democrats would love to unpack Corrine Brown's House district, the 3rd District, some used to call the gnawed wishbone, that extends from Jacksonville to Orlando, and put three Democratic-leaning districts in their place, but that divide in the Democratic Party I think makes it easier for Republicans to kind of capitalize on that split and get their way at court.

SPEAKER: You know, it's an interesting dynamic that actually Tom and I saw in a similar vane when we were doing committee reform in Congress. You take away any piece of any jurisdiction from a committee or subcommittee chair and it's like ripping the child out of their arms and they will absolutely fight to the death. And parties

face this problem all the time; that you can take a district that is extraordinarily safe and make it not quite as extraordinarily safe, and that representative will do vengeance to the party's goals to keep it that way.

I mean, the Missouri example is a good one, because it's not as if Emanuel Cleaver was in trouble. This was somebody who was going to coast to a victory under even the threat of an enormous political storm, but he was willing to throw a colleague over the side just to make it even safer.

So it makes this even more of an interesting dynamic for the works in the process, because you can't say, well, a party is going to take the reins of power in a state and always be able to do what they want, it's always a balance. You try and create a few more competitive districts and you may put some of your own in jeopardy.

And we also know that even when you get an extreme partisan gerrymander, as we had in Pennsylvania, larger political ties can overwhelm that. You get an election, Republicans may very well, in many cases, be able to add one or two points to an advantage in these median districts. But if it turns out that they've overreached badly on Medicare or on the threats to shut down the government and you get an enormous public backlash, that may mean that their members lose by three points instead of by what otherwise would have been five or six points.

So we just need to have a little bit of humility here when we try to project ahead in terms of what all this means.

MR. MANN: Yeah, on the one hand, the sort of stronger party voting makes it easier to draw sort of partisan districts, but it also makes them potentially more vulnerable, because you get wide swings that are based largely on reactions to the political parties nationally and get a lot more turnover.

As you were talking about the Missouri case, I was thinking of just the opposite experience in Virginia, where Bobby Scott said, hey, take away some of my minority constituents, I don't have to have this high a percentage. And he's already below 50 percent, as I recall, and he's saying you could create a second minority district with maybe 40 percent African-American constituents, so it works in a variety of ways.

Before we turn to questions from the audience, I wonder if we could have a little discussion about Texas, because Texas played such an important role in our hearts going back over time and its history in gerrymandering.

I gather the plan drawn up by the Republicans in this case works very much against the interest of the new Hispanic population. Would someone be willing to sort of lay that out? Have you looked at that, Anita? You're probably very much involved in the cases.

MS. EARLS: It's absolutely true that MALDEF introduced in the legislative process maps that would give them, I believe, an additional two congressional seats than the enacted map. And they have certainly filed suit saying that under Section 2 of the Voting Rights Act it was a violation of that act not to draw those districts.

There were also introduced, I believe, in the record, maps that would add another -- a district that would elect a candidate. A choice of black voters in the Fort Worth area, it would not be majority black, but it would be a combination of black and Latino voters that would elect a candidate choice of black voters, so that's kind of what's at stake in some of the litigation of the Voting Rights Act. There are some other types of legal claims that are being filed in Texas, as well.

MR. MANN: As well.

MS. EARLS: Yes.

MR. MANN: David, how did they do it? That is, what do those maps look like whereby some Republican gains were realized and a potential Latino district was not created? Where's the action?

MR. WASSERMAN: Well, I could, you know, play weatherman all day with the map if we had it, but you might be better off asking an abstract artist to decipher what the Texas draft looks like on the Republican side. Look, I don't think there's any question that Latinos have been grossly underserved by the redistricting process in past decades. And even from a nonpartisan point of view, the Texas plan is a pretty egregiously clever way of diluting votes of Democratic voters, but also Latino voters I think particularly in the significance for Voting Rights Act cases in the cases in the Dallas/Fort Worth area of Texas where it's possible to draw close to a 70 percent Hispanic district in Dallas/Fort Worth, and that community has been split 7 different ways under the Republican proposal. That's very clearly to elect Republicans in suburban Dallas/Fort Worth and deny Democrats a seat in that central urban area. You can also make the case that you could draw additional Latino majority seats in Houston although there is some dispute over whether the two Houston seats that would result would be over a citizen voting age population, Latino, but you could certainly also draw a new Latino majority district in South Texas without splitting Austin and Travis County six different ways as has been done in the Republican proposal. So it's exactly the map that we thought Republicans might draw with one exception, which is that I did think that they were going to draw a Latino majority district in Dallas/Fort Worth not only to meet VRA and avoid a lawsuit, but also to shore up a lot of their members by pushing them farther out into the suburbs. Instead, Republicans in Texas have gone one step further and I think that opens them up to a suit that could dismantle at least part of the map, if not all of it.

