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## The Impact of Density and Diversity on Reapportionment and Redistricting in the Mountain West

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### EXECUTIVE SUMMARY

During the first decade of the 21<sup>st</sup> century the six states of the Mountain West – Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah – experienced unprecedented political and demographic changes. Population growth in all six states exceeded the national average and the region is home to the four states that underwent the largest



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population gains between 2000 and 2010. As a consequence, the region is now home to some of the most demographically diverse and geographically concentrated states in the country – factors that helped to transform the Mountain West from a Republican stronghold into America’s new swing region. This paper examines the impact that increased diversity and density are exerting on reapportionment and redistricting in each Mountain West state and assesses the implications that redistricting outcomes will exert both nationally and within each state in the coming decade. Nationally, the region’s clout will increase due to the addition of three seats in the House of Representatives (one each in Arizona, Nevada, and Utah) and electoral contexts in Arizona, Colorado, Nevada, and New Mexico that will result in competitive presidential and senate elections throughout the decade. At the state level, the combination of term limits, demographic change, and the reapportionment of state legislative seats from rural to urban areas will alter the composition of these states’ legislatures and should facilitate the realignment of policy outcomes that traditionally benefitted rural interests at the expense of urban needs.

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## Introduction

As reapportionment and redistricting plans across the 50 states are finalized and candidate recruitment begins in earnest, the contours of the 2012 election are coming into focus. One region of the country where reapportionment (redistributing seats to account for population shifts) and redistricting (drawing boundaries for state legislative and congressional districts) are likely to have significant consequences in 2012 and beyond is in the six states of the Mountain West: Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah. Driven by explosive growth during the past decade, the Mountain West is now home to some of the most demographically diverse and geographically concentrated states in the country. As a consequence, the region has increasingly become more hospitable to Democrats, particularly Colorado, Nevada, and New Mexico and to a lesser extent Arizona. In this paper, I examine how these changes are affecting reapportionment and redistricting across the region. Specifically, after summarizing some of the key regional demographic and political changes, I offer a brief overview of the institutional contexts in which the maps are being drawn. This is followed by an assessment of outcomes in each state. I conclude with a discussion of the national and state level implications that reapportionment and redistricting are likely to engender across the Mountain West.

## A Region in Transition

Between 2000 and 2010 population growth in all six Mountain West states outpaced the national average of 9.7 percent and the region contains the four states that experienced the largest percent population increase in the country (Nevada = 35.1 percent; Arizona = 24.6 percent; Utah = 23.8 percent, and Idaho = 21.1 percent).<sup>1</sup> As a consequence, Nevada and Utah each gained their fourth seats in the House of Representative and Arizona was awarded its ninth. Beginning with the 2012 election, the Mountain West will have 29 U.S. House seats (Idaho has two House seats, New Mexico has three, and Colorado has seven) and 41 Electoral College votes.

Across the Mountain West, population growth was concentrated in the region's largest metropolitan statistical area (MSA).<sup>2</sup> Most notably, the Las Vegas metro area is now home to nearly three out of four Nevadans – the mostly highly concentrated space in the region. In Arizona, roughly two-thirds of the population now resides in the Phoenix MSA, which grew by nearly 30 percent. The Albuquerque MSA experienced the largest overall increase as a share of total population (nearly 25 percent) and now contains 44 percent of New Mexico's population. And while Idaho remains the state in the region with the least dense population, growth in the Boise MSA significantly outpaced that state's overall population gain and nearly 40 percent of all Idahoans reside in and around Boise. On the other end of the spectrum are the Salt Lake City and Denver MSAs, which as shares of the Colorado and Utah populations decreased slightly from 2000.

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Still, better than half (50.57 percent) of all Coloradans live in Denver and its suburbs and around 41 percent of Utah's population is concentrated in the Salt Lake City MSA.

