SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 18907

IN RE PETITION OF REAPPORTIONMENT COMMISSION, EX. REL.

APPENDIX OF THE REPUBLICAN MEMBERS OF THE CONNECTICUT REAPPORTIONMENT COMMISSION

ROSS GARBER
CHARLES L. HOWARD
SHIPMAN & GOODWIN LLP
ONE CONSTITUTION PLAZA
HARTFORD, CT O6103
TELEPHONE (860) 251-5000
FACSIMILE (860) 251-5219
RGARBER@GOODWIN.COM
JURIS NO. 57385

THEIR ATTORNEYS

TO BE ARGUED BY
ROSS GARBER

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12/29/2011

NATHANIEL PERSILY

Columbia Law School
435 West 116th Street
New York, NY 10027

Phone: (212) 854-8379
Fax: (212) 854-7946

Email: nate@persily.com
Web: http://www.persily.com/

ACADEMIC APPOINTMENTS

COLUMBIA LAW SCHOOL — NEW YORK, NY
- CHARLES KELLER BEEKMAN PROFESSOR OF LAW AND PROFESSOR OF POLITICAL SCIENCE — 2008 – present
- PROFESSOR OF LAW — 2007 – 2008

- *Courtesy Appointment*: Department of Political Science (2007–present).
- *Courses*: Constitutional Law; Advanced Constitutional Law: The Political Process; Freedom of Expression; Contemporary Issues in Law and Politics; Redistricting and Gerrymandering.
- *Service*: Lateral Appointments Committee Chair (2010-2011), Curriculum Committee Chair (2009-2010), Advisory Committee Chair (2008-2009), Intellectual Life Committee; Resources and Development Committee, Committee on Professional Development.
- *Center for Law and Politics*: Founding Director.
- *DrawCongress.org* : Founder.

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL — PHILADELPHIA, PA
- PROFESSOR OF LAW — 2005 – 2007
- ASSISTANT PROFESSOR OF LAW — 2001 – 2005

- *Secondary Appointment*: Department of Political Science (2003-2007).
- *Courses*: Law and the Political Process; Contemporary Issues in Law and Politics; Constitutional Law, First Amendment.
- *Service*: Tenure and Promotion Committee, Judicial Clerkship Committee, Nominations Committee, Committee on Academic Standing; Advisor to Journal of Constitutional Law and American Constitution Society; Coordinator of Faculty Retreat and Legal Studies Workshop; Supervisor to student seminar on state constitutional law.
- *Teaching Award*: Winner of the Robert A. Gorman Award for Excellence in Teaching.

VISITING PROFESSORSHIPS

HARVARD LAW SCHOOL	
SIDLEY AUSTIN VISITING PROFESSOR	Fall 2007
STANFORD LAW SCHOOL	Spring 2006
NEW YORK UNIVERSITY LAW SCHOOL	Fall 2004

OTHER WORK EXPERIENCE

REDISTRICTING CONSULTANT

Consultant to Redistricting Commission of Prince George's County — 2011, Upper Marlboro, MD

Consultant to redistricting commission of Prince George's County, Maryland, concerning County Council Districts.

Consultant to the Chief Justice of Puerto Rico — 2011, San Juan, PR

Consultant to Chief Justice Federico Hernández Denton during the process of redistricting of districts for the Senate and house of Representatives of Puerto Rico.

COURT APPOINTED EXPERT

Redistricting of Georgia General Assembly — Feb.-March 2004, Atlanta, GA

Appointed by U.S. District Court for the Northern District of Georgia to draw districts for Georgia House of Representatives and Senate. Plan adopted in Larios v. Cox, 314 F.Supp.2d 1357 (N.D.Ga., 2004).

Redistricting of Maryland State Legislative Districts — June 2002, Annapolis, MD

Appointed by Maryland Court of Appeals to draw Court plan, currently in effect, for 2002 state legislative districts. Plan adopted in *In re Legislative Redistricting of State*, 805 A.2d 292 (Md. 2002).

Redistricting of New York Congressional Districts — May-June 2002, New York, NY

Pursuant to *Rodriguez v. Pataki*, 2002 WL 1058054 (S.D.N.Y. 2002), appointed by Special Master Frederick B. Lacey to draw plan for New York State's congressional districts, later superseded by state legislature's plan.

EXPERT WITNESS

California State Senate — 2002-2003
Redistricting Litigation — Sacramento, CA

Served as an expert to evaluate the 2002 California Senate and Congressional redistricting plans concerning those plans' compliance with state constitutional provisions requiring respect for political subdivisions and geographic regions.

OUTSIDE COUNSEL

Bethlehem Area Unified School District — 2008
Bethlehem, PA

Consultant to school district in settlement concerning lawsuit alleging vote dilution in school district boundaries.

Miami-Dade County Attorneys Office — 2002
Miami, Florida

Consultant to Miami-Dade County in litigation involving the 2000 redistricting process and challenges to the structure of local government.

ASSOCIATE COUNSEL — 1999-2001
Brennan Center for Justice at NYU School of Law — New York, NY

LAW CLERK — 1998-1999
The Honorable David S. Tatel — Washington, DC
U.S. Court of Appeals, D.C. Circuit

LEGAL EXTERN — June-August 1996
The Honorable John T. Noonan — San Francisco, CA
U.S. Court of Appeals, Ninth Circuit

GRADUATE STUDENT INSTRUCTOR & RESEARCH ASSISTANT — 1994-1995
Professor Nelson Polsby — Berkeley, CA
Institute of Governmental Studies, U.C. Berkeley

EDUCATION

STANFORD LAW SCHOOL, J.D. with Distinction, 1998

- President, Volume 50, *Stanford Law Review*.

U.C. BERKELEY, M.A., 1994; Ph.D. in Political Science, 2002

- Recipient of the Edith Pence and Jacob Javits Scholarships.
- Thesis Title: *When Political Parties Go to Court.*
- Thesis Committee: Nelson Polsby, Bruce Cain, Raymond Wolfinger, Robert Post.

HEBREW UNIVERSITY OF JERUSALEM, 1992-1993
Raoul Wallenberg & Rotary Foundation Scholar.

YALE UNIVERSITY, B.A. & M.A. in Political Science, 1992
Phi Beta Kappa, *Magna Cum Laude*, Distinction in the Major, Recipient of the Haas Prize, Richard Sewall Cup, and Frank M. Patterson Prize for the finest senior project in American Politics.

