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REDISTRICTING REFORM AFTER THE FAILED

OHIO AND CALIFORNIA INITIATIVES

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WASHINGTON, D.C. 20003-2802
(202) 546-6666

C O N T E N T S

Introduction: THOMAS E. MANN

Panelists:

BRUCE E. CAIN
Robson Professor of Political Science,
Director, Institute of Governmental Studies,
University of California, Berkeley

MICHAEL P. McDONALD
Visiting Fellow, The Brookings Institution;
Assistant Professor of Government and Politics,
George Mason University

P R O C E E D I N G S

MR. MANN: [In progress]— the Ohio and California initiatives. Our purpose this morning is twofold: one, to take stock of redistricting reform after the ignominious defeat of two reform initiatives in California and in Ohio; but secondly, it's to call your attention to this new book that we have just published with the clever title— says Tom, co-editor—of "Party Lines: Competition, Partisanship, and Congressional Redistricting."

I'm joined this morning by two colleagues, Bruce Cain on my right and Michael McDonald on my left. Bruce is the Robson Professor of Political Science at the University of California, Berkeley; the Director of the Institute of Governmental Studies; now also, I'm happy to say, in Washington a lot as Director of the Washington Program of the University of California system. He's the author of two major books on redistricting. He's served as an expert witness and consultant in a number of redistricting cases. He's co-editor and contributor to the book, "Party Lines," and has been a visiting fellow here at Brookings as well.

Mike is an assistant professor of political science at George Mason University and a visiting fellow at Brookings. He actually was a student of Bruce's, an undergraduate student, at Cal Tech. Mike went on to earn his Ph.D. at the University of California, San Diego, where he began some really seminal work in measuring voter turnout. Since then, he has done a good deal of scholarship on the impact of redistricting institutions that is very germane to our subject here. He has been a consultant to the Arizona Citizens Redistricting Commission, to other states, to reform groups, and his

work is evident throughout the book, "Party Lines." So I'm just delighted to have both of them here.

I want to also call attention to the fact that David Skaggs is with us, David now with the Council for Excellence in Government, a former state legislator, former member of the U.S. House of Representatives who, among doing many other things, has most recently joined with the Campaign Legal Center on a large, ambitious project on redistricting reform. Their report just came out last week, "The Shape of Representative Democracy." There are copies outside, and you're invited to take them with you.

I would also like to call attention to Sam Hirsch, our colleague, an election law attorney and also student of redistricting. He's written some very interesting pieces on this subject for scholarly journals and joined with me in an op-ed on Friday to try to take the lemons of the Ohio and California initiatives and turn them into lemonade for the reform movement. More on that later.

As you all know, there has been a measurable increase and renewed focus on gerrymandering. A number of forces have congealed to produce this renewed interest and attention: certainly Tom DeLay's mid-decade redistricting and all of the melodrama associated with that in process; certainly the dramatic effect, basically a six-seat swing—one Democratic incumbent changed parties, one retired in the face of the new lines, and four were defeated in the general election; this was out of a goal of seven. Not bad—and of course the drama continues with the indictment of Mr. DeLay over the possibility of laundering funds not permitted in Texas state elections through the national party and

back to Texas. So that certainly gets the attention of people who might not otherwise pay attention to this subject.

But then, of course, we have the experience of the 2002 and 2004 elections. In 2002, there were a grand total of four incumbents defeated by challengers—best as we can tell, tying the lowest number in American history; followed by the 2004 elections in which seven incumbents lost, but two of those were running against other incumbents. So actually, five lost to challengers, and two of those were in Texas. Only three outside Texas had any such experience.

But along with that, the small number of incumbent defeats was a continued decline in the number of seats that were genuinely contested, competitive races. Measure it before the election by political handicappers, after the election by the margin of victory, and you will see a steady decline over the 20th century, sort of reaching a point now in the early 21st century of about two dozen seats that seem to be competitive out of 435.

Now, I think there's a widespread belief that changing conditions have elevated redistricting as a weapon of choice for party leaders and incumbents to advance their political interests. What are those conditions?

Stronger partisanship in the electorate, making it a little easier to forecast how citizens might vote in congressional races; there's more party-line voting.

Certainly higher stakes with the ideological polarization of the parties and the near parity between the parties, meaning that there's every incentive for parties to do whatever they can to try to hold their majorities, increase their majorities, or overcome

their minority status. There is no question but that the level of involvement of the national parties in state legislative politics and redistricting has increased measurably.

Third, new computer technology is alleged to have made it easier to accomplish gerrymanders. That's a subject of attention in the book, "Party Lines." And also a belief that various court decisions and non-decisions—from one person, one vote to various applications of the Voting Rights Act—have created opportunities rather than constraints for those who would gerrymander district lines to serve their interest.

The book reviews the law and politics of redistricting over the last several decades, assesses the accuracy of the claims that I've just made that are so widespread, and evaluates the various routes to reform. I want to call attention to a couple of these.

The first chapter, that Bruce and Mike write with a colleague, Karin MacDonald, has a sort of wonderful review of the law and technical detail and politics of redistricting over these decades and shows how the focus has really now moved in many respects from the national federal level to the state level. It also provides some evidence on the extent to which redistricting does or does not contribute to noncompetitiveness.

Another chapter indicates that redistricting ends up having an impact on the ability of strong candidates to emerge to challenge incumbents. It really has a depressing effect on candidate emergence. Mike and two colleagues provide some evidence suggesting it's not the computer technology that did it, just like it wasn't the butler with the candlestick in the library. In fact, new computer technology and its widespread availability, combined with transparency requirements, can create opportunities for competition in redistricting and produce very different outcomes. Nate Persily reviews the jurisprudence in this area, which is extremely important.

And in the final chapter, I take a look at the various avenues for reform at the federal and state level, at the legislative and court level, and certainly through the initiative process, and look in particular at redistricting commissions. They are not of a single variety. There is diverse, though limited, experience. There are lessons to be drawn. There is more experience to be assessed.

Anyway, that's what the book is about. Now we want to turn our attention to the elections last week. As I said, the initiatives were soundly defeated. I'd like first to turn to Bruce and then to Mike to weigh in with their assessments of what happened and what the implications are for the future of redistricting reform.

Bruce?

MR. CAIN: Very good. For those of you who may not have read the language in Prop 77—and that includes probably most of the voters in California—this is another whole topic which we'll knock down—but Prop 77 was different from the Ohio measure because Prop 77, unlike most redistricting proposals, gave the task of redistricting over to three retired judges. Most commissions don't do that. Even at the local level, most redistricting commissions rely on panels of citizens carefully balanced to put equal numbers of Democrats and Republicans and independents in there. This was different. This was three retired judges.

Why did they pick that one? They picked that one because this has been the traditional Republican proposal over the years. There have been four or five measures in the past. They all put retired judges on there, partly because California has had pretty good experiences with their court master alternative; that is, when the legislature was unable to come to an agreement with the governor, it bounced to a

special panel of court masters. The two times that they did that, in the '70s and in the '90s, the redistricting, while controversial—because all redistrictings are controversial—were not as controversial as the ones that had been done by the legislature in the past. So people were reasonably happy with what they had gotten in those two rounds.

Now, many Democrats believe—and it's really, I think, more paranoia than reality—that the judges in general tend to come from a pool that's more conservative and more Republican. In reality, Prop 77 took care of this with a very, very complex mechanism of disqualification which allowed for the different parties to contribute names into the pool and then to disqualify it. Alas, anytime you make a reform proposal that's very complex on the initiative ballot, you're decreasing the probability of passage by some significant amount, because the more complex the measure is, the more the voters just say I don't understand it, I'm not voting for something I don't understand. Which I think is, on balance, a healthy instinct, but it does limit you, when you're in technical topics, to how detailed you can get in your proposal.