In addition to further urbanizing the region, the prior decade's growth continued to transform the region's demographics as all six Mountain West states are now more ethnically diverse as compared to a decade ago.<sup>3</sup> The largest changes occurred in Nevada where the minority population increased by over 11 percent and now better than 45 percent of Nevadans are classified as non-white. While the bulk of this growth was among Hispanics, whose share of the population increased by 7 percent and are now 26.5 percent of all Nevadans, the Silver State also recorded large increases among Asian and Pacific Islanders. Arizona experienced similar increases as that state's minority population mushroomed from 36.2 percent to 42.2 percent with Hispanics now constituting 30 percent of the population. In Colorado, the minority population increased by 3.5 percent to 30 percent. Nearly all of this change was caused by an increase in Hispanics, who now constitute 20.7 percent of the state's population. New Mexico continues to be the Mountain West's most diverse state as nearly three out of five New Mexicans are minorities and the state contains the region's largest Hispanic population (46 percent). And while Idaho and Utah remain overwhelmingly white, both states' non-white populations grew at levels similar to Colorado. Idaho is now 16 percent non-white (including a Hispanic population of 11.2 percent) and nearly one in five Utahans is a minority. Between 2000 and 2010, Hispanics increased by 4 percent to constitute 13 percent of Utah's population.

Politically, these changes helped to create competitive electoral contexts across the region. Indeed, with the obvious exceptions of Idaho and Utah, the Mountain West is now more hospitable to the Democratic Party than it was in 2000. In particular, Democrats were able to make significant gains in Colorado, Nevada, and New Mexico and effectively flipped those states from Republican leaning in 2000 to Democratic leaning in 2010. In Arizona, the Democratic performance was highly variable and moved in near perfect tandem with the broader national political environment. At the same time, the downturn in Democratic support in 2010 indicates that the party has not yet consolidated its gains. Riding a favorable 2010 macro-environment, Mountain West Republicans gained one governorship (New Mexico), seats in ten of the region's 12 state legislative chambers, and seven House seats (out of a total of 26 in the region).<sup>4</sup> Thus, heading into the 2011 redistricting cycle, Republicans control the executive and legislative branches in Arizona, Idaho, and Utah and there are no Mountain West states where the Democrats have unified control as the partisan composition of the Colorado legislature is divided and Nevada and New Mexico have Republican governors and Democratic legislatures.

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## The Institutional Context

Because of variation in the institutional arrangements governing how each state approaches reapportionment and redistricting, the impact that the demographic and political changes outlined above are exerting on map drawing differs across the region. To be sure, there are a number of commonalities across the states such as requirements of equally populated U.S. House districts, minimum population variation for state legislative districts, and boundary lines that are compact, contiguous, and maintain communities of interests.

Beyond these constraints, mapmakers across the region are afforded different degrees of latitude in how they go about doing their work. For instance, in Nevada and New Mexico, the residency of incumbents can be considered, while Idaho forbids it. Idaho allows for twice as much inter-district population variation for state legislative districts as Colorado and New Mexico, and Idaho only allows state legislative districts to cross county lines if the counties are linked by a highway. Arizona and Idaho mandate that two lower chamber districts be nested within the boundaries of a state senate seat, while Colorado, Nevada, New Mexico, and Utah do not. Nevada also allows for multi-member member state legislative districts. Lastly, Arizona's redistricting plans must be pre-cleared by the U.S. Department of Justice. While Arizona is the only state in the region subject to preclearance, protection of minority voting rights also has been a point of contention in prior redistricting cycles in New Mexico.

