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Governmental Studies Conference:

**"COMPETITION, PARTISANSHIP, AND  
CONGRESSIONAL REDISTRICTING"**

Panel 4: Alternatives to Traditional  
Redistricting Processes

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P R O C E E D I N G S

MR. FRENZEL: We made one misleading description in the morning program. We accused Dale Oldham of representing the Republican National Committee. He actually belongs to a group called the Free Enterprise Coalition. So it should be noted and scratched in your program that we got that wrong.

Now Bruce is going to run the program for the afternoon.

MR. CAIN: Well, that is a frightening thought.

Let us get started with the next panel, having discussed many of the complexities and issues of redistricting. One of the more recent changes is the rise of many more citizen commissions.

Tom Mann has devoted himself to looking at some of these commissions and looking at the experience of them. So Tom is going to give a presentation, and then we are going to have two responses, one from Alan Rosenthal who is truly one of the greats in political science, one of the founding fathers of state legislative studies in modern political science. He is blushing modestly, but it is true. Then we have Steve Lynn who is out there on the firing line in Arizona, the chair of their citizen commission, which we have already referred to. So we really have an interesting

panel of people to sort of talk about the experiences of commissions.

So, Tom, give us your thoughts.

MR. MANN: Bruce, thank you very much.

You will soon realize my paper and my presentation are mere foils for Lynn and Rosenthal, the real experts on this subject, to make their independent presentations. So while Steve is chair of a citizens' redistricting commission, Alan Rosenthal has been chair of a politicians' redistricting commission, two rounds in New Jersey.

MR. ROSENTHAL: In New Jersey, we don't have citizens. Only politicians.

[Laughter.]

MR. MANN: As they know, I basically have set them up in my paper to really put us on the straight and narrow.

I think our morning discussion trying to examine the links between redistricting and various electoral maladies proved more complicated, it is fair to say, than is often evident in the public debates. Nonetheless, I think we would conclude there is enough evidence of incumbent protection, of minimal competition, of partisan unresponsiveness, and of polarization to at least consider ways of reducing the dominance in the redistricting process of self-interested political actors.

I was reminded of a quote that circulated in Washington a good deal around the time that the Texas Republicans succeeded in their mid-decade redistricting (the dangers of e-mail and its broader circulation). I didn't bring the quote with me, but let me paraphrase. It was from a staff member who said, "Whatever the voters do, our hold on power is assured." That was the sort of commentary being made about the Texas plan.

We picked up seven seats, and it doesn't matter. We have figured out a way to hold our power, whatever changing sentiments might exist among the voters. Now, that is an ordinary kind of thing that partisan players say, I suppose, but we ought to remind ourselves before we get too self-assured and Panglossian about living in the best of all possible worlds that at times the way in which we set the rules, the democratic rules of the game, holds us up appropriately to scorn and ridicule by others around the world.

We oftentimes think of ourselves as a paragon of democratic virtue, but maybe, just maybe, our system isn't absolutely perfect.

Emerging from this morning and built into my paper is what I see as the gulf between what I call the regulars and the reformers. I always had considered myself a

regular, a party regular, and yet, in recent years, I found myself drifting toward the reform camp, partly, I think, out of a realization that regulars are oftentimes unable to be anything but impervious to embarrassment for what they are prepared to do and willing to do and then justify, in a manipulation of the democratic rules of the game. We see it on a whole series of fronts, not limited by any means to redistricting.

What I am suggesting in this paper is that there is some ground between a skepticism about doing anything different and a kind of good naivete about the process. In fact, in a number of areas of political reform, the regulars and reformers have managed to see eye-to-eye, particularly when they are prepared to move away from longstanding positions and consider some alternatives.

My model for this is my former professor, Donald Stokes, who died some years ago, but not before having served as chairman for two rounds of the New Jersey State Legislative Redistricting Commission and who wrote a lovely essay in which he talked about the possibility of bridging the gap between the apolitical, European-style nonpartisan boundary commission--which tends to devalue and ignore important and relevant political information--on the one hand, and the utterly conflicted process in which those in

power write the rules under which they will stay in power and the public interest suffers, on the other hand.

So the quest here is not to replace one with the other. It is to see if, in fact, there aren't ways of altering the system to try to deal with the most blatant and egregious exercises of self-interest.

The latest American Political Science Review includes an article by Dennis Thompson, a theorist at Harvard who has written a very interesting book, Just Elections, that you and I are going to comment on at the APSA meetings.

He reminds us that, in fact, James Madison, who is the patron saint of regulars in many respects for propounding the idea that we should try to channel self-interest not deny it, apparently wrote very strongly about not allowing incumbent politicians to write the electoral rules of the game because they will use that capacity to perpetuate their position and power. So it is not quite a clear Madisonian-versus-progressive distinction here.

I think it is possible to value the American constitutional system, to appreciate our unique political culture, our suspicion of bureaucracies and authorities, our decentralization and parochialism, and our insistence on political control of bureaucracy, but still say that you can

go a little too far. You can so undermine the whole sort of rationale for a democratic polity that you end up doing great damage.

Having said that, I have done the easy part. The difficult part is figuring out a way to accomplish that objective, because, in fact, much of the analysis underlying the arguments of the skeptics or the regulars is good analysis, and there are great difficulties in trying to structure a process that sees little room for the public interest. But that is the challenge.

What the paper does is essentially lay out a way of thinking about alternatives to the normal state legislative control of congressional redistricting. Drawing on my colleagues, what I suggest is that conceptually we can think of it in terms of what aspect of the redistricting process is altered and the means by which the alterations are achieved.

In the former, we can look at the structure of the electoral system a la Rob Richie, the standards by which new maps are to be drawn, and the procedures used to draw and approve those district boundaries.

As far as the means by which those alterations are achieved, they might be constitutional, statutory, or judicial actions at the federal or state level. On the

constitutional statutory front, they might be initiated by legislatures or by popular initiatives.

The first category, considering alterations in the electoral system, is simply worth having front and center at the beginning, because, in fact, much of our redistricting problem is a function of single-member, first-past-the-post systems. Other kinds of multi-member systems and PR-style systems have much less of a problem with redistricting. There is no constitutional impediment for the most part to doing this.

In fact, there is some early history in the U.S. following these models. My own reading is that we are not close to a serious consideration at the national level, but there is interesting historical and contemporary experience at the state level that is well worth following and that might over time provide some useful experience.

On the redistricting standards, it is worth remembering that there have been federal standards for redistricting. They existed during a period of time between 1842 and 1929 that included the familiar requirements of contiguity, compactness, and equality of population.

We learned that Congress had the constitutional authority (and, therefore, presumably still does) to set standards for redistricting in states over congressional



districts, but we also learned back then that Congress had no means of enforcing those standards and for the most part the states ignored what Congress did.

