

America is an outlier in the world of democracies when it comes to the structure and conduct of elections. Presidents are elected not by direct popular vote but by 538 members of the Electoral College. Votes in federal elections are cast and counted in a highly decentralized and variable fashion, with no uniform ballots and few national standards. Responsibility for overseeing the implementation of election law typically resides with partisan officials, many with public stakes in the election outcome. And authority for redrawing legislative district boundaries after each decennial census—in the U.S. House of Representatives and in state legislatures—is lodged with political bodies in most of the fifty states.

The latter has long been a prominent and much-criticized feature of American politics. Redistricting is a deeply political process, with incumbents actively seeking to minimize the risk to themselves (via bipartisan gerrymanders) or to gain additional seats for their party (via partisan gerrymanders). But several recent developments have lent a new urgency to this issue and precipitated the most serious effort to reform redistricting processes in many years.

Decline in Competitive Seats

One recent development is the sharp decline in the number of competitive seats in the House and in most state legislatures. While during the last

quarter century the average number of marginal House seats, i.e., those decided within the range of 55 to 45 percent, has been a historically low 58 (13 percent of all seats), the number plummeted after the most recent round of redistricting, reaching 27—6 percent of seats—in 2004. Only four House incumbents were defeated by challengers in the 2002 general election, the smallest number in American history. Two years later only seven incumbents were defeated. Less than 50 of the 435 seats were seriously contested in 2002, many fewer than the number of targets in 1972, 1982 and 1992, the first elections after the previous rounds of redistricting. The number of House seats with a real contest shrank to three dozen in 2004.

The same pattern is evident in state legislative races. A prime illustration of this phenomenon is to be found in the largest state, California, where every incumbent seeking reelection won and not a single seat changed party hands in the 2004 congressional and state legislative elections.

Ideological Polarization

In addition to the decline in competition, American politics today is characterized by a growing ideological polarization between the two major political parties. A healthy degree of party unity among Democrats and Republicans has deteriorated into bitter partisan warfare. With the number of moderates in legislative bodies declin-

ing, the possibilities of bipartisan negotiation and compromise diminish. Many observers and participants believe redistricting fuels this polarization, by creating safe seats in which incumbents have strong incentives to reflect the views of their party's most extreme supporters—i.e., those active in primary elections—and little reason to reach out to swing voters.

Role of National Party Leaders

A third development behind the surge of interest in redistricting reform is the more aggressive actions by national party leaders to orchestrate partisan gerrymanders in the states. With the parties at virtual parity and the ideological gulf between them never greater, the stakes of majority control of Congress are extremely high. Norms that once constrained the behavior of party leaders have collapsed.

House Majority Leader Tom DeLay's infamous but successful mid-decade partisan gerrymander in Texas (which cost the Democrats six seats, twice the national gain realized by the Republi-

REDISTRICTING *reform*

By Thomas E. Mann

Illustration by Diane Fenster



cans in 2004) has set off a potential redistricting arms race. While the Colorado Republican effort to adopt a second post-2000 redistricting plan was nixed by the state Supreme Court, the party seems to have succeeded in Georgia, if newly drawn maps are pre-cleared by the Justice Department and upheld by the courts. Democrats are considering retaliatory actions in a number of states newly under their political control, including New Mexico, Illinois and Louisiana.

Redistricting Reform

Redistricting reform cannot by itself reverse these trends toward declining electoral competition, increasing ideological polarization between the parties, and smash-mouth partisan manipulation of the electoral rules of the game.

The country is evenly divided between the two parties. Most voters have sorted themselves into a party by their ideological views, and their decisions on where to reside have promoted a geographical segregation of like-minded citizens—conservatives to the exurbs,

liberals to cities. Furthermore, partisan attachments powerfully shape political perceptions, beliefs and values, and incumbents enjoy advantages well beyond the way in which their districts are configured. All of these forces will

continue to shape our politics no matter what initiatives are taken to improve the process. Redistricting reform is no panacea, but it is a start.

Most states redraw congressional district boundaries through the normal legislative process, constrained by standards set by Congress, the courts, and state constitutions and statutes. Congress requires states to draw single-member districts. The courts insist that all districts within states be of equal population and that minority votes not be diluted. Most states have put redistricting standards in their constitutions or statutes: compactness, adherence to political and geographical boundaries, and respect for communities of interest are the most common. However, these state standards suffer from ambiguity, conflict with other standards, and the absence of effective enforcement mechanisms. They have not been a serious constraint on the politicians drawing the maps.