The Mountain West states also vary in terms of who oversees the redistricting process. State legislators control the process in Nevada, New Mexico, and Utah, while Arizona and Idaho use commissions. In Colorado, the General Assembly draws the map for the state's seven U.S. House seats, while a commission oversees the drawing of state legislative maps. For the three states that use commissions for either all or part of their processes, commission size and composition differs significantly and only the Arizona Independent Redistricting Commission (AIRC) is charged with drawing maps that are competitive.<sup>5</sup>

However, the most significant constraint on reapportionment and redistricting in the Mountain West is the small size of the region's state legislatures.<sup>6</sup> The mix of small chambers, increased urbanization, and large geographic spaces means very large and increasingly, fewer and fewer stand-alone rural districts. This dynamic also helps to explain the region's history of malapportionment that often allocated seats by county regardless of population.<sup>7</sup>

## State Summaries

Based upon the overview presented above, expectations about the general contours of reapportionment and redistricting in the Mountain West are fairly straightforward: the clout of urban and minority interests will increase and to the degree that those factors benefit the Democrats, the Democrats should gain some partisan advantage. Realizing these outcomes, however, has proven to be

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less than amicable. With the exception of Utah, all other states in the region have had various aspects of their processes litigated, and map drawing for Colorado's U.S. House seats and all of Nevada and New Mexico's redistricting is being completed in state courts. Below, I summarize the status of reapportionment and redistricting in each state.

### *Arizona*

Beginning its work amid criticism of its composition, calls for its abolishment, and an investigation by the Arizona attorney general, the voter-initiated Arizona Independent Redistricting Commission (AIRC) has struggled to balance the conflicting demands of drawing competitive districts with the protection of minority voting rights. The commission's work has been further hindered by Republican Governor Jan Brewer's unsuccessful attempt to impeach the commission's nonpartisan chair. In addition, Arizona has filed a lawsuit in federal court challenging the state's preclearance requirement.

Republican attempts to undermine the AIRC stem from the fact that given unified Republican control of the Arizona governorship and legislature, Republicans would otherwise be in a position to implement a partisan gerrymander. At the same time, the GOP's present dominance is partially an artifact of the 2001 redistricting. To gain preclearance in 2001, the AIRC's maps created a large number of majority-minority state legislative districts and minority-friendly U.S. House seats by packing Democratic voters into these districts. In so doing, Democratic support in the surrounding districts was weakened; allowing Republicans to more efficiently translate their votes into seats.<sup>8</sup> Thus, despite a slight partisan voter registration advantage (4.35 percent as of July 2011), Republicans presently hold more than two-thirds of the state legislative seats and five of eight U.S. House seats.

Given Arizona's growth patterns between 2000 and 2010 coupled with the AIRC's charge of creating competitive district, drawing a map as favorable to the GOP in 2011 is virtually impossible unless the size of the Arizona legislature is increased. Still, in order to protect minority voting rights, Arizona's final maps are likely to tilt in favor of the GOP - just not to the degree that they have in the past. In particular, the elimination and consolidation of rural state legislative districts and a more urban orientation for Arizona's nine U.S. House districts should provide the Democrats with electoral opportunities that will only increase as Arizona's population continues to diversity and urbanize.

### *Colorado*

As noted above, Colorado uses a commission (the Colorado Redistricting Commission) for redistricting state legislative seats and the Colorado General Assembly draws the maps for the state's seven U.S. House seats. Neither process has gone smoothly. For the state's seven U.S. House seats, the Democratic-dominated state senate and the Republican-controlled lower chamber failed to

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find common ground after exchanging two rounds of maps. Because Democratic governor John Hickenlooper refused to call a special session, redistricting of Colorado U.S. House seats was completed in state court. After a good deal of legal wrangling, the Colorado Supreme Court upheld a map favored by Colorado Democrats that creates two safe Republican districts, one safe Democratic district, and four districts where neither party's registration advantage exceeds 4 percent. As a consequence, Colorado will feature a number of competitive U.S. House elections throughout the coming decade.

Map drawing for state legislative seats by the CRC has also been hindered by partisanship. Hoping to break a partisan stalemate, in late summer the nonpartisan chair of the CRC offered maps that combined parts of prior Democratic and Republican proposals to create thirty-three competitive seats (out of a total of 100) and twenty-four seats with Hispanic populations of 30 percent or more. After being approved by the CRC with some Republican dissents, the plan was rejected by the Colorado Supreme Court, which must sign-off on the CRC's plans before they can be implemented. By attempting to draw more competitive maps – a criterion that the CRC is not obligated to consider – the CRC's maps undermined its charge of producing districts that keep communities of interest intact. The CRC's second set maps, which were widely viewed as favoring the Democrats, were upheld by the Colorado Supreme Court.

