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Does the Introduction of Independent Redistricting Reduce Congressional Partisanship?

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Does the Introduction of Independent Redistricting Reduce Congressional Partisanship?*

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Abstract

In contemporary American politics, partisanship is frequently characterized as excessive, even if some aspects of partisanship may fundamentally characterize the U.S. political system. To reduce partisanship in the process of drawing political districts, independent redistricting commissions and related forms of de-politicized systems for redistricting have been implemented in some states. This paper analyzes whether the presence of relatively independent redistricting also reduces partisanship in the voting behavior of congressional representatives elected from the relevant redefined districts. Contrary to the initial expectations of the authors, the evidence reviewed here suggests that politically independent redistricting seems to reduce partisanship in the voting behavior of congressional delegations from affected states in statistically significant ways. The authors conclude with notes about the study's implications for further research into redistricting and partisanship.

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The Perceived Problem of Excessive Partisanship

Fervent support for one political party's policies when alternative policies are championed by another political party – one way to define partisanship -- may be a normal, unavoidable, and perhaps even desirable byproduct of the basic constitutional design of the American political system, with its structural divisions of governmental power and its effective enshrinement of two political parties. Some evidence, though, suggests that some forms of partisanship in American political life are intensifying¹ even during a period that has apparently been devoid of major structural changes in the nature of United States politics.² Recent books have offered details fleshing out how partisanship may now pose serious problems for the effective functioning of basic American political institutions like Congress.³ Editorial pages and political commentators routinely decry and denounce particular perceived examples of partisanship.⁴ Eyewitness insider accounts by longtime participants in congressional

¹ Nolan McCarty, Keith T. Poole, and Howard Rosenthal, Polarized America: The Dance of Ideology and Unequal Riches (MIT Press 2006).

² That is to say, during the past fifty years, the two main parties have remained intact, as have the major branches of government, and despite some relatively minor nods to federalism in the jurisprudence of the Supreme Court, the national government continues to dominate over the state governments, and at the national level, the executive branch continues its practical primacy over the legislative and judicial branches in most settings. That is not to say that partisanship has not affected interactions between the congressional and executive branches of the federal government. On that point more narrow point, see Jon R. Bond and Richard Fleisher, Polarized Politics: Congress and the President in a Partisan Era (CQ Press 2000).

³ See, e.g., Thomas E. Mann & Norman Ornstein, The Broken Branch: How Congress is Failing American, and How to Get it Back on Track, Institutions of American Democracy (2006); Juliette Eilperin, Fight Club Politics: How Partisanship is Poisoning the House of Representatives, Hoover Studies in Politics, Economics and Society (2006); Haynes Johnson and David S. Broder, The System – The American Way of Politics at the Breaking Point (Little Brown 1996).

⁴ See, e.g., Carl Julse and Jeff Zeleny, "Partisan Anger Stalls Congress in Final Push," New York Times, August 4, 2007; Carl Hulse, "Congressional Memo -- In Conference: Process Undone by Partisanship," New York Times, September 26, 1997; Editorial, "Of Bridges and Taxes," Wall Street Journal, Aug. 18, 2007 (2007 WLNR 1683878); Editorial, "A Triumph for Pelosi," Wall Street Journal, March 24, 2007 (2007WLNR 5745249).

politics also suggest that partisanship is intensifying.⁵ The present state of partisanship in U.S. politics is viewed by a number of onlookers as a modern political plague inviting reform.⁶

This paper examines whether the degree of partisanship shown by a widely-used indicator of partisanship in the voting behavior of members of the U.S. Congress may be reduced by restricting the partisan manipulation of the redistricting process through the implementation of relatively politically independent redistricting systems (which have been advocated by some reformers concerned about excessive partisanship).

How This Paper Fits in With Other Literature on Partisanship and Redistricting

In the 1962 case of Baker v. Carr,⁷ effectively overruling many prior precedents,⁸ the Supreme Court began a new era of judicial review of redistricting. Justice

⁵ See, e.g., Comments of Newt Gingrich in Eilperin, Fight Club Politics, *supra* n. 6, at 121; Lee H. Hamilton, “Why is Congress so Partisan?” Macon Telegraph, August 18, 2007, also available at http://congress.indiana.edu/radio_commentaries/why_is_congress_so_partisan.php.

⁶ Common Cause, for instance, has adopted this policy position: “In order to make American’s votes truly count in legislative and congressional elections, to create more accountability among elected officials and to put citizens, not elected officials, in charge of who gets elected, we must remove redistricting decisions from the purview of partisan legislators and establish fair criteria that guide the development of state and congressional districting plans.” <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=196481> (accessed November 6, 2007). On the other hand, the Center for Voting and Democracy, which is affiliated with Fair Vote.org, endorses proportional voting arrangements with larger multi-member districts as more likely than independent redistricting to reduce the instances of marginalization of disfavored voter groups within districts dominated by one party: “The lessons of our years of research on Congressional elections indicate that resolving the gerrymandering dilemma is only part of the problem. Redistricting reform can minimize the ability of partisan legislators to punish their enemies and reward their friends, but for competitive elections, legislative diversity, and other public interest goals multimember districts with proportional voting are needed to maximize the effectiveness of these reforms – and ensure all voters have choices and no strong prospective candidate is shut out of a chance to participate.” <http://www.fairvote.org/?page=1389> (accessed November 6, 2007).

⁷ 369 U.S. 186 (1962) (holding justiciable, and not a political question, an equal protection challenge to a longstanding state-law-sanctioned system of non-reapportionment in Tennessee that, through gradual shifts in population, had led over decades to stark mal-apportionments in the number of voters populating otherwise-comparable districts).

⁸ Although the Court in Baker v. Carr purported to distinguish Colegrove v. Green, 328 U.S. 549 (1946) and other cases, see Baker, 386 U.S. at 202 (plurality), Justice Frankfurter in dissent noted that a dozen “political question” cases were in sharp conflict with the holding in Baker. 386 U.S. at 266.

Frankfurter had earlier warned that such a subject would be a “political thicket” ill-suited to judicial review.⁹ A steady parade of court cases about redistricting has proceeded to emerge from that thicket,¹⁰ accompanied by a rich academic literature on the subject.

Justice Frankfurter’s warning in 1946 about the difficulties of judicial review of redistricting seemed in the 1960s and 1970s to have been overly alarmist, as the Court managed relatively effectively to re-introduce¹¹ and supervise periodic redistricting while defining and implementing the “one person, one vote” principle. Since the 1980s, though, the Court has been asked repeatedly to extend its supervision of redistricting to address the partisan gerrymander, a question sometimes intermingled with issues about the role of race in redistricting.¹² As the Supreme Court in more recent years has begun to focus on whether and how claims of partisan gerrymandering may be justiciable,¹³ Justice Frankfurter’s warning seems to echo more loudly than ever. Meanwhile, a companion academic literature has become engrossed in the difficult analytical and legal

⁹ “Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress.” Colegrove v. Green, 328 U.S. 549, 556 (1946)(plurality opinion by J. Frankfurter).

¹⁰ Early Supreme Court follow-ups to Baker v. Carr included Gray v. Sanders, 372 U.S. 368 (1963)(announcing the concept of “one person, one vote” as being a constitutional right, while striking down Georgia’s county-unit primary system), Wesberry v. Sanders, 376 U.S. 1 (1964)(requiring that federal congressional districts be apportioned by the states to ensure that voter populations within districts be the same in size as nearly as practical), and Reynolds v. Sims, 377 U.S. 563, 577 (1964)(while acknowledging some reason for a state to respect existing political subdivisions, nonetheless also requiring a state to make “honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable”).

¹¹ Redistricting had largely halted around the country earlier in the 20th century as entrenched interests resisted change. In the 19th century, by contrast, re-districting had been common, as had political battles over gerrymandering. For an interesting discussion of gerrymandering in the American republic until about 1842, see Elmer C. Griffith, The Rise and Development of the Gerrymander (Scott, Foresman and Company 1907; reprinted by Arno Press, 1974).

¹² The latter subject is governed by the quasi-constitutional Voting Rights Act, as amended in 1982. See, e.g., Shaw v. Reno, 509 U.S. 630 (1997).

¹³ Davis v. Bandemer, 478 U.S. 109 (1986)(finding a claim of partisan gerrymandering to be justiciable); Vieth v. Jubelirer, 124 S. Ct. 1769 (2004)(four justices finding partisan gerrymandering to be non-justiciable, four others finding different tests for unconstitutionally partisan gerrymanders, and Justice Kennedy observing in the middle that a “workable standard” of excessive partisanship in gerrymandering had not yet but still might emerge); League of United Latin American Citizens v. Perry, 126 S. Ct. 2594 (2006) (declining to find a case of constitutionally offensive partisanship in the political maelstrom of Texas’s mid-decade redistricting).

questions in understanding partisan gerrymandering.¹⁴ Recent robust scholarship has considered topics like the basic significance of partisanship in redistricting,¹⁵ the interplay between partisan and racial gerrymandering,¹⁶ analysis of the judicial role in reviewing partisan gerrymanders,¹⁷ and evaluations of procedural alternatives to redistricting that might have the effect of avoiding some of the perceived problems with partisan redistricting.¹⁸ Without venturing into the depths of such discussion ourselves, we note that there seems to be growing suspicion that the federal judiciary may someday soon concede Justice Frankfurter's original point and withdraw from any more deep forays into the political thicket of redistricting, such as seriously reviewing claims of unconstitutionally excessive partisanship.¹⁹

¹⁴ See, e.g., James A. Gardner, "A Post-Vieth Strategy for Litigating Partisan Gerrymandering Claims," 3 Election L.J. 643 (2004);

¹⁵ See, e.g., Samuel Issacharoff, "Gerrymandering and Political Cartels," 116 *Harv. L. Rev.* 593 (2002); Nathaniel Persily, "In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders," 116 *Harv. L. Rev.* 649 (2002)(taking issue with Professor Issacharoff's proposal).

