

THE BROOKINGS INSTITUTION

A Brookings Institution/Institute of
Governmental Studies Conference:

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

Panel 5: Practical Perspectives on the Politics
and Law of Redistricting

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Friday, April 16, 2004

8:30 a.m. to 4:00 p.m., EDT

The Brookings Institution
Falk Auditorium
Washington, D.C.

[TRANSCRIPT PREPARED FROM AUDIOTAPE RECORDINGS.]

P R O C E E D I N G S

MR. CAIN: I think we are going to try to get started, so that people can leave at 4:00.

Our last panel is called "Practical Perspectives on the Politics and Law of Redistricting," although we have sort of done a little bit of this in the earlier panels, but we really have some people that constantly keep their hands dirty as opposed to occasionally get their hands dirty. We have different types of practitioners represented in here.

Also, I will say that we finally have a panel that has some women on it, so we are breaking the barrier with respect to men and women. Of course, Karin did set a bad example by not getting up on the first panel, but it is true that this is a profession that has been largely dominated by men until people like Nina, Lisa, and Karin have gotten involved in the last 10, 20 years.

Let's start with Lisa Handley who has been a redistricting consultant for almost two decades, has written an enormous amount of stuff about redistricting and its impact, and now has her own business which has an international component to it. So Lisa is broadly experienced in all of this and will share her thoughts.

MS. HANDLEY: Actually, what I want to do is I want to focus on the international part of my business and

inject something that nobody else has talked about, although Tom Mann referred to it briefly.

About a decade ago--in fact, I would say, just about the time the 1990s round of redistricting began to die down--I began to look into researching and ultimately working in other countries. One thing I discovered is that in most of the rest of the world, redistricting is not nearly as partisan or as contentious as it is here in the United States.

Even Western democracies with first-past-the-post, single-member district systems manage to redistrict in a way that is quite routine. The redistricting is handled by a nonpartisan, neutral commission. The rules of the game are established; even the hierarchy of the rules of the game are clearly established. The process and, in fact, even the results rarely, if ever, hit the political radar.

On the other hand, recent trips on behalf of the UN to The Congo and to Afghanistan have put new meaning to the word "redistricting battle." In Afghanistan, for example, if you want to redistrict and you are a local commander with a lot of guns at your behest, you merely declare a district, and if someone objects--at least if someone objects strenuously enough--they will have to resort

to armed conflict to get you out of that particular position.

As contentious as we are in the United States, I guess we can take solace in the fact that we are not as contentious as other countries like Third World, post-conflict countries, like The Congo and Afghanistan. That said, however, we really are quite different than other Western democracies, including those with systems identical to ours or very, very similar to ours.

It turns out that in the nineteenth century, all Western democracies, including the U.K. and U.K. colonies--self-governing colonies--relied on the politicians to draw the districts, but in the twentieth century, beginning with the U.K. and Australia, the decision was made by politicians to extract themselves from this particular situation. In all of these countries, they have done precisely that. They have gotten out of the business of redistricting and handed it to nonpartisan--truly nonpartisan--independent commissions.

What I want to do is spend just a few moments talking about one commission in particular, the founding commission, what they do in the U.K. when it comes to redistricting.

The delimitation of districts in the U.K. is handled by four separate independent boundary commissions, one each for England, Wales, Scotland, and Northern Ireland. The composition of the four commissions is almost identical. All of the commissioners serve on the commission as a result of a position they hold within the civil service. You have got, for example, the Officer of the Registrar or the Voting Register Office; you have the Statistics Office; you have the Governing Survey Office on these commissions.

The commissions have a set of criteria. The criteria are established by law. They are in the electoral law, and not only are they listed in the electoral law, but the hierarchy in which you are to consider them are listed. This comes first, followed by this, followed by this, followed by this, so that if there is any, which there no doubt will be some, conflict in those criteria, the boundary commission knows how to resolve this conflict.

The system is very open to the public. There is a public inquiry process. Once the boundary commission comes up with a set of provisional lines, the provisional map is gazetted, and there is a period of time in which people can object. This is the first time and the only time that political parties come into play in this process. It is at

this point, just like every other ordinary citizen, that they can submit objections to the plan.

These objections, however, cannot be on partisan grounds. They have to find objections within the established criteria for saying that this particular plan is biased or doesn't recognize communities of interest or whatever.

Once submissions have completed, there is a public inquiry process set up with an assistant commission, depending on how many objections are raised. There is a consolidated public hearing process. An assistant commissioner, usually a barrister in the area, is designated as the person who will hold this inquiry, and people who have submitted objections will come and speak before the assistant commissioner, who will then cross-examine these people and open the floor to comments from the audience.

Once the inquiry process is over, the assistant commissioner will send a report either suggesting that the provisional plan remain the plan or that some changes be made and stating why these changes will be made. The boundary commission must decide whether to take the assistant commissioner's report into account and change the boundaries or not.

If they decide not to, they have to present a written report on why they didn't. If they decide to do so, they still have to present a written report on why this has to be the case.

Once each of the boundary commissions finishes the process, it hands the plan over to the Parliament. The Parliament has two choices in theory. They can vote it up, or they can vote it down. They can't modify it, and in fact, there is a lot of public pressure not to do anything other than to accept. In fact, the Parliament has done nothing but accept these plans.

The court in most countries has no role at all to play, but actually, in the one example that I chose to talk about at length, the U.K., the court did get involved in one and one suit only, our sort of Colgrove v. Green suit.

It was the Labor Party who brought a claim against the English boundary commission saying they paid too much attention to communities of interest, or natural communities, and not enough interest to population equality.

In fact, population equality is a criterion, but there is no tolerance limit set. You can have districts that vary more than 25 percent from the ideal population size, and for the particular districts that plaintiffs complained about, one district was--these are both

represented by a single representative--a London suburb that had something like 48,000 and another one was the Isle of [inaudible] with 92,000, the kind of deviations that we, of course, haven't seen in the United States since the 1960s, if we even saw them then.

Well, the court in this particular case said that, in fact, the only thing that it could do was determine whether or not the boundary commission had done what it was supposed to do and not determine whether it had weighed the criteria correctly or not and, thus, it bowed out of the system, so far, forever.

I have several other countries, but I want to bring in one country in particular. All of the other countries, like Australia and New Zealand and Canada, have all modeled their systems to some degree on this particular system, although some of them do it more efficiently.

The U.K., for example, in their third periodic review began the process in 1976 with 1976 voter registration data, which is how they draw the districts, and finished the process in 1982, still with the 1976 voter registration data. So, by the time they were completed, you had districts that were very largely divergent in population.

