

Testimony of Michael Watson, Capital Research Center

Good morning. My name is Michael Watson, and I am research director of the Capital Research Center, a nonprofit based in Washington, D.C. that studies organizational interests and their effects on American public policy. I would like to thank the committee for inviting me to speak on redistricting.

Politicians and political parties have battled each other over the manner of reapportioning members of legislatures and the drawing of districts since the beginning of the Republic; even the word for aggressively partisan district-drawing, “gerrymandering,” is over 200 years old.

The public is within its rights to debate the representativeness of its legislatures and to question if “fairer” representation can be had. But before we can even begin to debate the “fairness” of legislative apportionment, we need some basis for comparison.

A proposal before Congress known as H.R. 1 seeks changes to the process such that when “considered on a Statewide basis,” congressional redistricting would not “unduly favor or disfavor any political party.”ⁱ The proposal would then require all states to set the boundaries of their Congressional districts by using purportedly independent redistricting commissions, like the one currently used in California.

That raises two questions: First, how much do current Congressional district maps “unduly favor” one party or another? Second, do supposedly independent commissions in fact draw district maps that produce state-level proportionality among the parties—or at least produce more state-level proportionality than occurs in states that do not use purportedly independent commissions to draw the districts?

To set a control condition, I conducted an analysis that took real-world election results for the House of Representatives from 2010 through 2018 and then applied a simplified version of the mathematical procedure used by many countries to allocate their representatives to the European Parliament.ⁱⁱ The method allocates seats proportionally to competing parties, based on the total votes cast for each party in the jurisdiction, to equalize the votes cast per seat won by each party to the extent possible given the number of available seats. Proportional representation in some form has been advocated by some supporters of changing Congressional reapportionment procedures.ⁱⁱⁱ A federal law passed in 1967 bars states from creating multiple-member Congressional districts and using this procedure. (H.R. 1 would not modify the requirement for single-member Congressional districts.)

If a Congressional map does not “unduly favor” any political party, then—all else being equal—a state with multiple Congressional seats would elect a delegation of Representatives whose Democratic/Republican ratio approximately matches the proportion of the total votes cast in the state for Democrats and Republicans. Interestingly, we find that the present Congress already has essentially the same partisan breakdown that it would have if the 2018 vote totals were used to allocate representatives proportionally state-by-state: The Democratic caucus would have an identical 235 members. Pennsylvania’s districts, as redrawn by the state Supreme Court, would have one Republican replaced by one Democrat, and the vagaries of district-drawing (and the proportional allocation system) in other states would, in total, even out individual states’ variances from strict proportionality.

Another major finding of the analysis calls into question the idea that independent commissions draw Congressional districts that necessarily end up closer to the state’s proportional vote than do states that draw their districts under a legislative, judicial, or politician-commission system. From 2010 through 2018, states with “independent” commissions deviated no less, and in the current Congress *deviate far more*, from the proportional allocation than states that did not use such commissions.

California, long a model for fashionable electoral “reforms”—including independent redistricting commissions, top-two primaries, and extended voting periods—has been especially “unfair” for election after election, when judged by the proportional representation standard. In all the election cycles studied, California deviated by at least 9 percentage points in favor of excess Democrats (5 of its 53 seats) in each election. In its 2018 election, California produced a dramatically disproportionate result: it returned the Democrats an “extra” ten seats relative to the statewide vote proportion.

The currently debated means of assigning representation all come with advantages and disadvantages, and every manner of district-drawing is subject to the influence of organized political interests. A commission not responsive to the electoral process and given wide discretion to define the nature of districts is open to gaming by partisan political forces indistinguishable in effect from the legislators the commission replaced. ProPublica reported on extensive intervention by organized interest groups with ties to legislators influencing the 2010-cycle California redistricting in favor of those legislators’ interests.^{iv}

Apportionment of seats in the legislature is a fundamentally political act; there is no “scientific” way to determine how communities should be allocated and political ideals should be contested. Current Pennsylvania law allows the voters of the state at large, through elections for the state governor and

lieutenant governor, for the attorney general, and for judicial offices to act to reform their representation if voters feel such representation is inadequate.

Thank you for the opportunity to testify this morning; I welcome any questions you may have.

ⁱ US Congress, House, *For the People Act of 2019*, HR 1, 116th Cong., 1st sess., Introduced in House January 3, 2019 <https://www.congress.gov/bill/116th-congress/house-bill/1/text?q=%7B%22search%22%3A%5B%22h.r.+1%22%5D%7D&r=1&s=1>

ⁱⁱ Watson, Michael. "The Myth of Non-Partisan Districts: An Experiment in Redistricting Reform." Capital Research Center, June 22, 2019. <https://capitalresearch.org/app/uploads/The-Myth-of-Non-Partisan-Districts-FINAL.pdf>.