¹⁶ See, e.g., John Hart Ely, "Gerrymanders: The Good, the Bad, and the Ugly," 50 *Stan. L. Rev.* 607 (1988); Richard H. Piles and Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances After *Shaw v. Reno*," 92 *Mich. L. Rev.* 483 (1993); T. Alexander Aleinikoff and Samuel Issacharoff, "Race and Redistricting: Drawing Constitutional Lines After *Shaw v. Reno*," 92 *Mich. L. Rev.* 588 (1993); J. Morgan Kousser, "*Shaw v. Reno* and the Real World of Redistricting and Representation," 26 *Rutgers L. J.* 625 (1995); John Hart Ely, "Standing to Challenge Pro-Minority Gerrymanders," 111 *Harv. L. Rev.* 576 (1997); John Hart Ely, "Confounded by Cromartie: Are Racial Stereotypes Now Acceptable Across the Board or Only When Used in Support of Partisan Gerrymanders?," 56 *U. Miami L. Rev.* 489 (2002).

¹⁷ See, e.g., Mitchell N. Berman, "Managing Gerrymandering," 83 *Tex. L. Rev.* 781 (2005)(proposing decision rules for defining unconstitutionally excessive partisanship in gerrymandering); Adam Cox, "Partisan Fairness and Redistricting Politics," 79 *N.Y.U. L. Rev.* 751 (2004)(arguing for the imposition of a limitation on mid-decennial redistricting, whether through judicial or legislative intervention).

¹⁸ See, e.g., Michael S. Krang, "De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform," 84 *Wash. U.L. Rev.* 667 (2006); Jeanne C. Frommer, "An Exercise in Line-Drawing: Deriving and Measuring Fairness in Redistricting," 93 *Geo. L.J.* 1547 (2005); Jeffrey C. Kubin, "The Case for Redistricting Commissions," 75 *Tex. L. Rev.* 837 (1997); Developments: Voting and Democracy, 119 *Harv. L. Rev.* 1127, 1169-1176 (2006)(arguing that state judicial intervention is preferable to the implementation of independent redistricting commissions in efforts to reduce partisanship).

¹⁹ Such would seem to be the implications of the *Perry* case. But see the argument that state judiciaries may be more likely to pursue review of excessive political partisanship, e.g. Note, "Toward a Greater State Role in Election Administration, 118 *Harv. L. Rev.* 2314 (2005).

Regardless of the outcome of that important, lively discussion about the preferable character of legal regulation and judicial review of redistricting, this paper responds to a rather separate set of concerns about partisanship as a general phenomenon in American political life. More specifically, the paper explores what (if any) relationship such general evidence of political partisanship in congressional politics may have with the specific instance of partisanship in the redistricting process that has more thoroughly engrossed the legal academic literature to date.

By electing to address this question, the authors endeavor to begin to fill a noted research gap on the possible relationship between redistricting and partisanship. This knowledge-gap was noted in 2005 by Berkeley Professors Bruce Cain and Karin Mac Donald and George Mason University Professor Michael McDonald,²⁰ and affirmed in 2007 by Jonathan Steinberg in his review of their work.²¹ Here is their claim: “No serious academic analyses attribute [partisan polarization in Congress] solely or even primarily to redistricting. There are many other plausible causes [suggesting that] the partisanship of elected officials is not simply a function of line drawing. But is legislative polarization even marginally affected by line drawing? There has been no final verdict on that question to date.”²² Professor Nathaniel Persily of Columbia Law School, a prominent scholar of redistricting, also touched on the issue recently: “Is redistricting to blame [for party polarization]? I tend to think that the effect of redistricting on polarization has been overblown At least in theory, however, such a

²⁰ Bruce E. Cain, Karin Mac Donald & Michael McDonald, “From Equality to Fairness: The Path of Political Reform since *Baker v. Carr*,” in *Party Lines: Competition, Partisanship, and Congressional Redistricting* (Thomas E. Mann & Bruce E. Cain, eds., Brookings Institution Press 2005), at 20;

²¹ Jonathan H. Steinberg, “Congressional Redistricting, Served Two Ways,” 6 *Election L.J.* 322, 323 (2007)(describing Cain et al.’s aforementioned observation of a research gap as “correct[.]”.

²² Cain et al., *supra* n. 20.

relationship between bipartisan gerrymanders and polarization has intuitive appeal, even if the data may not yet demonstrate that such a relationship exists.”²³

The authors of this paper at the outset had no position on the question of whether there were, or were not, significant links between the two phenomena, and indeed were doubtful that any relationship would be found based on the skepticism of recognized authorities like Professors Cain, Mac Donald, McDonald and Persily. Moreover, after the research underlying this paper was largely complete, the authors of this paper were introduced to a draft study by Professors McCarty, Poole and Rosenthal, from Stanford University, the University of California at San Diego and New York University respectively, who released a draft of a related paper on whether gerrymandering causes polarization.²⁴ They conclude, “Polarization is not primarily a phenomenon of how voters are sorted into districts. It is mostly the consequence of the different ways Democrats and Republicans would represent the same districts.” Although the McCarty, Poole and Rosenthal paper targets a technically different question than this paper, and its approach to analyzing its topic also differs considerably,²⁵ the gist of that paper’s conclusion makes the results of the study underlying this present paper comparatively intriguing.

²³ Nathaniel Persily, “Forty Years in the Political Thicket: Judicial Review of the Redistricting Process since Reynolds v. Sims,” in Thomas E. Mann and Bruce Cain, eds., Party Lines: Competition, Partisanship, and Congressional Redistricting, (Brookings Institution Press 2005), at 81-82.

²⁴ Nolan McCarty, Keith T. Poole and Howard Rosenthal, “Does Gerrymandering Cause Polarization?” (Draft of August 6, 2007).

²⁵ See infra n. 114.

The Hypothesis that Strategic Redistricting Causes Excessive Partisanship in Other Political Behavior

Although Professors Cain, Mac Donald and McDonald noted a dearth of any “serious” scholarship about a possible relationship between redistricting partisanship and general political partisanship, more than a few well-respected political analysts have speculated openly about such a connection. Careful observers of and participants in any complex phenomenon like political partisanship would presumably be cognizant that a wide range of factors may have some bearing on such a matter. Therefore, in the case of the phenomenon of intensifying political partisanship, it is surprising that a number of these sophisticated insider participant analysts have singled out one particular cause ahead of others: the redistricting process.

On one hand, it is easy to see an approximate correlation between the return of regular redistricting after the 1960s²⁶ and a roughly simultaneous general increase in partisan rancor.²⁷ However, it is another thing to explain a particular causal dynamic that would support the notion that the two general trends are not just coincidentally parallel.

²⁶ Redistricting disappeared throughout much of the United States during the first half of the 20th century. The Supreme Court finally entered the festering controversy about urban voter disenfranchisement by overruling its prior decisions in the 1962 case of Baker v. Carr, which held that the so-called “one man, one vote” doctrine of legislative district voter population parity would be acknowledged as a judicially enforceable constitutional requirement. See generally Gary W. Cox and Jonathan N. Katz, Elbridge Gerry’s Salamander: The Electoral Consequences of the Reapportionment Revolution (Cambridge U. Press 2002).

²⁷ “Party polarization in Congress and many state legislatures has been on the rise since the 1980s, and it has reached levels comparable to those in the late nineteenth and early twentieth centuries.” Cain et al., supra n. 17, at 20, citing Gary C. Jacobson, “Explaining the Ideological Polarization of the Congressional Parties since the 1970s,” paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago, April 15, 2004; David Brady and Hahrie Han, “An Extended Historical View of Congressional Party Polarization,” paper presented at Princeton University, December 2, 2004; Nolan McCarty, Keith Poole, and Howard Rosenthal, “Polarized America: The Dance of Ideology and Unequal Riches,” Center on Institutions and Governance Working Paper 5, Institute of Governmental Studies, University of California, Berkeley (February 2005).

Former Representative Lee H. Hamilton, a Democratic member of Congress from Indiana for 34 years, now studies partisanship from political retirement at Indiana University, where he directs the Center on Congress. In explaining why partisanship seems to be intensifying, Hamilton points to the redistricting process:

“How did we get here? . . . For one thing, computers have enabled state legislators – or members of Congress eager to dictate to them – to draw congressional district lines that create safe Democratic or Republican districts. The result is that politicians running for the U.S. House don’t have to appeal to the center to win, they need to appeal to the core of their parties’ supporters.”²⁸

Former Republican House Speaker Newt Gingrich, himself considered a vigorous partisan during his own tenure in the House, seems to join with Representative Hamilton in singling out the redistricting dynamic as a significant cause of partisan “isolation.”

“[Democrats] get to rip off the public in the states where they control and protect their incumbents, and we get to rip off the public in the states we control and protect our incumbents, so the public gets ripped off in both circumstances In the long run, there’s a downward spiral of isolation.”²⁹

Another veteran House member, Republican Jim Leach of Iowa, shared the same basic view when he was still in office: “[R]edistricting has made Congress a more partisan, more polarized place. The American political system today is structurally geared against the center”³⁰

Experienced political insiders in state politics seem to have developed impressions about the effect of partisanship in redistricting on state politics that parallel the views of Hamilton, Gingrich and Leach about redistricting’s effects on federal

²⁸ Hamilton, *supra* n. 5.

²⁹ Comments of Newt Gingrich, in Eilperin, *Fight Club Politics*, *supra* n. 3, at 121.

³⁰ Jeffrey Toobin, “The Great Election Grab,” *The New Yorker*, Dec. 8, 2003 (quoting Representative Leach).

congressional partisanship. Two politically secure, second-term state governors, one a Democrat in a Democratic-party-controlled state (Governor Brad Henry of Oklahoma), and another a Republican in a Republican-party-controlled state (Governor Sonny Perdue of Georgia), have gone so far as to propose the implementation of independent redistricting commissions in their states, even though such arrangements would appear to disadvantage their parties, in order, they state, to facilitate less partisanship in overall state politics.³¹ Oklahoma Governor Henry was quoted saying that “until we revamp our redistricting process, it will be difficult to take the politics out of the business here at the Capitol . . . [L]egislators in those safe seats don’t tend to be more balanced in their approach.”³² Without specifically articulating a presumed connection between partisan redistricting and party polarization, Georgia Governor Perdue still generally noted when proposing a redistricting commission, “You can’t take politics out of politics, but an independent commission would come closer.”³³

The hypothesis that strategic partisan redistricting leads to a structure of incentives encouraging politicians to be pushed to partisan extremes in their representation is recited frequently as the product of a sort of inexorable cause and effect. Politicians are not alone in suspecting a connection, and suggesting how it may work. Washington Post reporter Juliet Eilperin, in her popular 2006 book on partisanship, described the presumed mechanism as follows:

“Now mapmakers can get detailed information about an area’s political makeup – down to the voting history of a single block – and plug it into a

³¹ See, for example, Janice Francis –Smith, “Oklahoma Governor Henry: Redistricting key to creating bipartisanship,” *The Journal Record*, Oklahoma City (Feb. 2, 2007); Walter C. Jones, “Partisan Drawing Decried,” *Augusta Chronicle*, Feb. 23, 2007 (2007 WLNR 7957906).