That was the measure. So 77 was different from Ohio because it didn't explicitly say anything about competition. The authors of this had originally had a proposal in there that as many lines as possible, as many districts as possible should be as close to plus or minus 7 points—or plus or minus 3.5 points, I can't remember, but it was plus or minus some margin of what the average was in the state. And they played with different formulas. And they abandoned that, because they discovered when you did that, you wreaked havoc on city and county lines and traditional criteria of redistricting.

And the interesting thing is, we've been doing an experiment at the IGS on behalf of the Irvine Foundation, where we hired a bunch of students and basically had them draw plans under different criteria. And if you simply say equal population and draw as many competitive seats as possible, take the congressional delegation of California—that's 53—how many seats can you get if you ignore everything else?, and the answer is you can get up to about 25 or 26 that would be competitive within some historical band, which we define, of competitiveness. I won't go into that, but just— You get half of the delegation.

But what would the seats look like? The seats would look like hell, because they would basically go—they would take California and make it into a layered cake. Because if you've seen a map of California, what's happened in California in the last 30 or 40 years—and we had some wonderful maps that we put up on our Web site on this, going back to the '30s. And you look and you see that in the '30s, actually, when the stronghold of Democratic support in California was in the Central Valley and in the Bay Area but not so much in the southland and the suburbs. And then, starting 1940 on, you gradually have more and more of the secular/professional people moving to the coast and more of the religious—

So in other words, California starts to look like the rest of the country. California in miniature has an east-west divide that looks very much like the red and blue divide that you have in the country. So basically, in order to make seats competitive, you have to go east and west and all the traditional criteria and the county boundaries force you to go north and south, because that's where the coastal range is. And so traditionally you don't go across the coastal range.

So my point about that is simply that you could do it, but you would have to wreak enormous havoc. So the authors of 77 took a look at this and said, oh, my God, every local government official in California will come out against this if we put this criteria in there, so they backed off. So ironically, you had Arnold Schwarzenegger pushing for a measure, Prop 77, that didn't even mention the word "competition."

Moreover, it put heavy emphasis on traditional redistricting criteria, such as respect for city and county lines, which would of course even handicap you more because of something which I'm going to talk about in a second, which is what I call self-gerrymandering, or self-sorting; that is, people moving into areas that are increasingly homogeneous, which then makes it hard to draw competitive seats. Homogeneity in a socioeconomic basis creates political homogeneity, which creates political safety, which makes it hard to undo it. I'll come back to that point in a second.

So let me just finish my punditry. Why was Prop 77 defeated? It was defeated because, number one, it had the mid-decade redistricting in it and, rightly or wrongly, paranoid or not, Democrats looked at that and said "Texas." Okay? They said "Texas."

Now, the irony is, by my own calculations, if the Democrats had gone ahead and voted for this, the irony is that it would have killed them in 2002 and 2004—there's no question the Democratic delegation would have shrunk; but in 2006, given the way things are shaping up nationally, it's quite possible Republicans would have lost a couple of seats. That's why almost all the Republicans, in the end, put money to defeat this thing, because they recognized very clearly that 2006 was not the time for the Republican Party to do good government reform. 2002 would have been great, 2004

would have been great, but 2006 was bad timing, given the way things are shaping up in Washington.

MR. MANN: Was that for both state legislative districts and congressional?

MR. CAIN: Yes. Obviously with Arnold's numbers dropping— But I think the sentiment—and this is a point I'm going to come back to in a second—the sentiment was much stronger in the congressional delegation. This split between the congressional delegation and the legislature will get greater in the next three months. Look for that one to erupt. Now, it may not erupt publicly because the congressional delegation in California is pretty clever about staying out of the headlines. But look for them to be secretly pushing very, very hard to kill any possible redistricting reform that will go in front of the legislature in the next couple of months, because they don't see anything in it for them.

And remember that, with term limits, there are a lot of state legislators who are saying, ah, yes, we should shuffle the cards in the Congress, because even if you don't create a lot more competitive seats and even if you don't change the distribution of the party very much, you're certainly going to change the faces, and my face might get in there because you'll end up combining a number of incumbents because almost any redistricting commission will take incumbency considerations out. So there is this term limits angle to this, that there are state legislatures who need jobs and the jobs could be had at the Congress level. So that will unfortunately become a subplot in any redistricting discussion.

Anyway, one, mid-decade redistricting certainly undid Prop 77.

Secondly, the failure to negotiate a bipartisan deal—and this is another whole long story about initiative measures, that a bunch of people go into a room and secretly concoct their own plan, they never vet it, they never discuss it with anybody. And this was another example of a plan that had never gone out and been vetted by all the various good-government groups, and it was just take it or leave it. Any serious reform in California done through the initiative process has to have bipartisan support. Arnold forgot that lesson, or was somehow persuaded that his salesmanship or his consultants were going to allow him to sell to California a whole bunch of things which were essentially Republican ideas. They were on important topics; there could have been a bipartisan consensus, but there wasn't, and instead he went forward with his ideas, which were perceived as Republican ideas, and that was what Prop 77 was seen as. How you put this thing together in terms of the coalition you put together is absolutely as important as the substance of it. You can't forget that. They obviously didn't do the homework, the political homework.

Third, and this is an interesting thing, the pre-election polls—we didn't have any post-election polls, but the pre-election polls indicated very clearly a gender gap over and beyond the party gender gap. Women were voting against this. Why? Because while the plan guaranteed reasonable balance in terms of the nominees that would go forward, the retired judges that would go forward, in terms of party it did not guarantee any gender balance. And most retired older judges are men. And this gets to, in a diverse state in the 21st century, if you don't pick from a pool that has diverse sources in a state like California, you're basically going to lose the support of the

minority community and of the women, who say enough already, you know, we're not in the paternalistic era any longer. And that was clearly a problem with this.

And then lastly, Prop 77, like all the other propositions, was caught up in the general resentment that California taxpayers had for paying \$43 million to have a special election for a bunch of measures that could have easily waited for the June ballot. And that resentment killed everything, including things that had nothing to do with the governor's agenda, such as Prop 73, parental notification. There's a strong suspicion—no good evidence, but a strong suspicion that that vote on Prop 73 would have been a lot closer—that's the parental notification—if Arnold hadn't put it on the special election ballot. And so everything was tarred with this anger and grouchiness about spending an extra \$43 million, not to mention the \$260 million that went into all the different measures.

And there is of course a suspicion, that I certainly share, that some of this is driven by the consulting industry's need to make temporary work permanent. I can't prove it, but my gut tells me that that's what's going on. I know a lot of consultants. I love them. But they don't like to let go—

MR. MANN: Some of your best friends...

MR. CAIN: Some of my best friends, I'd never let my sister marry one, all that. But anyway, the point is that there's no question that the consulting industry's fingers in all this has a lot of California voters very, very grouchy.

However, redistricting reform is not dead in California. It will probably divide along state legislative versus congressional lines. That will be an interesting little power struggle to watch. Remember that state legislators have the vote and they have

the incentive because they need the jobs, because they get termed out in the fastest time of any state legislature in the country. And they don't all want to go back in the City Council, thank you very much; they'd like to have something a little more august.