New Zealand added a wrinkle to the process, and I just want to spend one second talking about it because they did put political appointees on the commission.

They had a commission that is made up of seven members. Four of the members were identical to the boundary commission in the U.K. where these are ex officio officers who were serving because of their job within the civil service.

When the process began, there were two parties in New Zealand. Now it is called the Party in Government and the Opposition Party are parties. Each chooses a representative to serve on the commission so that you have got six members, and then the six members like, for example, the Arizona commission, choose a seventh member, a non-voting seventh member. I don't think it is required to be a barrister but has, in fact, always been a barrister.

In this particular instance, the political appointees serving on the commission have paid attention. I forgot to mention that in the U.K., you are not allowed to look at partisan data. It can't be involved in the system at all.

Now, the political parties are watching what is going on and paying attention to the partisan implications

of the plan, but the boundary commissioners are not allowed to do this.

In New Zealand, they are allowed to do this. The two political appointees that sit on the commission are paying attention to what is going on, but the point of them being there is the commissioner representing the government is going to make sure that no plan is biased or in favor of the opposition parties, and the opposition parties are making sure that no plan is passed that is biased toward the government.

Also, in this particular instance, you have got six voting members, but only two of them are from the political party, and they are from different political parties. So the partisan balance is still nonpartisan as compared to partisan, and you wouldn't even call such a commission bipartisan.

The point I want to make in this: I remember the first time that Bernie Grofman, my mentor, and I got some NSF funding and held a comparative redistricting conference in which we brought people from around the world to talk about the process in their countries.

I will tell you that when somebody from the U.K. got up and said, "We do this completely nonpartisan," every single American, including Mike McDonald--maybe not Bruce

who has written on the subject--but most Americans in the audience refused to believe that this was possible, but in fact, it is quite possible. It is an administrative procedure.

There are, number one, no politicians involved in the process whatsoever. The only thing they can do is subject objections within the public inquiry process. They don't draw the lines. They don't have a vote on the plan to be enacted, and for the most part, except under extraordinary circumstances, they cannot sue in court.

The decisions reached by the boundary authority have the force of law and, almost without exception, cannot be challenged in court. The one caveat to this whole process, however, is that the lack of partisan intentions do not mean, of course, a lack of partisan consequences.

Using an independent nonpartisan commission and not paying attention to the electoral effects doesn't mean the plan doesn't have electoral effects. In fact, of course, the plan does have electoral effects. It only means that any effect that is there is unintentional, which is quite a bit different than what is here.

What David Lublin and I found in subsequent research was that, in fact--and this was just alluded to by Dale--our plan overall, our congressional plan turns out to

be no more biased and, in fact, is less biased than some of these countries that have these nonpartisan redistricting commissions doing the line drawing.

MR. CAIN: Very good. Thank you, Lisa.

I think we will turn next to Tom Hofeller who has been in the redistricting business almost as long as I have, I think longer actually. I think he is older. No.

[Laughter.]

MR. CAIN: At any rate, Tom has been around for quite a while. He was instrumental in starting the Rose Institute, way back in the 1980s, which was one of the first places to use computerized redistricting data and had one of the innovative programs back in the '80s. Since then, he has been working with the RNC and now, of course, has moved into something totally unrelated, the Farm Service Agency.

MR. HOFELLER: It is totally unrelated, and as a matter of fact, my hands haven't been dirty for just about a year as of next Tuesday. So I will have been over there at the Ag Department, which is a totally new experience, I have to tell you.

I actually did my first redistricting work in 1965. We were using the punch cards that Kim used, and I would note that they were 10 years behind us for several decades. Everybody is caught up now. I thought that the

most impressive new thing in 2000 was actually the new 36-inch-wide inkjet printers that produced the biggest, most glorious maps we ever saw, and, boy, did they love them everywhere. We spent a fortune in paper.

I have been thinking about this, doing this in '65, a little bit, and then '70, '80, '90, and then 2000, all through this process, trying to figure out what can we do to reform it? I think in younger days, I was a little bit less jaded on the process and thought there are a lot of things we can do, and I guess since I have been around this long, I figured out that I am not sure that we can reform the process that much, anyway, and you never know how it is going to unfold.

I would just like to go through some of the processes and criteria and maybe give you some impression on the rules of redistricting.

First of all, I would note before every cycle or after every cycle or just before every cycle, it is interesting to see who is pushing reform and who isn't pushing reform, depending on where they think they are going to be. We will see how that lines up at the end of this decade rather than at the beginning because things could change.

I am not going to talk about voting rights, because I think Nina is going to do that. But I would just remark that the Voting Rights Act is up for renewal before the next redistricting cycle. It will be interesting to see how that plays out.

What about criteria? Well, first of all, compactness. I am not sure anybody knows how to measure compactness. I participated on a panel with Kim Brace. We sort of tag-teamed each other on this, and there are lots and lots of formulas. They penalize you and reward you for different things.

I think you could all agree that there are people who think that weird-looking districts are good, and there are people who think they are bad, and there are people who think that nice square districts are bad, and some people think they are good. It really all depends on what happened to you, and give a good redistricter a pen, and they will get around that.

The same is true with respect to political boundaries, county boundaries, and city boundaries. They will have different effects in different parts of the state and indeed in different states.

The quality of population I think is now probably more neutral a criteria than it was before the Georgia case.

One of the things that has happened from time to time in legislative redistricting because of the plus or minus 5 percent or, as Dale would remind me, top to bottom, 9.9. It doesn't matter what the minus and plus are. That can be abused politically to let the redistricting party actually steal a couple of districts just on the numbers. So we will see how that comes out in the Supreme Court on that Georgia case.

"Contiguity," I think is pretty much a neutral term, although some of the criss-crossed districts that have been built in North Carolina have been very, very unique. It is the first time I ever saw a map where one district actually passed through another district. So it wasn't just point attachment. It was point-transfer. It would be interesting to see what a person would look like if they tried to get from one end of the district to another without leaving the district. It would be like a black hole.

Communities of interest. Sounds wonderful. Whose community? Whose interest? You can argue endlessly over that.

What about commissions? I think we all can agree that commissions have had very mixed results, probably more dependent on who was on the commissions, but I can tell you every commission needs a tie-breaker and every tie-breaker

has some degree of prejudice. If you don't have a tie-breaker, you go to a court, which brings me to the next topic, and that is that the court system hasn't covered itself in complete nonpartisanship on either side of the issue over the last decade and indeed before.

If you want to watch an interesting process, you can watch forum shopping, judge shopping going on in these cases, and sometimes you are even surprised. You got somebody you didn't think you would like, and they turned out to be good.