³² Janice Francis –Smith, *supra* n. 24.

³³ Walter C. Jones, *supra* n. 24.

computer, allowing them to carve up neighborhoods with precision. The new software ensures both parties can maximize their partisan advantage in a congressional district, provided they have enough political clout to shepherd a map into law. . . . [T]he men and women who drew the nation's current congressional districts made the House less accountable to the public and more divided as a body.”³⁴

The supposed dynamics at play can be restated in the terms of rudimentary political game theory. Strategic partisan redistricting from the parties' perspectives is intended to maximize the impact of voters favoring the redistricting party, and to minimize the impact of voters favoring the other party, in situations where one party controls redistricting. From the individual candidate's personal perspective, the principal goal is slightly different: to maximize the chance of easy election or reelection in a particular district, while simultaneously advancing to the extent possible the chance of the candidate's party to achieve gains and/or preserve overall majority status. The incentives of the redistricting players (parties and politicians) can at least in theory coalesce by having the redistricting process operate to “pack” all relevant districts (in bipartisan gerrymandering situations where the parties agree to protect all incumbents) or at least to pack the districts of the minority party (in partisan gerrymandering situations), so potentially increasing the absolute number of safe seats whose holders are insulated with ample margins of victory. Those safe-seat holders, the thinking goes, may be less concerned with the awkward political job of appealing to cross-party-leaning constituents, and more concerned with appealing to the core constituents of the district's dominant party so as to defend against potential challengers in a primary. This overarching, commonly-touted theory is, in shorthand, the hypothesis that strategic

³⁴ Eilperin, Fight Club Politics, supra n. 3, at 92-93.

partisan and bipartisan redistricting causes excessive partisanship in the subsequent political life of candidates for and holders of office in the affected districts.

Although there may not have been many attempts until the recent draft paper by Professors McCarty, Poole and Rosenthal actually to measure the potential relationship between partisanship and redistricting, serious scholars have at least pondered the question, and Columbia Law Professor Issacharoff has described the presumed structure of incentives quite similarly: “Partisan gerrymandering skews not only the positions congressmen take but also who the candidates are in the first place . . . You get more ideological candidates, the people who can arouse the base of the party, because they don’t have to worry about electability. It’s becoming harder to get things done”³⁵ Rutgers University Professors Tarr and Williams make similar general claims: “Safe seats mean that legislators do not have to seek the political middle, because their electoral prospects do not depend for support from independent voters and members of the opposing party.”³⁶

Despite the distinct possibility that even brazenly partisan redistricting strategies are more complex than any simple “packing” approach,³⁷ that there are many other complex structures of incentives facing both parties in their redistricting decisions and politicians in their voting behaviors,³⁸ and that “independent” redistricting processes may

³⁵ Quoted by Jeffrey Toobin, *supra* n. 30.

³⁶ Introduction, Eighteenth Annual Issue on State Constitutional Law, 37 Rutgers L. J. 877, 878 (2006).

³⁷ See generally Steve Bickerstaff, *Lines in the Sand: Congressional Redistricting in Texas and the Downfall of Tom DeLay* (U. Texas Press 2007).

³⁸ The McCarty, Poole and Rosenthal paper, *supra* n. 17, seems to suggest, among other things, that party affiliation and discipline may explain a good deal more about the voting behavior of politicians than the circumstances of district boundaries and constituency characteristics.

not be very independent of partisan considerations,³⁹ this paper, for the sake of argument, accepts at face value the hypothesis that partisan redistricting may foster partisanship in the behaviors of congressional representatives. The point here is simply to test the strength of the supposed connection in an inverse situation.

Independent Redistricting as a Proposed Antidote to Partisanship

In short, if politicized methods of redistricting exacerbate partisanship in broader political contexts, then it is possible that de-politicizing the methods of redistricting may reduce broader examples of partisanship. This proposition is a common companion of the basic underlying hypothesis that strategic redistricting causes partisanship. Former Representative Hamilton, for example, has joined the reform movement advocating that a plausible antidote to excessive partisanship may be, at least in part, to wrest control of the redistricting process from the political parties:

“Perhaps [change reducing congressional partisanship will come from] a move in some states to abandon partisan redistricting and move to some more neutral way of drawing lines [E]ven little moves in the right direction would be an improvement over the situation as it stands today.”⁴⁰

This paper attempts to test whether de-politicization of the redistricting process can in fact produce reductions in generally excessive partisanship, as Representative Hamilton has surmised. Does abandonment of a more partisan form of redistricting ultimately result in even a “little” reduction in partisanship in the behavior of the congressional

³⁹ See Gene R. Nichol, Jr., “The Practice of Redistricting,” 72 U. Colo. L. Rev. 1029, 1030 (2001)(recounting an anecdotal comment by a member of Colorado’s commission that the commission had reduced the politics in redistricting from 100 to 98 percent).

⁴⁰ Hamilton, supra n. 5.

representatives elected to represent districts drawn through relatively de-politicized redistricting processes?

Incidentally, the authors readily acknowledge that there may well be ways of reducing raw party opportunism in redistricting itself other than through the utilization of relatively de-politicized independent redistricting commissions, advisory panels, panels of judges, or the like. Professor Issacharoff, for instance, has proposed a categorical, constitutionally based, judicially enforced proscription against any partisanship in redistricting, whatever the vehicle.⁴¹ Emory Law Professor Kang, on the other hand, in his Washington University Law Journal paper, has proposed more direct democratic involvement by the voting public in picking among alternative redistricting plans, reasoning that transparency of and public involvement in the process would improve the quality of what is inevitably an inherently political result.⁴² By studying here the effects of relatively independent redistricting commissions, the authors of this paper do not mean to endorse any particular device for de-politicizing redistricting, or even to discount Professor Kang's conceptually different, transparently-politicized approach to reducing raw partisanship in the crafting of political districts.

Going further, the authors recognize that the whole premise that partisanship is a "harm," whether in the particular case of redistricting or in the more general case of representative voting behavior, may be mistaken if partisanship is re-conceptualized. One can imagine a defense of partisanship as enhancing the distinctiveness of electoral

⁴¹ Samuel Issacharoff, "Gerrymandering and Political Cartels," 116 Harv. L. Rev. 593 (2002). But see Nathaniel Persily, "In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders," 116 Harv. L. Rev. 649 (2002)(taking issue with Professor Issacharoff's proposal).

⁴² Michael S. Krang, "De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform," 84 Wash. U.L. Rev. 667 (2006).

options, sharpening the outlines of policies, providing a potential platform for a third party to challenge the amazingly resilient system of political-party duopoly, fairly expressing the will of a fundamentally polarized electorate,⁴³ or even just as an expression of the “truth” that one partisan approach is right in some absolute sense, and another wrong, to an extent that justifies incidental ill effects from insistence on the “right” principle.⁴⁴ However, such are discussions for another day.

⁴³ The Austin American-Statesman conducted an interesting survey of historical voting patterns demonstrating that “[t]oday, most Americans live in communities that are becoming more politically homogenous and, in effect, diminish dissenting views. And that grouping of like-minded people is feeding the nation's increasingly rancorous and partisan politics.” Bill Bishop, “The Schism in U.S. Politics Begins at Home,” Austin American-Statesman, April 4, 2004. From a theoretical perspective, Professor Wildavsky has proposed a cultural explanation for how members of the public, largely disengaged from the details of complex political policies, can nevertheless generate clear preferences about those policies. Aaron B. Wildavsky, “Choosing Preferences by Constructing Institutions,” 81 *American Political Science Review* 3 (1987).

⁴⁴ This last argument was unabashedly articulated by former House Speaker Tom DeLay from the well of the House as he retired under pressure of a criminal indictment asserting his own involvement in illegal political maneuvers in the alleged pursuit of partisan gain:

“You show me a nation without partisanship, and I'll show you a tyranny. For all its faults, it is partisanship, based on core principles, that clarifies our debates, that prevents one party from straying too far from the mainstream, and that constantly refreshes our politics with new ideas and new leaders. Indeed, whatever role partisanship may have played in my own retirement today or in the unfriendliness heaped upon other leaders in other times, Republican or Democrat, however unjust, all we can say is that partisanship is the worst means of settling fundamental political differences -- except for all the others.

“Now, politics demands compromise. And Mr. Speaker, and -- and even the most partisan among us have to understand that. But we must never forget that compromise and bipartisanship are means, not ends, and are properly employed only in the service of higher principles. It is not the principled partisan, however obnoxious he may seem to his opponents, who degrades our public debate, but the preening, self-styled statesman who elevates compromise to a first principle. For the true statesman, Mr. Speaker, we are not defined by what they compromise, but [by] what they don't. Conservatives, especially less enamored of government's lust for growth, must remember that our principles must always drive our agenda and not the other way around.”

Tom DeLay, Farewell Address, available as of November 16, 2007 at <http://www.americanrhetoric.com/speeches/tomdelayhousefarewell.htm>.

DeLay's defense of partisanship from the right as a matter of principle is matched by New York Times columnist Paul Krugman's defense of partisanship from the left, also on grounds of principle:

“[A candidate can't] transcend partisanship in an age when that's neither possible nor desirable. . . . We all wish that American politics weren't so bitter and partisan. But if you try to find common

The Types of Redistricting Processes

Ryan Bates in his Duke Law Review article has already ventured a rough outline of the different types of independent redistricting systems practiced by several states.⁴⁵ In short, Bates proposes a typology of “primary” commissions that have presumptive authority for redistricting, “backup” commissions that come into play only when the legislature reaches a stalemate or otherwise defers to the commission, and “advisory” commissions that participate at an early stage by offering a nonbinding plan, then leaving the final decision in the legislature’s hands.⁴⁶ The Bates typology is further refined by accounting for variations in the commission’s membership structure. Bates notes that commission membership can vary in terms of the bipartisanship of membership, the extent of “blue-ribbon” membership defined by other (often political) position held, and whether a deadlocked bipartisan panel has a tie-breaking member from outside the immediate political arena.⁴⁷

A survey of the redistricting systems of 50 states conducted during 2006 and 2007 at Mercer University Law School by Professor David Oedel (“the Mercer Study”) confirms Bates’ general typology and supplements it by considering the redistricting systems in the states that do not have independent or semi-independent redistricting

ground where none exists — which is the case for many issues today — you end up being played for a fool.”