Since 1929, when Congress did not renew the standards, there have been many efforts to achieve them. Virtually all have failed. You will not be surprised to learn the most current one is a proposal by members of the Texas Democratic delegation to stipulate that redistricting may be done only once a decade, whether by legislature, court, or commission. I think the odds of that passing any time soon under Majority Leader DeLay are slim. The interesting question is what might happen if Democrats were to take control.

The move in Texas, which has been discussed and analyzed by others here, I will say was ambitious and brazen. In my view, it broke a century-long norm regarding how often redistricting is done absent a command from the courts, and it created the possibility of a new political dynamic that if followed or unleashed would be quite destructive to both parties and to the democracy.

So I hope we nip this baby in the bud and it doesn't become a norm of continued efforts throughout a decade to gain control of a single chamber that would allow a party to redraw the district lines. But that legislative

proposal isn't going anywhere soon. Maybe it will have more success in the courts.

The other federal mandates which have been discussed and detailed--the minority vote dilution and equal-population districts--were a function, in the first instance, of both congressional action interpreted by the courts and then, of course, by the courts alone.

Let me just put in my appeal, which I think is consistent with what almost everyone else has said, for easing somewhat the equal population standard, which carried to its logical extreme has provided a cover for mischief rather than a deterrent against it. But as to how we get there, I am going to have to defer to Nate. It isn't clear that that is anywhere in the future of court action.

You have heard a good deal about the effort to establish a partisan gerrymandering national standard through the courts, beginning with the Bandemer decision and about to be informed by the Vieth decision which should be handed down any day or week now.

I am not particularly upbeat about the prospects there either for dealing with partisan or bipartisan gerrymandering, given what the Court has said in oral argument and in its previous decisions.

On the state level, various standards are common. The problem is in their implementation, as you have heard already. They often suffer from ambiguity and conflict with other standards that makes it extremely difficult for them to serve as guides to the kind of map-making one might hope for.

It turns out that it is those nontraditional states, like Steve's Arizona, that are more likely to adopt explicitly political standards for redistricting, whether done by blind procedures or via requirements to draw districts that are demonstrably competitive or treat both parties fairly. Each of these approaches, in turn, has its own complications, and each also can lead to conflicts among various standards.

The final area, of course, is in the procedure of redistricting itself, that is, the normal process we know. We understand how it works. We know what unified government means and what split-party control means at the state legislative level. We also know that unified party control is no guarantee of partisan gains. It is all complicated.

Bruce has provided a good deal of this literature. It is also the case that requiring super-majority rules can make a difference as well.

The courts have obviously played a critical role in the imposition and implementation of these standards, and there are some interesting questions, as Sam suggested, about a newer role the state courts are playing that is worth paying attention to. But I think the direction in which most reformers have looked is to the independent redistricting commission where power is somehow taken out of the hands of the legislature and invested in some other group of citizens.

We now have seven states that do congressional redistricting by commission: Arizona, Hawaii, Idaho, Maine, Montana, New Jersey, and Washington. Twelve do state legislative redistricting, and there is also a "backup" procedure in Connecticut and Indiana for congressional redistricting. Other states use commissions in an advisory role to the normal process, and then, of course, there is Iowa. We have had a discussion of Iowa, and my paper deals with Iowa at some length as well.

You should realize that commissions presently in use for legislative redistricting vary in their size, the appointment of an even or odd number of members, the criteria and method used to appoint members, the state redistricting standards they must follow, the limits on information and drawing plans, the degree of independence

from the legislature and governor, the approval of plans by a majority or super-majority rule, the provisions for judicial review, timetable for action, staff, funding, and backup provision if the commission fails to approve a plan. You can see we are over-determined, and therefore, the possibility of doing really sophisticated multivariate analysis to tease out lessons is enormously constrained.

We know certain things. Partisan majorities and simple majority rules on commissions tend to produce partisan plans. Those with evenly divided membership, partisan memberships, or super-majority rules are likely to produce plans that protect parties and their incumbents.

Designing a commission that is neutral toward or that dampens the influence of both incumbents and parties is a challenge with which few states have successfully grappled.

In the paper, I talk about the experience of Iowa, Washington, New Jersey, and Arizona. I don't have time to go through these, and we have the advantage that there has been some discussion of Iowa. We are going to hear more about Arizona and New Jersey from our discussants.

Let me just say a word about Washington State, because there seems to be some disagreement among our

participants here about what is going on in Washington and whether it is competitive or noncompetitive.

Washington is a model that is a classic for a bipartisan gerrymander in the sense that it sets up a four-member commission evenly divided between the two parties with a fifth non-voting member chosen simply to serve as chair. The decision rule is super-majority; you must have three out of four votes. The legislature can amend narrowly, but not kill, by a two-thirds vote.

You would think that that setup would just produce one incumbent-protecting bipartisan gerrymander. It is the model that David Butler and Bruce have called a conceptual model of redistricting. But something else is going on in the state because it turns out Washington managed, after its first serious bout of commission-drawn congressional districts, to produce one of the most competitive delegations in the country.

The decade of the '90s was an extraordinary one in which six of the nine districts were genuinely competitive and in which the delegation managed to move from a seven-seat Democratic majority to a five-seat Republican majority, with seven of the nine House races won with less than 60 percent of the vote, a subsequent competitive pattern in the elections that unfolded.

The post-2000 plan led the state to reelect all of its incumbents, but then which state didn't? We had only four that lost. If you look underneath the measures, you will find that the state will have potentially more competitive districts than most any other. So the question is: Why? Why does Washington produce something different?

They do operate under a number of familiar standards: equal population, of course; contiguity; compactness; convenience; and respect for political subdivisions, communities of interest, and geographic barriers. But, in addition, the state standard says the plan cannot favor or discriminate purposely against a party or group and should encourage electoral competition. That is, maybe those standards in one way or another make a difference. Maybe it has something to do with the nature of the state--the population, the geographical distribution of voters, the small percentage of racial minorities, closely divided parties statewide.

I don't know, but it seems to me that it is enough to give pause to our assurance that we know that if it is structured in exactly this way, it is going to produce a particular outcome. I am hoping Steve's experience in Arizona may shed some light on the Washington experience.

I am also intrigued by the New Jersey experience. My dear friend, Alan Rosenthal, has been through two rounds of congressional redistricting. Donald Stokes was doing the state legislative redistricting. I think Stokes was more upbeat on the possibilities of dealing with partisan fairness and responsiveness through this process than Alan has been. As best as I can tell, Alan has pretty much salted in those Republican and Democratic House incumbents from New Jersey for decades to come. Anyway, he will help us understand what the experience is there.