PUBLICATIONS

The 2000 Congressional Redistricting Process in Retrospect: How Biased and How Competitive? (work in progress) (with Jason Kelly).

Public Opinion and the Sotomayor and Kagan Confirmations (work in progress) (with Amy Semet and Stephen Ansolabehere).

Public Opinion and Bush v. Gore: *Ten Years Later*, (work in progress) (with Amy Semet and Stephen Ansolabehere).

Taking Politics as Markets (Too) Seriously, (work in progress) (with Edward Rock).

Profiling Originalism, 111 COLUMBIA LAW REVIEW 356 (2011) (with Jamal Greene and Stephen Ansolabehere).

Measuring Election System Performance, 13 NYU JOURNAL OF LAW AND POLITICS 445 (2011) (with Stephen Ansolabehere).

The Law of the Census: How to Count, What to Count, Whom to Count, and Where to Count Them, 32 CARDOZO LAW REVIEW 755 (2011).

"Celebrating" the Tenth Anniversary of the 2000 Election Controversy: What the World Can Learn from the Recent History of Election Dysfunction in the United States, 44 INDIANA LAW REVIEW 85 (2010).

Partisanship, Public Opinion, and Redistricting, in 9 ELECTION LAW JOURNAL 325 (2010); *reprinted in* RACE, REFORM, AND REGULATION OF THE ELECTORAL PROCESS: RECURRING PUZZLES IN AMERICAN DEMOCRACY (Heather Gerken, et al. eds.) (2011) (with Joshua Fougere and Stephen Ansolabehere).

Race, Region, and Vote Choice in the 2008 Election: Implications for the Future of the Voting Rights Act, 123 HARVARD LAW REVIEW 1385 (2010) (with Stephen Ansolabehere and Charles Stewart).

Court Decisions and Trends in Support for Same-Sex Marriage (with Patrick J. Egan), POLLING REPORT, Aug. 17, 2009.

Fig Leaves and Tea Leaves in the Supreme Court's Recent Election Law Decisions, 2008 SUPREME COURT REVIEW 89 (2009).

Defacing Democracy?: The Changing Nature and Rising Importance of As-Applied Challenges in the Supreme Court's Recent Election Law Decisions, 93 MINNESOTA LAW REVIEW 1644 (2009) (with Jennifer Rosenberg).

The Constitutional Relevance of Alleged Legislative Dysfunction, 117 YALE LAW JOURNAL POCKET PART 256 (2008).

Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements, 121 HARVARD LAW REVIEW 1737 (2008) (with Stephen Ansolabehere).

PUBLIC OPINION AND CONSTITUTIONAL CONTROVERSY (Oxford University Press, 2008) (edited with Jack Citrin & Patrick Egan).

Eat Dessert First, 5 THE FORUM (2007)

The Promise and Pitfalls of the New Voting Rights Act, 117 YALE LAW JOURNAL 174 (2007).

Political Questions and Political Cases: The Evolving Justifications for Judicial Involvement in Politics, *in* Nada Mourtada-Sabbah & Bruce E. Cain, THE POLITICAL QUESTION DOCTRINE AND THE SUPREME COURT OF THE UNITED STATES (Rowman & Littlefield, 2007).

Strict in Theory, Loopy in Fact, 105 MICHIGAN LAW REVIEW FIRST IMPRESSIONS 43 (2006).

The Place of Competition in American Election Law, *in* MICHAEL MCDONALD & JOHN SAMPLES EDS., THE MARKETPLACE OF DEMOCRACY (Brookings Inst. Press 2006).

Options and Strategies for Renewal of the Section Five of the Voting Rights Act, *in* THE FUTURE OF THE VOTING RIGHTS ACT 255, 257 (David L. Epstein, et al. eds., 2006); *reprinted and revised in*, 49 HOWARD LAW JOURNAL 717 (2006).

Forty Years in the Political Thicket: Evaluating Judicial Oversight of Redistricting Since Reynolds v. Sims, *in* Thomas Mann & Bruce E. Cain eds., PARTY LINES: COMPETITION, PARTISANSHIP, AND CONGRESSIONAL REDISTRICTING (Brookings Inst. Press, 2005).

The Law of American Party Finance, *in* Keith Ewing & Samuel Issacharoff, PARTY FUNDING AND CAMPAIGN FINANCING IN COMPARATIVE PERSPECTIVE (Hart, 2005).

When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 GEORGE WASHINGTON UNIVERSITY LAW REVIEW 1131 (2005).

Regulating Democracy through Democracy: The Use of Direct Legislation in Election Law Reform, 78 SOUTHERN CALIFORNIA LAW REVIEW 997 (2005) (with Melissa Cully Anderson).

Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law, 153 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 119 (2004) (with Kelli Lammie).

Soft Parties and Strong Money, 3 ELECTION LAW JOURNAL 315 (2004).

Contested Concepts in Campaign Finance, 6 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 118 (2003).

The Search for Comprehensive Descriptions and Prescriptions in Election Law, 35 CONNECTICUT LAW REVIEW 1511 (2003).

Suing the Government in Hopes of Controlling It: The Evolving Justifications for Judicial Involvement in Politics, 5 UNIVERSITY OF PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW 607 (2003).

In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders, 115 HARVARD LAW REVIEW 593 (2002).

Soft Money and Slippery Slopes, 1 ELECTION LAW JOURNAL 401 (2002).

The Legal Implications of a Multiracial Census, *in* Joel Perlmann & Mary Waters, THE NEW RACE QUESTION (Russell Sage Press, 2002).

The Complicated Impact of One Person One Vote on Political Competition and Representation, 80 NORTH CAROLINA LAW REVIEW 1299 (2002) (with Thad Kousser & Patrick Egan).

The Blanket Primary in the Courts: The History and Precedent of California Democratic Party v. Jones, *in* VOTING AT THE POLITICAL FAULT LINE: CALIFORNIA'S EXPERIMENT WITH THE BLANKET PRIMARY (Bruce E. Cain & Elisabeth Gerber eds.) (University of California Press, 2002).

Candidates v. Parties: The Constitutional Constraints on Primary Ballot Access Laws, 88 GEORGETOWN LAW JOURNAL 2181 (2001).

Toward a Functional Defense of Political Party Autonomy, 76 N.Y.U. LAW REVIEW 750 (2001).

The Right to Be Counted, 53 STANFORD LAW REVIEW 1077 (2001) (reviewing PETER SKERRY, COUNTING ON THE CENSUS? (2000)).

