The Forum

The Limits of Partisan Gerrymandering: Looking Ahead to the 2010 Congressional Redistricting Cycle

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Abstract

This article looks ahead to the 2010 congressional redistricting cycle, and makes the case that the concern over the pernicious effects of partisan redistricting has been significantly over-exaggerated. Those attempting to use partisan control of the apparatus of state government to influence future elections operate under a number of significant constraints, from legal and political factors that inhibit the redistricting process and frequently result in compromise or litigation, to geographical and structural factors that dictate the extent to which electoral boundaries can be effectively manipulated to produce deviations from partisan symmetry. Evidence from the 1990 and 2000 redistricting cycles indicates that the benefits of partisan gerrymandering, where present, are extremely susceptible to subsequent electoral swings. This casts considerable doubt on the utility of partisan gerrymandering as a mechanism for instituting long-term electoral bias in congressional elections.

With the 2008 election season now over, the attention of pundits and political scientists alike now shifts to the 2010 cycle, and an anticipated midterm referendum on the Obama administration. While on the national stage Republicans are focused on winning back control of the U.S. Congress, with Democrats concerning themselves with maintaining the House and Senate majorities they have now enjoyed since 2006, those interested in redistricting will also be turning their attention elsewhere – to the state legislative and gubernatorial races that will determine which political party controls the redistricting of congressional and state legislative boundaries after the 2010 Census. In the vast majority of states, save the few that conduct redistricting through independent or bipartisan commissions, redistricting is an intensely political process, with the partisan sparring over the high stakes of securing the most favorable district alignment a fixture after each decennial census. At the same time, incumbents also view redistricting as a chance to insulate their electoral majorities against future challengers or potentially damaging electoral swings. Partisan control of the redistricting process has become a frequent target for criticism in the United States, with numerous newspaper and law review articles attributing declining electoral competition, soaring incumbent reelection rates, increased polarization, declining participation, and even voter dissatisfaction, to the allegedly corrupt and destructive practice of partisan gerrymandering (Lazarus 2003; Dorf 2004).

While research has demonstrated that partisan control of the redistricting process has considerable and long-lasting implications for subsequent electoral fortunes in state legislative elections (Gelman and King 1994), there is considerably more doubt over the extent to which partisan gerrymandering is a viable strategy for securing political advantage in elections to the U.S. House of Representatives (Erikson 1972; Cain 1985; Born 1985; King and Browning 1987; Swain Borrelli and Reed 1998). This article looks ahead to the 2010 congressional redistricting cycle, and makes the case that the concern over the pernicious effects of partisan redistricting exhibited in journalistic and law review articles, as well as from some political scientists, has been significantly exaggerated. Those attempting to use partisan control of the apparatus of state government to influence future elections operate under a number of significant constraints, from legal and political factors that inhibit the redistricting process and frequently result in compromise or litigation, to geographical and structural factors that dictate the extent to which electoral boundaries can be effectively manipulated to produce deviations from partisan symmetry. There is strong reason to expect, therefore, given past voting trends both nationally and at the state level, that congressional redistricting following the 2010 Census will likely have only relatively minor effects on the electoral fortunes of the Democratic and Republican parties in the subsequent decade, and that what effects are felt from redistricting will erode quite rapidly over subsequent electoral cycles.

Constraints on the Redistricting Process

Why might we expect partisan redistricting to be ineffective at insulating electoral gains against popular vote swings in subsequent election cycles? Theory would suggest that those attempting to implement a partisan gerrymander of Congressional districts operate under a number of significant constraints and tensions, which might limit the effectiveness of partisan redistricting. As noted by Gelman and King (1994), in any redistricting plan there is a fundamental tension between the competing goals of partisan advantage and incumbent protection. Any attempt to manipulate the House electoral boundaries to advantage one party over the other necessarily involves a party giving up votes in some districts in order to increase their overall number of legislative seats. With the redistricting process often characterized by a high degree of uncertainty about future election outcomes, incumbency thus provides incentives for redistricters to be conservative when redrawing the congressional boundaries.

In addition to this uncertainty about future incumbent fortunes, there also exists a high degree of uncertainty in redistricting about future changes in the demographic characteristics of the various districts. While census data and information on voting patterns may allow a party to effectively manipulate the partisan compositions of congressional districts, residential mobility of the target populations may render a partisan gerrymander ineffective in subsequent electoral cycles (Monmonier 2001). As a result, any electoral coalition created by targeted redistricting, especially the necessarily marginal majorities required to implement an effective partisan gerrymander, are likely to erode over time as populations and voting blocs shift and change due to migration patterns and generational replacement (Gimpel and Schuknecht 2003).