Competition. We have heard a lot about competition today. It was always interesting to me to be in a case where we had to explain an ecological regression analysis to a federal judge. Their eyes are spinning usually by the time that gets done, but regression is only as good as the data that goes into it, and I don't think both sides could ever agree on what data really works.

I know we had that big argument in New Jersey. Incidentally, we looked at Bartels and we weren't as sanguine as maybe the New Jersey Republicans were, but it is all in the data. It is sort of like survey research. If you can pick which 50 percent of the responses you want to tally, you can make it show anything you want.

One factor that is never brought up is the fact that votes cast to district analyses are subject to the fact that the ratio of voters to population is different in different areas of the state, and it changes throughout the decade.

I have heard very few people say, "Well, maybe we ought to plan ahead and give the areas we really are pretty sure are going to grow the smaller districts within the boundaries." I haven't seen that really advanced by proponents of fairness.

Last of all, computer plan drafting. I think Kim was right on. First of all, it has to do with what the program is, and second, it has to do with where the program starts. I don't know any politician in the world who would ever leave the drawing of his district up to a neutral computer programmed by somebody who doesn't know anything about it in many cases and even worse if they do know about it.

What to say about the situation in terms of competitive districts right now. There perhaps are a lot of reasons that we should look at about congressional districts in general when we think about competitiveness.

One of the things that is rarely discussed is the increase in population size of the average congressional

district across the country. We are now up to, what, 600,000? Who knows that figure? 640,000? Something like that?

MR. CAIN: Pretty close.

MR. HOFELLER: I am forgetting it, because I am dealing with the price of rice and things like that.

[Laughter.]

MR. HOFELLER: And that is just as arcane, too, I have to tell you.

It is a lot harder to campaign and win in a district of that population size. You need a lot of money, which has to do with funding, and I will leave you all to make your own analysis of what are going to be the results of the 2002 Campaign Reform Act, which might have been entitled by some, although I didn't entitle it that, the Incumbency Protection Act of 2002.

MR. CAIN: Scalia called it that.

MR. HOFELLER: Weakening the parties may not have been such a good thing. Beware of the Law of Unintended Consequences, sort of like the last reform which was PACs. That was going to be the great hope.

I think another thing you have to look at is a 40-district swing in a House of Representatives that is equally

balanced is better than a 50-district swing in a House of Representatives that is way unbalanced partisan-wise.

You might say that in 1994 when the Republicans took over the House of Representatives, the only people more surprised than the Democrats were the Republicans, except for one friend of mine who had always been predicting it, and gosh, even a blind chicken gets a kernel of corn once in a while, but it seemed to have stuck.

I think another thing everybody has to be aware of is that the redistricting situation is in flux for 2011 when it will take place in the next decade. It is in flux right now, and I have said this before, but the figures have changed a little. Remember that in 1991, Republicans controlled redistricting in states that consisted of five congressional districts, five.

If you count the switch in Texas--and we can go into whether mid-decade is good or not--if you take Texas out of the split control column and put it into the Republican Party, it was 129 Republican to 141 Democratic this time. This was the first time that Republicans really had control. In many cases, they didn't have a seat at the table. So that had different results. It is important to remember that the line drawers of the next redistricting will be the legislators, governors involved, and the people

who are selecting the commissions. So that situation could change rapidly, and that is why I say that people may think differently about reform at the end of the decade.

I can say also that the rules of redistricting are pretty much the same as they always have been, whether it is done in stocking feet on maps or ladders with acetate, and I would say to Kim that the Republicans in Illinois bought some of that acetate before Kim got there.

[Laughter.]

MR. HOFELLER: It is still always the same, and I have said this many decades. Redistricting brings out the worst in almost everybody, and it is never done on time.

My wife always says it is never done at all, witness that the attorneys here are still collecting pretty sizeable checks arguing out the cases.

What were some of the surprises, actually, in the last redistricting? Number one, my home state, California-- who would have thought it would have gone that way? There are reasons why it went the way it did, and I don't want to go into them because I saw it through one side.

I think Arizona was a bit of a surprise, too, and I sympathize with Chairman Lynn on his baptism by fire. Maybe he thought it was a nuclear holocaust and it isn't over yet, but it was interesting to see who were the big

proponents of this redistricting reform and then ended up suing because the consequences of the reform didn't quite go the way they wanted they to.

Georgia was, of course, a surprise because of the new one-person/one-vote rule that came down in Georgia, which if it stands up will get rid of one of the abuses in the deviation of legislative districts.

Finally, I think Mississippi was a bit of a surprise, too, in that a legislature where the Democrats had control, for many reasons, ended up not being able to draw a map.

I would just say that as all these reforms come up and I look at the rules and I look at the people who are doing them, if people propose them to me, which many of them don't, I say get a couple of good redistricting technicians, a good Republican, a good Democrat. Let them see if they can game your rules, and I will bet on those Republican and Democratic line drawers any time they will get around it.

So, when it comes to it, redistricting is a process that is a bit of an art form. It is done by people and politicians, and you can make a lot of rules. But there will still be people who can get around them.

Thank you.

MR. CAIN: Okay. Our next speaker is Nina Perales who is the regional counsel for MALDEF. MALDEF, of course, has been a major player in redistricting in the last couple of decades.

So, Nina, there is lots for you to comment on, I think.

MS. PERALES: Thank you.

To some extent, we stand outside this debate, because we don't do partisan work. So I wanted to let you know what we do in case you were thinking we did something else.

MALDEF is a civil rights law firm. We litigate broad impact cases in the traditional civil rights areas, including voting rights and redistricting, and we do this on behalf of Latino voters, the Latino electorate.

Our perspective is to effectuate Latino political strength. We challenge barriers to registration and turnout. We don't just do work around districting, but we also do vote dilution, including single-member district litigation and redistricting.

Our work is nonpartisan, which normally means we are fighting with both Republicans and Democrats in redistricting.

The context of our work is different from the context, I think, of many people here who might start with issues of what is the partisan balance in the state and how can we change it or how many competitive districts are there in the state and how can we change it. Our context really is focused on two completely different things.

One of them, since my region focuses largely on the Southwest, is about rapid population growth. Latinos are a rapidly-growing proportion of the population in many of the states that we do work in, and Mr. Lynn referred to Latino population growth in Arizona. I will give you an example from Texas, which is where my office is based.

From 1990 to 2000, the Anglo population grew 641,000. The Latino population grew by 2.3 million. As far as I am concerned, we brought Texas their two new congressional seats. Our delegation went from 30 to 32. We got neither of them.