In New Jersey there is, if you will, a tie-breaking system where you have an equal number of partisan appointees who come out of politics, and then you get someone who is presumably independent who will either mediate or come down on behalf of one of those. Of course, if the two teams decide to do a bipartisan gerrymander to begin with, there is nothing much that Alan can do, and maybe that is what he is going to tell us happened in this particular case.

Our knowledge of commissions suggests the limits and possibilities of this reform genre. It can certainly be used as efficiently as the normal legislative process to achieve partisan- and incumbent-protection gerrymanders. There is no question about that.



On the other hand, the kind of relationships that we have seen between how they are structured and what they produce are far from perfect. It turns out other aspects of a state's political geography and culture and the rules under which the commissions operate can make a difference.

Like my colleagues, I see great limitations in exporting to other political cultures and other states the Iowa plan, which, as was properly pointed out, is not a commission plan. But, in fact, I am struck by the interesting possibilities that exist in this commission world; commissions are far from a panacea--they are easily manipulated to produce the normal results--but they are capable of being structured in a way that allows for political information to be brought to bear while still allowing for some process whereby public interest considerations can weigh in as well. That is the challenge of redistricting reform: to avoid the great gulf between the two sides, one of which claims, "This is the way it is; this is the way it is always going to be," and the other which believes we can solve all electoral problems in America by adopting an Iowa model or an Arizona commission. Neither is the truth, but at the margins, like in other areas of political reform, there are constructive things to be done.

Thank you.

MR. CAIN: In Tom's paper, he contrasts the New Jersey state legislative effort with the New Jersey congressional effort, and he asks the provocative question: Do procedural differences alone account for the relative success of the state legislative over the congressional redistricting in New Jersey?

So I hand it over to Alan to explain himself.

MR. ROSENTHAL: Yeah, right. I take that very personally.

MR. CAIN: I knew you would.

[Laughter.]

MR. ROSENTHAL: I think I want to respond, but I want to talk a little bit about, first, the problem and, second, the solution.

I think it is ironic that in the last 20 years, we have had more competitive politics in this country and the competitive politics has led to less competitive districts. If you look at the nation or if you look at the statewide elections, you find they are generally very competitive. There are still a dozen to 15 States that are roughly one-party states for legislative purposes, but any candidate, any Democratic or Republican candidate or Jesse Ventura can win an election in virtually any state. So statewide, they are very competitive.

Even at the legislative level, there is competition, and there is certainly competition for the United States Senate or for the United States House. Yet, you have got the situation where maybe 10 percent of House districts at the federal level are competitive.

In the states, it varies by state, but anywhere from two out of five districts to four out of five districts, depending upon the state, depending upon the election, may be safe for one party or the other.

The question is: What is the problem? One way to put the problem is that each district is not as competitive as it might be or as it should be or that the House has too few competitive districts. Perhaps some of the states, New York State I would guess, have few competitive districts.

The fact is there is an increasing political homogeneity out there. One way to get competitive districts--we haven't done this in New Jersey; maybe they will think of doing it in Arizona or somewhere else--is to basically forget the maps. You just move people out of Newark to Suffolk County. You move the Democrats out of Newark to Suffolk County, and you move Republicans out of Suffolk County in New Jersey to Newark. So you can really create competitive districts by moving around populations.

I am not advocating that. I am saying that is one solution.

We have got a competitive political system. Years ago when I was growing up, practically the first thing I heard in listening to political scientists was that we want more responsible political parties. And now we have got responsible political parties and they are driving us nuts. Things are getting fierce. They stand for different things. Sometimes their stalemate compromise is more difficult to achieve and what have you.

Is representation a problem? I think not. I think representation really isn't a problem.

Is responsiveness a problem? I think not. First of all, in terms of representation, Members of Congress and members of state legislatures represent their districts, and very important parts of representation are for the district, that is, getting federal aid or getting state aid formulas for the district, getting projects for the district, taking care of people's personal problems, the ombudsman service, and those very important parts of representation. It doesn't matter. People do it.

As far as the issues are concerned, there are not many issues in which there is a district mandate. Members represent the larger groups in their district. They

represent their supporters. That is the way they look at representation.

I dare say representation is not suffering because of the lack of competitiveness. Responsiveness--I think most members are pretty responsive. There is a feeling they have become too responsive, and I think that is for safe and unsafe members.

Tom, you wrote the book, Unsafe at Any Margin, and I think that still holds and probably even holds more so. So I think there is a degree of responsiveness.

One can also make the argument in favor of this kind of stability, the stability that incumbent protection can provide. It provides for a certain degree of continuity. It provides for more experience. It probably provides for more adept Members of Congress and certainly more adept state legislators.

We will see the result of instability in the term-limited states when the study that Bruce Cain is working on is completed and is out, but probably, they are not very positive results.

To give you an idea of what that means in terms of redistricting, let me just go to the 1991 commission, a congressional commission in New Jersey. There is another interesting thing about protecting incumbents.

The problem, prior to this, was the problem of political unfairness, the problem of the majority party that had control of the governorship and the two houses of legislature trying to really destroy the opposition party. People like Phil Burton who are so good at doing it, that seemed to be the problem.

I think one of the solutions for that problem is the solution of trying to be politically fair, and that, I think has been the experience of the New Jersey Congressional Districting Commission.

In 1991, when the commission was going through that redistricting and it was the first experience of the commission which should have been created by statute at that time, both Republican members and Democratic members of that commission agreed that they wanted to protect an incumbent.

New Jersey was losing one congressional seat, going from 14 to 13. That makes an enormous difference in protecting incumbents. When you are losing a seat or, as in Maryland, when you are targeting incumbents, protection matters less because you have to focus on where you are going to put people in order to make up for that seat you are losing.

In 1991, both Republicans and Democrats agreed the one thing we want to do--there was unanimous agreement--is

protect Bob Rowe. Bob Rowe was a senior New Jersey congressman who chaired a committee and brought a hell of a lot of pork to New Jersey. So there was that recognition. It was self-serving, but it also had kind of a public interest in terms of benefiting New Jersey.

Let me just go to the New Jersey commission experience. It is kind of interesting. The legislative redistricting commission was created in a different way than the congressional districting commission, and I think that explains part of how it operates.

The legislative districting commission was created after a constitutional convention in New Jersey, and it was created by, more or less, citizens. What is unique about it is that the appointing authority for the independent member, the eleventh member, the tie-breaker member of the legislative commission is the chief justice of the state supreme court.

The congressional commission basically has six "D"s appointed by the legislative leaders and the party chair and six "R"s appointed in the same way, and those 12 members have got to come to agreement and appoint the thirteenth.