The very nature of gerrymandering itself often renders artificially created majorities extremely susceptible to adverse electoral swings. Partisan gerrymandering is generally accomplished by two principal strategies, which act in tandem with one other to maximize the effective votes of one party while minimizing those of another. The first of these is cracking, which refers to the practice of breaking up the targeted party's geographical bases of support into several different districts, thus diluting their votes and reducing their efficiency. These supporters are thereby unable to vote in sufficient concentrations to win the individual seats into which they are divided, even though overall they may represent a significant enough voting bloc to warrant representation (Butler and Cain 1992).

The second strategy is packing, which refers to the practice of combining the targeted party's geographical bases of support into a few supermajority districts, thus wasting significant numbers of their votes in a few overwhelming victories, and allowing the party controlling redistricting to capture neighboring

seats. Partisan gerrymandering is achieved using a combination of these tactics to pack some of the targeted party's voters into districts where they constitute a large majority, while cracking the rest of their voters into districts where they are only slightly in the minority. The intended effect is for the targeted party to win a few districts by large majorities with many wasted votes, whereas the gerrymandering party wins a large number of districts by small majorities and a highly efficient vote distribution (Owen and Grofman 1988).

The inherent dangers in this practice are immediately evident: the greater reward a party seeks to gain from partisan gerrymandering, the greater risk it must take in implementing it. The capacity for a gerrymander to distort election results depends upon the ability of the party controlling redistricting to capture seats by marginal majorities and hold onto them in subsequent elections. With each additional election conducted under a set of gerrymandered boundaries, it becomes increasingly difficult to predict the behavior of voters, and so marginal districts that a party was able to capture through redistricting may be lost as a result of relatively small national swings in the popular vote and coattail effects (Campbell 1986). As a result, artificial majorities created by gerrymanders are likely to be unstable and prone to swing back towards parity in subsequent electoral cycles, suggesting that while gerrymandering may be an extremely effective tool for a party to increase its electoral representation in the short term, in the long term its effect may be muted and may perhaps disappear altogether within a relatively short time.

The utility of partisan gerrymandering is further constrained by the significant legal and constitutional requirements that any redistricting plan must satisfy before it can become law. One such constraint is the inclusion of compactness requirements in many state constitutions, which impose a degree of regularity on the configuration of district boundaries, thus precluding the drawing of large numbers of irregularly shaped districts in the pursuit of partisan goals. Though there is no agreed upon definition or standard for gauging or measuring compactness, 18 states currently have some form of compactness requirement written into their redistricting laws (Voting and Democracy Research Center 2004), and these impose a considerable constraint on the ability of legislators to use redistricting to further partisan goals through gerrymandering. In addition to compactness requirements, state constitutions often impose further limitations on the redistricting process. For instance, 20 states require that congressional districts be contiguous, 20 also require that the district boundaries follow as near as possible existing county, city, and other municipal boundaries, 11 require redistricting plans to avoid splitting apart communities of interest, and 9 states also require that redrawn congressional districts preserve the cores of prior districts, thus mandating that previous electoral boundaries be left at least somewhat intact (Voting and Democracy Research Center 2004).

The constitutional requirement of "one person, one vote" has also acted as a significant constraint on partisan gerrymandering: redistricters must strive for almost absolute equality in district populations in order to avoid strict scrutiny by the federal courts, which have tended to frown upon partisan redistricting plans with even relatively minor population deviations (Cox and Katz 2002). The requirements of the Voting Rights Act also constrain redistricting in two ways: first, redistricters are required to create majority-minority districts in order to enhance minority representation, a process which can decrease the effectiveness of the optimal partisan gerrymander, especially in the presence of geographical constraints and supermajority-minority mandates (Shotts 2001). Second, in order to secure Department of Justice preclearance, redistricters also bear the burden of proof of demonstrating that the challenged plan does not adversely affect minority voting rights, including, as broadly defined, any splitting of a district in which a minority groups constitutes a majority of the population (Monmonier 2001).

Congressional Redistricting and Partisan Control of State Government

With a few exceptions, a necessary condition for the implementation of a partisan gerrymander of congressional district boundaries is that one party be in control of both houses of the state legislature and the governorship at the time of redistricting.[1] Redistricting plans must be passed by both houses of the state legislature and then signed into law by the governor, a fact that allows a minority party in control of just one of these branches to thwart the majority's wishes and force them to compromise on redistricting. It is also the case that, with state elections becoming increasingly competitive in recent decades, divided partisan control of state government has become the norm rather than the exception in U.S. state politics (Jewell and Morehouse 2001). For example, in the wake of the 2000 election when the vast majority of congressional redistricting plans were drawn up,[2] 23 states had unified partisan control of state government, whereas in 1990 just 20 states met this criterion. Even unified control of state government is no guarantee that a party will be able to use the redistricting process to implement a partisan gerrymander: due to factors such as a state only having a single at-large congressional district, states conducting redistricting through independent commissions, and the intervention of federal and state courts in the redistricting

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[1] Connecticut and North Carolina do not allow a gubernatorial veto of congressional redistricting plans, whereas Tennessee allows a gubernatorial veto of a redistricting plan to be overridden by a simple majority in both legislative houses. In these states partisan gerrymandering is possible when a party controls both houses of the state legislature but not the governorship. Several other states allow vetoes of congressional plans but not those for the state House or state Senate (Voting and Democracy Research Center 2004).