ⁱⁱⁱ See Amy, Douglas J. "What is 'proportional representation' and why do we need this reform?" Accessed June 5, 2019. <https://www.fairvote.org/what-is-proportional-representation-and-why-do-we-need-this-reform>. ; Yglesias, Matthew. "Proportional representation could save America." Vox. Oct 15, 2018. Accessed June 5, 2019. <https://www.vox.com/policy-and-politics/2018/10/15/17979210/proportional-representation-could-save-america>. ; Richards, Parker. "There's a Better Way to Elect House Members." The Atlantic. October 27, 2018. Accessed June 5, 2019. <https://www.theatlantic.com/politics/archive/2018/10/midterm-loss-democrats-may-spur-electoral-reform/574114/>.

^{iv} Pierce, Olga, and Jeff Larson. "How Democrats Fooled California's Redistricting Commission." ProPublica, December 21, 2011. <https://www.propublica.org/article/how-democrats-fooled-californias-redistricting-commission>.

THE MYTH OF NON-PARTISAN DISTRICTS:

AN EXPERIMENT IN REDISTRICTING REFORM

BY MICHAEL WATSON



CAPITAL RESEARCH CENTER
AMERICA'S INVESTIGATIVE THINK TANK

The Myth of Non-Partisan Districts: An Experiment in Redistricting Reform

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Executive Summary

Democrats, as well as interest groups aligned with their political interests, are demanding major revisions to the way elections are held for the U.S. House of Representatives. A bill known as H.R. 1 contains the House Democrats' desired changes. The proposed law would require all states to set the boundaries of their Congressional districts by using purportedly independent redistricting commissions. The Democrats and their allies claim this provision would ensure that when "considered on a Statewide basis," Congressional redistricting would not "unduly favor or disfavor any political party."

That raises two questions: First, how much do current Congressional district maps "unduly favor" one party or another? Second, given that "independent" redistricting commissions already operate in California, Washington, Idaho, and Arizona, do those commissions in fact draw district maps that produce state-level proportionality among the parties—or at least produce more state-level proportionality than what occurs in states that do not use purportedly independent commissions to draw the districts?

This report analyzes those questions by looking at real-world election results for the House of Representatives from 2010 through 2018 and then applying a simplified version of the procedure used by many countries to allocate their representatives to the European Parliament. That European procedure is known as the "D'Hondt method." It allocates seats proportionally to competing parties, based on the total votes cast in the jurisdiction.

This kind of proportionality is advocated by left-of-center groups like FairVote,ⁱ pundits like Matthew Yglesias of Vox,ⁱⁱ and politicians like Rep. Don Beyer (D-VA).ⁱⁱⁱ

If one takes the view of the Democrats and their allies, then a state with multiple Congressional seats "should" elect a delegation of Representatives whose Democratic/Republican ratio matches the proportion of the total votes cast in the state for Democrats and Republicans. Otherwise, the state's district maps provide "undue favor" to one party.

Interestingly, given the Democrats' insistence that H.R. 1 must be passed in order to remedy gravely "unfair" districts maps, we find that the present Congress already has essentially the same partisan breakdown that it would have if the 2018 vote totals had been run through a D'Hondt allocation calculator to allocate state Congressional delegations: The Democratic caucus would have an identical 235 members.

Using a D'Hondt allocation for the elections from 2010 through 2016, we find those Congresses would have had smaller Republican majority caucuses than they did in real life. And yet the partisan control of the House in each year would not have changed—not even in 2012, when Republican candidates received fewer aggregate votes than Democrats.

Another major finding repudiates the idea that states which use purportedly independent commissions to draw Congressional districts end up more “fair”—that is, produce state delegations that are closer to the state’s proportional Democratic/Republican vote—than do states that draw their districts under a legislative, judicial, or politician-commission system. From 2010 through 2018, states with “independent” commissions deviated no less, and in the current Congress *deviate far more*, from the D'Hondt proportional allocation than states that did not use such commissions.

California, long a model for left-of-center electoral “reforms”—including independent redistricting commissions, top-two primaries, and extended voting periods—has been especially “unfair” for election after election, when judged by the proportional representation standard. In all the election cycles studied, California deviated by at least 9 percentage points in favor of excess Democrats (5 of its 53 seats) in each election. In its 2018 election, California produced a dramatically disproportionate result: it returned the Democrats an “extra” ten seats relative to the statewide vote proportion.

A caveat: If the proportional representation system that we used to calculate the present study’s experimental “results” were actually used in real-world elections, that change in election rules would likely cause voters to change their behavior. That means real-world results would not likely be precisely the same as our experimental findings.

But that helps indicate that the proposals demanded in H.R. 1 are not in the interest of increasing the representativeness of the Congress. Instead, they are in the interest of the political power of the Democratic Party and its very effective redistricting-related legal machine.

Apportionment of seats in the legislature is a fundamentally political act; there is no “scientific” way to determine how communities and political ideals should be contested. Therefore America should leave the question of representation to the political branches; to legislation, not to faux-scientific legal baby-splitting.

Background

The results of the 2010 elections gave the Republican Party more than just a number of governorships and control of the U.S. House of Representatives. As the party took majorities in a number of state legislatures—including some, like North Carolina, that they had not controlled since the nineteenth century—this gave Republicans the ability to influence Congressional redistricting to a degree that the GOP had not experienced in decades.