So you get very different appointments. I am appointed as a thirteenth member, and I have more of an

obligation, or I feel more of an obligation, to the two-party representations. I think Don Stokes and, after Don, Larry Bartels [inaudible] of an obligation that way.

Furthermore, the interesting thing is I think Don and I basically disagree on our roles, whatever the appointing authority. Don felt that he represented the citizens of the state and that he should do what is good. I didn't have that feeling. I didn't think I represented anybody. I wasn't that presumptuous to think that I could speak for the citizens of New Jersey. I can't even understand them when they speak.

[Laughter.]

MR. ROSENTHAL: And I interpreted my role as one of trying to ensure political fairness, obviously ensure that the constitutional standards were met. That was no problem on equal population. Everybody knows that, or majority-minority districts when that was the situation in the '90s, but beyond that, I saw my unique role as trying to ensure political fairness.

MR. CAIN: By which you mean partisan fairness.

MR. ROSENTHAL: Yes, partisan fairness, meaning that basically these seats gained in the next election should be roughly proportionate to the vote for "D"s and



"R"s for Congress in that election. Basically, the seats should reflect a statewide vote.

In the 2001 redistricting, the commission was faced with an interesting situation. I am not sure in how many states this happened that way, but the New Jersey congressional delegation got together, went into the tank together, and the New Jersey delegation unanimously adopted a map, and that map was an incumbent protection map, especially for two districts that would have been--one that was very closely contested, Rush Holtz's district, and another one, Ferguson's district, that was competitive.

The congressmen adopted a map in which everybody was very well protected, and that map was submitted to the redistricting commission. I thought that was important. It is politically fair if the two sides sign off on it, but the commission did not accept that map for a number of reasons because of local considerations, because--and this is interesting--the Republicans felt that if they accepted that map, it would freeze the Democrats into control for the rest of the decade.

So there is some kind of political stuff that goes on that may remedy this imbalance. Because of the Republican position, the safety of the two districts was reduced. Rush Holtz's district wasn't as safe as it

otherwise would have been, and presumably, if Rush Holtz was not an incumbent in that district, that district would be reasonably competitive, even today.

On the other hand, the legislative redistricting commission was basically--I guess their basic--or Larry Bartels' basic aim was to get more competition, more competitiveness. The Democrats on the commission were very skillful. They knew everything about Larry Bartels that there was to know. They had read every book he had written, and I wouldn't want to do that.

[Laughter.]

MR. ROSENTHAL: As they put it to me, they knew more about Bartels than his wife did.

Meanwhile, the Republicans felt that since the chief justice, Deborah Poritz, made the appointment and the chief justice had been named by a Republican governor, Christine Todd Whitman, that they had nothing to fear but fear itself, and the Republicans sat on their hands while the Democrats crafted a map which basically unpacked a number of urban districts and put the blacks from these urban districts into suburban Republican districts or suburban competitive districts. They didn't increase competition. They took noncompetitive districts and

basically they won about five seats in the assembly and a couple of Senate seats as a result of the unpacking.

Bartels voted for that map. The curious thing, too, is that in the statewide elections that elected a Democratic Assembly and a Democratic Senate, the Republicans had more total votes than did the Democrats. So one could suspect that it may not have been politically fair, but it was a fair process and Bartels voted for the map that he thought was the better map.

Let me just conclude by saying that there are a lot of considerations. When you think about tinkering with a system that is pretty complex and, in large measure, unpredictable, how many elections have to be competitive for us to have competitive elections? Do we want all of them competitive? Could you just imagine 435 competitive elections for the United States House of Representatives? Just imagine that world.

MR. MANN: I will take 100, Alan.

MR. ROSENTHAL: You will take 100? Okay. Do I have anybody who will take 50?

[Laughter.]

MR. ROSENTHAL: But that is the point. You may not be able to decide on the number. Maybe you can. How do you regulate the number of elections?

I admit that 10 percent is too few, but how do you achieve a balance? Do you require that every state over a certain size has at least one-quarter competitive elections? You could do that, I guess, but I am not sure that that would work.

Or, do you leave it up to the states? If you leave it up to the states, my feeling is that the Arizona system is only likely to be adopted in those states that have the initiative and referendum.

We already have one division at the state level in this country. We have those states that limit the terms of members, and they tend to be the I&R states. So we might just make that divide a little deeper and have the I&R states also the ones that have the citizen commissions.

It is not likely to happen in a bunch of other states, but it may very well happen in--I mean, I could see a statewide campaign to take politicians off of redistricting. I mean, that would resonate with the voters. All you need is to get George Soros and some money and you will have your campaign, and California will be one of them, Colorado will be one of them, Maine will certainly be one of them, and maybe Massachusetts, unless the court overrules it, will be one of it.

The alternative is to kind of think that maybe this is episodic. Maybe a little competition in Congress will change on its own, because, I think, the incentives of politicians change. 2002 may have been a year of great compromises, congressional delegations going into the tank together, but that may not happen in 2004.

It seems to me that the Democrats, if they don't win control of the House, are going to have a very different redistricting strategy than just striking deals to protect incumbents. They are going to have to win seats, and they recognize if there are only 35 seats up for grabs, it will be tough to win the 12 that they need or whatever.

I think the parties and the Members of Congress-- there may be some change, and it would be nice to get back here again in 2 years and see what has happened, whether the problem has persisted and gone on. We would have to get together in about 10 years.

Anyway, those are my thoughts on it.

MR. CAIN: All right. Well, very good.

There were also questions for Arizona in Tom's paper. So we are very fortunate to have Steve Lynn who was on the Arizona commission that we were talking about.

So, Steve, share your thoughts about that.

MR. LYNN: Thank you, Bruce.

For those of you who don't know the details about the Arizona system--and I know we have talked about it in general terms--let me just give you a brief overview of how that system works, both in terms of what the Constitution says and then the practicalities.

In Arizona, fortunately we were in a position where we gained two congressional seats in 2000 as a result of reapportionment. Had we been in a contracting situation, it would have been a more difficult process than it was, and it wasn't that easy even with gaining two seats.

The ideal congressional configuration in the State of Arizona is 641,329 people, and if you check, all eight of our districts have exactly that number of people. We were able to get it down to a zero deviation, only because the number of citizens we had in the state was divisible by the number eight, thank you very much.

[Laughter.]

MR. MANN: Congratulations.

MR. LYNN: So the math works, if nothing else.

I have not participated in one of these before, but I now know that if you go to a physical science seminar and you hear all the papers being presented about the laboratory experiments, it is an interesting concept.

When you get political scientists together, I am speaking for the lab rats. I mean, I am the lab rat report today.

MR. CAIN: And we have been good to you.

MR. LYNN: And you have. The kibbles are there every time we do something right, and we are not on too many steroids.