Color by Numbers: Race, Redistricting, and the 2000 Census, 85 MINNESOTA LAW REVIEW 899 (2001).

THE REAL Y2K PROBLEM: CENSUS 2000 DATA AND REDISTRICTING TECHNOLOGY (Brennan Center 2000) (Editor and Contributor).

The Legal Status of Political Parties: A Reassessment of Competing Paradigms, 100 COLUMBIA LAW REVIEW 775 (2000) (with Bruce Cain).

The Right to Bail in International Extradition Proceedings, 34 STANFORD JOURNAL OF INTERNATIONAL LAW 407 (1998).

The Peculiar Geography of Direct Democracy: Why the Initiative, Referendum and Recall Developed in the American West, 2 MICHIGAN LAW & POLICY REVIEW 11 (1997).

The Parliamentary Option for California Government, *in* CONSTITUTIONAL REFORM IN CALIFORNIA: MAKING STATE GOVERNMENT MORE EFFECTIVE AND

RESPONSIVE (Bruce E. Cain & Roger G. Noll eds.) (IGS Press 1995) (with Bruce Cain).

CONGRESSIONAL TESTIMONY

United States v. Stevens: The Supreme Court's Decision Invalidating the Crush Video Statute, Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House Committee on the Judiciary, 111th Cong. (May 26, 2010).

Voter Registration: Assessing Current Problems, Hearing before the United States Senate Committee on Rules and Administration, 111th Cong. (March 11, 2009).

Understanding the Benefits and Costs of Section 5 Preclearance, Hearing before the United States Senate Committee on the Judiciary, 110th Cong. (May 17, 2006).

The States' Choice of Voting Systems Act: Hearing on H.R. 1173 before the Subcommittee on the Constitution of the House Committee on the Judiciary, 106th Cong. (Sept. 23, 1999).

SUPREME COURT AMICUS BRIEFS FILED

Brief for Nathaniel Persily, et al., Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 1738645 (US 2009) (No. 08-322).

Brief for Nathaniel Persily et al., Bartlett v. Strickland, 129 S. Ct. 1231 (2009).

Brief Amicus Curiae of Brennan Center for Justice at NYU School of Law in Support of Appellees, Utah v. Evans, 536 U.S. 452 (2002) (No. 01-714).

Brief Amicus Curiae of Brennan Center for Justice at NYU School of Law in Support of Respondents, Bush v. Gore, 531 U.S. 98 (2000) (No. 00-949).

BAR, EDITORIAL BOARD, AND PROFESSIONAL ASSOCIATION MEMBERSHIPS

- Member of the New York and United States Supreme Court Bars.
- Editorial Board, *Election Law Journal* and *The Forum.*
- United Nations Roster of Electoral Experts.
- American Political Science Association; Advisory Committee to Law and Political Process Study Group.
- Executive Committee, Section on Legislation, Association of American Law Schools (2004).
- Advisory Committee, Electoral Institute, Veracruz, Mexico.
- AEI-Brookings Election Reform Task Force.

RECENT SPEECHES AND PAPER PRESENTATIONS

- *Race, Party and Community Representation in the Redistricting Process*, Yale Law School, New Haven, CT, Feb. 25, 2011.
- *The Causes of Party Polarization in Congress,* HARVARD JOURNAL OF LEGISLATION Symposium, Harvard Law School, Cambridge, MA, Feb. 24, 2011.
- *Politics and the Roberts Court,* EMORY LAW JOURNAL Thrower Symposium, Emory Law School, Atlanta, GA, Feb. 10, 2011.
- *The 2010 Census and Election,* Columbia Law School Federalist Society, Feb 9, 2011.
- *The Shifting Sands of Redistricting Law: Unanswered Questions for the 2010 Cycle*, National Conference of State Legislatures, National Harbor, MD, Jan 23, 2011.
- *The Constitutional Politics of the Tea Party Movement*, Association of American Law Schools Annual Meeting, San Francisco, CA, Jan. 6, 2011.
- *Profiling Originalism*, Law, Economics, and Organization Workshop, Yale Law School, New Haven, CT, Dec. 9, 2010.
- *The Tenth Anniversary of Bush v. Gore,* Columbia Law School Alumni Breakfast Series, Greenberg Traurig, New York, NY, Dec. 2, 2010.
- *Bush v. Gore: A Decade Later,* ST. THOMAS LAW REVIEW Symposium, Miami, FL, Nov. 12-13, 2010.
- *Redistricting 2011: Decisions of a Decade*, Council of State Governments Intergovernmental Affairs Committee, Providence, RI, Dec. 5, 2010.
- *Expert Witnesses in Redistricting,* NAACP Legal Defense and Education Fund, Airlie Conference Center, Warrenton, VA Oct. 9, 2010.
- *Citizens United,* UNC First Amendment Law Review, University of North Carolina, Chapel Hill, NC, Oct. 8, 2010.
- *Redistricting Cases Since the Last Census,* National Conference of State Legislatures, Redistricting Task Force, Providence, RI, Sept. 26, 2010.
- *Profiling Originalism,* George Washington University Law School Faculty Workshop, Washington, DC, Sept. 21, 2010.
- *American Law Institute Conference on Election Law,* Philadelphia, PA, June 10, 2010.
- *"United We Stand, United We Fall?",* Panel Discussion on Citizens' United v. FEC, Stanford Law School Alumni Event, Waldorf Astoria, May 4, 2010.
- *Voting and Democratic Participation,* Conference on "Acknowledging Race in a 'Post-Racial' Era," Cardozo Law School, New York, NY. Apr. 30, 2010.
- *The Law of Democracy in the Age of Obama and Roberts*, Columbia Law Alumni Association, Ropes and Gray, LLP, Boston, MA, April 13, 2010.
- *The Law of the Census*, Indiana Law Review Conference on the Law of Democracy, Indiana Law School, Indianapolis, IN, April 9, 2010.
- *A Closer Look at Key Decisions Since 2000*, National Conference of State Legislatures Redistricting Task Force, Austin, TX, Mar. 26, 2010.
- *Race and the Law in the Age of Obama and Roberts,* 2010 Edward Brodsky Legal Conference, Anti Defamation League, New York Times Building, March 4, 2010 (moderator).
- *Taking Politics as Markets (Too) Seriously, The Past Present and Future of Election Law:* A Symposium Honoring the Work of Daniel Lowenstein, UCLA Law School, Los Angeles, CA, Jan. 29, 2010.