The best chance—and I've been saying this in Sacramento over and over again for the last two years—the best chance is to tie it in with term limits reform. Not to do away with term limits, however problematic term limits are—and political scientists are skeptical about them—but leave that aside, the six- and eight-year limits in California are ridiculously short, have completely robbed the legislature of any expertise in a state that needs expertise. Something more like 10 years, which is what a lot of states have, would be better for California.

Tying those two together in a 57-58-type deal, which is what Arnold did before, is probably the best shot at this. So as I say over and over again, Arnold's got to open up the tent, break out the cigars, cut the deal, and put two things onto the June or August ballot that tie these things together. That will get it out of the legislature with a two-thirds vote. But watch for the congressional delegation to try to tube it.

Let me just make one last point. I've gone a little longer than I wanted to, but it's fairly important. There are lots of other things that I can say, but there's something to bear in mind here. There are two separate questions. One is, how has redistricting contributed to the problem of lack of competition? And the second question, which is a distinct question, is how can redistricting ameliorate the situation independent of whether it's contributed? And I think my advice to the forces of reform is that you want to push more on the second question than on the first, because the first question is a very tricky empirical question and it leads you to overselling what you're

trying to do here, which is bring back competition. Because there's a lot of stuff going on that creates safe seats. The self-gerrymandering, self-sorting problem is a serious problem. And as we become a mobile society, it's very clear people prefer to live with people that are like themselves socioeconomically and racially. It's just a fact of life and we're going to have to live with it. And the more mobile the society, the more you're going to have social sorting.

And moreover, there's nothing that's lessened the incumbency advantage. Tom and I are old enough to know that our obsession in the '70s and '80s was with the incumbency advantage, and that hasn't lessened because of the problems of money and name recognition. As the districts get bigger and the dependence on money gets greater, then the fact of the matter is that the incumbency advantage doesn't lessen.

So if you take California in the cycle of the '90s, seats that were drawn by the court masters, there were 270 congressional races in the period of 1992 to 2000. And in those 270 races, there were 14 seats that changed hands out of 270. Fourteen seats. Two of them were seats that changed twice and they were outside any range of competitiveness that we'd normally define. One of them was a seat up in the north that basically, because the Green Party split from the Democrats, allowed for a Republican to hold it. Congressman Riggs held it for a short period of time and then it went back into Mike Thompson's hands. It had nothing to do with competitiveness. It had to do with the splitting off of the Greens from that party. The other one was Tom Campbell's seat, which, again, was held, even though it was way outside any competitiveness range, was held largely because Tom Campbell had an appeal to the Stanford/Palo Alto community that was just unique.

So if you cut out those races, you're really talking about even less than 14 seats that changed party hands. So you have to be careful about overselling that this is going to lead to a lot of shifting and changing of political power. But it does obviously have other kinds of effects in terms of, you know, making people stay more moderate, et cetera.

I guess what I want to say is that if you take the second problem, how can redistricting ameliorate the situation, as opposed to what is its contribution—its contribution, by the way, there is an effect. I'm not saying there isn't an effect, but there are all the other things that are going on. Then, of course, you have the following problem, which is that selling people on creating competitive seats above some natural level, you know, is not an easy sell because people really do prefer the homogeneity. They prefer to be in a district represented by somebody who is like themselves. If you're a Democrat, you want to be represented by a Democrat. If you're a Republican, you want to be represented by a Republican. If you're a donor, you would prefer to be in a safe seat because you don't have to give as much money. If you're an activist, you care to be in a safe seat, you know, because you have access to somebody that's in power. I mean, you go down the list and it's not just the incumbents that want safety. All the way up and down the system there are incentives for safety.

So this gets to a fundamental problem that I think takes me back to the election. When you try to do reform through the initiative process, you have to give the people what they want. And sometimes what the people want is not necessarily what they need. Because if you really believe that competition is important, then you're basically trying to get them to buy into something that they may not want. And so when

you do it through the initiative process, you have to get through their short-term incentives, which is, you know, to have homogeneous seats.

Now, I don't think that's impossible, because I think when it comes to redistricting I don't think preferences are really strong. But you do have to make a case that is not a natural case. And I think that was in the background of all this, too, is that, you know, people want to have competitive seats but not in their area; they want it to be somewhere else. So that becomes another problem in all this. And it also gets to the whole dilemma of democratic reform. The democratic reform sometimes isn't easy to do because the short-term incentives of people don't necessarily match the long-term.

MR. MANN: Bruce, thank you very much. That was very interesting and informative.

Mike, I trust you will have something to say about Ohio?

MR. McDONALD: Yes, a lot to respond to from what Bruce said as well.

Just to pick up on Bruce's final comment, since I've been out in the forefront of looking at redistricting reform and offering some proposals and thoughts on increasing competition, I will agree with Bruce to say that redistricting isn't the end-all and be-all of reform that would produce more competition, but competition is important for democracy and it's something that should be desirable—maybe not hyper-competition where every seat is competitive, but something above the 5 percent of the seats that are currently deemed to be competitive.

Looking forward to the 2006 election, the district lines have been drawn in such a way at the moment that it would require the Democrats to have a very, very

good year in 2006. They'd have to run the table on all of the competitive seats in order to take back the House. And that's unlikely. So even in the worst situation for the party that's benefited from redistricting, the tide may not be strong enough to overcome that redistricting, and their safety is essentially assured. I'm on record already as saying that I believe that Hastert will be speaker of the House through the end of the decade.

When you look at a state like Ohio, you see where we start seeing some of the problems with redistricting and its effect on competitiveness and partisan fairness as well. We have a state where two-thirds of the seats, out of 18, went to the Republicans in 2004, 2002. And those are all safe seats. All the Democratic seats are safe seats. There's very little opportunity within Ohio for any incumbent of either party to be defeated, looking forward to the 2006 election.

And so the reform that was offered in Ohio was somewhat unique, and Bruce already alluded to it, which is that, unlike any other redistricting institution that currently exists, the commission that would be created under the initiative would have created a commission that put competitiveness right below the federal criteria for redistricting—so equal population, Voting Rights Act, and contiguity, and then you'd have competitiveness. And it would have maximized competitiveness. And the commission itself, although it was kind of a nonpartisan sort of commission, actually had very little discretion in what it would do. It would accept maps that would be submitted to it; there was a complicated formula for just scoring the plans based on the competitiveness of the plan, and the partisan fairness as well. So there was a formula that would penalize if you created all competitive seats and then five safe Republican seats. There would be a balance there as well.

So essentially what the goal was, was to create a map that had essentially zero partisan bias in it, so it wasn't favoring one party over the other, and would have a large amount of responsiveness to the voters. Now whether or not that's a good thing, that could be debated, but that's what the intention was. And when you look at that on face value, that would sound to be a good thing in terms of partisan fairness and competition.

But what happened in Ohio was that this complicated formula was in part its death knell because when voters who knew about the initiative and knew about the Ohio plan—when they knew about it, they were very supportive of the reform. The Columbus Post Dispatch poll showed that the 22 percent of the people who knew about the reform supported it 56 percent. The other unfortunately 78 percent who weren't familiar with it walked into the booth on election day, saw a very complicated formula, a very long formula, they knew of the experience with DeLay, they knew that there was a mid-term redistricting component to it, and they were suspicious of it. And being suspicious, those people, in the poll, overwhelmingly were against it. And Ohio really went down in defeat 70 to 30 percent. So voters in Ohio were not willing to contemplate this reform when they were presented with it, but the people who understood it were.

