

**Reclaiming Voice, Restoring Value:
Gerrymandering, Disenfranchisement,
and the Need for Reform in the Way
We Choose Our Political Representatives**

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“There is a problem when the turnover in the United States House of Representatives is lower than it was in the Soviet Politburo.”
Nathaniel Persily

“[T]he average congressman is statistically more likely to marry Angelina Jolie than to be voted out of office.”
Steve Chapman

“[S]oft totalitarianism prevails, as obsequious as a wine waiter.”
J.G. Ballard

If one word encapsulates the whole of the concept of democracy, that word, it seems, might well be “voice.” Democracy derives from the Greek *kratos* (sway or influence) and *demos* (the people) – “popular voice,” in other words. Our own American version of democracy includes, as one of its philosophical pillars, the concept of “the consent of the governed,”¹ a notion laden with connotations of an active voice residing within the citizenry. A cursory review of a few Internet websites suggests that organizations of all stripes, from Democracy Collaborative²

¹ Jefferson, Thomas. 1776. *The Unanimous Declaration of the Thirteen United States of America*, <<http://earlyamerica.com/earlyamerica/freedom/doi/text.html>> (accessed on August 30, 2006). “[G]overnments are instituted among men, deriving their just powers from the consent of the governed.”

² See “Democracy, Diversity, and Voice Project” at website of *Democracy Collaborative*, <<http://cbvps.tempdomainname.com/vhosts/democracycollaborative.org/htdoc/scholars/diversity.html>> (accessed on August 30, 2006).

to the Scottish Parliament,³ refer to “voice” and “democracy” in tandem. Scholars write of them together in expressing ideas.⁴ Even the witty have conjoined voice and democracy.⁵

Individual (or even collective political) voice in a democratic society, in literal terms, can express itself through adrenalin-pumping street protests, or a reflective letter to the newspaper editor. It can also manifest itself through volunteer efforts on behalf of an advocacy group or contributions to a political organization, but the simple act of casting a vote is probably the principal mechanism by which those in a republican, or representative, democracy are considered to have a voice in the political process. The Bill of Rights itself, by protecting rights to free speech, free press, and association,⁶ and other constitutional amendments expanding and protecting the right to vote,⁷ confirm the essential connection between popular voice and democracy.

³ See website for the Scottish Parliament, <<http://www.scottish.parliament.uk/vli/myvhsp/action/why.htm>> (accessed on August 30, 2006).

⁴ See, for example, Sen, A. K. 1999. Democracy as a Universal Value. *Journal of Democracy*, 10.3:3-17, <<http://muse.jhu.edu/demo/jod/10.3sen.html>> (accessed on August 30, 2006). “People in economic need also need a political voice. Democracy is not a luxury that can await the arrival of general prosperity.”

⁵ The Nobel Prize-winning German author Gunther Grass is credited with saying that “[t]he job of a citizen is to keep his mouth open,” while Hubert H. Humphrey once quipped that “[t]he right to be heard does not automatically include the right to be taken seriously.” Many more quotes of a political nature can be found at Democracy.Ru, a website for the promotion of democracy in Russia, <<http://democracy.ru/english/quotes.php>> (accessed on August 30, 2006).

⁶ The First Amendment to the U. S. Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” Available online at <<http://usinfo.state.gov/usa/infousa/facts/funddocs/billeng.htm>> (accessed on August 30, 2006).

⁷ The Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments to the U.S. Constitution protected or expanded the right to vote with respect to, or in the context of, race, gender, taxes, and age, respectively.

One readily observes, however, that this concept calls for a more precise articulation. It is the *effective* voice of the governed that serves as the *sine qua non* of democracy. After all, a totalitarian regime, in theory at least, could allow for all manner of speech, press and association but, to the extent that such freedoms are without a mechanism by which to actually “sway or influence” – to determine directions and outcomes, in other words – they are meaningless. Engaging in unfettered, but meaningless, ineffectual speech in a totalitarian system, however, is probably more theory than reality. Voting, though, is a different matter. Throughout the twentieth century, dictators were routinely “reelected” around the world, with voter approval often approaching unanimity. As has been said, however, “[t]he right to vote involves more than simply casting a ballot . . .” (Engstrom 1994). It is an *effective* vote – a vote with *value* – that serves as a principal manifestation of the “voice” that distinguishes and defines democracy.⁸

Gerrymandering in General

The typical American, if asked to identify inhibitors within our political system that serve to diminish democracy, in general, and the value of his or her voice and vote, in particular, might well struggle to come up with more than a couple. Many might mention the corrupting influence of big money,⁹ or lobbyists. Some might even

⁸ One group of scholars, consistent with the above, has defined democracy as a system of government which meets three essential conditions: “. . . meaningful and extensive *competition* among individuals and organized groups (especially political parties) for all effective positions of government power, at regular intervals . . . ; a highly inclusive level of political participation in the selection of leaders and policies, at least through regular and fair elections, such that no major (adult) social group is excluded; and a level of civilian and political liberties – freedom of expression, freedom of the press, freedom to form and join organizations – sufficient to ensure the integrity of political competition and participation.” Diamond, L., Linz, J. and Lipset, S. M. (Eds.) (1988). *Democracy in Developing Countries: Africa*. (Boulder/London: L. Rienner) 2: xvi; quoted in Hofmeister, W., “Democracy: Definitions and Concepts in the Context of the Transformation of Political Systems.” <<http://www.kas.org.za/Publications/SeminarReports/Traditionallocalparticipation/HOFMEIST.pdf>> (accessed on September 2, 2006).