### *Idaho*

While partisan considerations have loomed large in the reapportionment and redistricting processes in Arizona and Colorado, in Republican-dominated Idaho the main points of contention have been spatial. Indeed, because of the difficulty of satisfying a constitutional requirement limiting county splits and a state law constraining how geographic areas can be combined, the Idaho's Citizen Commission for Reapportionment (ICCR) failed to reach an agreement before its constitutionally imposed deadline. After sorting through a number of legal and constitutional questions, a second set of commissioners were impaneled and completed their work in less than three weeks. Given Idaho's partisan composition, the final maps are a regional anomaly as they benefit the GOP while being somewhat more urban oriented. This was accomplished by moving rural Republican voters into urban Democratic state legislative districts and adjusting the lines of Idaho's 1st House district to shed roughly 50,000 citizens. At the same time, because of Idaho's strict constraints on how cities and counties can be divided, the map for the state legislature paired a number of incumbents in the same district and one district contains the residences of five incumbents, setting up a number of competitive primary elections.

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### *Nevada*

While growth patterns and demographic and partisan change in Nevada between 2000 and 2010 insured a redistricting process that would favor Democrats, Nevada Republicans sought to delay this inevitability as long as possible. The state's Republican governor, Brian Sandoval, vetoed two sets of maps passed by the Democratic controlled legislature and Sandoval refused to call a special session to complete redistricting. Instead, he and his party hoped for a better outcome in state court. Despite drawing a supervising judge who was the son of a former Republican Governor, Nevada Republicans fared no better in state court. Ultimately, the process was turned over to three special masters who rejected Nevada Republicans' claim that section 2 of the Voting Rights Act required a majority Hispanic U.S. House district.<sup>9</sup> As a consequence, two of Nevada's U.S. House seats favor Democrats, one is safely Republican, and the fourth is a swing district. In the Nevada legislature the representation of urban interests will increase as parts of or all of forty-seven of the sixty-three seats in the Nevada legislature are now located in the Democratic stronghold of Clark County.

### *New Mexico*

The 2011 process in New Mexico has essentially been a rerun of the gridlock that engulfed the state's 2001 redistricting debate. Once again, the Democrats sought to use their control over both chambers of the New Mexico legislature to preserve their majorities and draw the boundaries for the state's three U.S. House seats in manner favorable to the party. However, because of bickering among Democrats the legislature failed to approve its map for the state's three U.S. House seats prior to the end of the special session and the plans for the state legislature that were passed on party line votes were vetoed by Republican governor Susana Martinez. Thus, once again, New Mexico's divided state government coupled with the state's history of litigating redistricting plans (in 2001 map drawing and court battles cost the state roughly \$3.5 million) means that redistricting will be completed in state court. While the Republicans may be able to gain some concessions through the courts, New Mexico is the most Democratic state in the Mountain West and, as noted above, the state's growth during the prior decade was concentrated in heavily Democratic Albuquerque and its suburbs. Thus, as in 2001, the likely outcome in New Mexico is a redistricting plan that will be favorable to the Democrats and weaken the influence of rural interests.

### *Utah*

Utah is the only state in the region where conditions exist (e.g., unified partisan control in a non-commission state) for the implementation of a partisan gerrymander. However, to accomplish this end required the slicing and dicing

of communities and municipalities particularly those in and around the state's urban center. Most notably, in drawing the state's four U.S. House seats, Republicans divided the Utah's population center (Salt Lake City County) into four districts by combining parts of the urban core with rural counties - a plan that, not coincidentally, cracks the only part of the state where Democrats are able to compete. Similarly, maps for state legislative districts increase the number of seats that favor the GOP and, in many instances, protect incumbents from potential primary challengers by dividing communities into multiple districts. Democrats in Utah are so depleted that they were unable to get the Republicans to even agree to include recognition and protection of minority communities of interest to in Utah's redistricting guidelines. Thus, despite constituting nearly 20 percent of the state's population, minorities received no consideration in Utah's 2011 redistricting.