[2] The exception is Texas, where redistricting was undertaken by the Republican Party after they took control of the state House of Representatives in 2002.

Figure 1. Partisan Control of State Government, 2008/9 Election Cycle
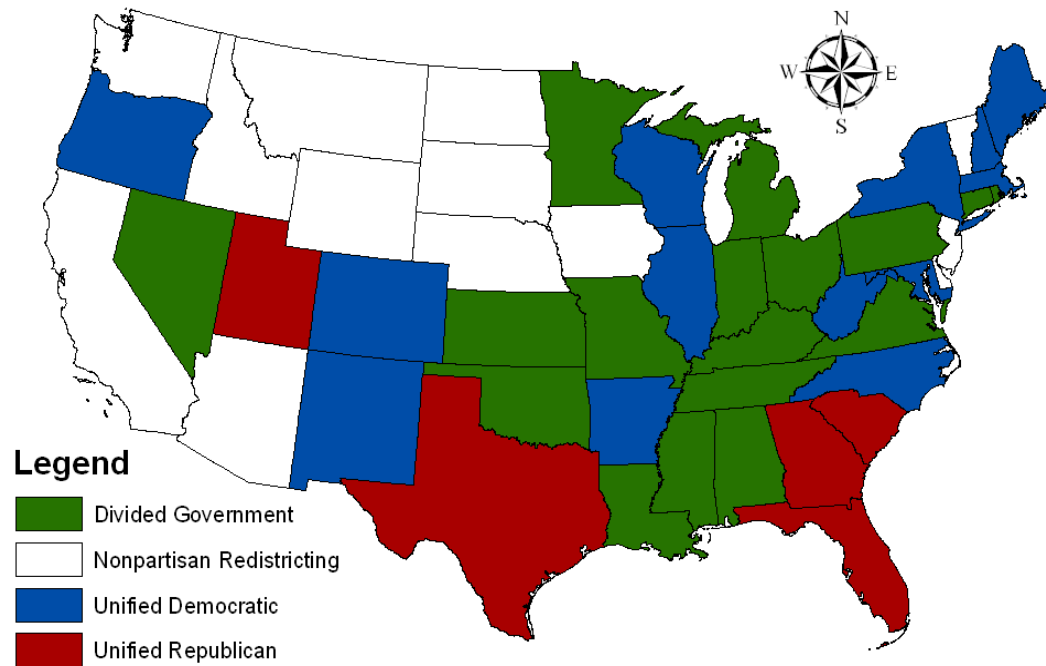
Notes: Nonpartisan Redistricting states include those with independent redistricting commissions and those with a single at-large congressional district.

process, of the 23 states with unified government in 2000, in only 13 was there potential for unilateral partisan gerrymandering of congressional districts.[3] Similarly, in only 16 of the 20 states with unified state government in 1990 was there potential for partisan gerrymandering.[4]

Figure 1 displays the same information on partisan control for current state governments. While 27 states had unified partisan control of both houses of the state legislature and the governorship after the 2008 election, as the map shows, in only 18 of those is there the potential for partisan redistricting to take place

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[3] North Dakota, South Dakota, Montana and Wyoming each had unified partisan state government, but have only a single at-large congressional district. Arizona, Hawaii, Idaho, New Jersey and Washington also had unified state government, but conduct redistricting through independent commissions. Congressional districts in Mississippi, which had unified Democratic control, were redrawn by the courts.
[4] South Dakota has a single at-large district, whereas Hawaii conducted redistricting through a commission. Florida and Mississippi had their congressional districts redrawn by the courts after the 1990 Census.

Table 1. Partisan Control of State Government in 2008, by likelihood of change in partisan control in 2010.

Safe Unified Government:[1]	
Democratic	AR, IL, MD, MA, NH , NC, WV (7 States)
Republican	UT (1 State)
Marginal Unified Government:[2]	
Democratic	<u>CO</u>, <u>ME</u>, **NY**, <u>NM</u>, <u>OR</u>, **WI** (6 States)
Republican	<u>FL</u>, <u>GA</u>, <u>SC</u>, **TX** (4 States)
Divided Government (Unified Legislative Control):	
Democratic Legislature	<u>AL</u>, <u>CT</u>, **LA**, <u>MN</u>, **MS**, NV, <u>RI</u> (7 States)
Republican Legislature	<u>KS</u>, **MO**, **OK**, **TN** (4 States)
Divided Government (Divided Legislative Control):	
Democratic Governor	KY, **MI**, **OH**, **PA** (4 States)
Republican Governor	**IN, VA** (2 States)

Notes: States in bold indicate that one or both houses of the state legislature are within a 10% swing of seats from one party to the other of changing partisan control. Underlined states indicate that an open seat gubernatorial election will be held in 2010, the result of which might shift partisan control. Includes only states where partisan redistricting is a possibility after 2010. Open seat gubernatorial elections include term limited and announced retirements as of 3/10. Source: Congressional Quarterly.