⁹ For what is often considered a complex, and deadly-dull, subject, campaign-finance reform has enjoyed a relatively high public profile in recent years. A slightly dated, but otherwise comprehensive, report on the subject is: Froomkin, D. (1998,

name a system that historically and structurally favors the existing two major parties, at the expense of third party efforts.¹⁰ Very few, however, would consider the boundaries of the congressional district, or state house and senate districts, in which they reside. But in the power to draw those voting-district boundaries lies the power to create a vibrant, competitive electoral process, in which each vote theoretically can affect the outcome and therefore has real value, or, alternatively, a district comfortably ensconced in the folds of incumbency, where one's vote, either as a minority-party or majority party member, matters very little – a “soft totalitarianism”¹¹ of sorts.

Gerrymandering – defined as “the use of partisan control over the [redistricting] process to gain partisan electoral advantage” (Lyons and Galderisi 1995) – dates back to the nation's beginnings (Jost 2004). Even earlier, the legitimate task of redistricting was supported by parliamentarians during the English Revolution as a means to redress political imbalances resulting from

September 4). Money Troubles. *The Washington Post*, <<http://www.washingtonpost.com/wp-srv/politics/special/campfin/campfin.htm>> (accessed on August 30, 2006). Other Internet postings on the subject include that of the Hoover Institution, <<http://www.campaignfinancesite.org/>> (accessed on August 30, 2006); the Campaign Finance Information Center, <<http://www.campaignfinance.org/>> (accessed on August 30, 2006); Public Agenda, <http://www.publicagenda.org/issues/frontdoor.cfm?issue_type=campaign_finance> (accessed on August 30, 2006); the Brookings Institution, <http://www.brookings.edu/gs/cf/cf_hp.htm> (accessed on August 30, 2006); and Public Campaign, <<http://www.publiccampaign.org/>> (accessed on August 30, 2006).

¹⁰ See Mott, Jonathan, “What is the History of ‘Third Parties’ in the United States?” <<http://www.thisnation.com/question/042.html>> (accessed on September 2, 2006); see also Disch, L. J. (2002). *The Tyranny of the Two-Party System*. New York: Columbia University Press.

¹¹ While the British writer J.G. Ballard used the term “soft totalitarianism” in a different context, one author names, among other things, gerrymandering and the “vanishing swing district” in arguing that America risks becoming an “autocracy” in some respects. See Kuttner, R. (2004, February 1). “America as a One-Party State.” *The American Prospect*, <<http://www.prospect.org/web/printfriendly-view.wv?id=6985>> (accessed on August 30, 2006).

population shifts, and this concept of numerical voting equality subsequently formed the foundation for redistricting in the United States (Redistricting Policy Group 2005). The U.S. Constitution provides that the House of Representatives shall reflect the populations of each state.¹² Historically, this has been accomplished by the taking of a census every ten years, with House seats then being apportioned to each state based upon population. Redistricting – the redrawing of political-district boundaries – becomes necessary as a state either gains or loses population, in order to reflect the new size of its congressional delegation.¹³ With little other Constitutional guidance,¹⁴ state legislatures historically have reserved to themselves direct power over the redistricting process and, as might be expected in such an overtly partisan environment, politicians have built a long tradition of gerrymandering - manipulating boundaries to serve the interests of particular candidates or parties (Redistricting Policy Group 2005: 8). The term itself originates in the efforts of Massachusetts Governor Elbridge Gerry and the Democrat-Republican legislature of 1812 to elect a fellow party member by creating a new district whose not-intrinsically-logical boundaries were said to resemble a salamander; thus, the Boston Gazette coined the term “gerrymander” (Redistricting Policy Group 2005: 8).

While, because of the primitive state of demographic information at their disposal, the efforts of Gerry and his cohorts actually failed, today’s politicians are armed with “computer technology and political databases [that] allow cartographers to fine-tune district boundaries to maximize partisan advantage” (Berman 2004).

¹² Article I, Section 2 of the U.S. Constitution, and the Twenty-Fourth Amendment (Section 2), require that representatives be apportioned among the several states “according to their respective numbers”

¹³ See “Safe Seats, Dangerous Democracy” (2005, October) (a report co-released by Common Cause Ohio and Ohio Public Interest Research Group), <<http://ohiopirg.org/OH.asp?id2=19957&id4=OHHP>> (accessed on August 30, 2006).

¹⁴ While *Baker v. Carr* (1962) enunciated the constitutional principle of “one person, one vote,” other redistricting limitations include the federal Voting Rights Act and traditional redistricting principles such as compact and contiguous districts. See “Shifting sands of redistricting law,” National Conference of State Legislatures, <<http://www.ncsl.org/programs/legman/elect/law-article.htm>> (accessed August 30, 2006).