- *The Redistricting Experience – Tales from the Field*, Redistricting Reform & Voting Rights - Identifying Common Ground and Challenges, Warren Institute, UCDC, Washington, DC, Nov. 10, 2010.
- "Democracia Electoral, Hacia Una Nueva Agenda," Electoral Institute of Veracruz, Veracruz, Mexico, October 15-16, 2009.
- *Election Law in the Age of Obama and Roberts,* Stone Agers Luncheon, St. Regis Hotel, New York, NY, Sept. 30, 2009.
- *Race, Region and Vote Choice in the 2008 Election*, The Ohio State Moritz College of Law Faculty Workshop, Columbus, OH, Sept. 23, 2009.
- *Originalism in the American Mind,* James Goold Cutler Lecture, William and Mary Law School, Williamsburg, VA, Sept. 17, 2009.
- *Gay Marriage, the Courts and Direct Democracy*, Roundtable at American Political Science Association Annual Meeting, Toronto, Canada, Sept. 4, 2009.
- *Reflections on the Supreme Court's Recent Voting Rights Cases,* New America Foundation, Washington, DC, June 30, 2009
- *New Developments in the Meaning of the Voting Rights Act,* National Conference of State Legislatures Redistricting Task Force, San Francisco, CA, June 14, 2009.
- *Voter Registration Reform*, AEI-Brookings Election Reform Project, Washington, DC, June 2, 2009.
- *The Meaning of the Voting Rights Act in the Age of Obama*, Stanford Law School Faculty Workshop, Stanford, CA, Mar. 18, 2009.
- *Election 2008: Looking Back and Moving Forward*, American Friends of the Hebrew University, New York, NY, Mar. 17, 2009; Columbia Law Alumni and Admittee Event, Washington, DC Mar. 17, 2009.
- *Election Administration Issues in the 2008 Election*, Tobin Project/ALI Elections Scholarship Conference, Duke Law School, Durham, NC, Feb. 27, 2009.
- *The Associational Rights of Political Parties: Recent Cases and Reform Efforts*, New York Bar Association, Election Law Committee, New York, NY, March 26, 2009.
- *Fig Leaves and Tea Leaves in the Supreme Court's Recent Election Law Decisions*, University of Miami Law Review Symposium, Miami, FL, Jan. 4, 2009; University of Minnesota Law School Public Law Workshop, Minneapolis, MN, Jan. 6, 2009.
- *Redistricting War Stories*, American Mathematics Society, Washington, DC, Jan. 8, 2009.
- *Everything You Ever Wanted to Know About Election Law*, Ezra Stiles College Master's Tea and Fellows Dinner, Yale University, New Haven CT, Oct. 30, 2008.
- *Litigation in the 2008 Election,* New York State Bar Association Committee on Minorities in the Profession, New York, NY, Oct. 28, 2008.
- *The Crawford Decision and the Future of Voter Identification,* University of Maryland, Baltimore, MD, Oct. 16, 2008.
- *Reforming the Presidential Nomination Process*, Stanford Law School, Stanford, CA, Oct. 3, 2008.
- *Defacing Democracy: The Rising Importance and Salience of As-Applied Challenges in the Roberts Court,* Rutgers-Camden Law School, Camden, NJ, Sept., 22, 2008; Minnesota Law School, Minneapolis, MN, Oct. 17, 2008.
- *The Law and Politics of the 2008 Election,* Columbia Alumni Association of the District of Columbia, Washington, DC, Oct. 15, 2008; New York Alumni Event, New York, NY, Oct. 7, 2008.

- *Litigating the 2008 Election*, Connecticut Bar Association, District of Connecticut Bench-Bar Conference, Sept. 19, 2009.
- *Improving our Elections: Future Research and Reform*, Carnegie Foundation, New York, NY, Sept. 18, 2008.
- *Legal Issues in the 2008 Election*, Cardozo Law School, Mar. 26, 2008.
- *Voting Rights, Voter Fraud and Election Administration,* Harvard Journal on Legislation conference on "Voices on Voting: Election Law in 2008," Cambridge, MA, Mar. 6, 2008.
- *Vote Fraud in the Eye of the Beholder,* Columbia Law School, Feb. 26, 2008; University of Chicago Law School, Mar. 4, 2008.
- *The New Voting Rights Act*, Journal of Law and Politics, University of Virginia Law School, Charlottesville, VA, Feb. 23, 2008.
- *Redistricting in Democratic Theory*, Byron White Center Symposium on Reapportioning Colorado, Old Supreme Court Chambers, Colorado State Capitol, Denver, CO, Jan. 25, 2008.
- Preview of the 2008 Election Campaign, Election Law Society, Harvard Law School, Cambridge, MA, Oct. 10, 2007; Columbia Law School Alumni Association, Nov. 8, 2007.
- Preliminary Results from the 2006 Cooperative Congressional Election Survey (with Stephen Ansolabehere), Stanford Law School, Stanford, CA Apr. 6, 2007.
- *The Implications of the 2003 Texas Redistricting Controversy*, Symposium on *Lines in the Sand,* University of Texas Law School, Austin, TX, March 2, 2007.
- *Public Opinion and Constitutional Controversy*, Symposium on Positive Approaches to Constitutional Law and Theory, University of Pennsylvania Law School, Philadelphia, PA, Feb. 24, 2007.
- *The Implications of the 2006 Elections for Legal Debates over Partisan Gerrymandering*, NYU Annals of American Law Conference, New York University Law School, New York, NY, Feb. 23, 2007.
- *The Promises and Pitfalls of the New Voting Rights Act,* Faculty Workshop, Columbia Law School, New York, NY, Jan. 11, 2007; USC Center on Law and Politics, Los Angeles, CA, Apr. 10, 2007; Northwestern Law School, Chicago, IL, Apr. 17, 2007; Harvard Law School, Cambridge, MA, Oct. 4, 2007.
- *Nonpartisanship, Competition and Minority Voting Rights*, UNC Center for Civil Rights, Chapel Hill, NC, Feb. 3, 2006; Humphrey Inst., University of Minnesota, Minneapolis, MN, Apr. 25, 2006.
- *The Constitutionality of the Voting Rights Act*, Congressional Black Caucus Foundation, Washington, DC, Mar. 9, 2006.
- *The Place of Competition in American Election Law*, Cato Institute, Washington, DC, Mar. 9, 2006.
- *Public Funding of Election Campaigns: Options for Reform and Questions for Research,* University of Wisconsin, Madison, WI, Jan. 28, 2006.
- *Gay Marriage, Public Opinion and the Courts*, American Political Science Association Annual Meeting, Sept. 1, 2005; Emory Law School Faculty Workshop, Sept. 21, 2005; University of Michigan Law School Faculty Workshop, Nov. 16, 2005; Hebrew University of Jerusalem, Jan. 2, 2006; Bar Ilan Law School, Jan. 3, 2006; Tel Aviv Law School, Jan. 5, 2006; Williams Institute at UCLA Law School, Feb. 24, 2006, Stanford Law School Faculty Workshop, March 22, 2006; Columbia Law School Faculty Workshop, June 13, 2006; Northwestern Law School, April 17, 2007.