MR. MANN: Michael, one last question to you, which is do you expect many plans at the congressional level to be ultimately written by judges? And if so, is there an opening for the public mapping kind of activities to have some influence at that stage?

MR. McDONALD: Courts actually prefer not to get involved in the redistricting process so their first instinct when there's a constitutional defect with a particular redistricting plan is to have the legislature or whatever the redistricting authority, be it a commission or something else, have them try again. They'll direct them to say here we have identified these errors. You have a chance now to rectify those errors. Where you could, however, have a map that's drawn by a court or a court take ideas from the public isn't these sort of voting rights issues. Those will probably most likely be put back to the legislature to fix if there are any issues that are discovered. It would be in states like Virginia or New York where you have a divided state government and you can't get a legislative plan passed, a congressional plan passed, and so there the courts have to step in because you can't delay redistricting although we did it learn in Mississippi that maybe it is possible to do that, but generally the courts don't allow an election to go by without redistricting. So in some states I think there's an opportunity where there are divided governments such as I described to do this.

I do want to comment though on something that David mentioned which is that in the Dallas area they've fragmented the Latino community, they the Republicans, in order to gain some additional representation. That's a short-term strategy I think for them in some cases because the Latino populations, if you look at the Census data, that's our growing population in Texas. And so you may be able to eke a map out one or two election cycles that would be favorable to Republicans in some of these districts. But if you look at these populations and project out what's going to be happening 10 years

from now, I don't expect Texas to yet turn to a blue state, but some of these districts are going to turn blue. So it's a short-term strategy and I don't think it's one that can stand up through the entire decade, which is kind of surprising to me because usually you want to draw some districts that are going to be solid throughout the entire decade and that you can maintain your majorities over a longer period of time. Here it seems like it's just a short-term gain sacrificed for long-term.

MR. MANN: Norm?

MR. ORNSTEIN: In terms of the courts, my hope is that one of the reasons that the courts are reluctant to get involved is they have no expertise and if you ask a court to draw a plan, they're going to have to find somebody to do it. If as we are now seeing the Public Mapping Project is getting a raft of reasonable plans that meet all the criteria and can do it in a powerful way and they can pull a plan right off the shelf, and that's the case in Virginia for example. So if you do end up where a court has to make a decision, it's going to make it easier for them and not just easier, but it will be a better plan.

MR. MANN: Now it's your turn. We have mikes. We would like you to identify yourselves and to ask a question that is shorter than the answer will be. So let's start all the way in the back.

MR. WEISS: My name is Jeff Weiss. I am a fourth-decade redistricting recidivist, so pleased to be at the fest. My question goes to litigation where this whole process is going down the road later in the decade in the courts. Several states who have Section 5 Voting Rights Act preclearance have filed for preclearance in both federal court and in the Justice Department. There has been a notion among several Republican attorneys general that the Obama Administration would play politics with redistricting, of course unlike that of any of the previous Republican administrations, and I think the

Voting Rights Act will probably coming out of Texas or Florida be the key issues over the next several years in litigation. So I guess a question for Anita or any others on the politicization of redistricting or whether courts or DOJ are better or worse or are of strategic advantage.

MS. EARLS: Interesting question. Just to throw a little more uncertainty into the mix of course is the fact that we have challenges to the constitutionality of Section 5 pending in the D.C. courts on their way to the Supreme Court and what does that mean if in two years the Supreme Court finds that Section 5 is unconstitutional? What does that mean if any objections have been issued? There's a lot of uncertainty around the Voting Rights Act.