One writer's description of the advent of "extraordinarily powerful redistricting software" suggests capitalist ingenuity gone awry:

In the decade-plus since the last round of redistricting following the 1990 Census, the technology of redistricting software has improved to the point where any organization can load sophisticated mapping programs onto their operatives' laptops, plug in demographic variables and generate devastatingly accurate redistricting maps designed to concentrate or diffuse party supporters in units tailor-made to benefit one party over another (Abramsky 2003).

Sometimes that level of sophistication is used to protect the status quo – in other words, incumbents of *both* parties.¹⁵ In 2001, California's Democrat-dominated legislature created a redistricting map supported by both parties, in that it very successfully protected all incumbents, regardless of party affiliation.¹⁶ Elsewhere, that technological sophistication combines with partisan fervor to distinctly disadvantage the minority party (and its voters). In Texas, for example, Republicans, led by House Majority leader Tom Delay, forced through a tradition-busting *midterm*¹⁷ (2003) redistricting that effectively cost a number of Texas congressional Democrats their seats.¹⁸ The phenomenon of manipulating the

¹⁵ See "A New Political Landscape," 23 October 2005, *Los Angeles Times*, Editorial Section, <<http://www.fairdistrictsnow.com/Los%20Angeles%20Times.htm>> (accessed on August 30, 2006). ("The greatest political swindle of the last 50 years in California has been the conspiracy between Democrats and Republicans to protect their own hides by redrawing the state's legislative and congressional districts.").

¹⁶ The effort was so successful, in fact, none of the 153 congressional and state legislative seats up for election in 2004 changed parties (Redistricting Policy Group 2005, 11).

¹⁷ Districts are traditionally redrawn only once every ten years, after the census, in order to comply with the constitutional principle of "one person, one vote," as enunciated in the Supreme Court decision in *Baker v. Carr*. According to one writer, "actions like those undertaken by Texas Republicans have never in living memory been launched by either political party" (Abramsky 2003).

¹⁸ See "States See Growing Campaign for New Redistricting Laws," *New York Times*, 7 February 2005, <<http://reforminstitute.org/cgi->

redistricting process to serve these base, partisan interests is often decried as the elected representative choosing his or her voters, instead of the voters choosing their representative.¹⁹

The Effect of Gerrymandering on the Democratic Voice

As suggested, one empirically-established²⁰ consequence of such manipulations is a less competitive electoral environment. This declining competitiveness²¹ is

data/article/files/316.shtml> (accessed on November 2, 2005). See also Redistricting Policy Group 2005, 11-12).

¹⁹ See, for example, "Democracy in Voters' Hands," 24 October 2005, *The Washington Post* (Ed. Sec., A20), <<http://www.reforminstitute.org/cgi-data/article/files/449.shtml>> (accessed on August 30, 2006). ("Elections are supposed to be about voters choosing candidates. That's not a meaningful choice if the candidates have already gotten to choose their voters."). See also website of FairVote, "Redistricting Reform Watch 2005," <<http://www.fairvote.org/?page=1428&mode=showallbig&offset=0>> (accessed on August 30, 2006). ("By gerrymandering the districts, legislators and their political cronies have used redistricting to choose their voters, before voters have had the opportunity to choose them."). See also "Why Bother Voting?," 25 October 2005, *The Washington Post*, Ed. Sec., A20, <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/24/AR2005102402032.html>> (accessed on August 30, 2006). ("Politicians are choosing their voters, rather than the other way around. It's wrong, and it has a corrosive effect on the very idea of popular sovereignty.") See also "The Chronicle Recommends: Prop. 77," 12 October 2005, *The San Francisco Chronicle*, <<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/10/12/EDGQIF6HBC1.DTL>> (accessed on August 30, 2006). ("[T]his is a democracy – a democracy that is being subverted when politicians select their voters.").

²⁰ See, for example, Tufte, E.R. 1972. "Determinants of the Outcome of Mid-Term Congressional Elections." *American Political Science Review*, 69:816-26; Tufte, E.R. 1973. "The Relationship Between Seats and Votes in Two-Party Systems." *American Political Science Review*, 67:540-54; Tufte, E.R. 1974. "Communications." *American Political Science Review*, 68:212.

typically manifested in startlingly-high reelection rates for incumbents. In 2002, eighty-one incumbent U.S House members ran unopposed by a major party candidate and, according to New York University law professor Richard Pildes, about 400 of the 435 congressional seats are now considered “safe” (Toobin 2003).²² While in 1992, 65 percent of House members running for reelection won by a landslide (defined as a margin of 20 points or more), that number had climbed to 80 percent by 2002 (Chapman 2005). Fewer than one in ten 2002 congressional races was won by less than ten percent, and fewer than one in five races was won by less than 20 percent (Redistricting Policy Group 2005: 12). Only four incumbents, nationwide, were defeated by non-incumbent challengers – the fewest number in the history of congressional elections (Redistricting Policy Group 2005: 13).²³ The average margin of victory for incumbents was nearly 40 percent, and winners took at least 55 percent of the vote in a full 91 percent of the U.S. House contests – 60 percent or more of the vote in 81 percent of such races (Redistricting Policy Group 2005: 13). The 2002 congressional races saw significantly less turnover than in similar elections during the last 30 years (Jost 2004). In 2004, congressional incumbents enjoyed a mind-boggling 99 percent reelection rate

²¹ The report “Mapping Democracy” states that “[o]ne of the most well-documented trends in political science is the decline in competition in congressional races over the past fifty years,” although they do suggest that no consensus exists within the academic community as to *what extent* redistricting is responsible, given other likely contributors such as increasing geographical polarization and incumbent advantage (Redistricting Policy Group 2005, 12-13). The latter suggestion seems rather cyclical, given that gerrymandering in fact enhances the advantages of incumbency.