So you might say that there was some sort of selling problem with the reform. However, there was \$6 to \$8 million spent by the pro-reform groups within Ohio to get out the word on the initiative. So they were able to get their message out. They were effectively countered—the Reform Ohio Now were the group that were in support of the initiative; Ohio First was a group that was against it. And it was interesting, when you looked at the yard signs that were out in Ohio, Reform Ohio Now

had a yard sign that said End Corruption, Restore Responsibility, Vote Yes on Measures 3, 4, and 5. So they had a package. It was not just redistricting reform, there was absentee ballot, there was a non-partisan election administration, and there was a campaign finance component to it. So this was part of a big package that Reform Ohio Now was selling to the people of Ohio. So they had these three measures they were supporting. That's their yard sign. The yard sign against was End Corruption, Restore Responsibility, Vote No on the measures.

So voters were given conflicting messages about what the reform was supposed to do. They come in, they look at the long ballot, and they get confused. And they say, well, I'm not ready to accept something like that. So potentially, that's part of the reason. We'll find out more about this because Celinda Lake has been commissioned by the Reform Ohio Now group to look at the reform, to do some polling on it, and find out exactly what was in voters' minds. That poll is not out yet.

But some of the same sorts of tactics were used by the Ohio First group in opposition as to some of the things that Bruce was mentioning. Both Reform Ohio Now and Ohio First commissioned maps that would have been really viable maps under the initiative because they would have been submitted to the commission and the commission would have just automatically chosen the map that scored best on their criteria. And the Ohio First group drew maps very similar to the maps that Bruce was describing for California, where they strung lines all throughout the state, and they said, look, you're going to have districts that go from Columbus up to, you know, up into the northwestern part of the state; you're going to have these long, stretchy districts. And that's true. When you maximize competition, you're going to get these districts that put

disparate groups together. That's what you have to do in order to draw competitive districts. I did the same sort of work in Arizona under court order at one point, where I was told to draw a maximization competitive plan for the state legislature. And I did the same thing. I drew district lines that stretched all over the place.

This is where I think one of the flaws of the Reform Ohio Now effort was found, is that there was no discretion that was given to the commission to draw a map that made any sense. And so the Ohio First organization was able to put out a map that said this—it's going to do all these really bad things to communities and split political subdivisions. And they could produce that map and publicize it and people could believe that that was going to be what was going to happen, because it might happen.

Now, the Reform Ohio Now group also put out a map which had a similar number of competitive districts and scored very similarly in terms of the partisan fairness scores as well, and it didn't do those things. And that's significant, because the second criteria in Ohio under this initiative would have been to look at keeping political boundaries intact. And so the Reform Ohio Now map, which produced a similar number of competitive districts as the Ohio First map, would have scored higher on the second tier criteria.

But still, if there had been a map that was out there that created even more competition somehow, it would have beaten both of these. And if it was a map that stretched spaghetti all over the state of Ohio, that map would have been the map that would have been accepted. So without discretion, without being able to produce a map which makes at least some political sense, the commission in Ohio was going to be

crippled at the outset and really would just be accepting maps instead of drawing a map that would benefit the voters of Ohio.

So voters could look at the arguments against it, they could see these stringy districts and, interestingly, too, although competition would have benefited Democrats considerably in Ohio, the counties that are predominantly Democratic in Ohio went overwhelmingly against it, too. Now, they were still higher than the Republican areas of the state in terms of their support, but Reform Ohio Now did not win in even Cuyahoga County. So their political base was confused and there was some concern among particularly minorities that these long stringy districts were going to be detrimental to minority representation within Ohio.

So we can see a coalition forming against redistricting reform based on the mid-decade redistricting, the belief that political subdivisions and communities of interest would be split, and among minorities that would believe that their representation would be diminished, and you might get a vote that would be overwhelmingly against reform in a state, even among Democrats, where, if this initiative had passed, we might be talking about something different, looking forward to 2006, with Democrats potentially having a chance of taking the House of Representatives, because it might have put enough districts in play.

So look forward for Ohio and other states where there are similar reform efforts, Ohio on the day after the election, the Speaker of the House of Ohio reached out to the chairman of the Reform Ohio Now and said we do want redistricting reform and we want these other reforms, we want to open that dialogue, because we do believe that something's broken in the electoral system in Ohio. So there may be something that

moves forward on that. A cynical view of this may be to look that, well, if Democrats do very well in the governorship and the state legislature in Ohio in 2006, Republicans may be looking at a Democratic controlled, or at least a divided controlled legislature and government in 2011, when they're doing their next redistricting. And so something that Tom has written on about the veil of ignorance, having that uncertainty is a circumstance that might initiate this sort of reform effort, sort of a bipartisan reform effort among Republicans and Democrats.

Now, that might not be the best sort of reform, because having a bipartisan solution to redistricting reform is really the worst sort of solution for competition. These sweetheart bipartisan incumbency protection maps produce no competition. I mean, ironically, what you got in Ohio was an incumbency protection map in 2001 because of varying political circumstances within the state, and you got a map that had very little competition. So that sort of bipartisan deal, while it sounds encouraging at first—you think, well, perhaps we're going to get a commission, an independent commission that's going to have these criteria that will produce some good outcomes for the state, if they institute some sort of bipartisan commission, likely that will not happen.

We look at reform efforts in other states, Massachusetts and Florida are currently doing petition-gathering for initiatives in 2006. The Massachusetts initiative is progressing. I'm not sure if they're going to get onto the ballot, and the same in Florida as well. These commissions that they're proposing are very similar to the California model on the criteria. The only difference is that the commission itself would be composed of a more citizen-oriented commission. Massachusetts has a complex formula

of selecting people that includes deans and political scientists of universities that might be experts in redistricting. And that's maybe not a bad way to go. You look at Larry Bartels in New Jersey who's been the tie-breaking member of the state legislative commission in New Jersey, appointed by the Supreme Court. He does apply fair criteria in 2001, when he was addressing redistricting in that state. So maybe it's not a bad thing to have some experts look at it. So maybe Massachusetts is a way to look to solve this.

In Florida it's a different situation, where a commission would be much more of a citizen sort of commission and there would be a much larger-sized commission as well, with the judiciary selecting three independents on that commission, a 15-member commission, which might be good as well. It might be good to have a 15-member commission to more reflect the diversity not just in terms of gender and ethnic makeup, but also of regional diversity. One of the experiences that I came out of Arizona, I found, was that commissioners really do favor the areas that they know well. And so the commissioners would draw lines that made political sense to them within their communities, but then in other communities, where they didn't know the political landscape very well, those communities ended up having lines that they eventually sued the commission against. So having that diversity and have the say in should the line go down that river or should it go down that major street, those are important things that commission need to think about, why they're doing redistricting.

And then finally we have a bill that Representative Tanner has offered within the House of Representatives. It currently has 42 cosponsors, at least when I checked last night onto the House Web site. It would mandate minimum standards for redistricting commissions, for congressional redistricting in all 50 states, and those

minimal standards would essentially have an even partisan balance plus a tie-breaker and have some very minimal standards. The thing about this bill would be that it would allow the states, if they desired, to go back and create more interesting criteria for their state that might be relevant for their state; they could fiddle around with the way in which the commissioners are selected. So there would be some opportunity there for the states to augment the reform that the Congress would mandate for them.

One drawback to this particular reform as I see it—besides, I don't think, it not having the political support that it needs currently in order to pass—but if it did pass, we would have a situation where many of the redistricting institutions are codified into state constitutions throughout the country, and so there would have to be a scramble of either constitutional conventions or initiatives or something in order to create commissions that would satisfy the federal requirements. And those federal requirements, by the way, would trump whatever the state constitutions were requiring. So there would be this amount of uncertainty.