Full disclosure: I was an deputy assistant attorney general for civil rights in a prior administration. I did preclearance work. What I will say is that from a public point of view, if you go to the D.C. District Court, it makes it harder for individual people who want to comment on the plan to have a role because the Justice Department process at least allows for easy public comment, whereas if it goes to court you have to intervene, have legal representation and it becomes a very different process. I think that there are so many other different things about the way the proceeds whether it's in federal court or DOJ that my point of view is that we continue to advocate for what we think the law says and we'll advocate in whatever forum or jurisdiction we need to, but there are some differences.

MR. MANN: Michael?

MR. McDONALD: In Virginia I served as a consultant to the governor's Independent Bipartisan Advisory Redistricting Commission or the IBARC. I was questioned by DOJ about the redistricting, the state legislative plans. Understand in Virginia we have a divided state legislature. There was a bipartisan log roll where the

State Senate drew their districts, the State House drew their districts, they scratched each other's backs and they forwarded it on to the governor who vetoed one, they made some minor revisions, and then they sent that off to DOJ with the governor's approval. So we had two different redistricting plans: one from the Republican state legislature or the State House and the Democratic controlled State Senate.

When DOJ asked me about the redistricting plans, their questions were primarily about the Democratic plan. They were fine with the Republican plan and there were opportunities I believe because in the course of my work for the governor's commission I drew an additional minority district that the legislature did not adopt. And so in the State House there was an opportunity there and there is some language in the Voting Rights Act which may even provide an opportunity for the Department of Justice to require the state to draw that additional district. They did not do that. Instead they looked at three districts that the Democrats had drawn down in voting age population and they were concerned as to whether or not those districts were going to continue to be effective to elect African-American candidates of choice in those districts.

And that's exactly what they need to do with the Voting Rights Act. That's exactly what's required under Section 5. That's what they looked at and they answered that question. So given that there was this opportunity to play politics with redistricting, the Department of Justice here had an opportunity. They correctly applied in my vision or in my view the Section 5 requirements and ultimately determined that the State Senate plan was acceptable. So there yet again a Democratic plan was the subject of scrutiny and not the Republican plan and yet they still at the end of the day accepted both plans.

MR. MANN: David?

MR. WASSERMAN: My perspective from a political standpoint, my question was always where would the Justice Department pick its battles? I think we know a little bit of the answer so far, that it doesn't mean a raft of new African-American districts in the south. I think the battle ahead is really Texas and perhaps California and Florida.

MR. McDONALD: I'll add one other thing. The Department of Justice can file litigation under Section 2 of the Voting Rights Act, so if we are going to see politics played with redistricting somehow, that may be really the vehicle where we see the Department of Justice become active, in filing or supporting some of this litigation that's ongoing in some of these states. But it doesn't appear to me that Section 5 is going to be their vehicle.

MR. MANN: The next question right here.

MR. FORTIER: John Fortier of the Bipartisan Policy Center. A question about California for -- a question about competition between different values. First, if somebody could weigh a little bit upon the conflict between Latino voters and emerging Asian voters as well, both of them looking for greater representation and having some conflicts with the commission. But secondly, some criticism of the commission for having at least a couple criteria, one to make more competitive districts and one to represent communities of interest. Are those two -- certainly they're in conflict to some extent, but is the commission given enough guidance of how to resolve those conflicts? Clearly the commission is going to make much more competitive lines than the very last very uncompetitive map drawn under another process, but might it have been more competitive? What's the way that the commission makes those sorts of decisions as to how best to represent communities of interest and how best to represent competition?

MR. McDONALD: Competition is not a requirement in the California Constitution, so what is thought will happen is that instead of trying to divvy up these communities in such a way as to work against competition drawing just sort of on a face-value neutral sort of criteria, you're going to see more competition emerge from that. And David can probably back me up on this, that's what we expect to see out of it. So it's sort of like competition emerging from some of the criteria and not imposing competition as a specific requirement. However, Arizona does that and Washington -- there are two states that have a requirement to create competitive districts. So if you want to, and there are some states that do this, you can explicitly put this into the state constitution, and I could talk about Arizona.

MR. WASSERMAN: John, I think that's a fantastic question and gets to the heart of what's facing the commission these days. I think it's their most difficult job in the last month they have before they have to pass lines. How do you address competing minority interests when, for example, if it's only possible to draw up very, very heavily black or Latino districts in certain areas of the state that are right next to each other? What do you do to maximize each ethnic or racial group's representation?