Surprising no one, and in keeping with American political traditions of all parties dating back at least to the reapportionment following the second U.S. Census in 1810, the newly Republican-led state legislatures drew redistricting maps that favored themselves. The United States, like the U.K., Canada, and India, elects its Lower House of the legislature by first-past-the-post voting (except Maine since 2018, which follows Australia in using preferential voting) in single-member constituencies; one consequence of such a system is that defining the constituency grants an advantage or disadvantage to one or another party based on its demographic and political-economic characteristics.

The Republican-drawn maps outraged Democrats, who had enjoyed an uninterrupted majority in the House from 1955 until 1995, in part thanks to Congressional district maps drawn by Democratic-controlled legislatures. Since the decennial reapportionment, Democratic interest groups—most prominently former Attorney General Eric Holder’s National Democratic Redistricting Committee—have filed numerous lawsuits attacking the Republican-drawn maps and legislative-led redistricting in general.

House Democrats’ omnibus election-rules proposal, H.R. 1, purports to address concerns about partisan redistricting with a provision requiring all states to adopt a so-called “independent redistricting commission” similar to those used to draw Congressional districts in Washington state, Idaho, Arizona, and California. H.R. 1 claims to seek districts that “shall not, when considered on a Statewide basis, unduly favor or disfavor any political party.”

But before one can assess the likely outcome of either judicially mandated changes to the House election system or to legislative revisions to the system, one should assess the current situation completely, rather than on the selective basis chosen by most partisan commentators. To determine the effect of districting on partisan strength in the U.S. House, this analysis considers a “control” condition; namely, the state-level allocation of seats by proportional representation using the D’Hondt allocation rule employed by most countries sending representatives to the European Parliament. This

"control" condition creates a baseline from which one can assess the potential impact of district lines on the outcomes of recent House of Representatives elections. Additionally, some left-of-center groups like FairVote,^{iv} pundits like Matthew Yglesias of Vox,^v and politicians like Rep. Don Beyer (D-VA) have advocated the adoption of a proportional system to replace single-member districts.^{vi}

Methodology

This analysis relies on a handful of general rules and special rules for unusual cases created by certain state-level policies and situations. It attempts to simulate the results of U.S. House elections based on two principles: Proportional representation under D'Hondt's allocation formula by state and the real-world vote tallies from the general elections of 2010 through 2018.

D'Hondt's method of proportional representation is a commonly used (though not the only) method of assigning parliamentary seats in international elections that use proportional representation; it is most prominently used by most European Union countries to allocate their representatives to the European Parliament. The D'Hondt rule assigns seats proportionally based on the concept of "votes per seat." Taken simply, seat assignment functions as a sort of "auction," with "bids" for each individual seat based on total votes cast for a party divided by the number of seats the party has already claimed plus one, until all seats are assigned.^{vii} D'Hondt's formula seeks to equalize (to the extent possible given the size of the legislature) the number of votes cast per seat a party wins.^{viii}

This experiment simulates a "closed-list" election, in which all votes for a party yield seats to candidates in the order selected by the party, to avoid the complication of personal votes in an "open-list" election. It also assigns each state as a single constituency to prevent complications from sub-districting; this approach is used by some but not all countries sending representatives to the European Parliament.

D'Hondt Allocation

The following chart shows the D'Hondt "bidding process" for seats among four parties (the Democrats, Republicans, Libertarians, and Independents considered together as a party) using the real-world results of the House elections in Colorado in 2018.

Party	Votes	Bid 1	Bid 2	Bid 3	Bid 4	Bid 5	Bid 6	Bid 7
DEM	1343211	1343211	671605.5	447737	335802.8	268642.2	223868.5	191887.3
GOP	1079772	1079772	539886	359924	269943	215954.4	179962	154253.1
LIB	58769	58769	29384.5	19589.67				
IND	32155	32155	16077.5	10718.33				

Each party makes an initial bid. Since the Democrats received the most votes for their first seat, the first seat is allocated to the Democrats. The second seat goes to the Republicans: Since they seek their first seat (bid 1) while the Democrats seek their second seat (bid 2), the GOP can bid its full vote total while the Democrats must divide theirs by two. The third seat is allocated to the Democrats, since their bid two is larger than the GOP's bid two or any of the minor parties' bid one; the fourth to the Republicans since their bid two is larger than the Democrats' bid 3, and so on, until all seven seats are allocated four-three to the Democrats as in the allocation order below.

Allocation Order		
Seat	Party	Bid
1	DEM	1343211
2	GOP	1079772
3	DEM	671605.5
4	GOP	539886
5	DEM	447737
6	GOP	359924
7	DEM	335802.8

The D'Hondt method's preference for assigning seats based on a proportional equivalence of votes cast per seat won is clearly visible in the marginal "bids" for the Republicans and Democrats; the Democrats "pay" only 24,000 votes fewer for their marginal seat than the Republicans do—7 percent of the 336,000 votes per seat. In fact, referring back to the main table, if Colorado had nine seats to award, the difference in votes per seat would be only about 1,300 votes on 269,000 votes per seat (the difference between the Democrats' Bid 5 and the Republicans' Bid 4)—a variance of approximately one-half of 1 percent.