Paul Krugman, “Played for a Sucker,” N.Y. Times, November 16, 2007.

⁴⁵ Ryan P. Bates, “Congressional Authority to Require State Adoption of Independent Redistricting Commissions,” 55 Duke L.J. 333 (2005).

⁴⁶ Id., at 346-348.

⁴⁷ Id., at 349-351. Iowa’s system of an agency conducting the redistricting function is described as unique, and outside the Bates typology.

systems. The Mercer Study finds that several states have adopted relatively independent redistricting commissions, that a variety of other techniques exist to address partisan logjams in redistricting, and that the largest group of states still treats the redistricting process as inherently political, to be worked out either at the discretion of any party effectively controlling the process, or in bipartisan ways when different parties control different houses of the state legislatures and/or the governor's office.⁴⁸ The Mercer Study is the basis for a very rough ranking of redistricting approaches across the country in terms of their relative partisan de-politicization or politicization, as follows:

**Results of the Mercer Study of Redistricting Systems (2006-2007):
Degrees of Politicization in the Various Types of U.S. Redistricting Systems
(Relatively De-Politicized Systems Ranked First)**

Category 1: States with primary, binding, independent redistricting commissions, whose memberships include a non-political tie-breaker. Description: Such states have a primary, binding independent redistricting commission. The membership is designed to draw an equal number of members from the two major parties, but the membership is uneven due to an ostensibly independent chairman or "tie-breaking" member. The legislature must accept the redistricting plan of the commission and the governor has no veto power. The commission draws both the state legislative districts and the U.S. Congressional districts. States in this category: Arizona,⁴⁹ Hawaii,⁵⁰ New Jersey,⁵¹ Washington.⁵²

⁴⁸ On file at Mercer University Law School Furman Smith Law Library. The study was undertaken to support the work of a blue-ribbon task force on Georgia redistricting reform appointed by Governor Sonny Perdue.

⁴⁹ ARIZ. CONST. art. IV, pt. 2, § 1 (establishing an independent redistricting commission for U.S. congressional and state legislative districts consisting of five members, of which no more than two will be

Category 2: States with fully independent redistricting commission for state legislative districting, but due to small populations, whose congressional districts are at large (i.e., permitted just one federal congressional representative). Description: Such states have a primary, binding independent redistricting commission. The membership is designed to draw an equal number of members from the two major parties, but the membership is uneven due to an ostensibly independent chairman or “tie-breaking” member. The legislature must accept the redistricting plan of the commission and the governor has no veto power. The commission draws the legislative districts, but there is no power delegated to such commissions for the drawing of congressional districts because the

from the same political party, and prohibiting members from seeking elected office within three years of membership); see <http://www.azredistricting.org/?page=prop106>.

⁵⁰ HAW. CONST. art. IV, § 2, 9 (requiring state reapportionment commission comprised of eight members selected by the state legislative leaders from each of the Hawaii’s major parties, and a chairman selected by the eight appointed members to establish U.S. congressional district lines by majority vote, which will become law upon publication by the chief election officer; commission members are restricted from seeking elective office for the first two election cycles following the redistricting) ; see <http://www.hawaii.gov/elections/factsheets/fsbo141.pdf>.

⁵¹ N.J. CONST. art. II, § 2 (authorizing New Jersey Redistricting Commission to establish congressional districts after each federal census; commission to consist of eight members appointed by the two major party leaders of the state house and senate, four members selected by the chairmen of the state committees of the two major political parties, and one chairman, who shall not have held public office in the last five years, selected by the appointed members); see <http://www.njleg.state.nj.us/lawsconstitution/consearch.asp>.

⁵² WASH. CONST. art. II, § 43 (establishing authority of a commission to provide for state legislative and U.S. congressional districts in each year ending in one; requires commission to be comprised of four members appointed by the legislative leaders of each of the two major political parties, and a fifth non-voting member, though the redistricting plan need only the approval of three members; elected officials are not eligible for memberships and the districts may not be drawn purposely to favor or discriminate against any party or group; a plan must be approved by January 1st of each year ending in two, or the state supreme court shall adopt a plan; the plan may be amended only by a vote of two-thirds of the legislature); see <http://www.redistricting.wa.gov/>.

state has only one congressional district. States in this category: Alaska,⁵³ Delaware⁵⁴ (Blue-Ribbon), Montana.⁵⁵

Category 3: States with primary, binding, bipartisan redistricting commissions, but with no non-political tie-breaking member. Description: Such states have a primary, binding independent redistricting commission. The membership is designed to draw an equal number of members from the two major parties. There is no independent chairman or “tie-breaking” member, potentially resulting in deadlock. The legislature must accept the redistricting plan and the governor has no veto power. The commission draws both the

⁵³ ALASKA CONST. ART. VI § 8 (establishing a five-member redistricting board of non-public employees appointed in the year in which federal census is taken, and is comprised of two appointees of the governor, the state senate president, state speaker of the house and the chief justice of the state supreme court; the board is responsible for drawing the state house and senate districts); see http://www.state.ak.us/redistricting/a_articlevi.htm.

⁵⁴ DEL. CONST. art. II, § 2A (following the federal census the state house and senate districts are drawn by a commission consisting of the governor, as chairman, and the state chairmen of the two major political parties, and shall be drawn with concern for equal population, natural and ancient boundaries, contiguous territory, and without favor to any party).

⁵⁵ MONT. CONST. art. V, § 14 (establishing a commission of five members, none of whom are public officials, to be selected for the purposes of drawing state house and senate districts, and U.S. congressional districts, when necessary; the majority and minority leaders of the house and senate each appoint one member, and the appointed members select a chairman; the plan shall be submitted, 90 days after federal census data is available, to the secretary of state and it shall become law); see http://leg.mt.gov/textonly/committees/interim/1999_2000/districting_and_apportionment/default.asp

legislative and congressional districts. States in this category: Idaho,⁵⁶ Michigan (as to state districts),⁵⁷ Missouri (as to state districts).⁵⁸

Category 4: States with primary, binding, semi-independent redistricting commissions whose blue-ribbon members have separate political roles as well. Description: Such states have a primary, binding redistricting commission. The commission membership is “blue ribbon” in the sense that members are selected on the basis of their other official roles in government, usually political in nature, which often has the effect of weighting the membership in favor of one or another of the two major parties. The legislature must accept the redistricting plan and the governor has no veto power. The commission draws both the legislative and congressional districts. States in this category: Arkansas (as to state legislative districts),⁵⁹ Ohio (as to state legislative districts).⁶⁰

⁵⁶ IDAHO CONST. art. III, § 2 (providing a commission for reapportionment to be formed by order of the secretary of state where there is reason to reapportion the state legislature or new U.S. congressional district boundaries; the commission is comprised of six members, four of which are designated by the leaders of the two major political parties in the state house and senate, and two of which are designated by the state party chairmen of the two major political parties; no members may be elected officials or run for elected office five years after serving on the commission); see <http://www3.state.id.us/idstat/TOC/72015KTOC.html>.

⁵⁷ MICH. CONST. art. IV, § 6 (establishing a commission on legislative apportionment for the purposes of apportioning and creating districts for the state house and state senate only; apportionment must be done with regard to state constitutional requirements; eight members are selected evenly by the party leaders of the state house and senate, and the chairmen of the state parties, who shall be restricted from public office for two years after apportionment is effective); see <http://www.michiganvotes.org/2007-SJR-A>.

⁵⁸ MO. CONST. Art. III, § 2 (establishing committee consisting of one member from each party in each of Missouri’s U.S. congressional districts to draw a plan for the districts of the state house of representatives; members are disqualified from public office for four years after participation); MO. CONST. Art. III, § 7 (establishing a commission of ten members evenly divided among the two major parties appointed by the governor from a list of nominees provided by the state party chairmen for the purpose of drawing the state senate districts; members are disqualified from public office for four years after participation); see <http://www.fairvote.org/?page=315>. Congressional districts are drawn by the state legislature.

⁵⁹ ARK. CONST. art. 8 , § 4 (establishing Board of Apportionment consisting of the Governor, Secretary of State and Attorney General to apportion the districts for the Arkansas state house and senate); see <http://www.state.ar.us/arkdistrict/legal.html>. Congressional districts are drawn by the state legislature.

Category 5: States with no independent redistricting commission, but a court is empowered to redistrict after a redistricting deadline passes. Description: Such states vest redistricting authority in the legislature, but if the legislature is unable to enact a legally compliant redistricting plan by a statutory or reasonable deadline, the courts will intervene to enact a binding redistricting plan. States in this category: Alabama,⁶¹ California,⁶² Connecticut,⁶³ Florida,⁶⁴ Iowa (as to state legislative districts),⁶⁵ Louisiana

⁶⁰ OHIO CONST. art. XI, § 1 (granting authority to Ohio's governor, auditor of state, secretary of state and four persons chosen by the leaders of each party of the Ohio house and senate, to apportion the districts of the Ohio state general assembly); see <http://www.legislature.state.oh.us/constitution.cfm?Part=11&Section=01>. Congressional districts are drawn by the state legislature.

⁶¹ ALA. CONST. art. IX, § 198 (providing that redistricting is the initial responsibility of the Alabama state legislature); *Brooks v. Hobie*, 631 So. 2d 883, 889-890 (Ala. 1993) (holding that following a legislative failure to redistrict U.S. Congressional districts, the court has the authority to adopt a redistricting plan); see <http://www.legislature.state.al.us/reapportionment/reap.html>.

⁶² CAL. CONST. art. XXI, § 1 (authorizing the California state legislature to create U.S. congressional districts with limitations in regard to single-member districts, reasonable population equality, contiguity, and geographical integrity); *Wilson v. Eu*, 823 P.2d 545 (Cal. 1992) (California Supreme Court has the authority to amend and adopt a redistricting plan if the legislature is unable to approve a plan in time for the upcoming election); <http://swdb.berkeley.edu/summary.htm>.