Equally important from our perspective is the phenomenon of racially polarized voting, which has been touched on from time to time here in the discussion. Racially polarized voting occurs in both the primary and the general election, and I want to dispel the myth that anybody might have wanted to put out that there is a correlation or a very tight and permanent correlation between race and

partisan affiliation. There isn't as far as we are concerned. We don't care as much about partisan affiliation as we care simply about race in the context of racially polarized voting.

Just to comment a little bit about Texas, I was making faces at Dale before when he was talking about Republicans in Texas, and he means Anglo Republicans in Texas supporting Latino candidates. Sometimes it happens, and sometimes it doesn't happen.

Where it is interesting is within the Republican primary where you have a Latino Republican running against a white Republican, and the Republican voters don't get the memo that the Latino is the one that the Republican leadership wants and he ends up getting crushed in the primary because of racially polarized voting within the Republican primary.

This also, however, happens within the Democratic primary in many cases where Anglos outnumber Latinos within the Democratic primary. We still have strong racially polarized voting, and the other interesting thing is that in the general election, while I believe that Republicans in Texas, if a Latino is nominated as the Republican candidate, will fairly consistently vote for him, white Democrats in Texas--who, remember now, are not the same kind of Democrats

you have in New Jersey or in New York or other places; these were the folks running around in the white sheets just a few years back--these white Democrats will cross over and vote Republican rather than vote for a Latino on the Democratic ticket.

So, although sometimes people will say, "Oh, well, minorities and one particular party or another, there is a fairly consistent correlation," where we do our work--very much on the ground--there is not necessarily a consistent correlation.

The way that you prove this about the Anglo Democratic ticket-splitter is when you add up the votes for Tony Sanchez who was our candidate on the Democratic ticket in Texas in 2002, and his running mate, John Sharp, was an Anglo candidate for Lieutenant Governor in Texas in 2002, and John Sharp got way, way, way more votes, Democratic votes, than Tony Sanchez did. That basically indicated that there were white Democrats who were willing to vote for John Sharp, who was actually lower down on the ballot, than they were for Tony Sanchez who was Latino.

So, when we do redistricting, we find that the two major political parties are seeking to manipulate district boundaries around and through the Latino community, but for partisan purposes. Our experience is that neither political

party is interested in expanding the number of districts in which Latinos can nominate and elect their candidate of choice.

Thus, we spend most of our time fighting partisan redistricting strategies that are coming from both the Democrats and the Republicans. Sometimes we see plans that want to pack us, which is to limit the number of districts we can control, and sometimes we see plans that want to fracture us, which is also going to limit the number of districts that we can control. Everybody here is sophisticated enough to understand that that also has an effect, packing and fracturing does, on the number of Democratic and Republican districts in the plan.

It also has an impact on incumbency where you have Anglo Democrats who are getting increasing numbers of Latinos in their districts to the point where they feel that they are being threatened in their own primary and who will then seek to fracture Latino voters, so that they have just enough, so that they can win the general, but not too many, so that they will lose their own primary.

One of the perfect examples of that is what happened in California in the 2001 redistricting where you had the Sherman-Berman fiasco where there were just too many Latinos between these two congressional districts. There

was a pushing back and forth between the two Anglo incumbents as to who was going to have to take the Latinos that neither one of them wanted and threats going back and forth and eventually a sort of artful construction of a horseshoe and a stake cutting through the Latino community so that the district arching around the outside didn't have enough Latinos to be controlled by the Latinos and then the other district stretched down from a Latino community down into an Anglo community.

Another example of incumbency protection with a minority district is in the Dallas-Fort Worth area in Texas where you have an Anglo Democratic incumbent who maintains his incumbency by fracturing the Latino community in redistricting plans and who, I guess, in the ultimate example of hubris has now been chopped into salad in his district where he could have been protected if he had allowed the creation of a majority Latino district in the area and run in it, which I think would have been the better course for him, but he did not want to do that.

Also, in Texas, to be fair, you also saw the fracturing of the Latino community in a Republican-favoring plan where the idea was not to increase the number of districts where Latinos could nominate and elect their candidate of choice but simply to rearrange, repack, and

[inaudible] Latino districts across the state in a way that would serve partisan ends, but which would not give an advantage to the Latino community.

In Arizona, we actually thought there was a good plan. That was challenged by some Democrats, and we came in and we intervened in order to successfully defend the Latino majority districts in Arizona and the congressional plan.

I do believe that our ability to create majority-minority districts has diminished somewhat. I think that it has been diminished by the Supreme Court, which is less and less enthusiastic about creating majority-minority districts in redistricting. You see cases like DeGrandy, which puts in a kind of false proportionality test. You see cases like Bossier Parish, which limited the ability of the Department of Justice to put pressure on Southern states to create majority-minority districts.

I do believe that Shaw is the dog that didn't bark in the 2000 round. I agree with Professor Persily on that one, and I don't think it presented as much of a problem as we thought, because, in some respects, Shaw districts were malformed because they were Democratic gerrymanders. In many cases, it was shown that you could do more compact districts that still survived and thrived in terms of electing minority-preferred candidates.

I also think we have a problem because the Supreme Court hasn't really offered any guidance for the past 10 years about how Section 2 of the Voting Rights Act plays out in redistricting. Not since DeGrandy have we really heard from the Supreme Court how this is supposed to work.

I am supposed to reflect a little bit on single-member districts and alternative mechanisms or alternatives to the kind of redistricting that we do now, and I will do that quickly.

I think it is really important that technology has become more accessible in redistricting, because it has allowed Latinos to play an unprecedented role in the redistricting process when, during this round, during 2000 certainly, MALDEF launched a project to bring redistricting out into the community by loading this now-more-accessible data and cheaper software onto laptops and traveling around and talking to people about redistricting and asking them how they wanted to be redistricted. That is kind of one of the nice things that has happened without any real structural change.

With respect to commissions--and my experience really has been in litigating the Arizona case--I thought the commission part worked fine, but what happened was that there was still a perception that the commission was

partisan in the plans that it drew and the political parties ended up getting into court. The Democrats mainly were the ones that were suing, and we ended up in front of a state court, with a democratically-elected-on-a-partisan-ticket judge, which kind of took us all the way back away from the commission model.

So one of the questions is: Even if you have a commission, how do you continue the nonpartisan nature of that if parties always know that if they don't like the way it comes out, they can get into state court where you have a judge who is elected on a partisan ticket? It seemed to me, being in that litigation, that the judge was sort of very openly a Democratic-elected official and was sending signals fairly early on that he was going to rule in favor of the plaintiffs.

In fact, I was a little bit surprised that we were successful in defending the districts that we did.