What we saw is the first draft come out. I think they were pretty regularized lines and I thought that it was a pretty good map that created three heavily Latino seats in central L.A. and two pretty heavily black seats in terms of voting-eligible population. When African-American advocates saw that it was reducing the effective number possibly of African-American represented seats from three to two, they pushed to spread that even thinner. But as Latinos are growing as a larger share of the population, under regular compact lines they ought to be receiving a higher share of minority/majority seats. And so I thought that map was fair. And coming under the pressure of ethnic and racial interest groups I think has caused the commission, if anything, to take a step

backward since their initial first draft of the map. But what we're seeing is that the goal of creating very compact, understandable lines is really at odds with the goal of some interest groups of maximizing minority representation, and that's the thorniest issue for the commission to handle in the final month.

MR. MANN: Yes, right here.

SPEAKER: My name is Clair and I'm a student at the University of Wisconsin. I'm not really an expert on this whole topic, so sorry if this sounds like an amateur question. You said that the courts have no expertise on this issue. I'm wondering what could make it better? More public input into drawing these lines? It sounds like there are a lot of problems. How could we improve them instead of taking them to the courts?

MR. ORNSTEIN: Go to publicmapping.org.

MR. McDONALD: We're going to issue a Wisconsin version of the software this week, so you can draw your own districts for Wisconsin.

MR. ORNSTEIN: Draw your own lines.

MR. McDONALD: Yes.

MS. EARLS: If I can add. Another process that we've been working on in a number of states is to make the technology available to interested community groups and have members of the public come and draw the maps themselves as a group. So when we did this in the State of North Carolina, we did it several different days. People came from different parts of the state. People in the western part of the state know their neighborhoods and their areas and know what they would see represented on the map. People in the eastern part of the state, they know their area. So when they came together they did a couple of things. They understood the tradeoffs because there always are tradeoffs in terms of meeting the redistricting criteria and what interests you

can recognize, but they could learn what was possible. So I think a lot of the critiques of redistricting are based on not really understanding what's possible. If you don't know what the geography and the data allows, you really can't have an effective role in the process or really understand whether a map is good or bad. So we got people involved by doing more than just coming into a public hearing or sitting at a computer by themselves, but were really involved as a community.

MR. McDONALD: Anita makes a very good point, which is that states and commissions and there are state legislatures, their version of public participation is hold a hearing and have people come to the hearing and they haven't really engaged with their constituents to find out what do they think their communities are. It's something that emerged in the meetings that we did with Virginia's independent commission to see people start coming out and describing their communities. We could do a lot more. We really could. The technology is there, the opportunities are there. We need to rethink how we are engaging our public and have that discussion about what the communities are well in advance of redistricting, not do it right once we get the Census data and then we have that discussion. That's too late because you really can't have a full discussion about what people feel their communities are and how their representational needs can be met. So I would hope again as we think about this and how we can do this 10 years from now, one of the things, just a very modest proposal, would be can we get a better discussion about how to best serve the representational needs of communities within a given jurisdiction or state or what have you well in advance of redistricting instead of waiting until the last minute?

MR. ORNSTEIN: David, if I could ask you, the Wisconsin case is an interesting one. You mentioned Paul Ryan's seat. We've got these recall elections that

could turn the State Senate over to the Democrats. What would that do to the Wisconsin plan or maybe even to Paul Ryan's district?

MR. WASSERMAN: This is all about timing and Republicans want to complete congressional redistricting by the time there is any potential for turnover. So in Wisconsin could we see that map overturned? It's very hard for Democrats to make the case that they could do anything about it after it were to pass. They don't have the governorship and it's always very, very difficult to undo something once it's done if only because the public only has so much appetite for dealing with redistricting, and once they see that the matter is resolved it's time to move on.

MR. ORNSTEIN: We've got three weeks until these special recall elections.

MR. McDONALD: I was going to say there's Illinois. We've already seen them leave the state once. So if they can just wait it out a couple of weeks, then they can get a different outcome. But what's actually going on, another very interesting thing that's going on in Wisconsin is that traditionally what happens in Wisconsin -- and this is by state statute -- all the local governments draw their wards first, like their precinct boundaries essentially. And they do that redistricting first and then the state draws its legislative and congressional districts out of those wards. Well, they've completely upended that process this time around. And accompanying these bills, these redistricting plans, are bills that change that whole process so that the state gets to move first and then the localities get to draw their precincts and wards after the state moves. So there's a lot of opportunities there, I think, for maybe litigation or some other people fleeing the state, and we may yet see that.