Three Options for Reform

Those seeking to reduce the partisan and incumbent manipulation of the redistricting process have three broad options.

The first is to persuade Congress to adopt additional standards for redistricting by the states. The most prominent proposal would prohibit more than a single round of congressional redistricting after the decennial apportionment. As long as Rep. Tom Delay, the chief architect of the Texas redistricting plan, remains majority leader, this idea is likely to go nowhere. The interesting question is how a Democratic majority in Congress might react to it.

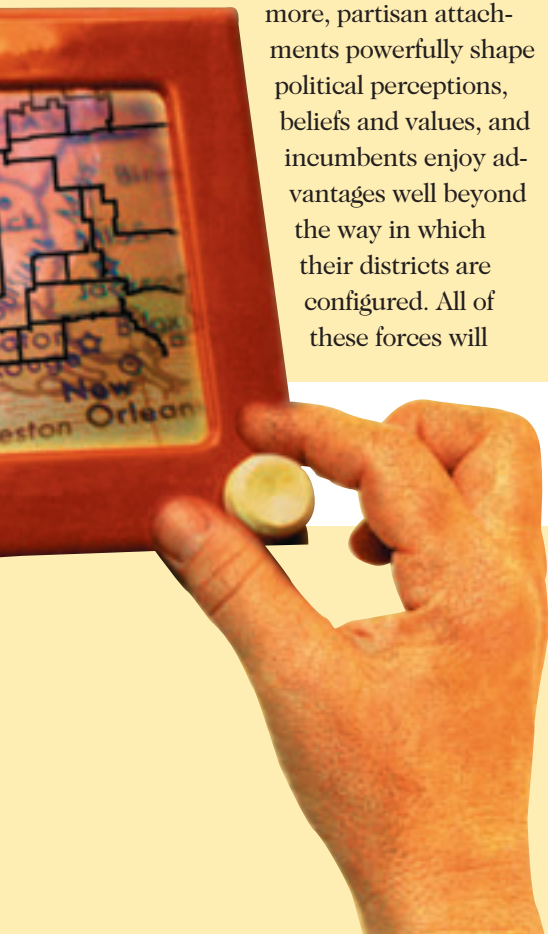
A second option for reformers is to convince the courts to find gerrymandered plans unconstitutional. In *Davis v. Bademer* (1986) the Supreme Court ruled that partisan gerrymandering is

justiciable under the Equal Protection Clause. However, by setting a high threshold for successful challengers (“evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process”), the Court rendered this standard ineffectual. Only one successful partisan gerrymandering claim—in a judicial election—has been litigated under the *Bandemer* ruling.

Last year the Court returned to this question by considering a case brought by Pennsylvania Democrats. Its decision in *Vieth v. Jubelirer* (2004) appears to have maintained the status quo. While all nine justices acknowledged that partisan gerrymandering could be unconstitutional, in rejecting the challenge the majority despaired of finding workable standards for determining when it was. Litigation challenging the Texas mid-decade redistricting plan continues, but the federal courts do not appear a promising venue for reform. Prospects for countering anti-competitive bipartisan plans are even bleaker. In past decisions, the Court has explicitly sanctioned the protection of incumbency as a legitimate redistricting objective.

The third and clearly most promising avenue of reform is to change the process by which states draw legislative maps. Often facing entrenched opposition in state legislatures, reformers are increasingly turning to the initiative process to establish independent, nonpartisan redistricting commissions.

Six states—Arizona, Hawaii, Idaho, Montana, New Jersey and Washington—already invest commissions with a first and final authority for congressional redistricting. Another, Indiana, uses a commission as a backup if the normal legislative process fails to produce a plan. Two other states, Maine and Connecticut, use commissions in



an advisory capacity: their plans must be approved by the legislature before taking effect. One state, Iowa, delegates authority for drafting redistricting plans to a nonpartisan legislative support staff agency, which operates under a “veil of ignorance” with respect to the addresses of incumbents, partisan affiliation of voters and previous election results. However, the Iowa legislature retains the authority to put its own mark on the ultimate plan.