Banning mid-decade redistricting doesn't necessarily benefit rapidly growing minority populations or the people who were shut out on the first round. I don't think it was that strange that Texas took up what has been referred to as mid-decade redistricting, because in the '90s, when we had a court-drawn plan after a successful Shaw challenge and Vera v. Bush, the court drew the remedial plan

and said, "Well, legislature, this is really your job. You all go to it," and they did it and they defaulted, but it always seemed to me in Texas that the legislature has the primary responsibility for redistricting whether or not a court has gotten in and done the previous plan.

What bothered us about the court-drawn plan in 2001 was that it was an incumbency protection plan, and it didn't do what we thought it should do to create more Latino districts. It had instead really sort of solidified what had been going on in the '90s, and that wasn't a good thing from our perspective. In fact, we were the only ones who appealed the court-drawn plan in Texas.

So, when the mid-decade redistricting started rolling, in some ways it presented an opportunity for us to have a second bite at the apple and ask the redistricters to recognize Latino population growth and do something about it, but then the downside was that they didn't recognize it and they didn't do anything about it and we ended up challenging that map as well.

I don't have that many experiences with alternatives to single-member districts, but we did do a litigation in Amarillo, Texas, where we brought cumulative voting to the largest jurisdiction in the United States, and

that is an at-large, alternative voting mechanism. I think it has its pluses and its minuses. It cuts both ways.

Cumulative voting allows for the representation of more geographically dispersed communities, which is nice because, as the Latino community becomes more geographically dispersed in smaller jurisdictions in Texas, I think it is nice to recognize that.

It is also nice that candidates can come from anywhere in the jurisdiction and still run to represent the Latino community. So you aren't just limited to whomever happens to be living in your single-member district, but I have noticed that there has been a problem with recruitment because I think people are still intimidated by running at large and the associated costs that go with it.

You also have the issue of whether your minority group meets the threshold of exclusion, which is that numerical threshold that you have to hit in order to be able to elect in an alternative voting system like cumulative voting.

Finally, something that is perhaps unique to Amarillo is that it is a very confusing ballot because it is run jointly in the election with the Amarillo College District. So the school board and the college district run with the same election, same precinct. All the races are

put onto the same ballot, but in one part of the ballot, you have to vote cumulative which means you cumulate your votes. You are given three votes, and you can lay them out however you want across the candidates, but the college district election is still pure at large where the only way minorities can elect is by single-stop voting, which is almost the exact opposite of cumulating your votes.

You are given multiple votes and you can only vote one in order to be effective, and that is just, I think, too much to expect from voters, and it has caused some really mushy things to happen in these elections.

Finally, I do believe the imposition of traditional redistricting criteria is completely unenforceable. I think in Texas, traditional redistricting criteria is a joke. I think that redistricters and courts both use the criteria opportunistically. Contiguity is almost the only one that you can really nail down with a fork, but in terms of compactness, no.

I have seen districts that we have proposed in litigation be rejected by a court as non-compact in 2001 and then embraced by almost the same court, two out of three members, in 2003 when they were proposed as part of the Republican-favored plan, a very similar kind of long north-

to-south districts that we had originally proposed that were eventually adopted in the redistricting plan.

Even when you can show that your districts are more compact using statistical measures, we had a court in 2003 tell us, "Well, who really cares about statistical measures? Let's just use our eyeballs," and I just think that is completely unworkable.

Similarly, I thought that in Arizona, the court used criteria opportunistically in terms of its inability to weigh increasing competitiveness with the protection of minority voting rights.

Finally, I think that some traditional redistricting criteria can be diluting of minority voting rights. For example, in Texas in our House state legislature, we have what is called the county line rule which requires you to combine counties together in whole pieces in order to make districts. Although we haven't challenged it, people from time to time have suggested that in using whole counties as building blocks, you, in fact, diminish the ability to create majority-minority districts.

So those are just some of my random thoughts.

MR. CAIN: Thank you.

Last but not least, we have Jeff Wice who was the redistricting counsel for the DNC and now is with the

National Committee for an Effective Congress, which I guess is also a redistricting organization.

MR. WICE: Thanks.

Since I guess I will be batting cleanup, I am going to try to give some perspectives on the process, where it is now, and where it might be going.

Before I start, I think it is incumbent that I recognize my mentor in redistricting and won't call him the grandfather, but maybe the godfather of redistricting data, Marshall Turner, who spent--I won't say how many decades at the Census Bureau--but is here with us today and is someone that I hope continues to stay involved in redistricting.

Let me open by following up on Kim Brace talking about how he got his gray hair by being in this process too long. I can actually say I have known Kim for 30 years and met him in a life before redistricting. How we both ended up here, we will leave that up to a psychologist to look at. While Kim admits that he got his gray hair from too much of this, I spent much of the 1990s where I was also working then for the Democratic Party and going to states. I would say that was before I entered the "Redistricting Protection Program" and who was speared in the next decade. I would say I have been to 40-some-odd states and don't have any

gray hair. Well, the hair is still dark up top, but the bottom didn't quite work out that way.

I have worked in redistricting since the late 1970s, and many of my years working with the national party, I have shared the platform with Tom Hofeller. One incident back in 1992, when we were working on the New York congressional redistricting, stands out in my mind as a classic of redistricting logic and some of the good work that Tom has actually done.

New York in 1992 had to lose three congressional seats, and there was a back-room meeting of the Long Island members. It was in the Rayburn House Office Building subway terminal, wide open, members negotiating lines. One of the Republican members said to me that the RNC told him that he could draw a non-contiguous district, a district that clearly jumped across water, land, along the north shore of Long Island, which to me was preposterous.

So I called over to the RNC. I reached Tom. I said, "Did you tell Congressman So-and-So that you could draw this district?" And Tom said, "I didn't tell him he could draw the district. I told him that no one said that he can't draw the district," and that district, despite several years of litigation elsewhere in the state, never

got challenged. So it is part of the great art of redistricting and what goes on in this process.

We are definitely at a time of change right now. We have several cases winding their way through the courts and at the Supreme Court. Of course, as we heard this morning, the Pennsylvania case could come down any time as soon as this coming Monday or as late as June when the Court adjourns or whatever else the Court might have in store. Other cases are pending before the court, the Georgia decision on the 10-percent state legislative rule, the Colorado re-redistricting. We also have a case from New York that I expect to be filed soon, and we also have the Texas congressional redistricting. So there are still about a half-dozen states at play that the Court has to deal with and could make major changes depending on where that goes.

I want to take a look back to give you some numbers and views on what happened in the '90s and the 2000 process and a little reflection going back to the 1990s process on the success rate.

I come from a state legislative environment where I have worked over two-and-a-half decades. So I look at it as the success rate in the states.

In the 1990s process, for state legislatures that redistricted there was a success rate of 60-percent on plans

for state houses, 58 percent for state senates, and 59 percent for congressionally drawn plans by legislatures.