In the interests of securing the most-proportional control, no "threshold," or minimum percentage of votes to start "bidding" for seats, was employed in the analysis.

The general rules are as follows, and apply to each election analyzed:

1. Votes cast by party in each state are recorded as tabulated by the Clerk of the U.S. House of Representatives' official report of the elections,^{ix} with exceptions as noted in the special rules for states where some seats reported no vote totals and in states with unusual voting systems.
2. For states with a single Congressional district, consistent with the European Parliament's rule for its single single-member constituency (representing the German-speaking Community in Belgium), the real-world first-past-the-post outcome is assumed to carry through. In only one case, the race for South Dakota's At-Large district in 2010, did the real-world winner receive less than an outright (50 percent plus one) majority that would ensure the result would hold under any plausible electoral system.
3. Calculation of the allocation of seats by D'Hondt's rule with no minimum percentage "threshold" (see sidebar) to receive seats was conducted using the publicly available Election Calculator created by University of Maryland electrical and computer engineering professor A. Yavuz Oruc.^x
4. For simplicity, Independents, write-ins, and No Party Affiliation candidates were treated as if they were a party.
5. Votes in uncontested races or runoff races involving two members of the same party under "California rules top-two" for which vote totals were reported are treated as valid votes for the party.
6. Reported blank votes, over-votes, "scattering" votes, or other null ballots were excluded from the totals.

Special rules are necessary for some situations created by state electoral rules and special circumstances.

1. During the period analyzed, Louisiana, Oklahoma, and most importantly Florida had races with an unopposed candidate for which vote totals were not reported. For Florida 2018, Oklahoma 2016, Oklahoma 2014, and Louisiana and Oklahoma 2010, vote totals for a Senate race representative of the state's general House outlook were used to calculate the seat distribution. For Florida in 2010 through 2016, due to the unrepresentativeness of proxy races to the House results, the seats not reported were treated as if they did not exist, with the seats removed from the party that won them in real life for purposes of comparison.

2. New York uses multiple-ballot-line elections, in which voters may cast votes for the same candidate on any of many “party lines.” While some parties (like the Democrats and the Working Families Party or the Republicans and the Conservative Party) tend to endorse the same candidates they do not always, and other parties (like the Independence Party) endorse candidates of both major parties or run their own candidates. For simplicity, each party was treated as its own party for purposes of seat allocation.
3. Where states reported votes for a ballot line easily identified as associated with a party (e.g. “Republican Tax Revolt” for Republicans in New York or “Democratic-Farmer-Labor” for Democrats in Minnesota), those votes were combined with the vote for the identifiable major party. This is the same practice used by Germany to assign national seats to its permanent “Union” between the two longstanding center-right parties, the Christian Democratic Union (which runs in 15 of the country’s 16 federal states) and the Christian Social Union (which runs in the state of Bavaria).
4. The 2018 voided race in North Carolina’s 9th Congressional District was treated as if the seat did not exist.

It is important to understand that the findings are a hypothetical experiment, not a prediction of how an EU Parliament-style election in the United States would go. Voters, political parties, and candidates follow the rules set by the electoral system, leading American voters to cast an overwhelming portion of their votes for a major-party candidate. Were a proportional system ever to be adopted, one can confidently predict that the two-party system would not survive; Brazil uses an open-list-proportional-by-state method (with a different allocation formula) to elect its lower house (the Chamber of Deputies); as of the most recent election, members of 30 parties were elected.^{xi}

Results

Using the real-world votes cast by party and the “Election Calculator”^{xii} to make seat assignments, notional outcomes for the 2010, 2012, 2014, 2016, and 2018 U.S. House of Representatives elections under a proportional-by-state approach were calculated. These were then compared to the real-world single-member district results (with certain uncontested races without reported vote totals excluded, as described in the methodology) to assess the extent to which each state might have district lines that “unduly favored” a political party.

Figure 1. Results of D'Hondt Allocation

Election Year	Real-World Majority Party	Real-World Majority Seats	Proportional By State Majority Party	Proportional By State Majority Seats	Change in Majority Party Size
2010	Republican	241	Republican	234	-7
2012	Republican	233	Republican	217	-16
2014	Republican	244	Republican	231	-13
2016	Republican	241	Republican	220	-21
2018	Democratic	235	Democratic	235	0

Seats Excluded for each year: 2010, one Republican-held seat with unreported results; 2012, one GOP-won and one Democratic-won seat with unreported results; 2014, three Republican seats and one Democratic seat with unreported results; 2016, one Democratic seat with unreported results; 2018, one seat given to no party because of the election being voided

The results show that using the proportional-by-state allocation method would not have changed the majority party in any given election, though the Republican majorities elected in 2010 through 2016 would have been reduced in size in the alternate scenario. In all years, members of minor parties would have been elected:

Figure 2: Minor Parties

Year	Minor Party Qualifying for Proportional Seat	Seats	State
2010	Conservative	1	New York
2010	Libertarian	1	Texas
2010	No Party Affiliation	1	Florida
2012	No Party Affiliation	2	California, Florida
2012	Conservative	1	New York
2012	Working Families	1	New York
2012	Libertarian	1	Texas
2014	Conservative	2	New York
2014	Working Families	1	New York
2014	Libertarian	1	Texas
2016	Libertarian	2	Arkansas, Texas
2016	Conservative	1	New York
2018	Conservative	1	New York

Over the full period, eight states had aggregate net deviations from proportionality of ten seats or greater, with three favoring Democrats and five favoring Republicans.