[1] Currently unified partisan control, neither legislature within ±10%, no open seat gubernatorial election in 2010.

[2] Currently unified partisan control, plus either one or both legislatures within ±10%, or open seat gubernatorial election in 2010.

following the 2010 Census.[5] Table 1 contains additional details about the current partisan control of state government, and highlights those instances where partisan gerrymandering may be possible after 2010.

Perhaps unsurprisingly, given their impressive performance in the two most recent national elections, the Democrats find themselves in a somewhat stronger position with respect to control of state government than do the

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[5] The states excluded are Arizona, Idaho, New Jersey, and Washington (independent commissions); Delaware, North Dakota, and South Dakota (at-large); Nebraska, which has a nonpartisan state legislature; and Iowa, which has statutorily mandated nonpartisan redistricting.

Republicans. Democrats currently enjoy unified control in 13 states where partisan gerrymandering is a possibility, whereas the Republicans control just 5. The Democrats must defend their unified control in six states with an open seat gubernatorial election in 2010 (CO, ME, NY, NM, OR, WI), where a Republican victory and the resulting veto would be enough to force the Democrats to compromise on redistricting even if they retain their state legislative majorities. Conversely, the Republicans face this situation in just three states where they currently have unified control (FL, GA, SC). And, while a Democratic open seat gubernatorial victory might allow them to take unified control in four of the seven states where they currently control both houses of the state legislature but not the governorship (AL, CT, MN, RI), the Republicans enjoy such an opportunity in three of the four states where they have legislative majorities (KS, OK, TN).

It seems likely, however, that this apparent Democratic advantage will be slightly or even substantially reduced after 2010. Theories of surge and decline in the literature on electoral change would predict a favorable electoral climate for the Republican Party in the 2010 midterm election, following Barack Obama's presidential victory in 2008, an effect that has been found to be present in both congressional and state legislative elections (Campbell 1986, 1987). A combination of a midterm election, in which the majority of governorships come up for reelection, and the large number of term-limited governors, means that there will be a significant number of open seat gubernatorial races in 2010. (Congressional Quarterly 2009). The Democrats have comparatively more gubernatorial seats up for reelection where the incumbent governor is not running, 11, to the Republicans' 7. The results of off-year gubernatorial elections in 2009, which saw an incumbent Democratic Governor defeated in New Jersey, and also saw the Democrats lose control of the Virginia governorship in an open seat election, also seem to point to Republican gains in 2010, as does the unexpected Democratic defeat in the 2010 special election to fill the Massachusetts Senate seat formerly held by Ted Kennedy. On the other hand, it is also possible that many Democratic majorities at the state level may to some degree be insulated from national electoral trends, with only three Democratic-controlled states having legislatures in which a gain of 10% of the total number of seats would allow the Republicans to take control in 2010. Either way, the results of several crucial legislative and gubernatorial elections in a few key states will therefore determine which parties in which locations will have the opportunity to pursue a strategy of partisan gerrymandering in the wake of the 2010 census.

It is clear, therefore, that partisan redistricting has not been a widespread phenomenon in recent decades. It also remains the case the case that not all parties in control of the redistricting process use the opportunity to significantly alter the electoral boundaries in the hope of achieving partisan advantage. For example, in 2000 Democrats in California and Republicans in Kansas controlled

both houses of the state legislature and the governorship, but decided to make only minor changes to the configuration of congressional districts (Congressional Quarterly 2008). Looking ahead to 2010, it seems likely that there will once again be only a fairly small minority of states in which these exists sufficient partisan control of the redistricting process for the implementation of a political gerrymander.

Learning the Lessons of the Past:
Congressional Redistricting in 1990 and 2000

It must be emphasized that the fact that partisan gerrymandering occurs in only a relatively small number of states in each redistricting cycle does not necessarily mean that it does not have significant negative effects for democracy – partisan manipulation of election results in only a few states can have a significant net effect on the overall distribution of congressional seats, and voter disillusion and dissatisfaction can potentially result from just a single high profile and egregious instance of partisan gerrymandering. It becomes important, therefore, to focus on those few states that did see partisan redistrictings after 1990 and 2000, and examine how subsequent election results in those states may have been affected by partisan manipulation of the electoral boundaries. Table 2 displays the election results for each state delegation to the U.S. House of Representatives where there was unilateral partisan control of the redistricting process in 2000, and Table 3 displays the same data for the 1990 redistricting cycle.[6]