In the 1990s, for commissions you had a 67-percent success rate for state houses and an 83-percent success rate in state senates, and for those commissions drawing congressional plans, a 100-percent success rate.

In the 2000 process, legislatures did comparatively better. There was an increase to 73 percent in the success rate of state houses enacting house plans that resisted any challenge. The state senate number jumped from 58 percent in the 1990s up to 76 percent in the 2000 process, and the congressional number went from 59 percent in '90 up to 77 percent in the 2000 cycle. For commissions, interestingly, commissions went from a 67-percent success rate for state houses up to 71 percent for state houses, from an 83-percent success rate for senates, down 12 percent to a 71-percent success rate for state senates. That might be part of the Arizona equation thrown in, and again, for commissions which drew congressional plans, a 100-percent success rate.

To compare the overall litigation from the 1990s to the 2000s of states not challenged, there were seven fewer state house plans challenged, three fewer state senate

plans challenged, and two fewer congressional plans challenged than in the 1990s process.

MR. MANN: Jeff, what is a success rate?

MR. WICE: A success rate, my caveat being from the state legislative environment, means that for a state legislature to enact a plan, to withstand the challenge, the success rate of a plan withstanding court challenge or not being challenged was that those numbers usually are in the 60-to-70-percent range.

Most plans, the overall amount withstood challenge. They survived. Maybe it is better to call it a survival rate than a success rate, and that fewer plans were actually challenged in the 2000 round than the 1990s rounds, about half the states by themselves in court in both the 1990s and the 2000s.

Looking at the process and where it is now, comparing it to the past decades, I think that redistricting wasn't as fun as maybe it used to be, that there were some very weird incidents that took place in the last 3 or 4 years, opening up with the St. Louis City Council redistricting where one member was so afraid of losing her district that she refused to leave to go to the restroom during the debate. Anybody wants to know what happened there, I can tell you the details later.

As recently as this week, we see results of the 2000 litigation where the Massachusetts speaker and committee chairmen from the state house redistricting are facing investigation for perjury by the U.S. Attorney for their testimony denying that they had anything to do with knowing what happened with redistricting during the Massachusetts House debate.

We saw a bill filed in Colorado last week trying to take away the power of the Colorado Attorney General for bringing any litigation without the approval of the governor or the legislature. I learned just yesterday that the Republican members of the legislature who introduced that bill against the Democratic Attorney General have withdrawn that challenge.

Even just this week, there are also press stories out of Virginia about the Speaker of the House denying he knew that the director of the Republican Caucus eavesdropped on Democratic redistricting negotiations. Those kinds of things didn't happen before, and a new phenomenon of possible criminal activity going along with redistricting this past cycle.

Where we go from now until 2010, I think is still unchartered, and I think this is an excellent time for Brookings and others to look for reform. A lot of what will

happen in 2011 depends on what happens in November of this year, especially in the states, in the state legislatures.

Of the 7,000 state legislators elected in the 50 states, the Republicans now hold a 60-seat majority in gross numbers. The Republicans now hold both chambers in 21 states, Democrats in 18 states. In all the 50 states, 25 states have chambers that, with a switch of just three seats this November, can switch party control to the opposite party.

Just to give you examples, in Maine and Colorado, a one-seat switch will end single-party control by the Republicans in one state and Democrats in the other. All that can happen this November.

I think, also, a phenomenon that we saw in the 1990 cycle will repeat itself again this year: the issue of term limits in the states. I recall a conversation I had with the then-speaker of the Missouri House who was elected in 1992 and was term-limited out before 2000, a leader of a major swing state who never experienced redistricting going in and wasn't going to be there for it going out. That has been a big, I think, change in the way states have redistricted with the lack of continuity, a lack of knowledge.

Also, I saw both national parties. There was a bigger effort to draw plans for Congress in Washington rather than work with the states, which often had much better databases and institutional knowledge among staff and others. I am not sure if that worked out right or wrong, but most of what was strategized in Washington was for incumbency protection, which led, I think, to the lack of competitiveness that we have seen and discussed earlier today.

As to where things go with changing, we have heard discussion of rules, of standards. Maybe the whole karma needs to change. Where it goes yet will depend a lot on what the courts might tell us. We have discussed Arizona enough that you know what happened there and what the standards were there or the rules or the criteria.

One experience I had that I will end with was the New York City Council [inaudible] districting of last year. New York City, based on a court challenge where the Supreme Court threw out the city's Board of Estimate, which was kind of like a super state senate along with the city council, rewrote the City Charter and created a 51-member-body city council. In doing that, the charter commission back in 1989 created a whole kitchen sink of criteria, which I thought at that point to be totally unworkable: compactness, Voting

Rights Act, incumbency, contiguity, everything thrown in, communities of interest, and how would it work. They tried to balance them with an order, a balancing act.

Last year, I served as counsel to the New York City Council [inaudible] Districting Commission, a body appointed by the mayor and the majority and the minority leaders of the city council. When the charter was adopted in 1989, 1990, New York had a Democratic mayor, a majority Democratic city council. By 2002, New York had a Republican mayor who had one-third of the appointments, and there was a real balancing act between the two parties.

Interestingly or ironically, the Republican and Democratic council members work in concert together often against what Mayor Bloomberg wanted, but the bottom line is New York City is a Section 5 Voting Rights jurisdiction which had to submit its plan to DOJ for approval and also was being threatened by challenges from every activist organization imaginable.

After all is said and done, the plan was pre-cleared by DOJ and didn't receive a single lawsuit filed against it, which is a first in New York City history. Maybe we did something right, but I think you ought to look at the New York City council language, the charter language

on how to balance different kinds of criteria and the Voting Rights Act and try to please everybody.

I can't say that we did it, but we were challenged over it. There is a silver lining often to this whole process. My colleague, who started with me in the mid 1980's ended up marrying Lisa Handley by the late 1990s.

So, with that, I think I will end at 4:00.

MR. CAIN: Okay. On that note of marital bliss, let's open it up. We have got maybe 15 minutes that we can devote to any final comments or questions.

QUESTION: Thanks. I will be quick, but I just thought I would pick up on what Nina said about Amarillo because we have been looking into Amarillo, and it is pretty interesting. The May elections are going to be the third school district election using cumulative voting. They used it first in 2000, and then in 2002; they had never had an African American elected and they had not had a Latino elected, I believe, for 20 years.

The first election, an African American and a Latina won. In 2002, a Latina won. So it is now a division of four Anglos and three people of color.