Anyway, Arizona had a 5.6-percent Republican advantage by registration in the year 2000, and our delegation of six Members of Congress was five Republicans and one Democrat. There was one majority-minority district in the State of Arizona.

I am sticking mostly with congressional, but I will jump to legislative because we do both. We multi-task in our independent commission, and there are some lessons that we learned in doing legislative redistricting that didn't really apply to congressional because, on balance, congressional was easier.

We are a citizen-driven initiative. So, in the year 2000, the citizens of Arizona decided that the legislature should no longer be responsible for their own back-room private redistricting process. What you get out of a process like this, quite honestly, and what you think

of a process like this is directly related to what you expect out of a process like this.

There are those who believe that this process was sold to the voters of Arizona on the basis that we would, in fact, create more competitive districts. I can assure you that that was actually a minor point in the process of selling this proposition.

The major point in selling the proposition was the line that was used in all of the campaign literature: "Let the People Draw the Lines." "Letting the People Draw the Lines" is the concept of not having the legislature involved in a direct political gerrymandering process.

So, from the standpoint of having five "ordinary," if you will pardon the expression, citizens draw the lines for the people of Arizona, we were wildly successful because no politician touched these lines directly.

Many of them had influence indirectly, I might add, despite our best efforts, but that I will get into in a minute.

The constitutional amendment passed overwhelmingly in the year 2000, and it created a five-member lay commission. This is an affirmative application process. 311 Arizonans decided that they might like to be pioneers in



this regard and serve on the commission, the first ever in the State of Arizona.

The commission on appellate court appointments took that list of 311, threw it against the wall, and came up with a list of 25. The 25 included 10 Republicans, 10 Democrats, and 5 "other." That "other," yes, you just had to be "other," and you had to be an "other" for three years consistently in registration. So you could have been anything as long as you were three years the same thing or not any of the other two things.

That list was circulated to the leadership in the state legislature, and each of the leaders had one appointment. So the House and Senate majority and minority leaders each made their appointments, and they could pick anybody on the list.

It wouldn't surprise anybody in this room to know that the first four appointments were two Republicans and two Democrats, and in fact, when those four people, once selected, met as a commission, February 13, 2001, they interviewed the five, now four, "other" that were on the list. One person had the good sense to drop out. Somebody, I think, leaked how much time we would actually have to spend to that person, and they chickened out. I think they

went into a monastery, which I believe is a lower-time commitment than we actually had.

[Laughter.]

MR. LYNN: At any rate, they interviewed the four, and they make the choice of the fifth person, the independent or non-Republican or -Democrat, to serve as chair of the commission. They picked me on the first ballot, because all the checks cleared. I had no idea who the other people were, and they had no idea who I was. I appeared before them and interviewed like everybody else.

So we have two Republicans, two Democrats, one independent, not one minority among us. Arizona, you may remember or you may know, is a state with a fairly hefty minority population. Our first set of criticisms, therefore, was literally that we could not be fair to minorities in the state because there weren't any among us, and that took about a month to deal with in terms of the press and all of the things going on.

We did, however, have one female member of the commission and just barely got to that point. So, in terms of those who did the choosing, I am not sure they were looking so much for representation as they were looking for people they might be able to influence, but that is just my guess.

The League of Women Voters and the Valley Citizens League are the two groups that put this measure on the ballot in Arizona, and if it is any measure of our success--and I go back to the campaign that they waged to get it passed--they have conferred on the entire commission the Kerry-Katt Award, which is given by the League of Women Voters for Outstanding Public Service. So they at least think we have done the majority of what we were supposed to do, which was to get it out of the hands in the back room and into the public.

Let's take a look at the criteria. As many of you know, there are six criteria imposed by the state constitutional amendment, and they include the things you would imagine: U.S. and Arizona constitutional provisions about compliance--Voting Rights Act compliance--equal population to the extent practicable--and again, zero on the congressional, but we have a deviation of probably plus or minus 2 to 3 percent on the legislative maps--geographically compact and contiguous, respect of communities of interest.

It was our own Sandra Day O'Connor who coined the phrase and then chose not to elucidate on what it meant or what it might mean, and we had two choices here.

As a commission, we could either define it ourselves and then impose it, or, as we chose to do, we

chose to have the people of Arizona define "communities of interest" in their own terms. And we went out of our way to hold an extraordinary number of public hearings to determine what the people of Arizona felt their communities of interest looked like.

Using geographic boundaries and county and city boundaries to draw lines was also imposed on us, as was favoring competitive districts where to do so would not create significant detriment to the other goals. I will get back to that in a little bit.

We also had the requirement that we must begin our process with the creation of a grid-like map using only population to equally populate the districts that we were drawing. So we did a number of random things to create a grid that had no specific rhyme or reason in terms of where we started, which direction we moved in to capture the people who would be in a district and so on, and we made that first attempt.

Then, we adjusted those grid-like districts as necessary to include the other criteria that were listed in the Constitution. We could not use voting history or registration data in the initial phases of mapping, and that was by design so that we would not get into the idea of judging competitiveness too early, but rather we could use

that data later on to analyze the districts that we had drawn. In fact, we employed a variety of consultants and experts, many of whom are sitting in this room I might add, to help us with those calculations as to whether or not districts would indeed produce minority candidates, if that were the intended goal, indeed produce competitive elections, if that were the goal and so on.

We were prohibited from knowing where incumbents lived or using that information or information about candidates in our mapping. Except for those of us who had had breakfast, lunch, or dinner at our congressman's home, none of us knew where any of the candidates lived, and quite honestly, most of us didn't truck with that group, anyway.

I made a joke, but nobody cares.

[Laughter.]

MR. LYNN: Lastly, the legislature was mandated to give us a budget of \$6 million out of the general fund to do our work. So far, we are not finished with our court battles yet, mostly on the legislative maps. The congressional maps are done, with no more court challenges that I am aware of, although there is no statute of limitation on that sort of thing. So somebody could come out of the woodwork at any time, but we are about to get our second supplemental appropriation from the legislature and

will have a total of about \$10 million that will have run to the commission and probably about \$8 to \$9 million of it will have run through the commission.

Independent redistricting is expensive. I was asked in the last hearing at the state legislature for our supplemental appropriation, "Why it is that we needed so much money?" when the senator remarked that the last time he was involved in a redistricting, it really didn't take that long or cost that much.

I pointed out to the senator that most of our redistricting was done, A) above ground, B) in meeting rooms that had open access to not only a parking lot but to the rest of the community, and C) all over the state, unlike their process which was done in the basement behind closed doors, not even open to the other party not in power and only presented when the maps were completed.

As a commission, we held 58 public hearings in two rounds to determine what the people in Arizona felt communities of interest should look like. We had over 50,000 hits to our website, and many of those were not profane.