MR. MANN: It is breathtaking to just contemplate the sort of political control of a process that nowhere else is it so controlled. Yes, right here, please.

MS. FELLOWS: Good morning. My name is Carletta Fellows. We established a political PAC in Maryland based on the growing population, specifically of minorities. Maryland is currently 45 percent minority, about 30 percent African-American. But I wanted to ask a question specifically to Latinos because one of the questions or some of the concerns that we're having right now with drawing maps is that utilizing the Jingles test and can you speak specifically to that, specifically among immigrants in the state of Maryland, which is again like many states, is the largest growing minority?

MS. EARLS: Well, I think that the Supreme Court has recently elaborated under Section 2 of the Voting Rights Act that you have to have a 50 percent -- in order to make a claim on behalf of a single minority group, you have to show that they're 50 percent or greater in a single district looking at voting-age population. Some circuits have said that has to be citizen voting-age population. There are huge questions around the reliability of citizen voting-age data because it's not in the PL 94 -- it's not in the redistricting dataset. So there are questions that arise around what data you are looking at to decide whether you have -- whether you can draw a district.

But then beyond that there's questions about can you justify a district if you're combining two minority groups and are they politically cohesive? And so what's the history of politics in the jurisdiction and have Latino citizens who are voting, are they politically cohesive with other minority groups so that you could form a coalition district or are they not? So there's a lot of actually very fascinating issues.

MR. MANN: A question all the way in the back there. Yes?

MS. BEKAVAC: Nancy Bekavac from Scientists and Engineers for America. I wanted to ask two -- raise one point and ask a question. One of the problems in the minority districts for the California group is in many of the urban areas you have dissimilar minority groups, cheek by jowl. For example, Koreatown in Los Angeles is very

-- is part of the two African-American congressional districts, and they are -- you had asked the question about Asian groups. They are very dissatisfied about that, and that's going to -- that's a rising group that's going to be very difficult.

The other thing is you are all assuming, contra the practice of Texas, that these district boundaries last for 10 years. What makes you think, notwithstanding various indictments, that anybody's going to let these congressional districts go for five years if they begin to experience what you were suggesting in terms of movement, substantial population movements?

SPEAKER: Well, there are a number of states that actually have prohibitions on re-redistricting. Texas is not one of them. And the Supreme Court said there's no federal requirement for only redistricting once a decade. It's up to states to make that determination. And so there are some opportunities in some states for re-redistricting, and it wasn't just Texas that did it over this last decade. Georgia did it. New Hampshire did it. South Carolina did it. So I expect that we will see some states do a re-redistricting over this next decade, especially if we do see these very significant swings like we just saw.

So if Democrats take control of a state legislature, I wouldn't be surprised if we saw a Democratic plan come and replace a Republican plan. If the Republicans can take control of the State Senate in Virginia, I wouldn't be surprised if we saw instead of a court-ordered plan, which would be in effect for 2012, to see a Republican plan put in place for 2014.

So there are some opportunities I think to see re-redistricting across the country. I think probably the biggest prize will be New York, if the Democrats can take control of the New York State Senate, and I think that there's a very good shot they will

after this redistricting that we could see a re-redistricting in the congressional districts in New York.

MR. MANN: Is that good or bad?

SPEAKER: Well, I think you should just do it once, but good districts in place to begin with then you don't have to go back and do it again.

MR. MANN: But it's consistent with the view in Washington, too. You take control of a chamber of the House. You repeal laws. And you don't allow laws to be implemented in a certain way. Our politics is so intensely partisan now that it affects laws that have been passed. It affects redistricting plans, almost everything. That was my editorial. Next question?

MR. MITCHELL: Thanks. I'm Garrett Mitchell and I write the Mitchell Report. And this question really comes right off Tom's last observation and goes to something that both Norm and Tom spoke to earlier. And let me try to phrase this way: It seems to me you've turned on its head the sort of conventional wisdom which is that redistricting drives polarization, suggesting that in fact it may be the other way around. Our intense polarization is driving the redistricting process.