Figure 3: States with Deviations from Proportional of Ten Seats or Greater

State	2010	2012	2014	2016	2018	Aggregate Deviation
Calif.	5	5	8	5	10	33
Conn.	2	2	2	2	2	10
Mass.	4	2	1	1	2	10
Florida	(4)	(3)	(1)	(2)	0	(10)
N.C.	1	(3)	(3)	(3)	(3)	(11)
Penn.	(2)	(4)	(3)	(3)	(1)	(13)
Texas	(2)	(3)	(2)	(4)	(4)	(15)
Ohio	(3)	(4)	(2)	(3)	(4)	(16)

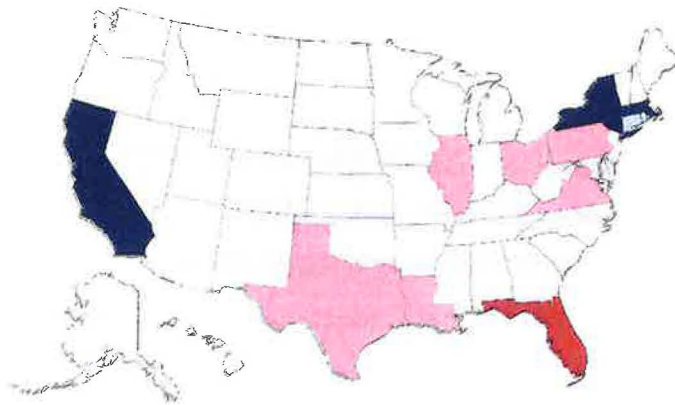
Note: Positive numbers are Democratic seats-above-proportion, negative numbers are Republican seats-above-proportion.

California was the most deviant large state^{xiii} on aggregate in each election. The most deviant large state as a proportion of its seats available for each election was as follows:

Figure 4: States with High Percentage of Deviation as a Proportion of Seats

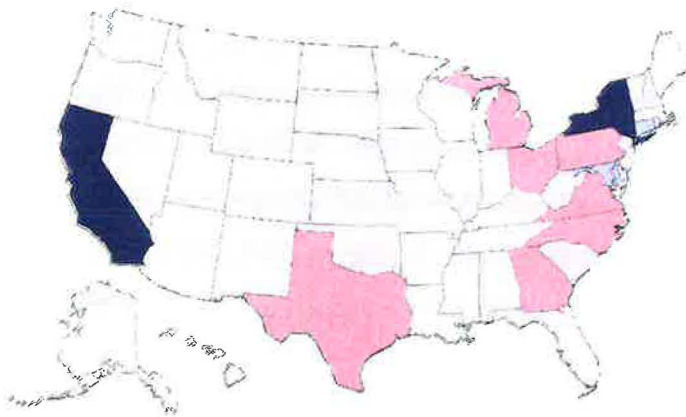
Year	State	Seats Available	Deviation	Favored Party	Percentage Deviation
2010	Mass.	10	4	Democratic	40%
2012	Ohio	16	4	Republican	25%
2014	N.C.	13	3	Republican	23%
2016	N.C.	13	3	Republican	23%
2018	N.J.	12	4	Democratic	33%

Figure 5: 2010 States with Representational Deviation Greater than Two Seats



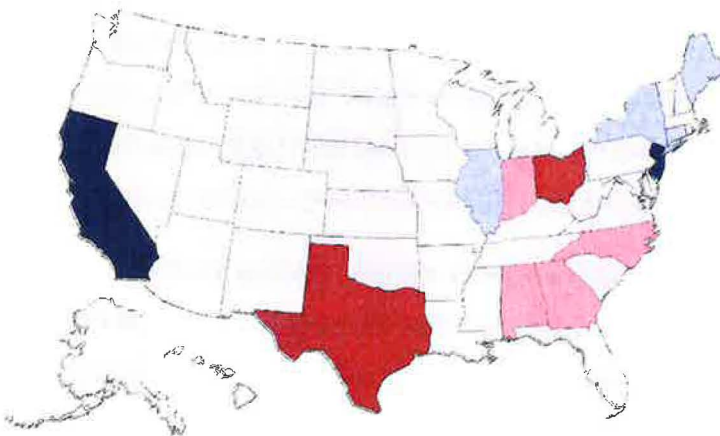
Notation: New York's excess Democratic seats would be replaced by three Republicans and one member of the right-of-center Conservative Party of New York. Florida's excess Republican seats would be replaced by three Democrats and one No Party Affiliation. Texas's excess Republican seats would be replaced by one Democrat and one Libertarian.