The data demonstrate several interesting trends in the electoral fortunes of the political parties following a partisan-controlled redistricting. First and foremost, and not unexpectedly given the high profile instances of partisan gerrymandering that have made the headlines in recent decades, the party that controlled the most recent round of redistricting was generally able to gain an immediate and significant boost in terms of their number of seats in that state's congressional delegation. For the 2000 redistricting cycle, it appears that the

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[6] The coding of particular redistrictings as partisan or bipartisan was based on identifying the party in control of the redistricting process, rather than the intent of the individual congressional redistricting plan. So, a state with unified partisan control at the time of redistricting would be coded as partisan regardless of whether the party chose to gerrymander extensively or not. The goal of this approach was to isolate the direct effects of partisan control of the redistricting process from the incidental partisan consequences of redistricting in general. Coding was based on information obtained from CQ's Almanac of American Politics and Guides to Congressional Redistricting, the Voting and Democracy Research Center, and the National Conference of State Legislatures.

Table 2. Seat Change in U.S. House Delegations After Redistricting, 2000-present.

State	2000 D	2000 R	2002 D	2002 R	2004 D	2004 R	2006 D	2006 R	2008 D	2008 R	Total D	Total R
Democrats Controlled Redistricting:												
Alabama	2	5							**+1**	*-1*	+1	-1
Arkansas	3	1									0	0
California	32	20	**+1**				**+1**	*-1*			+2	-1
Georgia[1]	3	8	**+2**		**+1**	*-1*					+3	-1
Maryland	4	4	**+2**	*-2*					**+1**	*-1*	+3	-3
Mass.	10	0									0	0
N. Carolina	5	7	**+1**				**+1**	*-1*	**+1**	*-1*	+3	-2
Tennessee	4	5	**+1**	-1							+1	-1
W Virginia	2	1									0	0
Total			+7	-3	+1	-1	+2	-2	+3	-3	+13	-9
Republicans Controlled Redistricting:												
Florida	8	15	*-1*	**+3**			**+2**	*-2*	**+1**	*-1*	+2	0
Kansas	1	3					**+1**	*-1*	*-1*	**+1**	0	0
Michigan	9	7	*-3*	**+2**					**+2**	*-2*	-1	0
Ohio	8	11	*-2*	**+1**			**+1**	*-1*	**+3**	*-3*	+2	-3
Pennsylvania	10	11	*-3*	**+1**			**+4**	*-4*	**+1**	*-1*	+2	-4
Texas[2]	17	13		**+2**	*-6*	**+6**	**+2**	*-2*	*-1*	**+1**	-5	+7
Utah	1	2									0	0
Virginia	4	6	*-1*	**+2**					**+3**	*-3*	+2	-1
Total			-10	+11	-6	+6	+10	-10	+8	-8	+2	-1

Notes: Includes states where one party was able to exert unilateral control over redistricting without unified control of state government (AR, MA, TN). Bold figures represent a net gain of seats, whereas Italicized figures represent a net loss. Source: Congressional Quarterly.

[1] District boundaries in Georgia were redrawn a second time by the Republican Party in 2005.

[2] Republican redistricting in Texas did not occur until 2003. The district boundaries in place for the 2002 election were drawn up by a special three-Judge Federal District Court panel.

Republican Party was able to gain greater short-term dividends from the 8 states in which they controlled redistricting than the Democrats did in the 9 states where

Figure 2. Control of Redistricting and Electoral Strength, 2000-2008
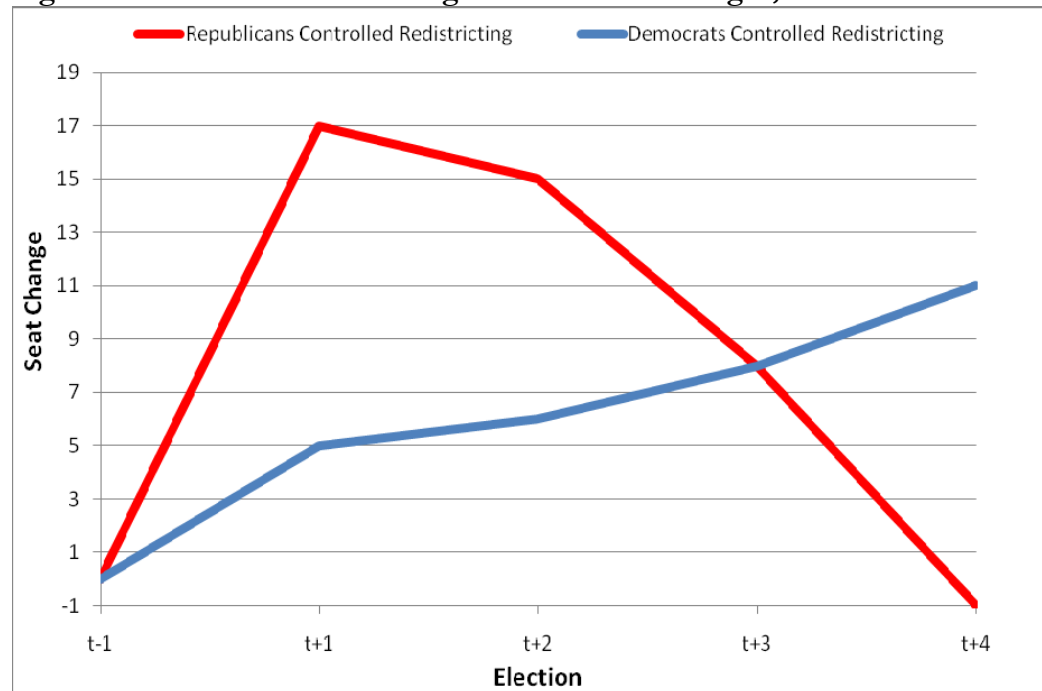
Notes: Totals represent seat changes in states with partisan redistricting at time (t), relative to the baseline of the 2000 election (t-1). In Texas, the baseline is 2002.