And if that's the case, my question is what kinds of results might we expect from sort of a more citizen-driven or commission-driven, i.e., less partisan-driven, redistricting process? Are we going to get the results that we wanted in the first place? If polarization drives redistricting and we put more redistricting in the hands of the people who aren't polarized, what are our realistic expectations in that regard?

And along with that, if the thesis of *The Big Sort*, Bill Bishop's book -- and maybe you can talk about the eyes rolling when you do that -- if the thesis is that we are redistricting with our feet, then it's about our migration patterns itself. Again, how does

the citizen-driven, commission-driven, less politically and polarized process get us the results that we're after?

MR. MANN: Okay, eye rollers first.

MR. McDONALD: Let me take on *The Big Sort* first. So there's a really wonderful website that Steve Romalewski at one of the SUNY schools has put together, which shows the changes between 2000 and 2010 looking at Census block level. And they've got a number of different municipalities across the country where you can visually see by rolling a mouse over your web browser to see how the populations have changed. We are un-sorting ourselves right now over this last decade. We are becoming more mixed up in terms of our race.

You can see that happening in suburban areas across the country, even exurban areas, and it's actually -- it complicates some of the voting rights issues because some of these African-American voting rights districts are in urban areas, in urban cores. They've lost population. Their population has moved out and become intermingled in suburban and exurban areas. It makes it more difficult to actually draw some of these minority districts.

And so it's complicating things actually, and it's another reason why it's -- while Latino populations have increased substantially, you're not seeing perhaps this commensurate increase in representation because they're intermixed. They're not going into some sort of barrio and living in some sort of enclave within areas. They're spreading out. These minority communities are spreading out and intermixing with white communities, Asian communities, African-American communities. So we're becoming more mixed.

MR. MANN: But Michael, what about political mixing?

MR. McDONALD: See, a lot of this is going on. *The Big Sort* is based on county-level data. This is going on in very densely urban areas where most of the population lives in the country, and so, yeah, if you look at counties, yeah. North Dakota, which has like a hundred people in some of the counties, yeah, they become more Republican. But what we really need to look at are these densely urban or suburban areas where most of the population in the country lives. And it's a very handful of counties instead of this overall number of counties which *The Big Sort* is talking about.

SPEAKER: But I think the larger, overall thesis of the book is correct politically. Those racially mixed communities, they may be getting more racially mixed and may becoming more of a melting pot in densely packed urban areas, but those are 80-20, 90-10 Democratic communities. The number of marginal precincts in the country is declining as we increasingly sort ourselves into like-minded communities politically. And as a result, our self selection has made it much easier for us to draw lines that are 60, 70, 80 percent and 20 for the other side. And as a result, we have fewer marginal districts, if you look at partisanship, than we ever have had before.

SPEAKER: Well, two counters to this. One is you can just draw the districts and see it's fairly easy to draw mixed districts that look compact or are following existing political boundaries. This notion that it's impossible to draw these districts is just blatantly false if you actually look at the districts that people are drawing through public mapping. So, one counter is that.

The other is my home county of Fairfax County has over a million people in it. It is -- if it was a city, it would be, I believe one, of the eighth largest cities in the country. And if you look at that county, it is a battleground county now. It's slightly blue. It went red in the governor's election. So it is a competitive county. And if you were just

drawing districts that were respecting the existing political boundaries there within Fairfax County, you would be drawing districts that are going to be competitive.

SPEAKER: Well, I would argue that it makes it harder. It doesn't make it impossible to draw competitive districts, but overall the self sorting that we've seen across the country in the last 10 years makes it harder to draw those districts.

SPEAKER: We're starting off with districts that are already sorted. So just drawing districts blindly, you're going to get more competition just by not going overtly out like Illinois's 17th current congressional district which is a block wide and goes through Springfield, Illinois, picking up golf courses and strip malls --

SPEAKER: Well, actually the Democrats made that district three points more Democratic in their most recent redistricting.

SPEAKER: I know, but I'm just saying that -- I mean, that's the sort of thing that you'd have to -- that you could undo by drawing districts that are following more just regular political boundaries than doing a partisan gerrymandering because there were various political reasons behind that.