Figure 6: 2014 States with Representational Deviation Greater than Two Seats



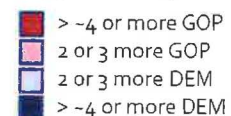
Notation: New York's excess Democratic seats would be replaced by one Republican, two members of the right-of-center Conservative Party of New York, and one member of the left-wing Working Families Party. Texas's excess Republican seats would be replaced by one Democrat and one Libertarian.

Figure 7: 2018 States with Representational Deviation Greater than Two Seats



Notation: New York's excess Democratic seats would be replaced by two Republicans and one member of the right-of-center Conservative Party of New York.

Key for all Maps:



Analysis

Takeaway 1: Assessed nationwide, the effect of redistricting is overstated. Additionally, "edge cases" with apparently incongruous results occur in many validly democratic-republican electoral systems.

Looking at the national seat allocations, one fact stands out: Over the entire period, control of the House of Representatives never changes in the proportional-representation experimental condition from the party controlling the House in real life. (While the Republicans hold 217 seats in 2012's experimental condition, that is in a notional House of 433 members, because one GOP-won and one Democratic-won uncontested race in Florida without reported vote totals were excluded from consideration.)

The Republican majorities all shrink, which would be expected even if there were no intentional partisan-advantage gerrymandering. A dispersed rural and suburban party has a natural advantage in converting votes to seats relative to a concentrated, urban party in a single-member-district system. The median voting precinct in the 2016 Presidential election was at least somewhat Republican, despite Democratic candidate Hillary Clinton receiving more raw votes; the effect of Democrats living in overwhelmingly rather than moderately Democratic areas effectively self-packs Democrats into "safe" districts.^{xiv} Additionally, the prevailing view of the Voting Rights Act requires that ethnic minorities receive "majority-minority districts"; in practice, the creation of such districts may further inadvertently pack Democratic voters into fewer districts.^{xv}

But while Republicans received boosts of at least three seats relative to proportional allocations from Pennsylvania, Ohio, Texas, North Carolina, and Florida (among 21 states that returned "too many" Republican Representatives in 2012, when the districts were "freshest"), there were countervailing states that returned "too many" Democrats: California's Democratic delegation exceeded the proportional allocation by six seats (despite the district lines being drawn by an ostensibly cross-party panel), New York's by four (though one "lost" seat would go to the allied Working Families Party), and four other blue states returned two more Democrats than proportional representation would assign.

And the 2012 elections, in which the Republicans won a majority without receiving the most votes, would remain an "inverted" result with a Republican majority. While left-progressives rage at this apparent "anti-democratic" outcome, numerous democratic electoral systems have yielded similar incongruous results in real-world elections, not just America's first-past-the-post system. In 1998,

Australia's center-right Liberal-National Coalition won reelection under a full-preferential compulsory voting single-member district system despite receiving 200,000 fewer "two-party preferred" votes than the defeated Labor Party.^{xvi}

Proportional systems, especially those with thresholds for representation or state-by-state representation systems, can still yield incongruous results. In the 2013 German federal election, the country's 5 percent threshold to win seats eliminated the market-capitalist Free Democratic Party and the nationalist Alternative for Germany, forcing the center-right Christian Democratic Union to form a coalition with the center-left Social Democrats. In its 2018 legislative elections, Brazil returned more Deputies from the left-wing Workers Party than the right-wing Social Liberal Party (PSL) despite the PSL receiving 1.3 million more votes.^{xvii} (This is likely due to malapportionment to reduce the power of Sao Paulo state, which voted a plurality for the PSL.^{xviii})

Takeaway 2: Redistricting "matters," but it manifests principally in the short-run and can be obviated by changes in population movements and political dynamics in the long run.

The results showing the smallest deviations from proportionality on aggregate in 2010 (the final general election of the post-2000 Census redistricting cycle) and in 2018 (the fourth of five in the post-2010 cycle) should not surprise. While in both cases (especially the post-2010 cycle) proportionality has been assisted by re-drawing maps after partisan litigation, a principal contributor to increased *national* proportionality is shifting political allegiances over time. Such shifts in allegiances can turn a partisan-advantaging "gerrymander" into a self-sabotaging "dummymander"—a districting map drawn to advantage one party that over the course of a Census cycle ends up favoring the other.^{xix}

Over the 2012-2018 period, two states stand out as potential "dummymanders": Virginia and New Jersey. Both states had maps drawn by Republican-aligned panels, though Virginia's was modified before the 2016 elections as a result of Voting Rights Act-related litigation, making it slightly less Republican-favoring.^{xx}

After the 2012 elections, both states' maps awarded the Republicans more seats than the proportional vote would have. By the 2018 elections, both states' partisan favoritism had flipped: Virginia returned one more Democrat than it "should" have, and New Jersey returned a full third of its delegation as "excess" Democrats.

Figure 8: Possible Republican “Dummysanders”

State	2012	2014	2016	2018
N.J.	(1)	0	0	4
Virginia	(2)	(2)	(2)	1

Note: Positive numbers are Democratic seats-above-proportional, negative numbers are Republican seats-above-proportional.