- *Options and Strategies for Renewal of Section Five of the Voting Rights Act,* Conference on "Lessons From the Past, Prospects for the Future: Honoring the 40th Anniversary of the Voting Rights Act of 1965," Yale University, April 23, 2005; Russell Sage Foundation, New York, NY, June 24, 2006; Howard Law School, Branton Symposium, Oct. 28, 2005.
- *New Politics*, Conference on "The Constitution in 2020," American Constitution Society, Yale Law School, Apr. 9, 2005.
- *Constitutional Issues in the Terry Schiavo Case*, Penn Law School, Mar. 29, 2005.
- *Regulating Democracy Through Democracy*, Conference on "The Impact of Direct Democracy," Initiative and Referendum Institute, U.C. Irvine, Irvine, CA, Jan. 15, 2005.
- *Conflicts of Interest in Comparative Perspective*, University of Trento, Trento, Italy, Sept. 17, 2004.
- *Partisan Gerrymandering after Vieth v. Jubelirer* and *The Constitutionality of Counting the Overseas Population*, National Conference of State Legislatures, Salt Lake City, UT, July 20-21, 2004.
- *Money, Elections and Political Equality: Campaign Finance After McConnell,* American Constitution Society, Washington, DC, June 19, 2004.
- *Homeland Security and Civil Liberties*, Joint Conference Sponsored by U.S. Army War College and Penn Law School, June 18, 2004 (conference organizer).
- *Understanding McConnell v. FEC*, Program in Law and Public Affairs, Princeton University, May 27, 2004.
- *Redistricting Georgia*, Ad Hoc Workshop, Penn Law School, April 22, 2004.
- *Forty Years in the Political Thicket: Evaluating Judicial Oversight of Redistricting Since Baker v. Carr,* The Brookings Institution, Apr. 16, 2004.
- *American Election Law*, The Moscow School for Political Studies, National Constitution Center, March 26, 2004.
- *The Constitutional Law of American Elections*, Fels School of Government, University of Pennsylvania, March 11, 2004.
- *American Election Law*, Penn Law Board of Overseers, Penn Club of New York, March 12, 2004.
- *The Law of the Census: How to Count, What to Count, Whom to Count, and Where to Count Them*, U.S. Census Bureau, March 4, 2004.
- *Perceptions of Corruption and Campaign Finance,* Southwestern Law School, Feb. 23, 2004; American Political Science Association, Chicago, IL, Sept. 3, 2004, Boalt Hall School of Law, Berkeley, CA, Sept. 7, 2004, Seton Hall Law School, Oct. 29, 2004, NYU Law School, Nov. 15, 2004.
- *The Law of Democracy*, Conference Organizer and Panelist, Penn Law Review, Feb. 6-7, 2004.
- *Redistricting Controversies*, Dianne Rehm Show, National Public Radio, Dec. 4, 2003.
- *Judging in the Current Era*, American Constitution Society, Penn Law School, Nov. 18, 2003 (moderated panel of four federal judges).
- *Panel on Appointment of Federal Judges*, Penn Law Public Interest Program, Oct. 29, 2003.
- *MSNBC* commentator for legal issues surrounding California recall, Aug.-Oct. 2003.
- *Recent Supreme Court Decisions, Chestnut Hill Academy*, Sept. 2003.
- *McConnell v. FEC: Understanding the Decision and Its Implications*, Penn Law, May 15, 2003 (conference organizer and speaker).

- *The Law and Technology of the Redistricting Process*, Columbia Law School, Feb. 6, 2003; NYU School of Law, Sept. 30, 2002.
- *The Effect of the BCRA on State Political Parties*, National Conference of State Legislatures, Washington, DC, Dec. 12, 2002.
- *American Election Law*, Speech to visiting election officials from China, Taiwan, and Hong Kong. Sponsored by the Carter Center, National Committee on U.S. Chinese Relations, Women's Campaign International. Fels School of Government, Nov. 3, 2002.
- *In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, National Conference of State Legislatures (Washington, DC, Dec. 12, 2002); University of Miami Law School, (Oct. 25, 2002); University of Pennsylvania Department of Political Science (Oct. 10, 2002); Rutgers-Camden Law School (Sept. 9, 2002); University of Pennsylvania Law School (Aug. 15, 2002).
- *Parties, Money and Corruption,* "The Funding of Political Parties Workshop," Institute of Advanced Legal Studies, University of London, July 5-6, 2002.
- *Redistricting New York,* University of Pennsylvania Law School Ad Hoc workshop, Summer 2002.
- *The Law and Technology of the 2000 Redistricting Process*, Harvard Law School, Apr. 22, 2002.
- *Strategies for Election Reform and their Legal Consequences*, Georgetown Journal on Poverty Law and Policy, Georgetown University Law Center, Feb. 25, 2002.
- *The Political Impact of One Person, One Vote*, Symposium on Baker v. Carr, University of North Carolina Law School, Chapel Hill, NC, Nov. 2-4, 2001.
- *Understanding and Complying with Bush v. Gore*, Election Law Task Force of the National Conference of State Legislatures, National Press Club, May 9, 2001.
- *Multiraciality and the 2000 Census*, Brennan Center at NYU Law School, May 4, 2001.
- *Latino Representation and the 2000 Redistricting Process,* National Meeting of the Latino Law Students Association, Columbia Law School, Mar. 2, 2001.
- *The Law, Politics, and Technology of the 2000 Redistricting Process*, Eagleton Institute of Public Affairs, Rutgers University, Dec. 18, 2000.
- *The Legal Regulation of Party Primaries*, Annual Meeting of the American Political Science Association, Washington, DC, Sept. 1, 2000.