[Laughter.]

MR. LYNN: And some even included maps that had been drawn by individuals. As Kim Brace told you earlier,

with the decrease in cost of the software, there are an awful lot of people who now know how to draw very professional-looking maps and submitted a number of them to us during the process, and we were hard-pressed to reject all of them as we did.

The issue of communities of interest was solved by creating something that we called Arizona units of representation. I think many of you may be familiar with the concept of the unit of representation determination, but we modified it for Arizona and created essentially a number of what we call AURs, Arizona units of representation, that were the sum total of the input from the public.

The public told us a couple of things. First of all, in terms of congressional redistricting, they were sick and tired of having everything radiate from the great State of Maricopa, which is the county in which Phoenix is located, and that they were tired of having all of our representatives come from Phoenix, with the exception of one in southern Arizona, which was a purely southern Arizona district in the prior redistricting. All representatives were Phoenicians or lived in the Phoenix area, and it was a hub-and-spoke situation.

So we created a district that is third in size behind Alaska and Montana--is that right? Montana is a single district?

MR. CAIN: Yes.

MR. LYNN: So it is the third largest, and we made sure that that district did not touch Maricopa County in any meaningful way.

So the representative from that district isn't from Maricopa County. As a matter of fact, he is from Virginia, but that is a different story.

[Laughter.]

MR. LYNN: Let's move on.

We hired a consultant out of California to help us with redistricting, someone who had had experience with creating these kinds of units of representation, and we had the opportunity to have legal representation from the Attorney General, but we chose not to because the Attorney General in our state, as in many states, is partisanly elected. We did not feel that that was appropriate, so we hired both a Democrat and Republican counsel. So we have co-counsels, one recognized from each political party, and that helped us as well.

We hired a competitiveness expert. He is sitting right over there, Dr. Michael McDonald. We hired a voting



rights expert. She is sitting right over there, Dr. Lisa Handley. You will hear from her later this afternoon. We hired Kim Brace to do some things. We have hired everyone in this room, just about.

MR. MANN: Why didn't you call us?

MR. LYNN: We stayed away from the college professors, because they just take too long. That is the problem.

[Laughter.]

MR. LYNN: So here are the major AURs that we put together in Arizona.

First, there was this urban/rural thing which was really critical.

The second thing was that we have 27 Native American reservations in the State of Arizona, and we have to and we are able to keep every one of those reservations whole within each of our congressional districts and our legislative districts. So we split no reservations in the State of Arizona.

Thirdly, we have an enormous Hispanic population, and it is growing. They were the first to address us as we were created as a commission and indicated that they needed to have the kind of representation that they felt was appropriate for them. The only thing I will tell you about

our treatment of minorities in the state is that when our congressional map was challenged by a couple of folks, MALDEF entered the case on our side. So, without any Hispanic representation on the commission, we did okay, and we were very pleased to have MALDEF with us in that regard.

Let's talk about the results. What did we produce as a commission? We produced eight congressional districts, two majority-minority districts. That is doubling the number that we had before. We have one completely rural district. It doesn't touch any meaningful part of Maricopa County. It is large, but it is rural. We have district representation now which is four Republicans and two Democrats.

Two of the districts were competitive by a very narrow and very strict standard of competitiveness, but I will tell you that the most competitive district in the state remains the one that elects now a 10-term Republican Member of Congress. He is a cardinal on the Appropriations Committee. Nobody is going to un-elect him any time soon. Arizona, while it has term limits for state officials, does not impose them on congressional candidates.

So we do have two competitive districts. However, in the 2002 elections, the Democrats should have had three seats in my opinion--I am the independent--and they had a

shot at four. The northern district, which was the large rural district, was a competitive district. It will grow out of being competitive as it grows in size, but it was competitive and will be hotly contested I think in 2004. I think the Democrats may have targeted that one this time around.

We also had the situation where one of our Republican incumbents first chose not to run for health reasons and then passed away, and that was an open seat. That open seat very well could have been won by a Democrat, although there was less of a chance there than there was up north.

The two majority-minority districts performed as they were supposed to. Both elected minority representatives to the House of Representatives and did well.

Let me conclude my remarks simply by saying that independence is not independence. I have now had to go back to the state legislature twice for additional funding. That funding is not guaranteed even though the Constitution gives the commission standing to sue the State, if we must, to get additional funding to do our job.

The Democrats, in the guise of a minority coalition, have been suing us for 2-1/2 years. We actually

completed our redistricting using about \$3.5 million of the \$6 million that was given to us. The remainder of the funds, plus the supplemental appropriations, has all been for litigation, and that is the difficulty when you have an independent commission: your political influence comes not only directly through the process, but by other means. It comes through court challenges using surrogates, and it comes through a number of different venues other than the straight process.

I will tell you that on one of the questions that Dr. Mann raises in his paper about did the blind provision about incumbents--was it effective, I can tell you as a matter of principle that no decision on the commission was overtly made on the basis of where any incumbent lived for either congressional or legislative redistricting.

Did we know we were being talked to in code on occasion about how this line might be better over here because the Voting Rights Act would be better served if somebody were so and so? Sure, but we didn't know which incumbent might have been protected, and we didn't know which situation we were correcting. So anything we did was in the blind, literally.

Do I think it was effective? As an independent member of an independent commission--other than the fact

that we can still be sued with alacrity I might add, and we have to go to the legislature for additional funding should it be necessary--I believe that the people of Arizona were much better served by this very open and very inclusive process than the ones that previously had been undertaken.

MR. CAIN: Thank you very much, Steve.

Since we didn't have audience participation at the end of the last panel, I think we will forego more discussion on the panel. They can work their comments into their responses from you, and we will throw it out to the audience for questions for any of the three.

We will start over here.

MR. HIRSCH: I think I may be the only person in the room who wasn't offered a position by Steve.

I was, however, the counsel to the Democrats on the New Jersey legislative commission and to the Democrats on the Washington commission, and based on those experiences, I just wanted to say a few things.

First of all, I think the most important thing about a commission--and this comes from somebody who is a little obsessed, admittedly, about partisan fairness--is that it equalizes the sizes of the two delegations. It is not a democratic thing. In some ways, the more popular party should have more power, perhaps, in this area like any

other, but I think it is a good thing for redistricting. You start with the same number of Democrats as Republicans.

The bad thing is often a commission is less representative than the legislature itself, and there, Steve, with all due respect, I think it actually is important to have racial and ethnic diversity on these commissions.

In New Jersey and the legislative commission, there was a Latino woman on the Democratic side, an African-American woman on the Democratic side, and although I am not at liberty to talk about the confidences of our conversations, I can tell you their input was very important, especially to me as an attorney trying to make sure that they complied with the Voting Rights Act.