²² According to the author, writing in 2003, “[t]he Republican advantage in the House is modest – just two hundred and twenty-nine seats to two hundred and six – but gerrymandering has made the lead close to insurmountable for the foreseeable future.” According to the website of the Office of the Clerk, House of Representatives, <<http://clerk.house.gov/>> (accessed August 30, 2006), the current House membership is made up of 231 Republicans, 201 Democrats, one Independent, and two vacancies.

²³ According to Jost (2004), a total of 16 House incumbents were defeated, suggesting that redistricting forced several incumbents into head-to-head contests. The 16 defeated compared to an average of 35 following redistricting in 1972, 1982, and 1992.

(Redistricting Policy Group 2005: 13). Only seven incumbents, of 399 running, lost their seats.²⁴ While in 1992, 103 congressional districts voted for one party's candidate for president and another party's candidate for the House (an indication of a potential swing district), by 2004 that number had dwindled to only 59 (Toner 2005).

This same lack of competition is also found at the state level.²⁵ The New York state legislature, for example, has created a solidly Democratic Assembly and a solidly Republican Senate "so efficiently that they seem to represent maps of two separate states" (*The New York Times* 2005). In the California races of 2004, none of the 153 contested legislative and congressional seats changed party hands (Drucker 2006). Floridians experienced the same result: not a single incumbent in the state legislature or congressional delegation lost, and more than 72 percent of state legislative races had only one major party candidate, making Florida a runner-up to Arkansas as the least competitive state in the country.²⁶ Only two of Ohio's 18 congressional races came in with a margin of victory under 20 percent (the closest being 17 points), while the average margin in state house and senate races was 38 percent and 35 percent, respectively, with 22 state legislative seats going uncontested (Kondracke 2005). It has been estimated that, at most, only seven of the 203 seats in the Pennsylvania statehouse are truly competitive (Farmer 2005). In five states – Arkansas, Florida, South Carolina, New Mexico, and Texas – at least 60 percent of their 2004 legislative elections were without a candidate from both major parties (*The Washington Post* 2005: A20). Nationwide in 2004, 39 percent of state legislative races were not contested by one of the two major parties (Redistricting Policy Group 2005: 13).

²⁴ See topic of redistricting on website of Common Cause, <<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=196481>> (accessed on August 30, 2006).

²⁵ State legislative races often suffer from lack of competition. State gubernatorial and U.S. Senate races are, of course, statewide and, by definition, not subject to gerrymandering. As might be expected, those races typically experience greater competition (Redistricting Policy Group 2005, 13).

²⁶ See Nancy Cook Lauer, "Lawmakers Cool to Redistricting; Debate Doesn't Assuage Their Concerns," 22 August 2005, *Tallahassee Democrat*, <<http://reforminstitute.org/cgi-data/article/files/426.shtml>> (accessed on August 30, 2006).

In addition to a lack of, or declining, competitiveness in our electoral process, other adverse consequences, perhaps not as well-established empirically but nevertheless logically compelling, are said to derive from today's pernicious strain of gerrymandering or from the lack of competitiveness that it engenders, including "complacent incumbents, polarized politics, cynical voters, and dull elections (Murphy 2005)." That the lack of turnover can lead to complacency is easy to understand. It seems a not-too-distant variation on the old "familiarity breeds contempt"²⁷ theme – contempt, in this case, being synonymous with the unresponsiveness and inattentiveness that results from not having to actually compete for reelection, and that flows, in particular, to minority party voters or anyone else "beyond the base."²⁸ While on a procedural or superficial level, such a state of affairs produces dull elections, on a much more substantive level, it is said to have bolstered the cynicism of voters²⁹ and radically transformed the ideological make-up of our legislative bodies. According to Samuel Issacharoff, a Columbia Law School professor:

Partisan gerrymandering skews not only the positions congressmen take but also who the candidates are in the first place. You get more

²⁷ Apuleius, a 2nd-century Roman philosopher and satirist, opined that "[f]amiliarity breeds contempt, while rarity wins admiration." Mark Twain, a 19th-century American humorist, on the other hand, quipped that "[f]amiliarity breeds contempt – and children," <<http://www.quotationspage.com>> (accessed on August 30, 2006).

²⁸ According to Jim Leach, an Iowa congressman, "[i]f you are Republican in an all-Republican district, there is no reason to move to the center. You want to protect your base." See Toobin 2003.