they were in control, with the Republicans picking up 11 seats and the Democrats 7 in the 2002 midterm election. Following the 2003 Texas redistricting, the Republicans were able to pick up an additional 6 congressional seats in the 2004 election, while the Democrats gained 1 additional seat, bringing their total seats gained to 17 and 8 respectively. The Republican Party's initial gains from partisan gerrymandering are therefore at least partly responsible for their impressive performance in the 2002 midterm election, where they bucked the trend of a President's party almost always losing seats in the House of Representatives (Campbell 1987).

What the data also illustrate is the susceptibility of electoral majorities obtained through redistricting to subsequent adverse swings in the national popular vote. Of the 30 seats gained by the Democrats in taking back control of the House of Representatives in the 2006 midterm election, 10 of them came from states in which the Republicans had controlled redistricting in 2000, and just 2 from the states where the Democrats had controlled the redistricting process. In 2008 the Democrats picked up an additional 10 seats in Republican states, while losing control of 2, and captured just 3 seats in Democratic states. After gaining 17 seats from the Democrats in states where they controlled redistricting in 2000, by the end of the 2008 election cycle the Republicans were actually worse off in

those states than they had been prior to redistricting, losing 18 seats to the Democrats in subsequent elections.

Figure 2 illustrates this trend graphically, displaying the number of seats gained over their 2000 baseline by the parties that controlled the redistricting process. Though the figure does demonstrate the redistricting bump for the controlling party in the election immediately after the redrawing of congressional boundaries, followed by a steady decline in their electoral strength in each subsequent election, perhaps the most striking feature is the dramatically divergent trends for the different political parties. Though the Democratic Party gained far less of a short-term advantage in the states where they controlled the redistricting process, they continued to steadily increase their seat totals in those states with their growing electoral strength in the latter part of the decade. In contrast, the Republicans, who received a far larger bump in their seat totals in states where they were in control of redistricting, have experienced a precipitous decline in their electoral strength in subsequent congressional elections.

Though a very different pattern emerges in the data from the 1990 redistricting cycle in Table 3, similar dynamics are arguably at work. The most interesting trend emerges for states in which the Democratic Party controlled redistricting in 1990, of which there are 14, whereas the Republican Party only exerted unilateral control of redistricting in two very small states, thus significantly blunting any potential electoral impact. What the data reveal, as illustrated in Figure 3, is a complete inability on the part of the Democrats to insulate their electoral strength against subsequent adverse electoral fortunes in states where they controlled redistricting. Not only were these states already trending in the direction of the Republicans by this time, most notably the 9 Southern and Border States included in the Democratic column, but the dramatic swing in the national popular vote in the 1994 midterm saw the Democrats lose a significant number of seats in the states where they had controlled the redistricting process. Of the 54 seats the Republicans gained in 1994, 21 were from the 14 states in which the Democrats had controlled redistricting after the 1990 Census, 19 of which were located in the 9 Southern and Border States.

The partisan advantage gained from gerrymandering therefore appears to be extremely transitory, with those seats captured through redistricting likely to switch back to the original party of control in the face of adverse electoral conditions. Redistricting does not insulate a party's electoral majority in the face of popular sentiment, and the more seats a party attempts to gain through gerrymandering, the more it is likely to lose seats in subsequent elections where the popular vote shifts in the opposite direction. Similarly, where a party controls redistricting in a state where its own electoral strength is declining, it is unlikely to be able to use partisan gerrymandering to preserve the existing seat distribution