As all of us here are sitting in a virtually monochromatic audience; it is also important for us to try to open up these discussions to include African Americans and Latinos in the future.

As for the substantive criteria in New Jersey, I think Professor Rosenthal said that competitiveness was Professor Bartels' top criteria. First of all, I think his main criteria with compliance were all the legal requirements, which includes a very strict requirement of concern for municipalities under the New Jersey

constitution. But as for the extra-legal criteria, his foremost was, as I understand it, minimizing partisan bias, making sure that if the vote divided evenly, the seats would divide as close to evenly as possible, because we can all agree that partisan bias ideally should be zero.

Competitiveness gives rise to this question of is 40 districts the right number or 100, like Tom suggests, or 435, and therefore, the right amount of competitiveness is very much a contestable issue. The right amount of partisan bias from a good government standpoint is not.

The third issue, as Bartels really emphasized, after zeroing in on partisan bias and getting some reasonable degree of competitiveness was what he called accountability, which is basically leaving districts alone as much as possible, so that incumbents and their voters will have a steady relationship.

The unpacking that was done by the Bartels commission did not just benefit Democrats. Under that plan, a record number of African Americans, a record number of Latinos, and a record number of Asian Americans were elected to the legislature, and contrary to what Professor Rosenthal said, which may in fairness be a reference to the 2003 election results, in the 2001 elections Democrats got a small majority of the vote for the Assembly and took 44 out

of 80 seats, and got a very, very narrow majority of the vote for the Senate and got a 20/20 tie. So it was not a Democratic gerrymander. Eighteen out of the 40 districts involved at least one winner who won with less than 60 percent of the votes. Nearly half the seats had real competition either for the Senate or the Assembly.

Lastly, on Washington, I think that the reason that you got an incumbency protection plan in Washington from this commission, despite the fact that it is structured differently than the New Jersey commission, is for very much the same reason. You had a lot of competition in Washington at the state legislative level because control of the legislature was at stake.

No one really cares who controls a congressional delegation. They don't vote as delegations. They go to a national assembly, and they are part of 435. So, in New Jersey, on Professor Rosenthal's commission, everyone could agree that seven Democrats and six Republicans was okay, because they didn't care that the median legislator in that delegation would be a Democrat.

In the New Jersey legislative setting, everybody cared who the median person would be because it would determine control of the legislature. So I think you actually end up with a different structure, not depending on



whether you have an odd number or an even number or how you build the commission, but depending on whether we care about who the median legislator is.

Lastly, it seems to me that the way to make these commissions work is not only to equalize the party strength, but to try--and here, I am echoing Nate's paper--to invoke rules and not standards and to have fairly specific rules about population equality, respect for political subdivisions, and also expressly political things like minimizing partisan bias. If you make them loose and say let's be as competitive as possible, it may work out beautifully, as Steve tells us it did in Arizona, or it may not. If you actually provide details that are judicially enforceable, then I think you have some hope of having meaningful standards.

That then throws us back into the state court question because rule-like specifics about how to draw specifics that are built into state constitutions or state statutes are not enforceable under the Eleventh Amendment in federal court. They will never be litigated in federal court. They will only be litigated in state courts. There, if you don't have a politically independent judiciary, all of this sort of crumbles, and whatever rules you try to impose on your commission may not work.

Sorry for being long-winded. I hope that is all the responses.

MR. CAIN: We can either do the responses with each of you, or we could get two or three people. You could add up your ideas. I think that might be more efficient. So just write down what you want to respond to.

Let's go to a couple more questions.

They don't have to be related. We are going to write down these comments, and then they are going to summarize all of their answers.

MR. ANDERSON: Lloyd Anderson, Ecological Linguistics.

Going back a little to the most general paper, Dr. Mann's at the beginning of this, I would like to see much more discussion of transferable votes, instant runoff, STV, small districts, et cetera, not for some of the reasons that are usually given, but for the reason that candidates are necessarily dependent on the goodwill and second- and third-place votes from the supporters of their competitors. I think a certain degree of civility more than the corrosive atmosphere we have now is necessary to solve any other problem. So I would hope we have much more discussion of that.

That implies confronting directly the current law, the Voting Rights Act I guess it is, requiring single-member districts. I do not believe anything justifies Congress passing that particular law, although it was well motivated to avoid the at-large districts which multiplied single vote basically many times, but if those can be distinguished, I would hope that courts, even up to the Supreme Court, can be induced to overturn that.

Back on Bruce Cain's statement at the beginning of today about further federal litigation of certain kinds, I would like to see a concerted attempt to make this not true.

David Horn, who is sitting over here, has done some very interesting work back into the diaries from the founders in the creation of our U.S. Constitution, noting the two or three votes in which they chose that the House of Representatives was to represent the people and was to have a high turnover and was not to represent the states. Repeated votes and the alternative view lost. That, to me, combined with notions of basic fairness, can be used in a long-term program of culturally pressuring all judges to pay attention to what they are supposed to be doing instead of getting distracted by very local and small things.

There is an item on which I would like help, if anyone here has any clues how to find it, and that is in

elections that were held at our founding, I believe that I have heard that at least some of them occurred in which people walked into rooms together and put black and white balls into urns. I do not know if this is literally true, but at least if the male property owners who were allowed to vote were in the room together, that means you had the equivalent of instant runoff because, whatever they perceived to be the strengths of the various components, they could immediately negotiate alliances and decide who to support.

MR. CAIN: We want to let everybody get a comment in. I think your points are well taken, and I think Tom is going to address them.

MR. ANDERSON: I think we should be much more ambitious about the general cultural label.

MR. CAIN: Okay. Tom will answer that.

Let's go to a couple more, and then we will go to the people on the panel.

Yes.

QUESTION: I just had a very quick question about the population, the demand to have population equality of districts, which we call "one-person/one-vote," but it obviously isn't one-person/one-vote. It is about constituent service, and it seems sort of bizarre, if you

think about it, that it matters to have 19 more constituents in one district versus another when you are talking about 641,000.

I was just wondering, Steve, as you were juggling other criteria, whether it would have been valuable to be able to relax that standard, as they have in Canada. They decided that that standard wasn't more important than other standards.

MR. LYNN: For us, it was fairly easy because Arizona geographically is an awful lot of land--

MR. CAIN: Let's hold on.

MR. LYNN: Oh, I'm sorry. It was a direct question.

MR. CAIN: I know. I understand. In other words, just make sure you cover it.

MR. LYNN: Got it.

QUESTION: Just the other very quick thing, though it would be more for Alan, it is interesting to see the contrast with Steve, an independent, and Alan, not representing independents, almost specifically saying "I am representing the two parties," in a state where I think independents are the plurality of voters. That might have been an interesting discussion.