LWVUS: The national Board has affirmed that all Leagues may take action under the LWVUS positions relating to redistricting, “Apportionment,” “Citizen’s Right to Vote,” and “Congress,” and should work to achieve three goals consistent with those positions:

1. Congressional districts and government legislative bodies should be apportioned substantially on population (“one person, one vote”);
2. Redistricting should not dilute the effective representation of minority citizens; and
3. Efforts that attempt or result in partisan gerrymandering should be opposed.

Leagues that do not now have a position may employ the LWVUS positions immediately, develop their own positions consistent with the overall League goals, or engage in a concurrence process to adopt another League’s position. The LWVUS will advocate for reform and support Leagues working on redistricting issues by sharing information, developing League expertise, and consulting with Leagues on advocacy, public education, and media outreach. The LWVUS is ready to assist you and would like to hear what your League is doing, intends to do or wants to do on redistricting issues. Contact the LWVUS Grassroots Lobbyist Angela Canterbury: acanterbury@lww.org.

Model for Reform

Arizona has become a prototype for current reformers. The state’s independent redistricting commission was established by popular initiative in 2000. Four members (two from each party) are appointed by state legislative leaders from a pool approved by a judicial appointments panel. The four appointees then select a fifth member (drawn from a comparable pool but not affiliated with either party) to serve as chair. Commission maps are approved by majority vote and are not subject to review by the legislature or veto by the governor. The commission is given explicit standards and procedures to follow in drawing redistricting plans. Importantly, these include favoring competitive districts and not identifying or considering the place of residence of incumbents or candidates.

Efforts to adopt some variation of the Arizona system are underway in a number of states. California Governor Arnold Schwarzenegger has proposed investing redistricting authority in a panel of retired judges. If he fails to reach agreement with the Democratic legislature, the Governor will lead an effort to place an initiative on the ballot later this year.

A number of organizations, including the Center for Governmental Studies, Demos and Common Cause, have issued guidelines for how redistricting commissions should be structured, members selected, and operating standards and procedures established. The devil is often in the details. Critics have expressed concerns with draft California initiative language, on grounds that it authorizes a second, mid-decade redistricting plan and that its provisions to ensure partisan fairness and competitiveness may be inadequate.

In other states, nonprofit organizations and unions are taking the lead to

draft and qualify initiatives for state ballots. The League of Women Voters at the state level has been active, too (see p. 7). Twenty-four states allow citizen initiatives on their ballots, and efforts are underway in Colorado, Florida, Massachusetts and Ohio to adopt redistricting commissions. In states without a provision for popular initiative, reformers must navigate the normal state legislative process to alter the redistricting process.

Incumbent officeholders and party leaders can be expected to oppose these efforts, since they are wary of changes that might diminish their individual reelection prospects or remove from their arsenal a weapon that might help them achieve or maintain majority control. But these self-interested calculations could lead to other preferences, depending on the particular political circumstances in each individual state. In some states, one party or the other may well conclude that they would fare better with a redistricting commission than with the status quo.

Conditions have improved for a major reconsideration of the manner in which legislative boundaries are redrawn. Success depends very much on the level of sustained interest and engagement by citizens across the country, including members of the League of Women Voters.

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VOTER LINKS

- www.brookings.org/comm/events/20040416redistricting.htm
- www.ncsl.org/programs/legman/elect/redist.htm
- <http://elections.gmu.edu/redistricting.htm>

Leagues in Action on Redistricting

Arizona: After years of work, the League achieved redistricting reform in 2000 and the creation of the Citizens Independent Redistricting Commission. Now the League has joined the Commission in defending its proposal. While the case works its way through the courts, Leaguers continue to monitor all Commission meetings and attend court hearings. The League successfully lobbied the legislature for additional funding for the Commission, whose funds had been depleted by the legal battle.

California: The League is working to reform redistricting in California where the Governor has endorsed proposed legislation to reform the process. Competing bills and campaigns for ballot initiatives are already underway in case legislation is not passed. The League supports two measures for redistricting by independent commission, and has offered to endorse the bill supported by the Governor if a provision requiring redistricting immediately following adoption of the measure is removed. The League has been working in coalition and consulting with the LWVUS on working with the Governor, the legislature and coalition partners to advance the criteria in the state League's position on redistricting: an independent, diverse citizens' commission to draw the lines for congressional, state senate, state assembly and Board of Equalization districts; an open process with information readily available to the public and opportunities for public comment at all stages; fair criteria for drawing district lines; and no provision for "mid-decade redistricting," i.e., for drawing new lines before the 2010 census. The League believes there could be the political and popular will necessary to achieve a less partisan, fairer, inclusive redistricting process for 2010.