And you also have some institutions, like Ohio, that would not conform to the congressional mandate. And Ohio is interesting. It's often held as an avenue of reform, where nonpartisan legislative staff draw the lines and offer maps to the legislature. And we may want to tinker with these alternative sorts of ways of doing redistricting and having a national blanket on reform. I mean, one of the ingenious things about federalism in the United States is that we can do this sort of experiment to figure out what works and what doesn't work. So having a straightjacket on all the states, although it's a very loose straightjacket, would deter some of that reform, retard it some bit.

One last thing, because I do want to promote our own look at competition as well, as Bruce had mentioned—and I picked up on it earlier and want to finish it up as well, is to say that redistricting isn't everything. I think it's a very important component, but incumbency advantage, the money, the way in which the parties have rigged the laws to favor the two political parties to the exclusion of other parties, all of these things are contributing to a lack of competition. So in March, John Samples at the Cato Institute, and I through the Brookings Institution, are holding a conference on electoral competition more broadly to address these questions, to look at what are the inputs of electoral competition and what are their relative weights and what sort of reform effort might be most effective. These sorts of questions, I think, are very important to address as we look forward to the remainder of a decade which I doubt will have very much competition.

MR. MANN: Mike, thank you very much. I'm going to turn in just a couple of minutes to your questions. I just wanted to react to a couple of things my colleagues said.

One, to underscore something Bruce said initially and Mike referred to as well, that is a more realistic reading of redistricting's impact on competition would be a healthy thing. But that is not the counsel of despair. Rather, it focuses one's attention on how redistricting reform can be used as a sort of positive tool to ameliorate some of the problems that it developed for a whole host of reasons. And it seems to me some really creative thinking is needed here, because there are tremendous variations and forms of commissions, redistricting. It boggles the mind to see some of these. I think if I were living in California I would have voted against Prop 77 and probably would have voted

for the initiative in Ohio, although I would have been very uncomfortable with the formulaic rigidity and the lack of discussion available to the commission.

I think we have broad agreement here that the Rawlsian veil of ignorance is really essential for any effort like this, that it has to be separated from parties' ability to calculate the impact. There has to be enough time between the adoption of the reform and its implementation for political control of legislative chambers, state legislative chambers and the governorship to occur. So there's some uncertainty about what its impact would be.

Secondly, much of the discussion here, virtually all of it, is focused on competitiveness—which is appropriate, but it's only one side of the issue. The other side is partisan fairness. I mean, the reality now is that because of partisan polarization and parity, this process is increasingly driven by national party leaders. Maps are now drawn in congressional offices in Washington, in many cases and therefore, it seems to me, it's important to build in as standards partisan fairness as well as competition. There was a time at which we could rely on—and Bruce has written about this and Justice O'Connor has picked up on Bruce's writing in some of her opinions on this—that there's sort of a natural sort of control on this process. The more parties work to gain advantage, the more they increase the potential competitiveness of some seats, which could come back to haunt them, but what we are seeing in the contemporary period is it's possible to make partisan gains and still to have very few competitive seats operating at the same time.

This leads to the point Bruce was making about the geographical sorting of voters, the residential decisions that are made of the like-minded citizens that cluster together, red states get redder, blue bluer; the same is true at the county level, at the

district level, precinct level. This really means, I would argue, that blind processes of redistricting can produce outcomes that are really quite unsatisfactory, and yet we had elements of blindness built into both of these initiatives. I think the incumbent's address couldn't be identified in the Ohio; that was certainly the case in— Tell me if I'm wrong on that, Mike.

MR. McDONALD: But who was drawing the maps? They were submitting the maps, so—

MR. MANN: Exactly.

MR. McDONALD: —how are you going to police that?

MR. MANN: So you can't police it. In fact, anytime you have Voting Rights Act applying, you simply have to take that into account. And the idea that you can really impose that is probably silly.

But it probably is the case that political data ought to explicitly be involved and factored into the process, and I simply want to call attention to some work that Sam Hirsch has done in trying to develop a model. It isn't clear one size fits all, but it is a really interesting proposal growing in part out of the New Jersey experience in which you try to combine good political data by allowing political parties to have representatives to sort of factor in, but set up a competitive environment between them and then give power, real voting power, to a tie-breaking chairman who is operating under a set of standards and constraints that would actually make it possible to achieve partisan fairness and some more reasonable level of competition. That's something that will be coming forward in the weeks and months ahead to add to the materials that are out there now.

The last point I want to make is to disagree with Michael on the certainty of Denny Hastert being speaker throughout the decade. I agree completely with structural obstacles to a major swing, but I remind you, we're talking 15 seats required. One of the things we've learned—and Amy Walter had, I thought, the best pundit's quote on this, that it isn't clear that the levees constructed on behalf of incumbents could withstand a category 5 storm.

Bruce has also made a sort of very important observation, that the best laid plans and maps of incumbents have been overthrown by political tides and winds. He said it much more cleverly and elegantly—I don't have it in front of me. But years ago, in doing some work with David Butler and Donald Stokes from Britain and applying it to the U.S., I discovered when a national tide is running strong, it's proportional party strength, which means that if it's a 7 percent swing—and right now, some of the numbers are suggesting double-digit swings; we'll see where we are—it tends to be exaggerated in the seats that are presumably safe for the party suffering from that national tide, which means it could easily dip into members who have more than 60 percent of the vote.

So I would say there's no reason to assume it's impossible. The obstacles are there, there are fewer competitive seats, but if voters get ornery enough and the swing is large enough, I don't doubt that it could produce a 20-seat pickup. Not a 52-seat pickup like 1994, but 15 or 20 is not 50. So there you have it.

MR. CAIN: And add to that, Tom, that you've now gone six years in since the census and you've had in some states an enormous amount of transition, demographic movement—you know, new housing developments, immigrant trends, et

cetera. And so no gerrymander is safe from, you know, the tides of time. They will wash away some of those effects. So I think it's wise to assume that a national tide of major proportions could indeed wipe out a number of Republican seats.

So, you know, if things continue on the current path, I agree with you, I think the redistricting will not save them. And some of the areas to watch the most closely are where they had control of the process—the Pennsylvanias and the Texas. I mean, Tom DeLay made his life harder because, in order to go after the Democrats, he had to give up—there's—you know, you have to give something up to have a more partisan plan. This was the big—the one thing I learned from Phil Burton, watching Phil Burton operate, is that to try to create a partisan plan, you have to force incumbents to do something they don't want to do. They have to give up some electoral safety for the good of the team. And it takes a real bastard like Phil Burton to make it happen. Because it's got to be somebody who just doesn't mind blood on the floor because he sees there's some—you know, there's some goal there. And Tom DeLay did that. And one of the people—

I will remind you that Phil Burton did that to his own seat in 1982. And you may remember that he had to run against a moderate Republican and he had to run for his life for the first time, in San Francisco, no less. So you add all Tom DeLay's problems to the fact that he reduced his margin and you can't rule out the possibility that Tom DeLay—assuming that he's still able to run—will be able to survive his own gerrymandering.

MR. McDONALD: I just want to reply. While it's a good analogy, the category 5 hurricane, let me really talk about the reality that a category 5 hurricane had

to kill people in order for us to be in a situation where we could talk about the Democrats having a big enough tide to take over the House of Representatives. The House is so secure for the Republican Party at the moment that, without this category 5, without Iraq, without all the other things, scandals that are happening, they would have been unresponsive to the voters. And I doubt that they're going to be very responsive right now. You look at the sort of budget rescission that we're getting out of the House; it's not a very responsive sort of deal that's coming out of there, even though a few moderates within the Republican Party have bolted.