| **Table 3.** Seat Change in U.S. House Delegations After Redistricting, 1990-2000														
	1990		1992		1994		1996		1998		2000		Total	
	D	R	D	R	D	R	D	R	D	R	D	R	D	R
Democrats Controlled Redistricting:														
Arkansas	3	1	*-1*	**+1**							**+1**	*-1*	0	0
Georgia[1]	9	1	*-2*	**+3**	*-4*	**+4**							-6	+7
Kentucky	4	3		*-1*	*-2*	**+2**	*-1*	**+1**					-3	+2
Maryland	5	3	*-1*	**+1**									-1	+1
Nevada	1	1			*-1*	**+1**			**+1**	*-1*			0	0
N. Mexico	1	2					*-1*	**+1**	**+1**	*-1*			0	0
N Carolina[2]	7	4	**+1**		*-4*	**+4**	**+2**	*-2*	-1	**+1**			-2	+3
Oklahoma	4	2			*-3*	**+3**	*-1*	**+1**			**+1**	*-1*	-3	+3
Oregon	4	1			*-1*	**+1**	**+1**	*-1*					0	0
R. Island	1	1			**+1**	*-1*							+1	-1
Tennessee	6	3			*-2*	**+2**							-2	+2
Texas	19	8	**+2**	**+1**	*-3*	**+3**	*-1*	**+1**					-2	+5
Virginia[3]	6	4	**+1**		*-1*	**+1**					*-1*	**+1**	-1	+2
W Virginia	4	0	*-1*								*-1*	**+1**	-2	+1
Total			-1	+5	-20	+20	-1	+1	+1	-1	0	0	-21	+25
Republicans Controlled Redistricting:														
N. Hamp.	1	1			*-1*	**+1**							-1	+1
Utah	2	1			*-1*	**+1**	*-1*	**+1**			**+1**	*-1*	-1	+1
Total			0	0	-2	+2	-1	+1	0	0	+1	-1	-2	+2

Notes: Bold figures represent a net gain of seats, whereas Italicized figures represent a net loss. Source: Congressional Quarterly.

[1] Georgia's congressional districts were redrawn by a three-Judge Federal District Court panel following the Supreme Court ruling in *Miller v. Johnson* (1995).

[2] North Carolina's Democratic redistricting plan remained largely in effect through the 1996 election, after which a more extensive redrawing was undertaken following the Supreme Court ruling in *Shaw v. Hunt* (1996).

[3] Virginia's Democratic redistricting plan was modified only slightly prior to the 1994 and 1996 elections, but the boundaries were redrawn extensively for the 1998 election following the Federal District Court's ruling in *Moon v. Meadows* (1997).

Figure 3. Control of Redistricting and Electoral Strength, 1990-2000
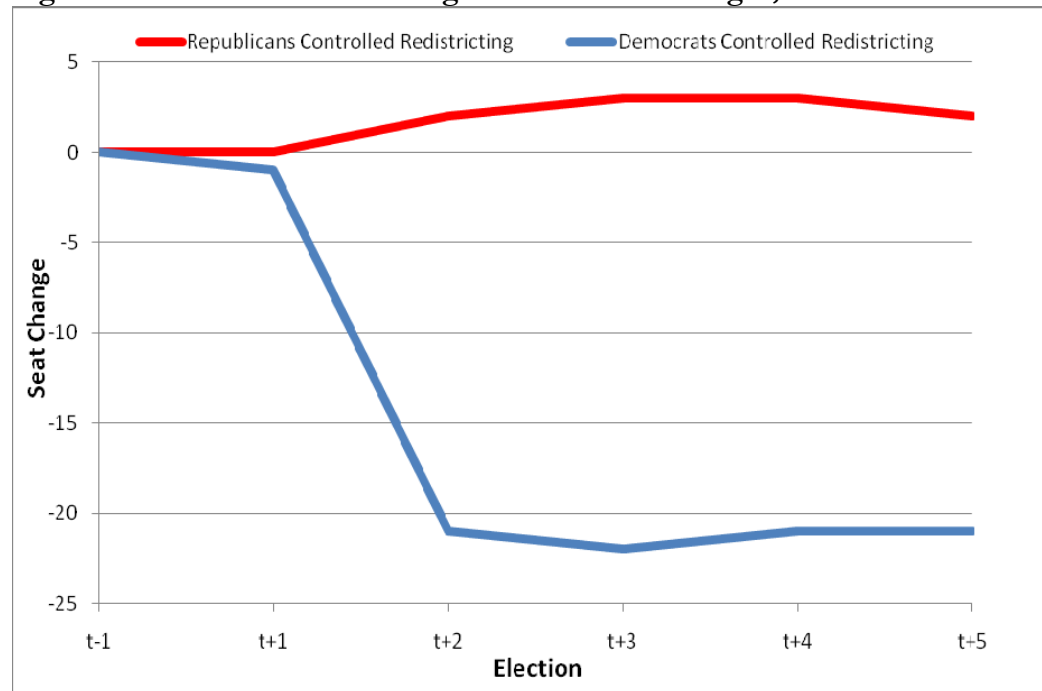
Notes: Totals represent seat changes in states with partisan redistricting at time (t), relative to the baseline of the 1990 election (t-1).

in the face of a declining popular vote share. While these data do not demonstrate a causal relationship between redistricting and seat change in Congress, they are indicative of the general trends in congressional elections in states where a single political party had unilateral control of the redistricting process, and cast considerable doubt on the utility of partisan gerrymandering as a mechanism for instituting long-term electoral bias.