MR. MANN: This exchange alone was worth the price of admission, but we haven't answered Gary's first question, which is really is there a reasonable expectation that by depoliticizing the redistricting process in a variety of ways -- the California way, the Florida way, the transparency in public map making -- will that in some way counter the extreme polarization of the parties and the legislatures?

SPEAKER: Well, there's something that we haven't mentioned and that's the top two new clauses in California's election laws. And Norm, maybe you'll touch on this as well. But it's really luck of the draw when you have a commission that's blind to incumbents' residences and political data. Yeah, they're going to draw maybe 5 to 10 districts that are competitive between the parties out of 53. Now, had they done

this back in 1990, I would argue that it could have been 20-25 competitive districts. Now even 5-10 is an improvement over what we would have now.

SPEAKER: Just to talk about the larger point, if we didn't think that it would make a difference, we wouldn't be spending our time doing this. But there's no panacea here, Gary. You know, the fact is that Arlen Specter left the party that he had been in for most of his life, not in a congressional district, but in a state where he knew that he couldn't possibly win re-nomination. When we saw Bob Bennett lose his seat, it was because of a nominating process that had nothing to do with the drawing of district lines.

The fact that people now look at partisan media -- listen to it, read it, and hear it -- and they develop a sense of facts or a world view that can be directly counter to what another group of people have and maybe counter to the facts as we know them, complicates matters in a way that redrawing district lines will not erase. The larger political polarization that we have has many factors attached to it. There may be other magic bullets that we could try, you know, and I actually think the California experiment with the open primary process -- we've only had one experience, which is a mixed one in this district that was just decided in California -- but it may alter the dynamic of that nominating process.

I'd like to see mandatory attendance at the polls so that we're no longer driven by a small sliver of voters, but that both parties' bases turn out and you can focus on voters who tend to be in the broad middle. This is no panacea is the bottom line, though.

MR. MANN: We've run over, but we're going to have one last question from this gentleman here, please.

MR. SOROKA: My name's Joe Soroka. I'm from Fair Vote, a legal intern this summer. And I think underlying this entire conversation so far has been the problems with redistricting, whether or not that be exasperating partisanship or diluting minority votes. So I was wondering on a more fundamental level whether the panel could speak to different systems of doing this, whether or not that'd be proportional representation or at-large districts with proportional voting systems that might eliminate the line drawing that leads to these problems that we're talking about here today.

MR. MANN: It certainly would. That is to say there are structural changes in the electoral system that you could make from straight PR to multi-member districts with some PR -- a variety of changes, compensatory systems like the Germans that would take some of the pressure off the partisan manipulation of single-member district boundaries. So the answer's certainly yes. In theory, it's possible, and our Constitution would tolerate that, a different kind of electoral system. But we have a national law in place with single-member districts that is the immediate barrier to this. But I say the more talk about these broader structural alternatives there is, the more informed this broader discussion will be.

SPEAKER: You don't quite completely escape, though, from gerrymandering even in a multi-member district system. So it still exists, it just has less of an impact on the elections in those countries. So it's a good one potential solution, but it doesn't quite -- it's not a magic bullet. There's no magic bullet for any of this.

MS. EARLS: But I might say I think it can potentially solve the issue of the Korean neighborhood that's in the middle of an African-American area because it decouples geographic residents from political representation. And potentially it means that there's more of a multiplicity of viewpoints at the table and possibly then helps with this whole issue of the polarization of our politics. So I think that there's a lot --

SPEAKER: And the countries that have PR systems tend to be even more polarized than the U.S. Believe it or not, it's possible to have Communist and Socialist and Fascist parties in your system. Even though that's what we call some of our parties here today, there are real parties like that out there that actually have members in their parliaments.

SPEAKER: Well, the only certainty today, I think, is that even other single-member representative democracies from single-member districts are laughing at us right now for this very discussion.

MR. MANN: Indeed, even among that family of democracies with single-member districts, they think the way in which we redraw our lines is absolutely crazy. Maybe that's the proper note on which to end. Please thank Michael and Anita, Norman, and David. Thank you all for coming. (Applause)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/Carleton J. Anderson, III

Notary Public in and for the Commonwealth of Virginia

Commission No. 351998

Expires: November 30, 2012