⁶³ CONN. CONST. art. III, § 6, *amended by* CONN. CONST art. XII, art. XVI, § 2, art. XXVI, and art. XXX, § 2 (providing authority for the Connecticut legislature to create U.S. congressional districts; requiring a two-thirds vote of each house for passage of a redistricting plan; legislative failure to adopt a plan will result in the formation of a nine-member bipartisan binding independent redistricting commission and failure of that commission to agree on a plan allows the Connecticut Supreme Court to intervene and compel the commission to enact a plan or otherwise establish a redistricting plan); see <http://www.cga.ct.gov/red/section6article3.htm>.

⁶⁴ FLA. CONST. Art. III, § 16, (granting apportionment powers to the state legislature, also providing a special apportionment session in the event that the legislature is unable to adopt a plan at the adjournment of the general session, and allowing the Florida Supreme Court to order a redistricting plan in the event that the special apportionment session does not yield a statutorily compliant plan); see <http://www.floridaredistricting.org/ConstRequirements.html>.

⁶⁵ IOWA CONST. art. III, § 36 (granting the Iowa Supreme Court the authority to review apportionment plans of the Iowa general assembly, and order a compliant plan be enacted or otherwise cause a plan to be enacted); see <http://www.legis.state.ia.us/Redist/profile.pdf>.

(as to state legislative districts),⁶⁶ Maine,⁶⁷ Minnesota,⁶⁸ New Hampshire,⁶⁹ South Dakota (inapplicable to U.S. congressional district, which seat is at large).⁷⁰

Category 6: States with semi-independent “back-up” redistricting commissions with tie-breaking member. Description: Such states have a binding independent redistricting commission. The membership is designed to draw an equal number of members from the two major parties, but the membership is uneven due to an ostensibly independent chairman or “tie-breaking” member. The commission is not active until the state legislature fails to enact a legally compliant plan by a statutorily imposed deadline.

States in this category: Illinois,⁷¹ Indiana (as to U.S. congressional districts only).⁷²

⁶⁶ LA CONST. art., III, § 6 (granting the Louisiana Supreme Court the authority to establish districts for the Louisiana house and senate in the event the legislature fails to produce a compliant redistricting plan for a practically reasonable time); see <http://house.legis.state.la.us/hredist/redist-faq.htm>.

⁶⁷ ME. CONST. art IV, Part 1 § 3 (granting the Maine Supreme Court the authority to enact an apportionment plan for Maine’s U.S. congressional districts upon a failure of the Maine legislature to agree on a plan within 130 calendar days after convening); see <http://www.fairvote.org/?page=309>.

⁶⁸ MINN. CONST. art. IV, § 2 (granting authority to Minnesota legislature to establish redistricting plan for U.S. congressional districts); *Zachman v. Kiffmeyer*, 629 N.W.2d 98, 98 (Minn. 2001) (recognizing judicial authority to establish redistricting plan where the legislature is unable to adopt plan in reasonable time before an election); see <http://www.gis.leg.mn/html/red-prof.html>.

⁶⁹ N.H. CONST. pt. 2nd, art. IX (establishing initial authority in the legislature to create an apportionment plan); *In Re Below*, 855 A.2d 459, 462-463 (N.H. 2004) (authorizing the New Hampshire Supreme Court to step in and perform redistricting where the legislature fails to do so before an election); see <http://www.fairvote.org/?page=319>.

⁷⁰ S.D. CONST. art. III, § 5 (granting authority of the South Dakota legislature to reapportion the state into districts that are compact, contiguous, and equally populated as practicable, but where the legislature is unable to do so by a statutory deadline, the Supreme Court is responsible for the apportionment); see <http://www.fairvote.org/?page=33>.

⁷¹ ILL. CONST. art. IV, § 3 (establishing initial authority to create U.S. congressional districts in the Illinois General Assembly, and requiring that the district be compact, contiguous and substantially equal in population; if the Illinois General Assembly is unable to approve a redistricting plan by a statutory deadline an eight member commission comprised of both state representatives and unelected persons appointed by the leaders of the two major parties of the Illinois General Assembly shall file a redistricting plan upon approval of five members; deadlock by the commission past a statutory deadline will be resolved by the

Category 7: States with semi-independent “blue-ribbon” back-up redistricting commissions. Description: Such states have a binding redistricting commission whose “blue ribbon” membership is selected on the basis of the members’ other roles, usually political in nature, so likely to be weighted in favor of one of the major parties. The commission is not active until the state legislature fails to enact a legally compliant plan by a statutorily imposed deadline. The legislature must accept the redistricting plan and the governor has no veto power. States in this category: Mississippi (as to state legislative districts),⁷³ Oklahoma (as to state legislative districts),⁷⁴ Texas (as to state legislative districts).⁷⁵

Category 8: States with semi-independent advisory redistricting commissions.

Description: Such states have an independent redistricting commission, but the redistricting plan is a proposal to the legislature and not a binding plan. The legislature may amend the proposal or reject the proposal and enact a new plan. States in this

random selection of a tie-breaking member from two names submitted by the Supreme Court); see <http://www.ilga.gov/commission/lrb/con4.htm>.

⁷² IND. CODE § 3-3-2-2 (LexisNexis 2002) (authorizing a commission consisting of the speaker of the Indiana house, president pro temp of the Indiana Senate, the chairman of the Indiana Senate and House committees responsible for redistricting and a fifth member appointed by the governor from the membership of the Indiana General Assembly to adopt a redistricting plan upon failure of the Indiana General Assembly to do so); see <http://www.in.gov/legislative/ic/code/title3/ar3/ch2.html>.

⁷³ MISS. CONST. art. 13, § 254; see <http://www.mscode.com/msconst/13/13-254/html>.

⁷⁴ OKLA. CONST. art. V, §.9A, § 10A, § 11A; see http://www2.lsb.state.ok.us/oc/oc_5-11A.rtf.

⁷⁵ TEX. CONST. art. III, §. 28; see http://www.tlc.state.tx.us/redist/process_lrb.htm.

category: Colorado (as to state legislative districts),⁷⁶ Iowa (as to U.S. congressional districts only),⁷⁷ Vermont (inapplicable to congressional district, which is at large).⁷⁸

Category 9: States with exclusive legislative responsibility, but task assigned to a legislative committee. Description: Such states vest redistricting authority in the legislature. The legislature assigns redistricting duties to a specific specialized committee, but retains the right to accept or reject the recommendation subject to gubernatorial veto. States in this category: Georgia,⁷⁹ Kansas,⁸⁰ Kentucky,⁸¹ Louisiana (as to congressional districts),⁸² Michigan (as to congressional districts),⁸³ Mississippi (as to congressional

⁷⁶ COLO. CONST. art. V, § 48; see http://www.state.co.us/gov_dir/leg_dir/lcsstaff/REAP/Constitution.htm#State.

⁷⁷ IOWA CODE § 42.5-42.6 (Supp. 2006) (establishing five member temporary advisory commission, the Legislative Services Agency, to aid and assist the legislature in drawing U.S. congressional districts which are statutorily compliant; IOWA CODE § 42.4 (duty to present redistricting plans to the General Assembly for approval and the Iowa public for comment); see <http://www.legis.state.ia.us/Redist/profile.pdf>.

⁷⁸ VT. CONST. § 73 (authorizing the general assembly to provide for the establishment of a legislative reapportionment board to advise and assist the general assembly); see http://www.leg.state.vt.us/reports/02Redistricting/LAB_Senate.pdf.

⁷⁹ GA. CODE ANN. § 21-1-2 (Supp. 2007) (implying the Georgia legislature's basic constitutional authority to apportion congressional districts); see http://www.legis.ga.gov/legis/2005_06/house/Committees/reapportionment/gahlcr.htm.

⁸⁰ KAN. STAT. ANN. § 4-138 (Supp. 2004) (establishing the current U.S. congressional districts for the state of Kansas); see <http://skyways.lib.ks.us/ksleg/KLRD/Redistrict/redistr.htm>.

⁸¹ KY. REV. STAT. ANN. § 118B.100-160 (LexisNexis 2006) (establishing authority of Kentucky legislature to draw U.S. congressional districts for the state of Kentucky, and establishing the current districts); see <http://www.fairvote.org/?page=307>.

⁸² LA. REV. STAT. ANN. § 18:1276 (2004) (establishing the current U.S. congressional districts for the state of Louisiana); see <http://house.legis.state.la.us/hredist/redist-faq.htm>.

⁸³ MICH COMP. LAWS SERV. § 3.63 (LexisNexis 2003) (authorizing legislature to establish U.S. congressional districts which must be single member districts, contiguous, in compliance with federal statutes, split county and city lines as infrequently as possible, compact, and regularly numbered); see <http://www.fairvote.org/?page=312>

districts),⁸⁴ North Carolina,⁸⁵ North Dakota (inapplicable to congressional seat, which is at large),⁸⁶ New Mexico,⁸⁷ Nevada,⁸⁸ New York,⁸⁹ Oregon,⁹⁰ Tennessee,⁹¹ Texas (as to

⁸⁴ MISS CODE ANN. § 5-3-121 (2002) (establishing a standing joint congressional redistricting committee assigned to adjusting U.S. congressional districts in the event that the number of U.S. congressional districts is altered as a result of a federal census); see <http://www.msjrc.state.ms.us/>.

⁸⁵ N.C. GEN. STAT. § 163-201(2003) (establishing current U.S. congressional districts for the state of North Carolina); see <http://www.ncleg.net/redistricting/Concepts/Concepts.html>.

⁸⁶ N.M. STAT. ANN. § 1-15-15 (Supp. 2006) (establishing the authority of the New Mexico legislature to draw U.S. congressional districts for the state of New Mexico, though the plan enacted by this statute was eventually altered due to constitutional challenges); see <http://www.fairvote.org/?page=324>.

⁸⁷ North Dakota has a single representative and thus has no statutory policy regarding the establishment of U.S. congressional districts; see <http://www.fairvote.org/?page=321>.

⁸⁸ NEV. REV. STAT. ANN. § 304.060-120 (LexisNexis 2002); see <http://www.leg.state.nv.us/lcb/research/RedistReapp.cfm>; <http://www.fairvote.org/?page=318>.

⁸⁹ N.Y. STATE LAW § 110 (2003) (establishing current U.S. congressional districts for the state of New York); see <http://latfor.state.ny.us/>.

⁹⁰ OR. REV. STAT. § 188.010 (2005) (establishing that the Oregon legislature has the authority to draw U.S. congressional districts, and must be, as much as is practicable, contiguous, equal in population, related to geographic and political boundaries, related to communities of common interest and connected by transportation links; districts must not be drawn for the purpose of favoring any political party, incumbent legislator or diluting the voting strength of any language or ethnic minority group); see <http://www.fairvote.org/?page=327>.