²⁹ See, for example, Neuborne, B. (2001, March 12). "Reclaiming Democracy." *The American Prospect*, <<http://www.prospect.org/print/V12/5/neuborne-b.html>> (accessed on September 2, 2006) ("Unless we can devise methods for returning a degree of competition to the electoral process, voters will rationally stay home."); see also "A Partisan Game of Gotchal," 14 June 2004, *Business Week*, <http://www.businessweek.com/magazine/content/04_24/b3887074.htm> (accessed on September 2, 2006) ("Voter cynicism is rising as more Americans realize how little choice they really have for Congress.").

ideological candidates, the people who can arouse the base of the party, because they don't have to worry about electability.³⁰

Finally, this environment of “deadened competition” results in an elective body that does not accurately reflect changes in voter sentiment. As has been pointed out with respect to the House of Representatives, because so few districts can realistically be expected to change parties, that deliberative body as a whole will fail to track shifts in underlying popular opinion:

A national swing of five percent in voter opinion – a sea change in most elections – will change very few seats in the current House of Representatives. Gerrymandering thus creates a kind of inertia arresting the House's dynamic process. It makes it less certain that votes in the chamber will reflect shifts in popular opinion and thus frustrates change and creates undemocratic slippage between the people and their government.³¹

The same results can be said to exist in many states with respect to their state legislative bodies.

Efforts at Reform

Partisan gerrymandering's legacy, and its accelerating impact on the electoral process, seems clearly to be a significant diminishment of democracy. Compounding that sobering state of affairs, most Americans are no doubt unaware of its impact on the effectiveness of their political voice or the value of their vote.³²

³⁰ Quoted in Toobin 2003. See also Kondracke 2005, quoting Tennessee congressman John Tanner: “[T]he system skews Members [of Congress] to the extremes. The middle has shrunk, and all you have left is the wings.”

³¹ Potter, T. & Ortiz, D.R., *Amicus Curiae* Brief of The Reform Institute et al., at p. 22, in the Supreme Court case of *Vieth v. Jubelirer*, decided April 28, 2004. Both the Brief and the Supreme Court Opinion can be accessed from: <<http://reforminstitute.org/cgi-data/issues/files/13.shtml>> (accessed on August 30, 2006).

³² See “The Gerrymander Scandal,” 7 November 2001, *The Wall Street Journal*, <http://www.fairvote.org/op_eds/wsj110701.htm> (accessed on August 30, 2006) (“Americans will go to the polls a year from this week in the quaint belief

To rectify this, a number of structural modifications have been at least proposed and promoted by various organizations³³ and, in some cases, instituted in various parts of the country.

Proportional Representation

Proportional representation (“PR”)³⁴ represents, perhaps, the greatest single means by which to restore electoral voice and voter value. A secondary benefit would be a greatly reduced role for the kinds of partisan redistricting that have undermined our democracy. In our present system of single-member district (“SMD”) representation, the election winner (whether by a 70%-30% landslide, a bare majority (51%), or, where there are more than two candidates, a mere plurality) serves to supposedly represent the interests of all constituents. The notion of today’s polarized and partisan politicians representing the “will of the whole” of their respective districts is, of course, a fiction – minority voters (i.e., anyone who did not vote for the winner) are underrepresented, or not represented at all. Such SMDs function to represent only the interests and views of one part of the electorate: those who elected them.³⁵ As gerrymandering creates safer and safer seats, not only are the votes of all those who did not elect a particular representative undervalued, *majority* votes (at least on an individual basis) become essentially meaningless as well, given the foregone conclusion that most political

that they will be electing a new Congress. But the real story is that nearly all of those races have already been decided – by politicians in backrooms and long before anyone even votes.”).

³³ For example, The Center for Voting and Democracy, <<http://www.fairvote.org/?page=1389>>; Common Cause, <<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=196481>>; The Reform Institute, <<http://reforminstitute.org/cgi-data/issues/files/13.shtml>>; and, to some extent, The Center for Public Justice, <[http://www.cpublicjustice.org/stories/storyReader\\$1338](http://www.cpublicjustice.org/stories/storyReader$1338)> (all accessed on August 30, 2006), are all involved in efforts to reform the abuses of gerrymandering.

³⁴ For a comprehensive treatment of the subject of proportional representation, see Amy, Douglas J. (1993). *Real Choices/New Voices: The Case for Proportional Representation Elections in the United States*. New York: Columbia University Press.

³⁵ See Amy, Douglas J. “Fair Representation in North Carolina,” <<http://www.fairvote.org/?page=539>> (accessed on August 30, 2006).

“races” are today. This disenfranchisement is said to be the “root cause” of the lack of competitiveness in our present “winner-take-all” system (Skillen 2005).

By contrast, PR electoral systems typically use large, multi-member districts³⁶ in which seats are distributed, not on a winner-take-all basis, but according to the percentage of votes received by a particular candidate or party.³⁷ Usually, with a minimum threshold percentage of the vote necessary to actually win a seat, such a system ensures that minority voices (whether racial, ideological, party, or other basis) are effective and their vote meaningful. Moreover, because minority voices cannot be shut out of representation, district boundaries no longer have the same political implications and, consequently, redistricting to achieve numerical equality loses much of the partisan rancor that characterizes such efforts in the United States.³⁸ Even though PR elections are the most common form of elections in Western democracies,³⁹ the criticism most often raised here, with respect to such systems, are that they threaten electoral stability (Neuborne 2001). The argument, however, can be argued to reveal as much a skeptical attitude toward electoral and representational diversity as any real fear of genuine structural instability. After all, measures can easily be envisioned that would work to preserve stability in the system, while providing a marked increase in electoral voice and vote value. A substantial minimum vote threshold, for example, would mitigate against an exorbitant number of “parties” winning seats (and the resulting “destabilizing” coalition-building that would necessarily ensue), while still allowing for much more meaningful elections. Nevertheless, most efforts to experiment with proportional voting systems have been rejected in the United States (Neuborne 2001) and, while no provisions in the U.S. Constitution would prohibit the use of PR elections for the U.S. House of Representatives, federal statutory law currently mandates single-member districts for the House.⁴⁰ Despite its simplicity and logic, and despite

³⁶ Some have proposed that each state be turned into one multi-member district from which its allotted number of House seats would be filled by means of a PR system of voting. See Skillen 2005.