## Implications and Conclusions

Reapportionment and redistricting are often regarded as the most political activities in the United States; an expectation that is certainly being realized across the Mountain West. In the swing states where legislators draw the maps (for example, Colorado, Nevada, and New Mexico) but where state government is divided, partisan considerations loomed large, causing all of these states to conclude all or parts of their redistricting processes in the courts. The conflicts between Arizona's preclearance requirement and the AIRC's commitment to drawing competitive districts have partisan consequences as well. In one-party Idaho and Utah, the politics of space were at issue. Geographic constraints on district boundaries imposed through statute and the Idaho constitution ensured that more rural seats were preserved and that the growing influence of urban interests will be checked. In Utah, Republicans moved in the opposite direction by carving up the very communities from which they are elected in order to implement a partisan gerrymander.

Another school of thought, however, argues that the most typical redistricting outcome is not partisan gain or loss, but an uncertainty that shakes up the state political environment and facilitates political renewal. In the case of the Mountain West, there is evidence to support that claim as well. The biggest source of uncertainty will continue to be growth. While the economic downturn has slowed migration to the region, the Mountain West states remain poised to keep expanding in a manner that will further concentrate and diversify their populations. A second source of uncertainty is the region's large number of nonpartisans. While redistricting is often framed as a zero-sum game played between Democrats and Republicans, the electoral hopes for either party hinges on its ability to attract the support of the region's expanding nonpartisan demographic.<sup>10</sup>

At the state level, with the exception of Idaho, the most significant consequence will be a reduction in rural influence. The combination of term



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limits in Arizona, Nevada, and Colorado, small legislative chambers, and fast growing urban populations will continue to decrease the number of entrenched rural legislators and the number of stand-alone rural districts. Consequently, urban interests should be positioned to align state policy with demographic reality. The void created by the demise of rural legislators will be filled by minorities, particularly Hispanics. To date, the increased political activism of Hispanic communities across the region has primarily benefited Democrats; helped in no small part by the hard-line rhetoric and policies championed by some Mountain West Republicans.<sup>11</sup> More generally, depending on growth patterns, by 2020 Nevada and perhaps Arizona may join New Mexico as states with majority-minority populations. Thus, with or without Section 2 of the Voting Rights Act, minority legislators, primarily Hispanics, will increase their ranks significantly. The only question is whether all of these politicians will be taking office with a "D" next to their names or whether some will be elected as Republicans.

Nationally, the impact of reapportionment and redistricting is mixed. Certainly, the addition of three U.S. House seats after the 2010 census will give more voice to regional issues in Washington D.C. At the same time, because the Mountain West's House delegation will continue to be split along partisan lines and many of the region's competitive House seats will rotate between the parties throughout the decade, it may be difficult for any but the safest Mountain West representatives to accrue the requisite seniority to become players in the House. Also, because of pending retirements in Arizona and New Mexico, a successful 2010 primary challenge in Utah, and a resignation in Nevada, the region's influence in the U.S. Senate is likely to decline in the near term. Indeed, after the 2012 election the only senators from the region who will have served more than one term will be Nevada's Harry Reid, Arizona's John McCain, Idaho's Mike Crapo, and Utah's Orrin Hatch (presuming a successful 2012 reelection).