Selected Media Appearances and Interviews

- *Television*: NBC, ABC, CBS, CNN, MSNBC, FoxNews, Bloomberg, CNNfn.
- *Radio*: NPR, CBS Radio, ABC Radio, BBC Radio, Voice of America.
- *Newspapers and Wire Services*: New York Times, Washington Post, Wall Street Journal, Los Angeles Times, San Francisco Chronicle, Philadelphia Inquirer, Washington Times, Houston Chronicle, Christian Science Monitor, Dallas Morning News, Miami Herald, Atlanta Journal Constitution, Detroit Free Press, Baltimore Sun, the Guardian, McClatchy, Knight Ridder, Gannett, Associated Press, United Press International.
- *Other periodicals*: The New Yorker, The New Republic, Congressional Quarterly, Roll Call.

SCHOOL OF SOCIAL SCIENCE
University of California, Irvine
3151 Social Science Plaza
Irvine CA 92697-5100
949-824-6394
bgrofman@uci.edu

2008 VITA- BERNARD GROFMAN

EDUCATION

B.S.	University of Chicago, Mathematics (1966)
M.A.	University of Chicago, Political Science (1968)
Ph.D.	University of Chicago, Political Science (1972)

ACADEMIC POSITIONS HELD

2008-	Jack W. Peltason Endowed Chair, University of California, Irvine.
1980-	Professor of Political Science and Social Psychology, University of California, Irvine
2001-	Adjunct Professor of Economics, University of California, Irvine
2008-	Director, Center for the Study of Democracy, UCI Interdisciplinary Organized Research Unit
2008	Scholar-in-Residence, Nuffield College, Oxford University (June)
2008	Scholar-in-Residence, IRGEI Laboratory for Political Economy, University of Paris II (Pantheon), France (April-May)
2007	Scholar-in-Residence, IRGEI Laboratory for Political Economy, University of Paris II (Pantheon), France (April-June)
2006	Scholar-in-Residence, New York University School of Law (Sept.-Dec.)
2003	Gaspar de Portola Scholar-in-Residence, Department of Economics, Pompeu Fabra University, Barcelona, Spain (May-June)
2002	Scholar-in-Residence, Berlin Science Center (Wissenschafts Zentrum), Germany (July)
2001	Fellow, University Institute of Advanced Study and Scholar-in-Residence, Department of Political Science, University of Bologna, Italy (April-June)
1990	Scholar-in-Residence, Institute for Legal Studies, Kansai University, Osaka, Japan (June-July)
1989	Visiting Professor, Department of Political Science, University of Michigan (Fall Semester).

1985-86	Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford
1985	College Visiting Professor, Department of Political Science, University of Washington, Seattle (Spring Quarter).
1984	Guest Scholar (Sabbatical), Governmental Studies Program, Brookings Institution (Winter Quarter).
1976-80	Associate Professor of Political Science and Social Psychology, University of California, Irvine.
1975-76	Visiting Assistant Professor, School of Social Sciences, University of California, Irvine (Winter and Spring Quarters).
1975	Adjunct Assistant Professor, Applied Mathematics, SUNY at Stony Brook (Spring Semester).
1973	Visiting Lecturer (Gastdozent), Lehrstuhl fuer Politische Wissenschaft, University of Mannheim (Summer Semester).
1971-76	Assistant Professor, Political Science, SUNY at Stony Brook.
1970-71	Instructor, Political Science, SUNY at Stony Brook.

PROFESSIONAL AFFILIATIONS

American Political Science Association
Public Choice Society
Law and Society Association
American Institute of Parliamentarians

EDITORIAL BOARDS

1980-83	American Journal of Political Science
1983-85	Law and Society Review
1986-88	Society for Orwellian Studies
1987-89	American Politics Quarterly
1989-91	Political Analysis
1991-	Public Choice
1996-	Electoral Studies
1997-01	Journal of Politics
1999-01	Member, Advisory Board, Encyclopedia of Public Choice
2001-	Election Law Journal
2001-03	Member, Advisory Board, Rivista Italiana di Politiche Pubbliche (University of Bologna)

PUBLICATIONS

Books (published)

(P1) Grofman, Bernard, Lisa Handley and Richard Niemi. Minority Representation and the Quest for Voting Equality. New York: Cambridge University Press, 1992.

(P2) Merrill, Samuel III and Bernard Grofman. A Unified Theory of Voting: Directional and Proximity Spatial Models. New York: Cambridge University Press, 1999.

(P3) Adams, James, Samuel Merrill and Bernard Grofman. A Unified Theory of Party Competition: A Cross-National Analysis Integrating Spatial and Behavioral Factors. New York: Cambridge University Press, 2005.

(P4) Regenwetter, Michael, Bernard Grofman, A. A. J. Marley and Ilia Tsetlin. Behavioral Social Choice: Probabilistic Models, Statistical Inference, and Applications. New York: Cambridge University Press. 2006.

Edited Books (published)

(E1) Grofman, Bernard N., Arend Lijphart, Robert McKay and Howard Scarrow (Eds.), Representation and Redistricting Issues. Lexington, MA: Lexington Books, 1982.

(E2) Lijphart, Arend and Bernard Grofman (Eds.), Choosing an Electoral System. New York: Praeger, 1984.

(E3) Grofman, Bernard N. and Arend Lijphart (Eds.), Electoral Laws and Their Political Consequences. New York: Agathon Press, 1986.

(E4) Grofman, Bernard N. and Guillermo Owen (Eds.), Information Pooling and Group Decision Making. Greenwich, CT: JAI Press, 1986.

(E5) Grofman, Bernard N. and Donald Wittman (Eds.), The "Federalist Papers" and the New Institutionalism. New York: Agathon Press, 1989.

(E6) Grofman, Bernard N. (Ed.), Political Gerrymandering and the Courts. New York: Agathon Press, 1990.

(E7) Grofman, Bernard and Chandler Davidson (Eds.), Controversies in Minority Voting: The Voting Rights Act in Perspective. Washington D.C.: The Brookings Institution, 1992.

(E8) Grofman, Bernard N. (Ed.), Information, Participation and Choice: An `Economic Theory of Democracy' in Perspective. Ann Arbor, Michigan: University of Michigan Press, 1993.

(E9) Davidson, Chandler and Bernard Grofman (Eds.), Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990. Princeton, NJ: Princeton University Press, 1994.

(E10) Grofman, Bernard (Ed.) Legislative Term Limits: Public Choice Perspectives. Boston, MA: Kluwer, 1996.

(E11) Grofman, Bernard (Ed.) Race and Redistricting in the 1990s. New York: Agathon Press,

1998.