⁹¹ TENN. CODE ANN. § 2-16-102 (LexisNexis 2003) (granting authority to the Tennessee General Assembly to establish U.S. congressional districts subsequent to each federal census); see [Http://www.fairvote.org/?page=332](http://www.fairvote.org/?page=332).

U.S. congressional districts),⁹² Utah,⁹³ Virginia,⁹⁴ Wyoming (inapplicable to U.S. congressional district, which is at large).⁹⁵

Category 10: States with legislative authority subject to gubernatorial veto. Description: Such states vest total authority for redistricting in the legislature subject to gubernatorial veto. States in this category: Arkansas (as to U.S. congressional districts),⁹⁶ Colorado (as to congressional districts),⁹⁷ Massachusetts,⁹⁸ Maryland,⁹⁹ Missouri (as to congressional districts),¹⁰⁰ Nebraska.¹⁰¹ Ohio (as to congressional districts),¹⁰² Oklahoma (as to

⁹² TEX. REV. CIV. STAT. ANN. art. 197i (Vernon Supp. 2007)(establishing the current U.S. congressional districts for the state of Texas, as drawn by the legislature in 2003); see <http://www.tlc.state.tx.us/redist/redist.htm>; <http://www.fairvote.org/?page=333>.

⁹³ UTAH CONST. art IX, § 1 (authorizing the Utah legislature to create U.S. congressional districts); <http://www.le.state.ut.us/Interim/2001/html/2001sperdt.htm>; see <http://www.fairvote.org/?page=334>.

⁹⁴ VA. CONST. art II, § 6 (establishing authority in Virginia Genera; Assembly to draw U.S. congressional districts which are to be contiguous, compact, and as equal in population as practical; the legislature has authority to redraw districts after each forthcoming federal census); see <http://dlsGIS.state.va.us/>.

⁹⁵ WYO. CONST. art. III, § 48 (granting the Wyoming legislature the authority to divide states into U.S. congressional districts in the event that a federal census entitles Wyoming to more than one U.S. congressional seat); see <http://legisweb.state.wy.us/leg2/redistrict/generalinfo.htm>.

⁹⁶ ARK CODE ANN. § 7-2-101-5 (Supp. 2005) (establishing the current U.S. congressional districts for the State of Arkansas); see <http://www.fairvote.org/?page=293>.

⁹⁷ COLO. CONST. art. V, § 44 (granting Colorado General Assembly control over the establishment of U.S. congressional districts); see http://www.state.co.us/gov_dir/leg_dir/lcsstaff/REAP/Constitution.htm#State.

⁹⁸ MASS. ANN. LAWS. Ch. 57, § 1 (LexisNexis Supp. 2006) (establishing current U.S. congressional districts for the Commonwealth of Massachusetts); see <http://www.fairvote.org/?page=311>.

⁹⁹ MD. CODE ANN. EL, § 8-701 (LexisNexis Supp. 2003) (establishing the authority of the Maryland legislature to create the U.S. congressional districts for the state of Maryland); <http://www.fairvote.org/?page=310>; see <http://redistricting.state.md.us/maryland/>.

¹⁰⁰ MO. REV. STAT. § 128.346 (2007) (establishing the authority of the Missouri legislature to created U.S. congressional districts for the state of Missouri); see <http://www.fairvote.org/?page=315>.

¹⁰¹ NEB. REV. STAT. ANN. § 32-504 (LexisNexis 2005) (establishing the current U.S. congressional districts for the state of Nebraska); see <http://www.fairvote.org/?page=317>.

congressional districts),¹⁰³ Pennsylvania,¹⁰⁴ Rhode Island,¹⁰⁵ South Carolina,¹⁰⁶ Wisconsin,¹⁰⁷ and West Virginia.¹⁰⁸

**The “Before and After” Test:
Did Adoption of Independent Redistricting Change
The Voting Behavior of those States’ Congressional Representatives?**

The fact that different systems for redistricting exist (and that they provide something of a range of politicization in redistricting) happens serendipitously to create a sort of state-by-state laboratory for testing the effects of different redistricting processes on the broader political process. In this light, the particular question posed for testing can be conceptualized as whether the relatively de-politicized systems for redistricting have the effect of reducing partisanship in subsequent congressional voting behavior by the

¹⁰² OHIO REV. CODE ANN. § 3521.01 (LexisNexis Supp. 2007) (establishing the current U.S. congressional districts for the state of Ohio); see <http://www.legislature.state.oh.us/constitution.cfm?Part=11&Section=01>.

¹⁰³ OKLA. STAT. tit.14, § 5.2 (2002) (establishing the current U.S. congressional districts for the state of Oklahoma); see <http://www.fairvote.org/?page=326>.

¹⁰⁴ PA. CONS. STAT. ANN. § 3595.301 (West 2007) (establishing the current U.S. congressional districts for the state of Pennsylvania); see <http://www.fairvote.org/?page=328>.

¹⁰⁵ R.I. GEN. LAWS § 17-4-1 (2003) (establishing authority of Rhode Island legislature to draw U.S. congressional districts for the state of Rhode Island); see <http://www.riredistricting.org/>.

¹⁰⁶ S.C. CODE ANN. § 7-19-40 (Supp. 2006)(establishing the current U.S. congressional districts for the state of South Carolina); see <http://www.scstatehouse.net/html-pages/redist1.html>.

¹⁰⁷ WIS. STAT. § 3.001 (2006) (establishing the authority of the Wisconsin legislature to draw U.S. congressional districts for the state of Wisconsin); see http://www.legis.state.wi.us/ltsb/redistricting/state_of_wisconsin_profile.htm.

¹⁰⁸ W. VA. CONST. art. 1, § 4 (establishing the authority of the West Virginia legislature to draw contiguous, compact U.S. congressional districts of as equal a population as practicable); see <http://www.fairvote.org/?page=338>.

representatives elected to the districts that are drawn with relatively less concern for partisan political party opportunism than in other districts.

One workable test of this potential effect explored in this paper is to compare the degree of partisanship shown in the voting records of a state's congressional delegation *before* implementation of such a relatively independent redistricting system with the degree of partisanship shown in the voting records of the same state's congressional delegation *after* a relatively independent redistricting system is employed to redraw congressional district boundaries.

With this test in mind, the first task of the authors has been to identify which redistricting processes were relatively independent, and secondly, which of those systems were used by states to re-draw congressional district lines for the first time after the 2000 census (typically at the end of 2002). Recognizing that there is some degree of uncertainty about the relative degrees of independence of the various forms of redistricting commissions and systems, the authors have chosen to accept any examples from the first eight categories of redistricting commissions in the Mercer Study as qualifying for these purposes as "relatively independent" forms of redistricting systems. The authors further winnowed the target group to those states with relatively independent redistricting that were invoked for the first time in the 2002 redistricting cycle to re-draw congressional districts in their states. Under these two criteria for testing, the following six states were selected for this study: Alabama, Arizona, Connecticut, Hawaii, Idaho and Maine. In other words, the authors believe that those six states constitute the entire universe of U.S. states that redistricted their congressional districts after the 2000 census, about the end of 2002, for the first time using a relatively independent form of

redistricting commission or system (i.e., any system identified in categories one through eight of the Mercer Study of Redistricting Systems).

Measuring Changes in Partisanship in Congressional Voting Behavior

The next empirical challenge for the authors of this paper has been to identify a particular measure of general partisanship in legislative voting behavior, so as to be able to gauge whether a change to a more independent redistricting system might have some statistically observable effect on the degree of perceived partisanship in the aggregate of each relevant state's congressional representatives' voting records.

Votes by any legislative representative obviously reflect many factors, and the very notion of characterizing any particular vote as categorically partisan, or any particular representative on any particular vote as excessively partisan, is problematic. The academic literature in political science has pursued analyses of roll call voting for many years, demonstrating considerable sophistication especially on questions involving the extent of party influence over different types of votes.¹⁰⁹

However, the authors of this paper are particularly interested in the perception of partisanship overall, and as viewed not by academicians interested in gauging the power of parties or other forces to influence voting behavior, but by the most knowledgeable

¹⁰⁹ See, e.g., Stuart Rice, Quantitative Methods in Politics (Knopf 1928); John Kingdom, Congressional Vote Options (Harper & Row 1973); William H. Riker, The Art of Political Manipulation (Yale U. Press 1986); Gary W. Cox & Eric Magar, "How Much is Majority Status in the U.S. Congress Worth?" 93 *American Political Science Review* 299 (1999); Keith Krehbiel, "Party Discipline and Measures of Partisanship," 44 *American Journal of Political Science* 212 (2000); Gregory Hager and Jeffrey Talbert, "Look for the party label: Party influences on voting in the U.S. House," 25 *Legislative Studies Quarterly* 75 (2000); James Snyder and Timothy Groseclose, "Estimating Party Influence on Roll Call Voting," 44 *American Journal of Political Science* 193 (2000); Keith T. Poole and Howard Rosenthal, "D-NOMINATE After 10 Years: An Update to Congress: a Political-Economic History of Roll Call Voting," 26 *Legislative Studies Quarterly* 5 (2001); James Snyder and Timothy Groseclose, "Estimating Party Influence on Roll Call Voting: Regression Coefficients Versus Classification Success," 95 *American Political Science Review* 689 (2001).

political participants themselves, including the very partisans who have participated both in crafting the questions to be voted upon and counting the subsequent votes.¹¹⁰ The most widely acclaimed source of such data has, since the 1980s, indisputably been the National Journal, which has devised measures of the degrees to which particular congressional votes conform to “conservative” or “liberal” characterizations as viewed by the National Journal’s board of experts.¹¹¹ The National Journal’s annual aggregation of

¹¹⁰ See, e.g., Comments of Newt Gingrich, *supra* n. .

¹¹¹ Here is the National Journal’s description from 2006 of the methodology used in generating the congressional vote ratings, available for 2006 at <http://nationaljournal.com/voteratings/methodology.htm>. Ratings from earlier years are available by arrangement with the National Journal, which maintains a proprietary interest in the information.

“The ratings system was first devised in 1981 under the direction of **William Schneider**, a political analyst and commentator, and a contributing editor to *National Journal*, who continues to guide the calculation process. Data processing and statistical analysis were performed by [Information Technology Services of the Brookings Institution](#).