One thing that is interesting about Amarillo, just as a broader context for some of this discussion, is the voter turnout before they had cumulative voting was about 3

percent of registered voters. It then was moved up to 7 percent of registered voters, then dropped back to about 5 percent of the registered voters. Obviously, if there are a lot of people who--I mean, there is an overall climate of lack of participation in places like that, but I think they are pretty important to look at.

Just very quickly on that is we have looked at campaign financing of multi-seat districts versus single-member districts in winner-take-all elections. It is interesting. We have a lot of multi-seat districts in the state legislature.

Canada and every state that we have looked at actually spend less in multi-seat districts than single-member districts, perhaps because they can team up with other candidates, but when they use alternative systems, they also can be more targeted in their messaging.

On the ballot design, Peoria, Illinois, uses cumulative voting, and in Amarillo, they have the kind where you have three votes. You can put two on one candidate and one on another. You can spread them out. In Peoria, you just vote for one, two, or three, which would be just like what they do in the college board elections. If you go for one, that candidate gets three. If you go for two, they get one and a half each. So the ballot would actually be

exactly the same, and there are some other advantages of that ballot. I would point out there are some different ways of doing these things that speak to some of the concerns.

One last thing on alternative systems, a nice trivia question is: Where in November 2000 was the voter turnout highest in the United States? The answer is Puerto Rico. Puerto Rico has an Election Day holiday, but they also have a degree of proportional representation for their legislative elections, two different kinds, and the voters seem to be pretty enthusiastic about it.

MR. CAIN: Okay. Tom?

MR. MANN: Questions for Lisa and Nina.

Lisa, I wanted you to carry your discussion one step further and tell us whether you have had an epiphany after decades in legal trenches. Have you come from your international experience believing that the U.S. outlier status is one of choice, rather than one of necessity and that, in fact, you think we ought to be moving in some direction toward models adopted in the rest of the world?

For Nina, MALDEF is certainly nonpartisan, and you were very clear in saying you challenged Republican and Democratic plans, but my reading is that two-thirds of Latinos vote Democratic and probably a higher percentage of

Latino-elected officials are Democratic. Therefore, when it comes to representing the interest of the broader community, it isn't clear that fighting a Democratic plan works to its advantage. Does that constrain you in any way? Can you maintain your nonpartisanship and serve your constituency's interest?

MS. PERALES: One thing I discovered working for the UN and other international organizations is the one system that the UN, in fact, none of these international organizations will sanction in the countries that they come in and assist on elections--it is precisely the system that we have. I am talking now about the electoral system more generally, but if the country insists on maintaining a single-member-district, first-past-the-post system, then they simply will not help to pay for the elections, help organize the elections in any way, if they won't put into place a nonpartisan redistricting commission. They just will not sanction it.

I don't think we are going to see that here. Maybe slowly but surely in some states, we have seen it, but there is not going to be a massive movement for that. The rest of the world looks at us with amazement. I mean why hasn't the system changed? The system clearly works more efficiently, less expensively in every other country.

MR. CAIN: But it takes longer.

MS. PERALES: It takes longer in the U.K., but in Australia and New Zealand, they do it in less than a year.

MR. MANN: What about the difference between being a parliamentary system versus being a government of checks and balances where you have a separate executive?

MS. PERALES: It depends on what you are talking about. Many of the systems that we are putting into place in the UN are presidential systems. That is what we will see in Afghanistan. That is what we are going to see in the Congo. They still will have nonpartisan redistricting commissions in charge of redistricting. But those two countries have their own problems.

MR. FRENZEL: I would like to follow up on that, talking about redistricting commissions in parliamentary democracies, most of which are Westminster style or Westminster variants. They differ substantially from the U.S., because we have a very purely regional system. That is what the framers gave us.

The districts and the way they are constructed, it seems to me at least, are far more important in our system than in theirs. If their prime minister looks good, all their guys are going to get elected anyway. It doesn't make very much difference where the meets and bounds are set or

how the writings are drawn. It just seems to me we are talking about elephants and camels here, and to compare a commission on meets and bounds with the kind of work that we are doing here is quite different.

At least it doesn't seem to me that we are an outlier. I think what our states are doing is experimental and pretty interesting and much more difficult in our system than what they have done over there traditionally.

MR. CAIN: I would add, David Butler and I, of course, went back in the early '90s and we were the first ones to sort of think about this. David, in particular, was very "gung ho" initially that the British system might be the system for the United States and then convinced himself that it probably wouldn't work.

Part of the problem, of course, is that you don't have a neutral civil service. You don't have neutral judges. You don't have the insulation that the parliamentary systems have. So this gets us back to the kind of problem to get the culture of nonpartisanship in which those institutions would flourish. You need to step back in the system and start talking about where are you going to find those nonpartisan officials.

It is not out of the question, but it certainly will be more difficult to find the kind of expertise, neutral expertise.

The other thing is that you got to remember that in these parliamentary systems, incumbency advantage doesn't matter so much. You could drop in, parachute into a particular district, and it doesn't really matter because of the strength of party.

The fact that we have residency requirements greatly complicated the negotiation process. Again, it is not to say you couldn't adopt these systems. Clearly, the Iowa system is somewhat in that model.

As we move to commissions and the commissions hire outside experts like Lisa and Mike and people that aren't obviously, regularly related to the political parties, you are kind of in a privatized way simulating the British system, only at slightly higher rates.

At any rate, independent commissions with hired guns does kind of get to an American version of that independence.

MR. HOFELLER: I think you ought to think about one more little item that appears on the horizon, just before and just after each presidential election, and that is the allocation of electoral votes. Some people are

advocating that it should be done by congressional district, and I say that is all we need is another excuse to fight over and gerrymander a congressional district. So that is one that everybody ought to look at very carefully because we don't need yet another motivation.

MS. PERALES: I wanted to address Mr. Mann's second question.

MR. CAIN: Sure, go ahead.

MS. PERALES: There are two ways of looking at it, right? Currently, if we were to take a snapshot today, most Latinos are voting Democratic in the general election. It is probably even higher than two-thirds if you sift out the Cubans who are kind of their own special case.

So you could take the position that is what is good for the Latino community is what is good for the Democratic Party in redistricting. However, you come up against what Mr. Oldham was talking about, which is that throughout the South, dilution was accomplished by having Anglo Democrats who are not the preferred candidates of the minority voters in the primary election representing minority voter interest.

The first example I was giving you is that it is best to focus on creating opportunities for Latinos to nominate and elect their preferred candidate regardless of

political party and to stick cleanly with that principle, because otherwise you get into a very blurry situation where you are assuming that that partisan affiliation is going to stick, and for Latinos it doesn't stick as well as it does for African Americans.