(E12) Grofman, Bernard, Sung-Chull Lee, Edwin Winckler, and Brian Woodall (Eds.) Elections in Japan, Korea and Taiwan under the Single Non-Transferable Vote: The Comparative Study of an Embedded Institution. Ann Arbor, MI: University of Michigan Press, 1999.

(E13) Grofman, Bernard (Ed.) Legacies of the 1964 Civil Rights Act. Charlottesville: University Press of Virginia, 2000.

Edited Books (published) (cont.)

(E14) Bowler, Shaun and Bernard Grofman (Eds.) Elections in Australia, Ireland and Malta under the Single Transferable Vote. Ann Arbor: University of Michigan Press, 2000.

(E15) Grofman, Bernard (Ed.). Political Science as Puzzle Solving. Ann Arbor, MI: University of Michigan Press, 2001.

(E16) Grofman, Bernard and Arend Lijphart (Eds.) The Evolution of Electoral and Party Systems in the Nordic Countries. New York: Agathon Press, 2002.

MAJOR RESEARCH GRANTS

1998-01	National Science Foundation Program in Methodology Measurement and Statistics, "Collaborative Research on Probabilistic Models of Social Choice," (NSF# SBR-97-30578, $213,000 with Anthony Marley, Co-PI)
1994-95	Electoral Laws, Electoral Lists and Campaigning in the First Non-Racial South African General Election, National Science Foundation, National Science Foundation (NSF# SBR-93- 21864, $39,512, with Arend Lijphart).
1991-93	The Impact of Redistricting on the Representation of Racial Racial and Ethnic Minorities, The Ford Foundation (#446740-47007, $166,000).
1988-92	Collaborative Research on the Voting Rights Act: Implementation, Effects, and Implications for Law and Society. National Science Foundation Law and Social Sciences Program (NSF SES #88-09392, $231,000, with Chandler Davidson); Supplementary Grant for Collaborative Research on the Voting Rights Act: The Effects of Changing Electoral Systems on the Election of Women. National Science Foundation Law and Social Sciences Program (NSF SES 88-09392, $8,500, with Chandler Davidson and Susan Welch).
1987-89	Ethnic Voting Patterns in Metropolitan Toronto (Social Sciences and Humanities Research Council of Canada, $14,480, with Janet Landa and Michael Copeland).
1985-87	The Dynamics of Spatial Voting Games and Games on Graphs, National Science Foundation, Decision and Management Sciences Program (NSF SES #85-06376, $99,300, with Guillermo Owen).

1985-86 The Impact of Laws Relating to Elections and Representation, National Science Foundation, Political Science Program (NSF SES #85-15468, $23,200).

1983-84 Analysis of the Multnomah Jury Archive, National Science Foundation, Law and Social Sciences Program (NSF SES #82-18588, $35,000).

1981-83 Reapportionment and Representation. National Science Foundation, Political Science Program (NSF #SES 81-07554, $49,970 with Guillermo Owen)

MAJOR RESEARCH GRANTS (cont.)

1980-82 Applications of Game Theory to the Study of Political Institutions. National Science Foundation, Political Science Program (NSF #SES 80-07915, $31,300 with Guillermo Owen)

1978-79 Modeling Jury Decision Processes: The Multnomah Jury Archive, National Science Foundation, Law and Social Sciences Program (NSF SOC 77-24702, $73,800). $8,000 funding provided by the American Bar Association).

1978-79 Electoral System: What Difference Does it Make? National Science Foundation, Political Science Program (NSF SOC 77-24474, $35,800, with Howard Scarrow).

1976-77 Modeling Jury Decision Processes, National Science Foundation, Law and Social Sciences Program (NSF SOC 75-14091, $68,200).

HONORS AND AWARDS

2005 University of California, Irvine Academic Senate Distinguished Faculty Award for Research

2003 Co-recipient (with Timothy Brazill) of the Duncan Black Prize of the Public Choice Society for best paper published in Public Choice in 2002, ("Identifying the Median Justice on the Supreme Court through Multi-Dimensional Scaling: Analysis of the 'Natural Courts" 1953-1991")

2001- Fellow, American Academy of Arts and Sciences

2000-02 President, Public Choice Society

2001 Co-recipient (with Arend Lijphart) of the George Hallett Prize of the Representation and Electoral Systems Section of the American Political Science Association for books with a lasting contribution to the study of electoral systems (Lijphart and Grofman (Eds.) Choosing an Electoral System, 1984; Grofman and Lijphart (Eds.) Electoral Laws and Their Political Consequences, 1986)

2001 Lauds and Laurels Award for Faculty Achievement. UCI Alumni Association.

1997 The campus-wide winner, Award for Teaching Innovation and Excellence: UCI Dean for Undergraduate Education.

1996 The School of Social Sciences winner, Award for Teaching Innovation and Excellence: UCI Dean for Undergraduate Education.

1995 Lauds and Laurels Award for Professional Achievement. UCI Alumni Association.

1995 Co-recipient for (with Chandler Davidson) of the Richard Fenno Prize of the Legislative Studies Section of the American Political Science Association for the best book published in 1994 in the field of legislative studies (Quiet Revolution in the South).

1992 Designation by the Gustavus Myers Center for the Study of Human Rights in North America of Controversies in Minority Voting as one of the outstanding books on intolerance published in North America.

1991-93 Chair, Section on Representation and Electoral Systems, American Political Science Association.

1985 Co-recipient (with Philip Straffin) of the Carl B. Allendoerfer Award, Mathematical Association of America, for exposition in mathematical writing for undergraduates.

1982-85 Co-Chair, Conference Group on Representation and Electoral Systems, American Political Science Association.

HONORS AND AWARDS (cont.)

1979 Pi Sigma Alpha Award, Best Paper, Annual Meeting of the Midwest Political Science Association.

LISTINGS

Who's Who in the World, Providence, NJ: Marquis, 1998, 1999, 2000, 2001
Who's Who in America (West), Providence, NJ: Marquis, 1999
American Political Scientists: A Dictionary. Glenn H. Utter and Charles Lockhart (Eds.) Westport, CT: Greenwood Press, 2002, pp. 138-140

PROFESSIONAL ARTICLES (in print)

(1) Grofman, Bernard N., and Edward Muller. 1973. The strange case of relative gratification and potential for political violence: The V-curve. American Political Science Review, 67:514-539.

(2) Grofman, Bernard N., and Gerald Hyman. 1973. Probability and logic in belief systems. Theory and Decision, 4:179-195.

(3) Grofman, Bernard N. 1974. Helping behavior and group size, some exploratory stochastic models. Behavioral Science, 19:219-224.