Colorado: In the 1970s, the League led a citizen's initiative to establish an independent reapportionment commission on state legislative districts that was approved by voters. The League believes that the commission has worked well and is committed to establishing a similar independent commission for U.S. congressional districts. The post-2000 Census congressional redistricting plan resulted in a gerrymandered map that the court overturned. Since then, the League has worked in a coalition to create an independent commission for the federal districts. Instead of placing an initiative on a crowded 2004 ballot, the coalition decided to work with the legislature to pass a constitutional amendment for approval by the voters.

Florida: The League has formed a coalition, the Committee for Fair Elections, to put redistricting reform on the 2006 ballot. It will gather signatures for a constitutional amendment to form an independent commission and set standards on redistricting. The League expects a long campaign, but it has a longstanding commitment to redistricting reform. Previous efforts failed for lack of funding; this time the coalition has significant funding.

Idaho: In 1994, the Idaho constitution was amended to create an independent commission on redistricting based largely on the League's position. Despite failure to get proposed legislation on the ballot after its studies in 1986, the League succeeded in raising awareness among lawmakers and the public. It provided an alternative to the partisan legislative fight that led to proposed redistricting plans that were repeatedly contested in court. After a struggle over the 1990 redistricting, the legislative leadership turned to the League for

help. The result is a commission that operates independent of the legislature, listens to constituencies, and delivers more competitive districts that meet the standards of the Supreme Court of Idaho.

Maine: The League's board has recommended to members for consideration at convention that this year the League form a coalition to work on achieving a nonpartisan commission for redistricting. Using LWVUS redistricting-related positions, the board recommends that redistricting reform by the 2010 Census be made a Maine League priority initiative. The hope is to use the successful Clean Elections model to improve Maine's elections process and lend momentum to nationwide reform efforts.

Maryland: Maryland's constitutional structure gives the governor responsibility for drawing up redistricting plans. After the last census, the redistricting plan produced districts that were not compact and barely contiguous; the courts threw it out. After completing its *All About Redistricting: A 2004 Study*, the League adopted a position on redistricting by a nonpartisan appointed commission. Since this requires a constitutional amendment, the League is working on introducing and passing legislation in 2005.

Massachusetts: In the last seven years, Massachusetts has ranked 49th of the 50 states in electoral competitiveness. While redistricting reform has long been a League priority, recently prospects improved with established popular support and more legislative advocates. Last year, the League worked to pass the non-binding "Fair Districts for Fair Elections" initiative by more than 67 percent in all districts where it was on the ballot. It called on state representatives to support a state constitutional amendment to create an

independent redistricting commission, subject to strict guidelines for public participation, nonpartisanship, retaining the integrity of existing communities, and respecting the voting rights of minorities. Now the League is urging legislators to join the 55 cosponsors of the Independent Redistricting Commission constitutional amendment, filed on behalf of the League and its Fair Districts Coalition. Redistricting reform could make the ballot by 2008.

Texas: For over two decades, the League has supported the formation of a redistricting commission with the initial responsibility of formulating a redistricting plan designating boundaries for congressional districts and state House and Senate districts. The League supported the post-2000 census redistricting process by testifying and helping to educate legislators on the League's positions. When the legislature called multiple special sessions on redistricting to redraw the districts already upheld by the courts, the League voiced opposition, noting that a valid plan existed. The League's statewide testified at public hearings and advocated for the de-politicization of redistricting. The state approved the second redistricting plan and used it in the 2004 elections. The League perseveres in its fight to reform redistricting in Texas!

Utah: The League continues work on redistricting reform, one of its top 10 priorities. This year, League member, former LWVUS Board member, and state legislator Roz McGee again introduced a bill to create a bipartisan redistricting task force. The bill failed, but Rep. McGee will continue to work for passage.

Wisconsin: Legislation was recently introduced asking the nonpartisan Joint Legislative Council to develop a new redistricting system similar to Iowa's. The League supports this proposal as a first step.