Reapportionment and the 2010 Census

What might these lessons from the most recent redistricting cycle teach us about what we should expect as we move towards the 2010 Census? One important point which emerges from the previous discussion is that congressional reapportionment has considerable consequences for partisan gerrymandering: redistricters are considerably constrained from pursuing partisan goals in states that have lost seats in Congress, whereas partisan manipulation almost guarantees that those controlling the redistricting process will be able to take control of any congressional seats a state gains as a result of reapportionment. The 2000 redistricting cycle is a case in point: of the 24 congressional districts the party controlling redistricting was able to capture in the subsequent election, 7 were in

states that gained representation in congress as a result of reapportionment, whereas just 4 were in states that had lost seats in congress.[7] Based on 2008 population estimates, the 2010 Census will see more significant changes in congressional apportionment, with 12 seats expected to be reapportioned, affecting the allocations of either 18 or 19 states, depending upon the particular projection model used (Election Data Services 2008). Of the 12 seats expected to be gained as a result of the Census, 8-9 of them are located in states where the Republicans currently enjoy unified partisan control of state government, whereas only 0-1 are in states where the Democrats currently have unified partisan control.[8] The biggest gains are expected to be in Texas (4 seats), Arizona (2 seats), and Florida (1 or 2 seats), two of which (Texas and Florida) currently have state governments that are dominated by the Republican Party.[9] Of the 12 districts expected to be lost as a result of reapportionment, 3 are in states currently under unilateral Democratic control, whereas just one is in a state controlled by the Republican Party. This suggests that, not unexpectedly given the recent population migration trends, the Republicans will benefit significantly from reapportionment in their efforts to secure partisan advantage in redistricting in the wake of the 2010 census. The significant loss of seats in swing states with pure divided government and closely divided state legislatures, such as Ohio, Michigan, and Pennsylvania, also suggest that the redistricting process will be particularly contentious in these jurisdictions.

Conclusion: The Rise of Mid-Decade Redistricting

This article has outlined a theoretical framework as to why we might expect partisan gerrymandering of congressional district boundaries to exert only relatively minor and generally short-term effects in elections conducted after the 2010 Census. Analysis of current trends in control of state government and congressional apportionment has also identified those states which may provide

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[7] As a result of the 2000 Census 12 Congressional seats were reapportioned: Florida, Georgia, Texas and Arizona each gained two seats while California, North Carolina, Colorado and Nevada gained one; New York and Pennsylvania each lost two seats whereas Connecticut, Illinois, Indiana, Michigan, Mississippi, Ohio, Oklahoma and Wisconsin each lost one. The net regional change reflected a movement in population from the Northeast and Midwest, which each lost five seats, to the South, which gained 7 and lost two, and to the West, which gained 5 (U.S. Census Bureau).

[8] The exact distribution depends on whether Florida or Oregon receives the final reallocated seat. While extrapolations based on short-term population trends assign the seat to Oregon, those based on population patterns over the entire decade predict it to go to Florida (Election Data Services 2008).

[9] The third state expected to gain 2 or more seats, Arizona, conducts redistricting through an independent commission.

especially fertile ground for partisan redistricting following the 2010 elections. While the partisan control of state government stemming from their impressive performance in the 2006 and 2008 state legislative elections appears to favor the Democrats, congressional reapportionment and the influence of surge and decline in the upcoming midterm may serve to counter this, and may even shift the advantage in favor of the Republicans. A potential spanner in the works of the redistricting process is the recent trend towards redrawing congressional districts multiple times over a single redistricting cycle. The rise of mid-decade redistricting has been a unique feature of the 2000s redistricting cycle. Mid-decade redistricting plans were passed in three states during this decade, and on two occasions, the 2003 Republican redistricting of congressional districts in Texas after they took control of the state House of Representatives in 2002, and the 2005 Georgia redistricting, also conducted by the Republican Party after they had taken control of the state Senate in 2004, these plans survived constitutional scrutiny and went into effect for subsequent congressional elections. A third attempt at mid-decade redistricting, again by the Republicans and this time in Colorado, was struck down by the state's Supreme Court under a provision in the Colorado constitution that limited redistricting to a fixed time window following the decennial census (*Salazar v. Davidson,* 79 P.3d 1221 Colo. 2003). The coming redistricting cycle will shed more light on whether these developments represent a temporary blip, or perhaps the beginning of a new trend in partisan gerrymandering.

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