“The votes in each issue area were subjected to a principal-components analysis, a statistical procedure designed to determine the degree to which each vote resembled other votes in the same category (the same members tending to vote together). Ten of the 187 votes (two in the Senate and eight in the House) were dropped from the analysis because they were statistically unrelated to others in the same issue area. These typically were votes that reflected regional and special-interest concerns, rather than general ideology.

“The analysis also revealed which yea votes correlated with which nay votes within each issue area (members voting yea on certain issues tended to vote nay on others). The yea and nay positions on each roll call were then identified as conservative or liberal.

“Each roll-call vote was assigned a weight from 1 (lowest) to 3 (highest), based on the degree to which it correlated with other votes in the same issue area. A higher weight means that a vote was more strongly correlated with other votes and was therefore a better test of economic, social, or foreign-policy ideology. The votes in each issue area were combined in an index (liberal or conservative votes as a percentage of total votes cast, with each vote weighted 1, 2, or 3).

“Absences and abstentions were not counted; instead, the percentage base was adjusted to compensate for missed roll calls. A member who missed more than half of the votes in any issue category was scored as ‘missing’ in that category (shown as an asterisk [*] in the vote-rating tables).

“Members were then ranked from the most liberal to the most conservative in each issue area. These rankings were used to assign liberal and conservative percentile ratings to all members of Congress.

“The liberal percentile score means that the member voted more liberal than that percentage of his or her colleagues in that issue area in 2006. The conservative figure means that the member voted more conservative than that percentage of his or her colleagues.

such data (more than 100 votes a year are used for the analysis) has come to be used by Washington onlookers as the best available independent approximation of where on the political spectrum an individual congressional representative may appear to lie for the purposes of partisan labeling.¹¹² Because the authors of this paper are concerned with the interplay (if any) between redistricting and the perception of partisanship, then it seems appropriate to credit the perceptions of those who are most intimately involved in the relevant political process. The National Journal approach to gauging partisanship in roll call voting for these purposes seems more appropriate than having the academic authors of this paper choose from among any one of a number of different academic approaches to analyzing the “partisanship” (however academically defined) evidenced in roll-call voting – none of which appear to be extensively relied up by the participants in the political processes themselves, and each of which seems to have been designed for more specialized purposes than those at stake in this paper.

“For example, a House member in the 30th percentile of liberals and the 60th percentile of conservatives on economic issues voted more liberal than 30 percent of the House and more conservative than 60 percent of the House on those issues, and was tied with the remaining 10 percent. The scores do not mean that the member voted liberal 30 percent of the time and voted conservative 60 percent of the time.

“Percentile scores can range from a minimum of 0 to a maximum of 100. Some members, however, voted either consistently liberal or consistently conservative on every roll call. As a result, there are ties at both the liberal and the conservative ends of each scale. For that reason, the maximum percentiles are usually less than 100.

“Members also receive a composite liberal score and a composite conservative score, each of which is an average of their six issue-based scores. Members who missed more than half of the votes in any of the three issue categories do not receive a composite score (shown as an asterisk [*] in the vote-rating tables).

“To determine a member's composite liberal score, for example, first add the liberal scores in all three issue areas. Next, in each issue area, calculate 100 minus the member's conservative score and add the three results together. The two figures are then combined and divided by 6 (the number of individual scores).

¹¹² Telephone interview with Tom Bonier, political analyst with National Committee for an Effective Congress (October 9, 2007).

As a result, the authors of this paper aggregated National Journal Vote Ratings for all the representatives in each of the six surveyed states for the periods of 1996-2002 (before a redistricting in each state using a relatively more independent form of redistricting system) and 2003-2006 (after a redistricting in each state using a relatively more independent form of redistricting system).

Our Statistical Analysis of Whether the Introduction of Independent Redistricting Reduced Partisanship in Voting by District Representatives

First, we generated a partisan variable that is the absolute difference between the National Journal's "Liberal Score" (CLS) and "Conservative Score" (CCS) for each of the six states' aggregated congressional delegations both before and after independent redistricting took effect in those states at the end of 2002.

Before we could determine whether the average level of partisanship fell after the redistricting at the end of 2002 using a relatively independent form of redistricting, and thus whether the mean value of our partisan variable had fallen, we had to determine if the variance and therefore the standard deviation before the redistricting, both within a state and across all states, is significantly different from the variance after redistricting.

The standard deviation ratio tests are shown in Table 1 below. Our null hypotheses are that the pre- and post-redistricting standard deviations are the same, and thus the ratio of variances is one. The alternative hypotheses are that the pre- and post-redistricting variances are different, and thus statistically significantly different from one.

Table 1 reports the standard deviation ratio test results for the overall sample including all six states as well as for each of the individual state. We rejected the null

hypothesis for the test for Hawaii ($2 * \Pr(F < f) = 0.0140$). Because the assumption of equal variances was violated for Hawaii, we proceeded to compute the approximate t using individual sample variances instead of the pooled variance. It also required us to find the Satterthwaite approximation of degrees of freedom when analyzing the differences in the means.

Table 1: Partisanship Standard Deviation Ratio Tests

	Years	Overall	State Representative Caucus					
		State Averages	Alabama	Arizona	Connecticut	Hawaii	Idaho	Maine
Mean Overall	1997-2006	43.34	53.52	56.37	33.75	55.16	45.08	59.61
Std. Dev. Overall	1997-2006	15.16	25.51	26.94	28.90	18.37	18.64	14.87
Mean Pre-redistricting	1997-2002	48.44	56.43	57.48	34.87	62.28	54.83	65.65
Std. Dev. Pre-redistricting	1997-2002	14.77	25.42	24.57	26.33	10.03	15.04	12.76
Mean Post-redistricting	2003-2006	35.69	49.15	55.12	31.74	44.48	30.45	50.55
Std. Dev. Post-redistricting	2003-2006	12.49	25.47	29.72	33.69	23.24	13.40	13.72
Standard Deviation Ratio Test								
Ho: ratio = 1								
f-value		1.40	1.00	0.68	0.61	0.19	1.26	0.86
Degrees of Freedom		35, 23	41, 27	35, 31	35, 19	11, 7	11, 7	11, 7
Ha: ratio \neq 1								
$2*Pr(F > f) =$		0.40	0.97	0.28	0.20	0.01**	0.78	0.80

* Significant at alpha = .05

** Significant at alpha = .01

Table 2: Partisanship Means Tests

	Years	Overall	State Representative Caucus					
		State Averages	Alabama	Arizona	Connecticut	Hawaii	Idaho	Maine
Mean Overall	1997-2006	43.34	53.52	56.37	33.75	55.16	45.08	59.61
Std. Dev. Overall	1997-2006	15.16	25.51	26.94	28.90	18.37	18.64	14.87
Mean Pre-redistricting	1997-2002	48.44	56.43	57.48	34.87	62.28	54.83	65.65
Std. Dev. Pre-redistricting	1997-2002	14.77	25.42	24.57	26.33	10.03	15.04	12.76
Mean Post-redistricting	2003-2006	35.69	49.15	55.12	31.74	44.48	30.45	50.55
Std. Dev. Post-redistricting	2003-2006	12.49	25.47	29.72	33.69	23.24	13.40	13.72
Mean (1997-2002) - Mean (2003-2006)								
Ho: = 0								
t-value		3.48	1.17	0.36	0.39	2.04	3.70	2.52
Degrees of Freedom		58.00	68.00	66.00	54.00	8.76	18.00	18.00
Ha: $\neq 0$								
Pr(T > t) =		0.00**	0.24	0.72	0.70	0.07	0.00*	0.02**
Ha: > 0								
Pr(T > t) =		0.00**	0.12	0.36	0.35	0.04*	0.00*	0.01**

* Significant at alpha = .05

** Significant at alpha = .01

For all states combined and each individually, except Hawaii, we fail to reject the hypothesis that the before and after standard deviation of partisanship are the same. For the overall analysis and each state individually, except Hawaii, the means tests utilize the degrees of freedom as the number of observations minus two. For Hawaii, we use Satterthwaite's degrees of freedom.

Looking at the overall average level of partisanship in the states, we see that the average level of partisanship appears lower but statistically indistinguishable after redistricting for the particular states of Alabama, Arizona, and Connecticut. However, over the same period, we see a statistically significant reduction in partisanship in Hawaii, Idaho, Maine, and, most significantly, in the aggregated data for all six states surveyed.

In other words, we can say at the 99 percent confidence level that the degree of partisanship in voting behavior of representatives representing the pool of six states *changed* after the introduction in those states of relatively independent redistricting after about late 2002, and furthermore that the degree of partisanship in the aggregate meaningfully *declined* after the introduction of relatively independent redistricting after late 2002.

Were National Trends or Other Key Variables Skewing the Six-State Data?

At least three alternative hypotheses would also yield differences in the mean levels of partisanship over time in these selected states. For instance, there may have been a national trend due to some exogenous factor that caused all states, not just those states newly undergoing independent redistricting, to experience a reduction in the level of partisanship. Another alternative hypothesis is that there may be significant differences among states and that these differences, though exogenous to the estimate, explain why these six states in particular experienced both de-politicized redistricting and declining levels of partisanship. A third alternative could be that the unique party affiliations of the representatives in these six states may explain their levels of partisanship. In other words,

other states with party representation patterns similar to the patterns present in these six states may have experienced a similar reduction in the level of partisanship because of the pattern of party affiliation and not because of independent redistricting.

In order to address these alternative hypotheses as to why differences in the level of partisanship may have occurred, we generated our measure of partisanship using the National Journal's Vote Ratings for all House members in 1998 and 2006, i.e., from times in non-presidential years both before and after the six-state group instituted independent redistricting. Initially we then calculate the average level of partisanship by each state's caucus. We then regressed the following equation:

$$partisanship_{j,t} = \alpha + \beta_1(\text{independent_redistricting}_{j,t}) + \beta_2(\text{year} = 2006) + \gamma(\text{state}_i) + e_{j,t}$$

(Eq. 1)

where j is each state, t is the year, and γ is the vector of dummies for each state.

The results are shown in Table 3, Estimate 3, below. Accounting for both differences across states and the possibility of a national trend in partisanship, a state that independently redistricted in 2002 witnessed a 13 percentage point decline in the average level of partisanship of their state caucus. This estimate is significantly different from zero with a 90 percent confidence interval. Although it does appear that the average level of partisanship by state caucuses nationwide was marginally lower in 2006 than 1998, the shift is not statistically significant.