³⁷ See Amy, Note 35 supra.

³⁸ See Amy, Note 35 supra.

³⁹ See Amy, Note 35 supra.

⁴⁰ The language of 2 U.S.C. Section 2c provides that “there shall be established by law” single-member congressional districts in any State entitled to more than one

some modest success at the city council, county commission, and school board level,⁴¹ proportional representation nevertheless remains a long-term project of questionable prospects in the United States.

Instant Runoff Voting

A less far-reaching structural change that does not run afoul of the single-member district mandate, but which might also alleviate some of the political advantages that allow for the worst abuses of partisan gerrymandering, is instant runoff voting (“IRV”). An American invention, and over 130 years old, Ireland and Australia have used IRV for over 90 years – the former to elect its president and the latter to elect its House of Representatives.⁴² In IRV, voters indicate their strength of preference for any of several candidates. A candidate who receives an outright majority of first-preference votes is declared the winner. Absent such an outcome, the votes of the weakest candidate are reallocated according to their second preference, and so on, until one candidate receives a majority of the votes. Because it remains a winner-take-all system (i.e., only one representative will be elected), some argue that IRV is a “very poor substitute for proportional representation,” doing nothing to solve voting rights problems, ensure minor party representation, or eliminate problems associated with redistricting, such as uncompetitive districts and partisan gerrymandering.⁴³ It inarguably enhances, however, the effectiveness

Representative and that "Representatives shall be elected only from districts so established."

⁴¹ According to the website for The Center for Voting and Democracy, <<http://www.fairvote.org/index.php?page=243>> (accessed on August 30, 2006), the cities of Cambridge, Massachusetts, Philadelphia, Pennsylvania, Hartford, Connecticut, and Waterbury, Connecticut, along with numerous city councils, county commissions, and school boards in Alabama, North Carolina, Texas, and South Dakota, have adopted some version of proportional voting. The variations listed include choice voting, limited voting, limited voting with limited nominations, and cumulative voting.

⁴² See Instant Runoff Voting website, <<http://www.instantrunoff.com/faq.asp>> (accessed on August 30, 2006).

⁴³ See, for example, Amy, Douglas J., “Instant Runoff Voting: No Substitute for Proportional Representation,” *PR Library*, <<http://www.mtholyoke.edu/acad/polit/damy/articles/irv.htm>> (accessed on 192

and value of votes, and the accuracy of representation, by largely eliminating the “wasted vote” and “spoiler” problems associated with third parties.⁴⁴ While third-party voters may not see their first preference elected as their representative, their second-preference vote may well determine just who their representative turns out to be, giving them a real voice in the democratic process (other than, as spoiler, ensuring the election of their *least*-preferred candidate). Even as to redistricting, being able to rank multiple candidates as to preference may well confound abilities to predict voter behavior and offset the advantages of sophisticated redistricting computer software, making the worst abuses of partisan gerrymandering more difficult to realize. Regardless of its real or perceived deficiencies vis-à-vis proportional voting, advocates of electoral reform⁴⁵ generally view instant runoff voting as a step in the right direction, and more achievable, politically, than proportional representation, at least in the short term.

Independent Redistricting Commissions

While proportional representation is a distant hope for many reformers, and instant runoff voting perhaps addresses gerrymandering and its negative consequences only indirectly, another more widely-successful reform effort has aimed specifically at taking the most extreme abuses of partisanship out of the redistricting process and returning a level of competitiveness to our democratic electoral system.

August 30, 2006). Amy, a professor in the Department of Politics at Mount Holyoke College, created the PR Library website (<http://www.mtholyoke.edu/acad/polit/damy/prlib.htm>) as a “source of information on proportional representation elections.”

⁴⁴ The most infamous example of these problems is the 2000 presidential election, in which Nader is argued to have drawn enough votes away from Gore in Florida to give that state, and therefore the election, to Bush. It is likely that, under IRV, the second choice of most Nader voters would have been Gore, altering the outcome of the election, and more accurately representing the true preferences of voters.

⁴⁵ For an excellent and comprehensive introduction to the many variations of ranked, or preferential voting methods, as well as proportional methods and others, see the Wikipedia website’s treatment of the topic of “Voting System,” <http://en.wikipedia.org/wiki/Voting_systems> (accessed August 30, 2006).