The reasons for these shifts are easily understandable. Between 2014 and 2018 the Republican Party fundamentally re-considered who its base voters were; instead of the party’s historical reliance on upper-middle-class suburbanites, Republican officeholders shifted their allegiance to (white) rural laboring classes. The result was defeat for Republican lawmakers like Barbara Comstock (R-VA), Tom MacArthur (R-NJ), Leonard Lance (R-NJ), and David Brat (R-VA) at the 2018 elections. The New Jersey Republicans were especially hard-hit, as provisions of the Tax Cuts and Jobs Act of 2017 limiting deductions for state and local taxes paid were exceptionally hard on upper-middle-class taxpayers in very-high-tax states like New Jersey.

These sorts of swings illustrate the peril of drawing districts to maximize the number of members of a party elected to Congress: If the political dynamics underlying the district-drawing change, a number of “protected” incumbents can find themselves defeated all at once.

Takeaway 3: Neither major political party is innocent of creating Congressional maps designed to advantage their representation.

While much of the conversation about redistricting is driven by groups such as the openly partisan National Democratic Redistricting Committee and ostensibly non-partisan but ideologically liberal groups like FairVote, Common Cause, and the Funders’ Committee for Civic Participation and focuses on Republican efforts—like those in North Carolina and Ohio—to shore up their positions through “gerrymandering,” Democratic-led legislatures likewise violate proportionality to shore up their positions.

While California—the most-divergent Democratic state on aggregate—draws district lines using a so-called “citizens’ redistricting commission” (which will be addressed in Takeaway Four), Connecticut and Massachusetts use legislative redistricting and draw districts that ruled out representation for those states’ minority Republicans through the entire decade—regardless of shifting political winds.

A proportional allocation of Connecticut's five seats would have seen three Democrats and two Republicans returned in each election; instead, in each election it returned a unanimous five Democrats. Massachusetts' effectiveness in suppressing the possibility of electing a single Republican to any of its nine (Massachusetts lost a seat in the 2010 Census) districts led the party of the state's sitting governor (Republican Charlie Baker) not to contest 18 of the 36—fully half—of the Congressional district elections from 2012 through 2018.

While these results are notable, the divergence from proportion does not *necessarily* indicate "partisan gerrymandering"—it may simply be the case that Democratic voters in Connecticut and Massachusetts are exceptionally efficiently distributed. Another, clearer illustration of the Democratic Party's willingness to gerrymander comes from North Carolina, better known for its post-2010 Republican-drawn district lines of recent controversy. Prior to 2010, the Republican Party had not controlled both houses of the North Carolina General Assembly—which has control of redistricting not subject to veto by the state's governor—since the nineteenth century.^{xxi}

It should therefore be unsurprising that in the 2010 elections for U.S. House in the state, the Republican Party received one fewer seat than the Democratic Party despite the GOP receiving 240,000 more votes.^{xxii} It was only after losing control of redistricting that Democrats and liberals in the state demanded the adoption of the (Republican-proposed) independent redistricting commission;^{xxiii} Republicans instead decided to repay Democrats for their century of gerrymandering by advancing a legislative-drawn map that advantaged the GOP.^{xxiv}

Takeaway 4: Commission-drawn maps can result in a de-facto gerrymander.

Everyone knows that the Golden State is Democratic. But it is *not* 86.8 percent Democratic, as its post-2018 Congressional delegation (46 Democrats, 7 Republicans) is. Indeed, despite a number of voting law "reforms" designed to juice turnout and votes cast for Democratic candidates, Democrats won "only" 65.7 percent (8.01 million of 12.1 million) of the votes. Analyzed using the proportional-by-state method, California returns an "excess" of ten Democratic members.

This deviation from proportionality occurs despite California drawing its district lines using the supposedly "fairer" method of a "Citizens Redistricting Commission." Indeed, the Democrats' H.R. 1 would "grandfather" California's commission while creating similar commissions in the states that do not currently employ one. Meanwhile, Texas uses conventional partisan redistricting (which after 2010 was controlled by Republicans). Despite this, Texas's state-level results for the elections conducted

after the 2010 redistricting (when California's Citizens Redistricting Commission came into force for Congressional districts) deviated from proportionality by *less* than California's "bipartisan" map did—both in aggregate seats and in percentage of seats.

Figure 9: Disproportion in Texas and California

Election Year	California Seats	Calif. Pct.	Texas Seats	Texas Pct.
2012	5	0.09434	-3	-0.08333
2014	8	0.150943	-2	-0.05556
2016	5	0.09434	-4	-0.11111
2018	10	0.188679	-4	-0.11111
Aggregate	28	0.132075	-13	-0.09028

Note: Negative values indicate more Republicans were returned in real life than would be proportional, positive values show more Democrats than proportional.

Conclusion

The results of this experiment show a few things. First, the impact of Congressional redistricting is likely slight and fleeting—Republicans' post-2010 advantage evaporated by the conclusion of the 2018 elections, which returned a Congress that has a partisan composition very much like the one that D'Hondt's method applied at the state level would. (It would probably be more ideologically diverse, with more Southern Democrats and New England and California Republicans, but that is for another time.)