So that's really what's the problem here, is that we've got such little competition that members of both sides of the party see very little incentive to negotiate with the other side, they see very little reason to reach out to the moderate center. We have very few moderates left within the House. And all of these things are contributing to a very poisonous atmosphere. We need to fix the system, because if we don't do it, this is going—in 2011, maybe the Democrats win, maybe that's good. But then it's just going to be a reversed situation. And really, that's not going to be good for the country as a whole. We need to have a center; we need to have some moderation within this country.

MR. MANN: I don't think you'd get any disagreement from the two of us on that observation.

Okay, please, questions.

QUESTION: My name is [inaudible]. I work in Common Cause's redistricting program, and as such I had the great misfortune of being intimately involved in the campaigns in both California and in Ohio. Hopefully, we'll have better

luck as we move forward in both Massachusetts and in Florida. But I have a slightly different analysis than that which you've provided, although in some cases it is similar and I would be interested in reaction.

First is, as you mentioned, Mr. Cain, passing reform is always difficult. This type of reform in particular is always difficult. And we had less than perfect campaigns in both California and in Ohio. I would say there were definitely mistakes that were made along the way.

The second thing is incumbency is incredibly powerful and I think we're finding out, even more so today, how powerful it is in terms of the ability to raise money, the ability to mobilize party apparatus against reforms that affect incumbency. Incumbents have always opposed redistricting reform, as evidenced in California and in other states, regardless of whether it is a mid-decade redistricting effort or any other type of effort.

The third thing is, in California, at least, I believe very much more than any other factor, this was a referendum on Governor Schwarzenegger. And unions, other interests spent the better part of a year doing whatever it took to reduce his popularity and to fight against the governor as well as his reform agenda.

But I would argue that the conversation has been dramatically moved forward by the efforts in California and Ohio, notwithstanding the losses, and it has provided the opportunity to look at redistricting reform across the states in a more serious manner than it has ever been looked at before. I think that the goal of fixing this broken system, as you all have suggested, is creating a truly independent commission

that is not bipartisan, but that moves beyond bipartisanship to nonpartisanship, because both Ohio and California have demonstrated the problems with bipartisan commissions.

So I guess I would just be interested in your reaction to a little bit of an alternative analysis.

MR. CAIN: Well, you know, you left out of the narrative the split between the national Common Cause and the local Common Cause in California. And I want to grab onto that point and I think that the Common Cause has to examine that point, because I really think that as you think about reform, you have to think about the coalition you're putting together. Element number one of that is that the process of formulating the reform proposal has to include consulting with all the people that might potentially be part of the coalition. And that includes the minority community. And with all due respect, Common Cause nationally is, I think, insensitive to the point of political problems to the issues of racial diversity in California, because Common Cause is largely a white, liberal, you know, reform organization. I say that, and my father was a great contributor to Common Cause and I'm a white liberal myself. So I have great sympathy for Common Cause. But as a political entity, you can't think just white liberals. You've got to get outside that box. And you've got to listen to the minority community. Common Cause at the state level has minorities involved in it, and they were saying wait a minute, you know, this headlong rush into competition without sufficient guarantees of minority representation just isn't going to work in California.

So I think the lesson from that is, one, you need to reach out to MALDEF, NAACP, APALC, all the various minority communities, and make sure you're talking to them. Secondly, you can't just be a Democratic reform group; you've

got to work with the Republicans and it has to be at the stage when you're putting together the reform proposal. It can't be after the fact accepting what they give you.

The third thing is—and I think Mike alluded to this, I certainly did—which is you've got to keep the criteria flexible and loose. Because there's a lot of trends in redistricting and we'll have some other passion 10 years from now, and you need to keep these things tradable, you need to allow some discretion to the commission. And I think you need to have language about competition. But I think the formulaic approach, both Tom and I are skeptical about that. And I think if you keep it to a reference to competition and a need to do that. I mean, in Arizona it didn't do a lot of good, so it's not going to help all the time, but it's going to—if it's combined with a lot of transparency—and by the way, that's the last element I'll say—there's not enough discussion in these proposals of the need for transparency.

What is transparency? Number one, make sure that every single hearing is open. Now, that's not going to eliminate secret discussions, but at least it's going to put a lot of stuff out on the table. They're already doing that at the local government level around the country. The second thing is allow for public submissions. Let people draw lines. It will have two purposes. One, it will introduce good ideas, and secondly it will educate a lot of people about the tradeoffs that are going on there. So there has to be transparency, there have to be guarantees for more openness and notification, et cetera. And that frequently is missing in all these proposals. Nobody says anything about transparency. Yet I'm increasingly, as I get older and more senile, the only thing that I really believe in in American reform is transparency, true transparency. It's the only thing that works.

So I would say that: Negotiate up front in a bipartisan manner, be more sensitive to minority concerns and diversity issues, and thirdly, add in more transparency requirements—are my recommendations for success to Common Cause.

QUESTION: My name is Cecelia Martinez. I'm utterly confused by the vote in my home state of Ohio. The reason why I'm confused is I lived through the Arizona redistricting and a lot of the components were similar, where you have high corruption in the state, you have voters that are ready for change. So I'm confused by why we lost so bad in Ohio. And the only difference that I see between the two states, the main difference in the proposal, is the mid-decade redistricting. Was that such a big component that voters in Ohio were willing to reject it? You know, the redistricting initiative in Arizona was very similar, I think, to Ohio in its language and the formulas. Voters in Arizona didn't seem to be confused by that; in fact, they were okay with it. I think it passed, like, 60-40.

So I'm wondering, are we Ohioans just generally more confused than Arizonans? Is it a political culture thing? Is it that, you know, Western states are more open to these kinds of reforms? And as we move forward in the reform community, what is the lesson learned from Ohio—more so than California, because I think that the Schwarzenegger thing was probably the biggest issue there. But I am very confused by Ohio and I'm hoping that Michael will shed some light on that for me.

MR. McDONALD: You know, it is true that we have recently in U.S. elections redistricting reform in Arizona with Prop 106, and it passed overwhelmingly. A Republican state, and despite the national Republican efforts to work against it, it was still successful. It won 56 percent of the vote. So we have seen success.

So what is the issue? While the conditions are clearly different from now versus then, in 2000, when Prop 2000 was being offered to the voters in Arizona, it was about redistricting. It wasn't about having a mid-decade redistricting. So maybe that's part of the puzzle. Florida will be a very interesting state to look at if that language gets on the ballot in Florida, because the redistricting reform will come in three parts. Two of the parts deal with establishing the commission and the criteria it operates under. The third part of it is having the mid-decade redistricting. And if it is mid-decade redistricting, if voters are really that savvy that it's mid-decade redistricting that they're against but they're for redistricting reform, they will vote yes on the two parts that establish the commission, but they will vote against the mid-decade redistricting.

I don't think that that is all of the story. It just doesn't seem to me it can be. I think there were many circumstances that came out of the sequencing of reform efforts. We had California come out first, and a number of people came out against Schwarzenegger, liberals, because they perceived this to be a power grab, and at the time maybe it was a power grab. And so you saw people writing editorials against Prop 77 who might otherwise have been in favor of Ohio if they had thought it through and realized, well, actually they should support redistricting reform because they were going to get something good at the end.