Coordinated at some levels,⁴⁶ and involving largely independent efforts at other times, the intention is to remove elected politicians from the redistricting process and replace them with independent redistricting commissions, to be guided by more objective redistricting criteria than incumbency protection or party advantage. The foremost goal is to reintroduce competitiveness into the American electoral landscape.⁴⁷

Presently, the most common form of redistricting remains the traditional legislative process, with its attendant partisanship. Thirty-eight states use the legislative process for congressional redistricting, and 26 states use it for state legislative redistricting (McDonald 2004). Twenty states use a commission at some stage of congressional or state legislative redistricting.⁴⁸ While, at first glance, that latter statistic may strike an encouraging note, in reality many such commissions are not truly independent but, rather, by virtue of the particular selection process utilized, are simply partisan extensions of a partisan elective body. In a number of such states, for example, legislative leaders or statewide party officials are either commission members or designate its members.⁴⁹ Such a scenario, as might be expected, can lead to some of the same problems associated with legislative redistricting. Where a commission with odd-numbered membership is made up of partisans, one party, almost by definition, can adopt its version of a redistricting plan. Other membership arrangements and voting procedures tend to foster bipartisan compromise (not *nonpartisan* redistricting) and an incumbent-protection

⁴⁶ Common Cause, for example, launched its “nationwide redistricting plan” in January of 2005, was active in ballot efforts in Ohio and California, and has gathered signatures in Florida for a 2006 initiative. See Common Cause website, <<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG7b=196481>>, for its redistricting guidelines (accessed on August 30, 2006); see also Lauer 2005.

⁴⁷ See Basham, P. & Polhill, D. (2005, June 30). “Uncompetitive Elections and the American Political System,” *Cato Institute Policy Analysis No. 547*, <<http://www.cato.org/pubs/pas/pa547.pdf>> (accessed on August 30, 2006) (“There will not be an improvement in political competition until the incumbent fox ends his tenure as guardian of the democratic henhouse.”).

⁴⁸ See Basham, P. & Polhill, D. (2005, June 30: 380). According to McDonald, a commission plays a primary role in congressional redistricting in seven states and in state legislative redistricting in 12 states. Seven states use a commission for both.

⁴⁹ See Basham, P. & Polhill, D. (2005, June 30 382).

redistricting plan,⁵⁰ one of the perceived evils of legislative redistricting and gerrymandering.

While no state provides a perfect example,⁵¹ several models can at least be characterized as genuine reform efforts. Party influence within Arizona's commission, for example, is reduced through a complicated membership selection procedure and by the fact that the commission must draw plans without taking into account incumbents' homes (McDonald 2004: 383). Moreover, elaborate qualifications for commissioners, aimed at making them less tied to the political parties, were recently added.⁵² Its constitution, along with that of Washington's, even requires its commission to draw competitive districts where practicable,⁵³ and other states have adopted Hawaii's constitutional provision prohibiting commissions from drawing district boundaries to favor a political party or particular incumbent officeholder (McDonald 2004: 384). Iowa, long held up as a reform model, actually assigns the task of drawing district boundaries to a nonpartisan legislative staff (to be approved or rejected by the legislature). Those

⁵⁰ McDonald (2004: 383), citing Butler, D. & Cain, B.E. (1992). *Congressional Redistricting: Comparative and Theoretical Perspectives*. New York: MacMillan), suggests this is the outcome in several states, where an equal number of partisans choose a tiebreaker at the beginning of the process by a majority vote, and then adopt a redistricting plan, also by a majority vote.

⁵¹ For a good comparative summary of independent redistrict commissions, see Center for Governmental Studies website, <<http://www.cgs.org/projects/politicalreform/IndependentRedistrictingCommissionsSummaries.doc>> (accessed on August 30, 2006).

⁵² McDonald (2004: 384).

⁵³ Not everything is perfect, however, and competitiveness is in the eye of the beholder. A judge ruled in January, 2004 that the Arizona Independent Redistricting Commission's maps were unconstitutional, and required that they be redrawn to increase the number of competitive districts. Working under protest, the commission did just that, doubling the number of competitive districts (from four to eight, out of 30). The commission defined competitiveness as those where voter registration is within 7 percentage points between the major parties. See Robbie Sherwood, "AZ: New Legislative Maps Drawn Up," 2 March 2004, *The Arizona Republic*, <<http://www.azcentral.com/specials/special12/articles/0302redistricting02.html>> (accessed on August 30, 2006).

redistricting plans are drawn without any political data or information such as the addresses of incumbents.⁵⁴

Academic and public-policy organizations have been particularly active with respect to promoting independent commissions. Common Cause, in August, 2005, issued its *Redistricting Guidelines*, calling for the creation of “nonpartisan independent redistricting commissions.”⁵⁵ The Reform Institute’s *Principles for Redistricting Reform*, issued in May, 2005, also call for minimizing partisan political control by assigning redistricting power to an “independent”⁵⁶ commission. Finally, Harvard University’s Institute of Politics, through its Redistricting Policy Group, issued a comprehensive “blueprint” for redistricting reform, entitled “Mapping Democracy,” in April of 2005. It provides for an “intricate process” by which an independent commission would be chosen, made up of two members of each of the two major political parties and three members unaffiliated with either such party, and “tasked with drawing a redistricting map based upon geographic and demographic, not political, considerations, and . . . prohibited from using data to facilitate the intentional creation of safe districts.”⁵⁷

⁵⁴ See “Shifting Sands of Redistricting Law,” National Conference of State Legislatures website, <<http://www.ncsl.org/programs/legman/elect/law-article.htm>> (accessed on August 30, 2006).