Thus, the arena where the region is likely to garner the most attention is in the coming decade's three presidential elections. Colorado, Nevada, and New Mexico were all battleground states in 2004 and 2008, with Republican George W. Bush narrowly winning all three in 2004 and Democrat Barack Obama flipping them blue in 2008 by wider margins. Obviously, Idaho and Utah will remain out of reach for the Democrats in statewide contests for some time. However, Arizona is likely to become the region's fourth swing state in the near future. Thus, continued investment in Arizona and throughout the region will allow the Democrats to further expand the number of Mountain West states in play while forcing the GOP to spend resources to defend turf that it once could safely call its own.

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## Endnotes

<sup>1</sup> U.S. Census Bureau, “State and County Quick Facts,” August 2011 (<http://quickfacts.census.gov/qfd/index.html>).

<sup>2</sup> U.S. Census, “American Fact Finder,” August 2011 (<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>).

<sup>3</sup> U.S. Census Bureau, “State and County Quick Facts,” August 2011 (<http://quickfacts.census.gov/qfd/index.html>).

<sup>4</sup> Despite close elections in Colorado and Nevada, none of the region’s U.S. Senate seats changed parties in 2010.

<sup>5</sup> The Arizona Independent Redistricting Commission (AIRC) consists of five appointed members: four partisans chosen by the party leaders of each legislative chamber and a nonpartisan who is chosen by the other four members and serves as chair. The Colorado Redistricting Commission (CRC), which oversees redistricting for state legislative districts, consists of 11 members: four of whom are picked by the party leaders of the General Assembly; three who are selected by the governor; and four who are chosen by the Chief Justice of the Colorado Supreme Court. The Idaho Citizen Commission for Reapportionment (ICCR) consists of six members, four of whom are chosen by party leaders of the Idaho Legislature and one member chosen by each of the state chairs for the Democratic and Republican parties.

<sup>6</sup> Excluding Nebraska (because of its unicameral structure), the average size of the lower and upper houses of the other 49 state legislatures are 110 and 39.22 respectively. Only the 42-member New Mexico Senate exceeds the national average chamber size. The largest lower house in the region, Utah’s 75-seat House of Representatives, is 35 seats below the national average.

<sup>7</sup> Legislative size, however, is not immutable. To increase the size of the legislatures in Colorado, Idaho, and New Mexico would require amending those states’ constitutions. The lower chamber of the Utah legislature could be expanded as it is presently below its constitutional cap. Arizona and Nevada set the sizes of their legislatures by statute.

<sup>8</sup> In this regard, redistricting outcomes in Arizona are similar to those in another Section 2 region, the South. In both instances, the provisions of the Voting Rights

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Act have the perverse effect of increasing symbolic representation for minority groups while decreasing the number of legislators who may be receptive to minority interests. See, Kevin A. Hill, “Congressional Redistricting: Does the Creation of Majority Black Districts Aid Republicans?” *Journal of Politics* (May 1995): 384–401, and David Lublin, *The Paradox of Representation: Racial Gerrymandering and Minority Interests in Congress* (Princeton University Press, 1999).

<sup>9</sup> Governor Sandoval and Republicans in the legislature claimed that Section 2 of the Voting Rights Act requires the use of race as the basis for drawing a Hispanic U.S. House seat — a position clearly at odds with the holding in *Shaw v. Reno* (509 U.S. 630, 1993), which allows race to be taken into consideration but does not allow it to be the predominant factor. Democrats and many Hispanic activists countered that packing Hispanics into a single House district would marginalize their influence in Nevada’s other three U.S. House districts and because white voters in Nevada do not vote as a block as evidenced by the fact that Hispanic candidates won eight state legislative seats, the attorney generalship, and the governorship in 2010 without such accommodations, race-based redistricting in Nevada is unnecessary

<sup>10</sup> At the time of the 2010 election, nonpartisan registrants constituted over 30 percent of Arizona voters, 26 percent of the Colorado electorate, and around 15 percent of voters in Nevada and New Mexico (Idaho and Utah do not report partisan registration figures)

<sup>11</sup> For example, Arizona’s 2010 Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070) and Utah’s 2011 Utah Illegal Immigration Enforcement Act (HB497).