Maybe it was the political circumstances. Maybe it was the DeLay and then this coalition forming against Schwarzenegger and that became the national conversation rather than the conversation about the corruption and dealing with corruption in Ohio. Those are all just suppositions. Perhaps when we get Celinda Lake's polling we'll get a better sense of what was really going on in Ohio.

The thing about Arizona was there were Republicans who were voting for the reform in Arizona. But we didn't have—I mean, we had Democrats voting against the reform in Ohio. So something about the political circumstances changed between 2000 and 2005 which really defeated the reform.

MR. MANN: Remember, there were four political reforms that all went down in Ohio overwhelmingly, suggesting that you can't just explain the redistricting initiative failure on its own terms. It got caught up in sort of a larger political dynamic and probably had a lot to do with confusion and uncertainty and different signals coming from different elites, including Governor Schwarzenegger coming into the state on behalf of it, which probably increased Democratic opposition to the initiative. Same thing in California. All of the initiatives on the ballot went down. So as Bruce said, there was a resentment at the special election itself.

It does maybe suggest to you that less is more, that simple is better than complex, that one initiative with a story around it and a narrative is more effective than inventing it in a larger package that confuses and complicates matters.

We have a bunch of questions here. We're going to get them all out and then we're going to have a final response to all of those. We're going to take all of these questions and do our best and close out with them.

QUESTION: I'll try to do this quickly. Gary Mitchell from the Mitchell Report.

I want to try a sort of contrarian idea, and it's because every time I find myself listening to people talk about reform I'm reminded of Daniel Patrick Moynihan's

I thought brilliant suggestion about gun reform, which was that we ought to leave that alone and just outlaw bullets.

The question is this: It's clear that competition is a central, arguably highest, value in a market economy. I question, for the purposes of this discussion, whether that is demonstrable in a representative democracy and in particular in, if you will, putting together a Congress. Is competition the highest or among the highest values, or are things like excellence, diversity, and fairness? So the question really has two parts. One is whether that supposition makes sense, and second, whether to some extent redistricting reform may be in fact working on the wrong end of this problem.

QUESTION: Jeff Weiss. I'm with the redistricting project of the National Committee for an Effective Congress and have served as the Democratic National Committee's redistricting counsel for several go-rounds.

My question or comment really focuses on taking the politics out of the politics, and the problem in that Ohio and now Massachusetts, possibly Florida, that these initiatives are drafted in a way that might make worse mischief than what the politicians themselves do. The Massachusetts proposal in particular that does let you take political considerations into account, the political data, but then doesn't let you help or hurt a political party. You can't do one without the other. And that this particular initiative has several thousand signatures already. The train has left the station, but it's the wrong vehicle to get you there. And I think we need to look for some kind of a way to work both nonpartisan but bipartisan to get the players together will just make things worse than they are right now unwittingly, but with the right intention.

QUESTION: My name is Jo Freeman, and I would like to put on my hat as a former party hack who's done a lot of turn-out-the-vote campaigns.

It strikes me that there is a contradiction in the interests of the local candidates who want noncompetitive districts and the national and state candidates who would want more competitive districts. And the reason for that is because it's simply a lot easier to turn out the vote in November if you have a competitive local race, even if what your real interest is is getting out the vote for your presidential or gubernatorial candidate. And that's because the turn-out-the-vote organizations are local organizations, and if they're not out there working for their person, you have to recreate the will.

So my question to both of you on competitiveness is have you said anything about the politics behind these reform proposals, and does it appear that the national and state parties and candidates are weighing in differently than the local candidates on how competitive the district should be?

QUESTION: Les Francis, former political consultant, Bruce, and someone who's done a lot of ballot measure campaigns.

A couple of thoughts, not a question. The first is that 65 percent or so of all ballot measures in the country fail. So the no vote has a 2-1 advantage going in. Among the things that tells us is that we have to get the messaging right. And picking up on Gary's point, it seems to me that competitiveness ought not be the goal but whether I think part of the goal ought to be the elimination, or reducing, if you will, the polarization that characterizes our politics and our legislative bodies—and I see E.J.

Dionne in the back—and the politics of false choices that that polarization has produced. It seems to me that has to be more part of the message than competitiveness per se.

QUESTION: Gary Kalman with USPIRG.

I actually was in Ohio in the few days leading up to the election, and I do want to agree with the panelists on saying it actually didn't seem to me that it was coming down to the details. In fact, there was this very effective ad, I would argue—and I think the polling will probably show this, the most effective ad was one run by the opposition that was "the devil is in the details." But they actually never talked about the details. They just sort of raised the issue that there's all these details out there. And so I do think that putting four initiatives on the ballot, once that—as the gentleman over here said—train was out of the station, that there was almost nothing we could do in terms of turning it around and winning all of them. There were just too many places for the opposition to attack.

And so my question would be, in looking at—it seems to me that we ran into a big problem with confusion at the ballot. And so what would be some of your suggestions, if you could comment a little bit more, about how do we make redistricting, which seems to be a very complicated issue, clear enough and short enough for the voters to sort of grasp and understand? What are sort of the key points you would say in a strong redistricting proposal?

MR. MANN: Well, who would like to take first crack? Mike, would you?

MR. McDONALD: Sure, I'll go first.

In terms of the sort of goals that we want to set—and it actually merges well with the other question, because it's a good question to ask; and Jeff's question as well—you want something that's sensible that does address many goals. Competition is one of them. Competition has other effects that we might desire in a democracy, like having higher voter turnout, like having strong party organizations that are devoted to mobilization efforts. You see across the states where you see the most competitive states, you see the strongest political parties, state political parties. And you look down to the districts where you see the strongest machines, if you will, at the district level, that's where you have competition.

So competition isn't just about competition for its own right in giving voters choices, it's about all the other things that come along with those choices and having the parties have to compete within that arena of democracy. And it leads to more moderation, it leads to better candidates stepping forward to try and challenge incumbents. So it has many good effects.

But in order to get to that point, we do have to have a sensible reform. And the devil is in the details, unfortunately. And a lot of groups are out there; they push their reform, they're so dead-sure that their reform is the way to go. Because John and I have been involved in these discussions, Jeff and I have been involved in these discussions with these reformers at the state level. It's very difficult to try and tell them, well, this isn't really going to do what you hope it to do and this is not going to provide the political support that you are going to need in order to get something passed. And unfortunately, those details need to be hashed out beforehand.

But I think with Ohio going too far in terms of its straightjacketing the commission and what it could do is not a good approach. You do want to have some flexibility. And I am concerned about moving forward on this. I did talk with one of the fund-raisers for the Reform Ohio Now organization, and he told me that he thought redistricting reform was dead at this point, that he didn't think that any organizations were going to come out to supply that \$6 to \$8 million that's needed to get the initiative passed in another state. The defeats were so resounding within these states that it's going to be difficult to have this reform elsewhere. So I'm not very optimistic looking forward that we're going to have reform efforts that are successful for the next couple of years.

MR. CAIN: There were a couple of questions about the value of competition, there was a question about turnout, and there was a question about how to make redistricting clear enough.

The value of competition, I think among the three authors here, I'm probably the least persuaded that this is the most important thing to do, redistricting. I believe it's important to do—and I go back to the California case, because if you go back to the 1990s and you look at the five cycles of races in the Congress there, you had—and it varies from year to year, depending upon the movement of voters, et cetera—you had on the order of a dozen seats that were within a competitive registration range. And what Michael Berman did, Howard's brother—and Michael is very, very good at it; he's the best—what Michael did was he cleared out all the seats in a range from plus 3 percent Republican to plus 10 percent Democratic in terms of registration. And that's pretty much the range of where the close races are in California. And he basically cleared it out. So if you look at a histogram of what the redistricting was all about, you

had sort of a distribution where you had about a dozen out of the 53 seats that were in this range, and then all of a sudden it disappears.