⁵⁵ See Common Cause website, <<http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=366007>> (accessed on August 30, 2006). To avoid incumbency-protection collusion, its guidelines call for a requirement that plans have the support of “other [commission] members not affiliated with either major political party” and be approved by a super-majority or consensus of commission members.

⁵⁶ The Reform Institute’s position seems to endorse both *nonpartisan*, apolitical commissions (akin to Iowa’s nonpartisan legislative staff) and *bipartisan* commissions, depending on such factors as the degree of combativeness in the political culture, the existence of a tradition of nonpartisan legislative staffing, Voting Rights Act issues, and the degree to which political subdivision lines are convoluted. See The Reform Institute website, <<http://reforminstitute.org/resources/Report7.pdf>> (accessed on August 30, 2006).

⁵⁷ “Mapping Democracy: A Blueprint for Redistricting Reform.” (2005, April). *Redistricting Policy Group, Institute of Politics, Harvard University*, http://www.iop.harvard.edu/pdfs/redistricting_final_report_042805.pdf (accessed on August 30, 2006).

While the movement for independent redistricting commissions continues to face expected political opposition,⁵⁸ academic naysayers,⁵⁹ procedural questions,⁶⁰ and voter skepticism,⁶¹ it appears to be gaining solid strength, with

⁵⁸ See, for example, Lauer 2005 (“Neither [Democratic Representative Curtis Richardson nor Republican Representative Dudley Goodlette] sees a need for an independent commission to replace lawmakers when it comes time to redraw political boundaries.”).

⁵⁹ Lauer 2005, quoting UCLA law professor Daniel Lowenstein as saying “I think that despite the fact that of course there’s a conflict of interest, the legislature is the place where redistricting ought to be done.” For an interesting perspective on, and a healthy dose of skepticism about, the success of independent commissions in Britain, see Johnston, R.J. (1982, December). “Redistricting by Independent Commissions: A Perspective From Britain.” *Annals of the Association of American Geographers*, 72, 4, <<http://www.blackwell-synergy.com/links/doi/10.1111/j.1467-8306.1982.tb01838.x/abs/>> (available for fee; accessed on November 2, 2005 (“Fair redistricting, it is contended here, is an impossibility.”)).

⁶⁰ For an article in which important questions are raised about just what factors (compactness, competitiveness, natural boundaries, etc.) should determine the drawing of district boundaries, see Murphy 2005 (“So which is more important to democracy? Compactness or competitiveness? Or something entirely different?”); see also Amy, “Fair Representation in North Carolina” (2006) (“[F]or the purpose of representation, it may make little sense to group together people by geography. Instead, they should be grouped together by the political interests by which they define themselves.”); see also Neuborne 2001 (“[G]eographical districts reflect only one form of political representation. What about economic interest, such as agriculture or manufacturing; economic status, such as rich or poor; age; political affiliation; gender; race; religion; sexual preference; marital status; parenthood (or nonparenthood); educational status; and a host of other possible interest groupings?”). The failed Ohio ballot initiative of November, 2005, provided that “a primary criterion to be utilized by the new commission in creating legislative districts would be to ensure that districts are competitive.”). See Chapman 2005.

⁶¹ Both November, 2005 ballot initiatives (in California and Ohio) seeking to establish independent redistrict commissions failed. These setbacks, however, have been argued to be the result of the fact that such efforts were taken to the voters in the middle of a census cycle, as opposed to at, or after, a new census, creating an appearance of political maneuvering by the minority party, as opposed to “good-

efforts continuing in a number of states and even the introduction of federal legislation.⁶² And while independent redistricting commissions may not solve all problems associated with partisan gerrymandering, or revive competitiveness in all districts, they at least do not guarantee an *absence* of competition,⁶³ and they do bring a sense of objectivity, and therefore credibility, to this neglected and abused aspect of democracy.

Conclusion

The freedom to vote does *not* define a democracy. An *effective* voice, partly derived from a *meaningful* vote – a vote that has *value* – is the essence of democracy. Partisan gerrymandering that has left all but a handful of congressional seats without meaningful competition has served to deprive the American electorate of its voice, and to rob its vote of any real value. Reform measures – from instant runoff voting and independent redistricting commissions, to the more far-reaching proportional representation - can help to reclaim that voice, restore value to our votes, and return vibrancy to our democracy.

government” reform. See “Redistricting Defeats,” 14 November, 2005, *The Washington Post*, <<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/13/AR2005111300956.html>> (accessed on August 30, 2006) “The most important [lesson] is that redistricting should not be attempted in the middle of a census cycle – even when that redistricting is in the service of reform.”

⁶² In May, 2005, Democratic Representative John Tanner of Tennessee introduced the “Fairness and Independence in Redistricting Act” (HR 2642), which would set national standards for bipartisan independent commissions to draw each state’s Congressional district maps, and prohibit the consideration of political issues such as voting history, party affiliation, or the potential impact on incumbents. A related bill (HR 4094), also requiring independent redistricting commissions, was introduced as recently as October 20, 2005 by California Representative Zoe Lofgren. See The Library of Congress THOMAS website, <<http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR04094>> (accessed on August 30, 2006).

⁶³ See *The Washington Post*, “Why Bother Voting?” (2005).

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