MR. CAIN: We will send that on to Alan.

I want to go to the back and get two more, and then I think at that point, we will hand it over to our panelists.

MS. CECILIA MARTINEZ: I would like to know from the panel how you feel about the proposal in California that might be on the ballot in the next round. The proposal is for retired judges to do the redistricting as opposed to the legislature. I was curious to see what the panelists thought about that proposal.

MR. CAIN: One more.

MR. OLDHAM: A couple of quick points. One, I do feel obliged to defend the honor of the Texas legislature, since none of them are here.

In fact, there have been a couple of redistrictings without court orders, not on congressional maps, on legislative maps, but legally, they are exactly the same. The federal courts have made it very clear that a legislative map is always preferable to a federal court-ordered map, because they don't consider it appropriate for the judges actually to be doing that.

The third thing on that point, in most states, this will not create a flood. The only place where you would have occasion that this could actually occur is where you have a court-ordered map in place and one side or the

other actually gains control of the ability to redraw the map. So you are only talking about a handful of states.

The question I have really goes to something Mr. Rosenthal said earlier. He was talking about how this may be something that only happens in the I&R states. You haven't dealt with one of the paradoxes. By making a process more fair in one state, you can actually make the overall plan less fair.

To give you an example of that, today we have a congressional map, frankly for the first time in half-a-century, where if the Republicans get a majority of the generic vote for Congress, they will probably win a majority of the seats. If the Democrats get a majority of the generic vote for Congress, they will probably win a majority of the seats. That does not get us there, however, because there are 50 fair plans. That gets there because there are several states that have very biased plans for Republicans, have very biased plans for Democrats, and they sort of, kind of cancel each other out, and then there are a few in the middle that are kind of competitive.

The question becomes if you then take one side's plans that are being drawn by one party's legislatures and take them out and make them fair, but you don't do that to

the other side, then the overall map is actually going to become skewed.

I think Mr. Rosenthal kind of started to touch on that, but it certainly hasn't been touched on by the rest of the panel, and I raise that in the context of League of Women Voters, for instance, which supported the Arizona initiative. They supported an initiative in Michigan. They supported an initiative in Florida. They didn't support one in California, and they didn't support one in Oregon.

The differences between those states are instantly recognizable to me. They may not be to a few other people, but it is selective, and unless you can do this across the country, it probably actually doesn't make the process fair, even though it makes it fair somewhere else.

MR. CAIN: I think they got it. That is a good point, and I think it needs to be commented on.

Let's do Steve first, and then we will finish with Tom. Then we have got to get to the next panel.

MR. LYNN: Thanks, Bruce.

Very briefly, on the comment about representation: I think, depending on the size of the panel, it is very difficult to get representation with five people, and because of some other requirements that were made for geographic representation, it is the way the list worked out



and the way the choices were made. There was the opportunity to actually select a Hispanic female for the commission. The chooser elected not to do that, and perhaps with the requirement, they would have.

With respect to competitiveness and other criteria of specificity, I believe that if you don't allow the commission a certain amount of discretion--I would argue the same amount of discretion that the legislature had in doing its version of redistricting--the independent commission is constrained in a way that it should not be, and therefore, you can have criteria, but if you go so far as to make them very, very rigid, I would argue that 20 people in this room could come up with 20 different definitions of "competitiveness," not just registration as being the criterion.

As to the last question about zero population, Arizona was very easy because it was divisible by eight, and Arizona geographically is an awful lot of land with a few pockets of population. So it is just a matter of carving out the right Census tracts in those centers of population to make it work.

We do have a 2-to-3-percent variation in the legislative plan, which we understand may be challenged in

court. We don't know. At this point, bring it on. We don't care. We just want to get it done.

[Laughter.]

MR. CAIN: All right. Very good. Shades of John Kerry in that speech. I like that.

Okay. Tom?

MR. MANN: Sam's comments lead to a really interesting and, I think, fundamental point about the questions of competitiveness and partisan fairness.

Much of our talk here is about competitiveness and its decline and the difficulty of trying to deal with it and increase it through the redistricting process. But from what Sam said and what Stokes was trying to do in New Jersey sometime ago, it seems that when you deal with the partisan issue, there are two dimensions. One is partisan bias, that is: where are you at the 50 percent of the vote? Then the question is partisan responsiveness. That is, if you get a 5-percent shift in the vote, does it produce some kind of a shift in the seats, or is it possible to move back against it?

It seems to me that in order to get a partisan-responsive system, you have to have some competitive districts. If you get a situation where the districts are for the most part frozen into one party or another, then you

remove the ability of the citizenry to change the majority party in Congress.

Ninety percent of our talk here seems to have been about individual competition. The problem with that, as Alan pointed out, is we have lots of representation. We have lots of individual responsiveness, but that is not what we are talking about entirely. We are talking about the capacity of a democratic electorate to change the team.

Going to Dale's very last point, you are quite right that pieces of fairness at the individual level can result in an overall system that is unfair, but if you allow this pluralized, self-interested system to do its work, there is no guarantee we will end up at a golden mean.

In fact, if Tom DeLay succeeds, he will incrementally build what is now basically a 50/50 divide into a more substantial and permanent Republican majority in the House in terms of the number of seats, and we may repeat the long-term, one-party control that we had for decades before the 1994 election. It may be the root to reform is not to focus on measures of competitiveness but to focus on measures of partisan fairness and responsiveness, which will get you to the competitiveness dimension. It is at least something to think about.

Lloyd, you are absolutely right. It is a fascinating idea to think about alternative voting systems and their impact on diminishing elements of polarization, and I think broader considerations of electoral systems and voting systems is a great idea. Raw population equality is nuts. The challenge is to figure out how to get the courts to ease off that to provide some flexibility in the system to accomplish other objectives.

Cecelia, the California initiative looks to me to be foundering. The reality is that strong opposition is now coming from the Republican congressional delegation, members like Dave Dreier who are very happy with how things are situated; they may look at those retired judges and decide that most of them will have been appointed by Democratic governors and may end up producing plans that tilt in a Democratic direction. So I don't think we have got the right formula there.

Finally, Dale, I would just say I am sure it is legal to take a second bite of the redistricting apple, and I believe you when you say there are state legislative precedents for it. It violated a norm of longstanding in congressional redistricting and set up a frightening prospect.

Dale, I hope you are right that the circumstances under which it can be pursued are limited.

MR. CAIN: Okay. Let us make the transition pretty quickly. We only have an hour left to the conference. So, if you need to get coffee, go get coffee, but I think we need to change the panelists as quickly as possible.

So, if we could have the next group of people come forward.

[Break.]