However, this result may just be an artifact of party affiliation or the construction of the average. In order to address such possibilities, we returned to the voting records of individual representatives to determine if individual representatives within a state vote with less partisanship after independent redistricting. We then regressed the following:

$$partisanship_{i,j,t} = \alpha + \beta_1(independent_redistricting_{j,t}) + \beta_2(year = 2006) + \gamma(state_i) + \delta(party_{i,j,t}) + e_{i,j,t} \quad (E$$

q.2)

where i is the representative in district i.

The results are shown in Table 4, Estimate 4. Significant at the 99 percent confidence interval and holding constant possible year, state, and party effects, a representative from a state that newly independently redistricted in 2002 voted with less partisanship. The magnitude is similar to the results shown in Table 3.

Table 3: Overall State Partisanship

	Estimate 1	Estimate 2	Estimate 3
Post Independent Redistricting	4.773 [0.841]	7.354 [1.206]	-13.442 [1.707]*
Year 2006 dummy		-4.852 [1.606]	-2.356 [0.561]
Constant	30.384 [10.964]***	32.655 [10.260]***	38.578 [18.376]***
State Dummies	No	No	Yes
Observations	100	100	100
R-squared	0.003	0.015	0.808

Robust t statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

Table 4: Individual Representative Partisanship

	Estimate 1	Estimate 2	Estimate 3	Estimate 4
Post Independent Redistricting	-5.564 [1.839]*	-5.861 [1.688]*	-14.458 [3.869]***	-13.98 [3.661]***
Year 2006 dummy		0.573 [0.348]	0.838 [0.512]	0.772 [0.472]
Constant	49.595 [25.988]***	49.319 [29.687]***	36.981 [45.187]***	40.638 [8.568]***
State Dummies			Yes	Yes
Party Membership Dummies				Yes
Observations	861	861	861	860
R-squared	0.001	0.002	0.149	0.153

Robust t statistics in brackets

* significant at 10%; ** significant at 5%; *** significant at 1%

In short, we have taken some steps to consider whether other factors may be affecting the primary results explored in this paper. While we cannot (and do not) say that other factors have no bearing on partisanship in voting by congressional representatives, we can say that some of the most seemingly-likely extrinsic factors do not appear to be overwhelming the central observation of this paper that the introduction

of independent redistricting reduces perceived partisanship in the voting records of congressional representatives from those states.

In short, after accounting for (1) a possible national trend, (2) individual differences between the studied states and all other states, and (3) the particular pattern of party affiliation in the six states compared with other states, we still observe a statistically significant reduction in partisanship among states newly introducing de-politicized systems for redistricting.

Conclusions and Implications

We conclude that there is statistically significant evidence of a reduction in the most popular conventional measure of perceived partisanship¹¹³ in the voting behavior of congressional representatives from those six states that redistricted for the first time about the end of 2002 using relatively politically independent redistricting systems.

Based on this finding, we hypothesize (but have not here proven) the converse, i.e., that there is some statistically significant causal connection between relatively politicized forms of redistricting and partisanship perceived in the subsequent voting behavior of congressional representatives elected from those districts.

Perhaps the most immediate need for further study involves how to reconcile the tentative result of this draft paper, which concludes that independent redistricting reduces perceived partisanship, with the tentative result of the draft paper by Professors McCarty,

¹¹³ That is, reduction in the variance between the National Journal Vote Ratings' liberal and conservative voting scores for individual legislators when that data is aggregated by relevant state.

Poole and Rosenthal, which concludes that party affiliation plays a dominant role in partisanship.¹¹⁴

Although we have presented statistically significant evidence about the ability of independent systems for redistricting to reduce the conventional appearance of partisanship in congressional voting behavior, we make no claim that there is an exclusive or primary relationship between relatively politicized forms of redistricting and excessive partisanship by affected congressional representatives. Indeed, the authors readily concede that there likely are many other forces at work in fostering an environment conducive to political partisanship, and conversely, in potentially undermining the conditions conducive to political partisanship. We would not be surprised, for instance, if further research shows that individual representatives may exhibit higher degrees of perceived partisanship in voting to the extent those

¹¹⁴ Complementary readings of the two papers seem possible, although it is also possible that their respective conclusions conflict. The McCarty, Poole and Rosenthal paper concludes that party identification is strongly aligned with partisanship of voting record, and that “the centers of the two parties have drifted further apart” for reasons that have little to do with redistricting. Even if true across all congressional districts, such a conclusion would not necessarily mean that redistricting does not have a contributing effect on polarization. Moreover, it seems that the McCarty, Poole and Rosenthal paper focuses in significant part on estimates about a factually small sample of moderate districts that exhibit so-called “intra-district divergence” and that do not exhibit sorting effects, meanwhile under-examining the phenomena of districts exhibiting sorting effects (i.e., conservative constituencies electing Republicans who vote conservatively, and liberal constituencies electing Democrats who vote liberally). If so, their paper may structurally avoid considerations of possible evidence of excessive partisanship in the increasingly “strong” safe-seat districts that show sorting effects. There is some reason to suspect that the voting records of representatives from districts with strong majorities favoring the representatives’ own parties may skew even more partisan than the respective constituencies’ presidential voting performance might predict, and hence be evidence of excessive partisanship by the representatives (rather than just the normal degree of partisanship that could be expected by representatives merely attempting to mirror the degree of partisanship exhibited by the underlying constituent base). Indeed, the kind of polarization analyzed in the McCarty paper may be a different kind of polarization than what is conceptualized in this paper. McCarty et al. state, “Some of the increase in polarization is due to an increase in the congruence between a district’s characteristics and the party of its representative. Republicans are more likely to represent conservative districts and Democrats are more likely to represent liberal ones.” The authors of the present paper would not describe congruence between a constituency’s presidential voting performance and its representative’s voting record as exemplifying excessive partisanship, or polarization. In any event, McCarty, Poole and Rosenthal do concede that the elimination of districting altogether in favor of statewide elections would “roll polarization back to the level of the mid-1990s.” Insofar as our paper is only making a claim that independent redistricting can cause marginal reductions in partisanship, the basic claims may still be practically reconcilable.

representatives are subjected to party discipline and/or are counted in party leadership positions. We would also be curious to know about the effects of tenure, particular party affiliation, race, age, and gender on partisanship in voting. A different perspective might be gleaned from analyzing how constituent demographics, constituent party affiliations and constituent voting patterns in other settings may have some bearing on partisanship in a congressional representative's voting behavior.

Of course, the authors make no claim that there is any exclusive or primary causal relationship between the use of independent redistricting systems and reductions in the partisanship shown in the voting behavior of congressional representatives elected from those districts. Partisanship can presumably be reduced in a number of ways, only one of which may involve adoption of relatively de-politicized systems for redistricting.

Nonetheless, the authors note that former Representative Hamilton¹¹⁵ expressed hope in adjusting the states' systems for redistricting if such adjustments would produce even a "little" change in overall congressional partisanship. From the vantage point of Representative Hamilton, therefore, and more generally as a matter of scholarly interest about the potential interconnectedness of partisanship in the redistricting process and other incidences of partisanship in American political life, our limited findings may still be of some interest.

As to independent redistricting commissions and related systems for de-politicizing redistricting, it will be useful to confirm through other tests whether they do reduce voting partisanship, and whether they will continue to have such effects after an initial switch. Moreover, especially for states considering adopting new forms of independent redistricting systems, as well as for states contemplating changes to existing

¹¹⁵ Supra n. 5.

systems, it would be useful to know whether particular types of relatively de-politicized redistricting systems are more effective than others at reducing partisanship overall. It will be interesting to sift through the effects of the next round of redistricting in the continuing reapportionment revolution, comparing and contrasting the experience of state caucuses that are selected through different techniques. Meanwhile, more empirical and analytical work still can be done on the historical record that already exists as we continue to seek out clues into how and whether different types of redistricting decisions affect the composition of legislative bodies and the subsequent behavior of legislators.

Even without changes in the laws governing redistricting, however, there is reason to suspect that partisanship in redistricting may change all by itself. It will be intriguing to gauge, for instance, the extent to which Justice O'Connor was correct in the case of Davis v. Bandemer to observe that partisanship in redistricting is self-regulating – that parties will not overdo it without suffering painful negative consequences.¹¹⁶ The 2006 congressional election reversal for the Republicans, in which more seats proved to be at play than had previously been predicted by many onlookers, underlines the latent threat of democratic discipline.¹¹⁷ With that experience relatively fresh at hand, one could imagine the parties taking somewhat different approaches to redistricting after the 2010 census even without regulatory interventions to de-politicize the process as a formal matter.

¹¹⁶ 478 U.S. 109 (1986).

¹¹⁷ On a micro-political level, one might loosely view Tom DeLay's downfall as a form of discipline for his prominent role in the national spectacle of the mid-decennial 2003 Texas redistricting. See, e.g., Steve Bickerstaff, Lines in the Sand: Congressional Redistricting in Texas and the Downfall of Tom DeLay (U. Texas Press 2007). Elbridge Gerry, gerrymandering's namesake, himself surrendered the governorship of Massachusetts in an electoral loss the year following his oversight of the publicly ridiculed (and now-classic) example of gerrymandering.

Other subjects for further possible research involve closer analysis of the inner workings of partisanship in redistricting and, in particular, differences in distinct strategies of gerrymandering. Do partisan gerrymanders (which exhibit both packing and spreading of vote clusters) have the same effects on partisanship as bipartisan gerrymanders (which exhibit packed seats more or less throughout the state), or are partisan gerrymanders less polarizing because of the calculated acceptance by the redistricting party of narrower margins and closer races by their own strongest candidates? Meaningful distinctions between the two quite-different forms of partisanship often are obscured in the general discussion of partisanship in redistricting.

Finally, the authors recognize more fundamentally that there may be valid reason to question the wholesale normative revulsion to the concept of partisanship, whether in the particular case of redistricting or in the general case of congressional voting patterns. Is partisanship wholly normatively undesirable, or is it defensible to the extent that it helps sharpen choices and issues, provides a way for a potential third party to undermine the political duopoly, facilitates the expression of what a majority of voters in a district wishes to express about issues on the political agenda, or expresses absolute, uncompromising distinctions between competing principles? We envision a more nuanced approach to partisanship than has so far accompanied the literature on the subject.