Now, what does it mean for that to disappear? Well, the problem, of course, in order to sell reform you have to exaggerate the effects of reform, and that's basically, you know, what's going on. There's a lot of hyperbole about what it would mean to put those 12 seats back. And let's just stipulate for the record that that's hyperbole. You're not going to massively transform the system. You're not going to change the politics overnight.

On the other hand, I did write an op-ed piece—I was the first person in California to complain about this. And I did it for a very selfish reason. I thought the entertainment value of California elections would go down to zero. And I'm a political junkie and I enjoy the competitive races. I will say that flat out. And I wrote an op-ed piece to the Sacramento Bee whining about the fact that I would not be entertained by this, and I warned them that when they were sitting in Sacramento in October unable to come to an agreement on the budget, it's because they lost a few of those swing votes. And in order to get two-thirds, you know, the pivotal voters are in that range there, those moderate seat ranges, so a few people can make a difference in whether or not you get out of there in July or whether you get out in August. I mean, eventually even hard-core partisans have to get the hell out of Sacramento in August because it's hot. So, I mean, you know, what we're talking about is saving them six weeks. And I said you guys put six weeks into your calendar as a result of this redistricting.

So I believe it's important, but I don't believe it's the be-all and end-all. And the great irony, and I write about this in the book, is that when I went to all these

redistricting reform discussions in the '80s, our big thing was partisan fairness. And the great irony is that there were a lot of people that were involved in the redistricting in 2001 who actually thought that by California standards this was an accomplishment, because for the first time we weren't going to spend the whole decade arguing about partisan fairness. And so Joe Remcho, who was a critical figure in the redistricting, an attorney, his legacy was that he had finally ended all that bitterness. But of course the cost of it was the clearing out of that range of competitiveness.

So, you know, is it—I mean, here's an interesting question. And we don't have an answer yet in political science; there's so much work we have to do on the connection between the nature of the district you're in and whether your politics are moderate or not. It's not a simple one-on-one relationship. And it's also not clear, based on the experience of many different democracies, that people in parliamentary systems, that come from systems that are very much polarized, are very much able to come to compromise. You're able to come to compromise in many different ways.

The question is do you build incentives for compromise in at the district level or do you try to build it in at another level. And it's not obvious that building it in at the district level is necessarily the way to go. It's possible that it needs to be done within the rules of the legislature or whatever. And in California, the other argument that we're having is should we get rid of the two-thirds vote. I would argue no, that having a super-majority requirement and forcing those bastards to sit there in the summer when it's hot makes them come to compromise even if they're coming from different districts. So it's possible that you can work at different levels in terms of where

you get compromise, and to assume that it's all going to come at the district level is a problem.

Now, to the issue of different incentives, the answer is yes, there are different incentives on turnout. It's really quite fascinating. It's not all related, in fact mostly related, to redistricting. But the basic problem in a state like California is that statewide offices want to turn out the vote in the most loyal areas because if they're going to invest a lot of money in getting voters out to vote, you want to have a high probability that they're going to vote for you. You don't want to invest a lot of money in people who might potentially vote against you. So if you think about it, in competitive seats you have a slightly higher ratio of unreliable voters, and so if you invest a lot of money in that, you may get more turnout, but they may not be people that vote for you. And partisan turnout is about getting people that are going to vote for you.

So the tension in California was always between the Diane Feinsteins, et cetera, and other people, who wanted to get more voters out of the minority communities, but of course they didn't have competitive seats and the Voting Rights Act is not going to allow you to create competitive seats there, so you're always going to have that mobilization problem for the Democratic Party and their base and the Republicans and their base.

So, you know, in an ironic sort of way, the fact that these seats are more polarized actually aligns the turnout incentives a little bit more in the direction of the statewide candidates, but only on the margin. I mean, that tension is always going to be there. And moreover, the problem for statewide candidates is that the actual probability that the race will be close enough that any amount of mobilization effort, which costs

millions of dollars in a large state like California, the probability that that turnout effort is going to swing the election is so low that it really undercuts the incentive to do it.

And this was classic—you may remember when Jerry Brown came back from the Far East, he became the head of the California Democratic Party. And you remember they booted him out. Why did they boot him out? Because when Diane Feinstein was running for governor, he made the perfectly rational calculation that he would have to spend an enormous amount of time raising millions of dollars to increase the turnout by 100,000 or 200,000 voters in California and that the odds that that would affect the gubernatorial race were extremely low and he didn't want to sell his soul to the interest groups that he would have to sell it to in order to get that money. All was perfectly rational. I mean, Jerry can be a very rational man. The problem was he bet against history and history proved him wrong, because it turned out that that race between Pete Wilson and Diane Feinstein was extremely narrow. And so Jerry bet that it wouldn't matter in the one race where it did matter, so the Democratic Party kicked his ass out of it, you know, and said you're not our chairman anymore.

So, I mean, it is an interesting problem, and that kind of tension occurs all the time in California. But I don't really think that redistricting is going to change that very much.

Finally, can you make redistricting clear to the voters? Well, I've been trying for 30 years, and...no.

[Laughter.]

MR. CAIN: I mean, you can tell good stories. And I've got lots of great stories, you know, about legislators who insist on having their dead mother's grave in the

district. You know, things like that. But they don't have much value when you're talking about what's happening in a democracy. They're just interesting stories about the quirky things that happen when people negotiate about what they care about. But it's a very, very hard issue to get over to voters.

That's why I keep coming back to it's only going to work when you have a bipartisan coalition that includes minority groups, that includes the white liberal groups, includes everybody; you put it all together and you go to the voters and say everybody thinks this is a good idea and it will be a better process. You'll probably have to oversell what it's going to do. I mean, I understand that. You have to oversell what it's going to do. But you do that, too, and then you'll get some change in some of these states.

MR. MANN: Let me just make a couple of closing responses. Is competition a highest value? Not really, if what you mean is the number of, say, legislative congressional districts that are competitive. What's important is the capacity to change the party in power. That is, to change control of government. And now we have, with the parity between the parties we probably have a greater chance now than we had during the 40-year Democratic reign in the House of Representatives. But they're sort of worried that the number of competitive districts is getting so small that it may weaken our ability to change party control when the voters want it, and that ought to be a level of concern. Also, going back to partisan fairness, if the sort of partisan control of the process becomes dominant once again, it could freeze in a partisan majority in a way that works against democratic accountability.

A point about—and this is sort of comments to the Massachusetts designers and Common Cause and so on—there are real limits to nonpartisanship in this era. I think too much is reasonable basis for worrying about bipartisan agreements and gerrymanders, but the idea that you're going to cut the politicians out and somehow win as a result, I think, is nonsensical. We need to start thinking much more seriously about how to build them in at the core, but then at the decisive margin to have an element of nonpartisanship and standards that allow you to come up with results that achieve your objectives, but all the while building in the key political information that's central. You know, we always lean one way or the other, and which it's sort of goo-goo—it's all public interest and politics, and partisanship be damned—or just the opposite. And we have to figure out a way of taking both into account if we're going to really succeed here.

With that, I want to thank Bruce and Mike and all of you for coming. We are adjourned.

[Applause.]

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