Second, it shows that both parties in a state-level majority (as one prefers) *prosper from the natural dispersion of the other party's voters or engage in partisan gerrymandering*; for every Ohio there is a Connecticut or a Maryland.

Third, it shows that the Democrats' proposed solution to the "problem" of legislative redistricting, the so-called "independent redistricting commission," fails to ensure a "fairer" allocation of seats, leading one to wonder what the real motivation behind such a proposal might be.

All told, it is important to note that the question of who shall determine the allocation of representatives in the legislature is a fundamentally political one that cannot be resolved without political considerations. There is no "non-political" way to apportion a legislative body; indeed, such an act may be the most political act a polity can undertake. This is therefore good cause to leave the

question of representation to the political branches; to legislation, not to faux-scientific legal baby-splitting.

ⁱ Amy, Douglas J. "What is 'proportional representation' and why do we need this reform?" Accessed June 5, 2019. <https://www.fairvote.org/what-is-proportional-representation-and-why-do-we-need-this-reform>.

ⁱⁱ Yglesias, Matthew. "Proportional representation could save America." Vox. Oct 15, 2018. Accessed June 5, 2019. <https://www.vox.com/policy-and-politics/2018/10/15/17979210/proportional-representation-could-save-america>.

ⁱⁱⁱ Richards, Parker. "There's a Better Way to Elect House Members." The Atlantic. October 27, 2018. Accessed June 5, 2019. <https://www.theatlantic.com/politics/archive/2018/10/midterm-loss-democrats-may-spur-electoral-reform/574114/>.

^{iv} Amy, Douglas J. "What is 'proportional representation' and why do we need this reform?" Accessed June 5, 2019. <https://www.fairvote.org/what-is-proportional-representation-and-why-do-we-need-this-reform>.

^v Yglesias, Matthew. "Proportional representation could save America." Vox. Oct 15, 2018. Accessed June 5, 2019. <https://www.vox.com/policy-and-politics/2018/10/15/17979210/proportional-representation-could-save-america>.

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^{vii} Sterman, Daniel. "Dr. Strangevote Or: How I Learned to Stop Worrying and Love the Bader-Ofar Law." Times of Israel. March 10, 2019. Accessed May 21, 2019. <https://blogs.timesofisrael.com/dr-strangevote-or-how-i-learned-to-stop-worrying-and-love-the-bader-ofar-law/>.

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^{ix} Available for each regular general election for U.S. Representatives since 1920 at "Election Statistics, 1920 to Present." US House of Representatives: History, Art & Archives. Accessed May 21, 2019. <https://history.house.gov/Institution/Election-Statistics/>.

^x Oruc, A. Yavuz. "Election Calculator." Election Calculator. 2015. Accessed May 21, 2019. <https://user.eng.umd.edu/~yavuz/electioncalcEE.html>.

^{xi} Shook, Bryana. "2018 Election Series: 2019 Brazilian Congress." Woodrow Wilson Center. 2018. Accessed May 21, 2019. https://www.wilsoncenter.org/sites/default/files/2019_brazilian_congress.pdf.

^{xii} Oruc, A. Yavuz. "Election Calculator." Election Calculator. 2015. Accessed May 21, 2019. <https://user.eng.umd.edu/~yavuz/electioncalcEE.html>.

^{xiii} Defined as states with ten or more House seats; a state with many seats is easier to redistrict in a manner favorable to one or the other party.

^{xiv} Badger, Emily. "How the Rural-Urban Divide Became America's Political Fault Line." The New York Times. May 21, 2019. Accessed May 23, 2019. <https://www.nytimes.com/2019/05/21/upshot/america-political-divide-urban-rural.html?smtyp=cur&smid=tw-upshotnyt>.

^{xv} Hill, Steven. "How the Voting Rights Act Hurts Democrats and Minorities." The Atlantic. June 19, 2013. Accessed May 22, 2019. <https://www.theatlantic.com/politics/archive/2013/06/how-the-voting-rights-act-hurts-democrats-and-minorities/276893/>.

^{xvi} Electoral Commission. "House of Representatives - Two Party Preferred Results 1949 - Present." Australian Electoral Commission. February 17, 2016. Accessed May 23, 2019. https://www.aec.gov.au/Elections/Australian_Electoral_History/House_of_Representative_1949_Present.htm.

^{xvii} "October 7, 2018 Chamber of Deputies Election Results - Brazil Totals." Election Resources on the Internet: Federal Elections in Brazil - Results Lookup. Accessed May 28, 2019. <http://electionresources.org/br/deputies.php?election=2018&state=BR>.

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^{xix} "Dummymander." Taegan Goddard's Political Dictionary. April 15, 2011. Accessed May 22, 2019. <https://politicaldictionary.com/words/dummymander/>.

^{xx} Virginia used legislative redistricting, while New Jersey used a bipartisan commission of political figures; the tiebreaking vote was held by a member who had served in Republican gubernatorial administrations. See

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https://ballotpedia.org/Redistricting_in_Virginia_after_the_2010_census. and "Redistricting in New Jersey after the 2010 Census." Ballotpedia. Accessed May 22, 2019.

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