Latinos may choose not to be Democrats for a bunch of different reasons in different places. For example, in Texas there are some towns that are so tightly controlled by a corrupt Democratic machine that I have seen Latinos voting Republican for clean government reasons, and that happens down south along the border.

I have also seen in a district where you have brown-on-brown elections, which is, for example, Congressional 23 in Texas, where you have a Republican Latino and a Latino Democrat running against each other, you see less adherence to the Democratic Party by Latinos because maybe the Latino Republican is articulating a socially conservative message that appeals to the Latino voters.

He may not be the preferred candidate, and in fact, in the example I am giving, the Republican Latino was never the preferred candidate in the end, but you saw less cohesion between Latinos and the Democratic Party.

So, because it is not an [inaudible] characteristic and because there is a great potential for abuse in assuming that what is good for Democrats in redistricting is ultimately what is good for Latinos, we have chosen to take the position that creating districts in which Latinos can nominate and elect their preferred candidates is the only really honest way to effectuate Latino political strength.

MR. CAIN: Okay. We are getting to the very end. So let's go all the way to the back.

QUESTION: I usually share Tom's world view. I am maybe not quite as cynical about the notion of standards.

Clearly, I think we all shared a view that Congress is clearly able to enact congressional standards for the drawing of districts. I don't think that is in dispute.

I think what is in dispute, though, is what the impact of doing that will be since they haven't been around since 1929. So, one, is the process so rigged now that it is a waste of time, or do standards have some value in and of themselves in the process? Do compact districts have value? Do political subdivisions have value? What would be the impact on Congress enacting that statute? They could do it tomorrow.

MR. HOFELLER: Do you want me to answer that?

MR. FRENZEL: Sure.

AUDIENCE: Actually, I know what your answer is.

[Laughter.]

MR. HOFELLER: Congress should hold hearings.

MR. CAIN: I would say that--and it goes back to a point that was made earlier by Sam--the more explicit you make these rules, if you could get a consensus that 20 percent of the seats have to be competitive or that they have to adopt a certain compactness formula and that is the one you are going to use. Yes, it is arbitrary, but that is the way it is. The more explicit it is, then the more force it is going to have in terms of constraining and shaping the districting, the more it is a rule and less a standard, as in Nate's continuum. I think that was the continuum, right? It has been a long time, several hours since I heard it, but I think that was it. Then, obviously, the more it constrains the process.

The more it is a standard, and Tom's point that to put a couple of clever redistricters together and Tom and his friends over a couple of beers and they will hammer out the thing by the end of the night, and that is true. So the problem is getting to an agreement on that 20-percent figure, because that is going to wreak havoc in some aspect.

If you were to do that in California, it might impact on some of the voting rights districts and areas where you could prove there was no polarization. I could easily draw--and did just for fun--more competitive seats, but it meant going over boundaries which historically in California, people didn't want to go over, going over a mountain range that they didn't want to go over and putting the Central Valley in with the coastal areas. People will bellyache about that. So it get down to how badly do you want it.

Here is an interesting point that I keep making. I have been to hundreds of redistricting hearings in my 20-some-odd years, and I have yet to hear a citizen group or citizens demand that they want their district made competitive. They want to have more people like themselves in the district. They generally don't want to pay extra money for the elections, thank you very much. They would rather--[audio break].

MR. CAIN: So I have never heard--it is people at a higher systemic level, political scientists, who are going to say we ought to have higher responsiveness, and I am with you. I buy all of the Democratic theory, but the reality is you go to a redistricting hearing and you are rarely, if ever, going to hear anybody say, "Make my district

competitive." You are not going to hear a Democrat or a Republican or any group come in and say that. Even implicitly, they are not going to say it.

All right. Steve is going to say he heard somebody.

MR. WICE: Could I just add to that, Bruce?

MR. CAIN: Yes.

MR. WICE: I used the New York City example, and I think it further proves the point that you could have the system of ranked criteria all working against each other with Section 5 on top of the whole process in a term-limited situation as New York is and have these competing forces work against each other and still come out and try to please most of the people all of the time. That is probably the best example outside of Arizona to look to for a model, if there is a model.

MR. CAIN: We are going to give Steve the last word.

MR. LYNN: A quick case study to prove your point. Nina has already characterized the Superior Court judge who has ruled in the Arizona legislative district case. That judge ruled as a bench mark that competitiveness was a superior criterion and that we could not draw a map with

fewer than seven competitive districts. Our former map had four.

With Dr. McDonald's help, we used competitiveness as the most important criterion after equal population and drew 23 competitive districts. The minute we applied voting rights criteria to it, those 23 districts went to five. We then had to rehabilitate districts to get over the benchmark. So not only are the standards the issue, but the relative importance of the various standards in terms of weighting or prioritization are also the issue.

You are absolutely correct, Bruce. We heard forced testimony that we want competitiveness, not knowing what that meant. They were saying those things. They were saying those things at the behest of the Democratic Party that was suing us at the time.

AUDIENCE: That is not one of the criteria
[inaudible].

[Laughter.]

MR. CAIN: Good point. Very good point.

MR. HOFELLER: I just want to say in defense of myself, I think that probably a lot of the criteria that Congress might pass, although I would be very surprised if they ever did, probably won't do much harm, but I think that

they better be careful because of the Law of Unintended Consequences. We have seen that in other reforms before.

So you just want to make sure that what you do will give the result that you think it will give.

MR. CAIN: Right. And, Tom, you never have to defend yourself. Trust me.

MR. HOFELLER: Okay.

QUESTION: Could I ask a quick question of Tom? Which is just to mention the House side, a very quick question about whether you think there should be more House Members. You mentioned the House districts.

MR. CAIN: Well, tell him whether they are Republican or Democrat, and then he will answer the question.

MR. HOFELLER: Aside from the fact that once a decade, we have the usual push to increase the House, so that no seat will lose a state, you can depend on that every decade. That always happens, just like the state that just barely lost a seat always sues and they always lose. Those just go without saying.

I just want to note--and that is the experience in California now that has senatorial districts that are larger than congressional districts, as does Texas now--that the more voters there are in a district, the less susceptible it

is to a grass-roots campaign. Read your Tenth Federalist and balance whether in order to create that reform, you would have to turn the house into a mob versus wanting competitiveness. It is the same. You really have to watch what you are doing, but I think that that is a factor against competitiveness of House districts. That is all I am saying. I am not making a recommendation.

MR. CAIN: Okay. Well, I want to thank the panelists for an excellent job. It has been a long day, and I think we are still arguing on it. So it just shows the strength of the redistricting subject, but thank you very much. It was an excellent panel.

[Applause.]

[Whereupon, at 4:00 p.m., the conference concluded.]