(4) Grofman, Bernard N., and Gerald Hyman. 1974. The logical foundations of ideology. Behavioral Science, 19:225-237.

(5) Grofman, Bernard N. 1975. The prisoner's dilemma game: Paradox reconsidered. In Gordon Tullock (Ed.), Frontiers of Economics, 1:101-119.

(6) Mackelprang, A. J., Bernard N. Grofman, and N. Keith Thomas. Electoral change and stability: Some new perspectives. 1975. American Politics Quarterly, 3(3):315-339.

(7) Grofman, Bernard N. 1975. A review of macro-election systems. In Rudolph Wildenmann (Ed.), German Political Yearbook (Sozialwissenschaftliches Jahrbuch fur Politik), Vol. 4, Munich Germany: Gunter Olzog Verlag, 303-352.

(8) Grofman, Bernard N., and Jonathan Pool. 1975. Bayesian models for iterated prisoner's dilemma games. General Systems, 20:185-194.

(9) Grofman, Bernard N. 1976. Not necessarily twelve and not necessarily unanimous: Evaluating the impact of Williams v. Florida and Johnson v. Louisiana. In Gordon Bermant, Charlan Nemeth and Neil Vidmar (Eds.), Psychology and the Law: Research Frontiers. Lexington, MA: D.C. Heath, 149-168.

(10) Grofman, Bernard N. 1977. Jury decision-making models. In Stuart Nagel (Ed.), Modeling the Criminal Justice System, Sage Criminal Justice Systems Annuals, Vol. 7, Beverly Hills: Sage Publications, 191-203.

(11) Grofman, Bernard N., and Jonathan Pool. 1977. How to make cooperation the optimizing strategy in a two-person game. Journal of Mathematical Sociology, 5(2):173-186.

(12) Grofman, Bernard N. 1978. Judgmental competence of individuals and groups in a dichotomous choice situation. Journal of Mathematical Sociology, 6(1):47-60.

PROFESSIONAL ARTICLES (in print) (cont.)

(13) Grofman, Bernard N., and Howard Scarrow. 1979. Iannucci and its aftermath: The application of the Banzhaf Criterion to weighted voting in the State of New York. In Steven Brams, Andrew Schotter and Gerhard Schwodiauer (Eds.), Applied Game Theory. Vienna: Physica-Verlag, 168-183.

(14) Grofman, Bernard N. 1980. A preliminary model of jury decision making. In Gordon Tullock (Ed.), Frontiers of Economics, Vol. 3, 98-110.

(15) Grofman, Bernard N. 1980. Jury decision-making models and the Supreme Court: The jury cases from Williams v. Florida to Ballew v. Georgia. Policy Studies Journal, 8(5):749-772.

(16) Grofman, Bernard N. 1980. The slippery slope: Jury size and jury verdict requirements--legal and social science approaches. Law and Politics Quarterly, 2(3):285-304.

(17) Grofman, Bernard N., and Howard Scarrow. 1980. Mathematics, social science and the law. In Michael J. Saks and Charles H. Baron (Eds.), The Use/Nonuse/Misuse of Applied Social Research in the Courts. Cambridge, MA: Abt Associates, 117-127.

(18) Grofman, Bernard N. 1981. Mathematical models of juror and jury decision making: the state of the art. In Bruce D. Sales (Ed.), Perspectives in Law and Psychology, Volume II: The Trial Processes. NY: Plenum, 305-351.

(19) Grofman, Bernard N. 1981. The theory of committees and elections: The legacy of Duncan Black. In Gordon Tullock (Ed.), Toward a Science of Politics: Essays in Honor of Duncan Black. Blacksburg, VA: Public Choice Center, Virginia Polytechnic Institute and State University, 11-57.

(20) Weisberg, Herbert and Bernard N. Grofman. 1981. Candidate evaluations and turnout. American Politics Quarterly, 9(2):197-219.

(21) Grofman, Bernard N. and Howard Scarrow. 1981. Weighted voting in New York. Legislative Studies Quarterly, 6(2):287-304.

(22) Grofman, Bernard N. 1981. Alternatives to single-member plurality districts: Legal and empirical issues. Policy Studies Journal, 9(3): 875-898. (Reprinted in Bernard Grofman, Arend Lijphart, Robert McKay and Howard Scarrow (Eds.), Representation and Redistricting Issues. Lexington, MA: Lexington Books, 1982, 107-128.

(23) Taagepera, Rein and Bernard N. Grofman. 1981. Effective size and number of components. Sociological Methods and Research, 10:63-81.

PROFESSIONAL ARTICLES (in print) (cont.)

(24) Landa, Janet, and Bernard N. Grofman. 1981. Games of breach and the role of contract law in protecting the expectation interest. Research in Law and Economics Annual, 3:67-90.

(25) Grofman, Bernard N. 1982. A dynamic model of protocoalition formation in ideological n-space. Behavioral Science, 27:77-90.

(26) Grofman, Bernard N., Scott L. Feld, and Guillermo Owen. 1982. Evaluating the competence of experts, pooling individual judgements into a collective choice, and delegating decision responsibility to subgroups. In Felix Geyer and Hans van der Zouwen (Eds.), Dependence and Inequality. NY: Pergamon Press, 221-238.

(27) Grofman, Bernard N. 1982. Reformers, politicians and the courts: A preliminary look at U.S. redistricting in the 1980s. Political Geography Quarterly, 1(4):303-316.

(28) Grofman, Bernard N. and Howard Scarrow. 1982. Current issues in reapportionment. Law and Policy Quarterly, 4(4): 435-474.

(29) Grofman, Bernard N. and Guillermo Owen. 1982. A game theoretic approach to measuring degree of centrality in social networks. Social Networks, 4:213-224.

(30) Grofman, Bernard N., Guillermo Owen and Scott L. Feld. 1983. Thirteen theorems in search of the truth. Theory and Decision, 15:261-278.

(31) Grofman, Bernard N. 1983. Measures of bias and proportionality in seats-votes relationships. Political Methodology, 9:295-327.

(32) Grofman, Bernard N. and Janet Landa. 1983. The development of trading networks among spatially separated traders as a process of proto-coalition formation: the Kula trade. Social Networks, 5:347-365.

(33) Owen, Guillermo and Bernard N. Grofman. 1984. Coalitions and power in political situations. In Manfred Holler (Ed.), Coalitions and Collective Action. Wuerzburg: Physica-Verlag, 137-143.

(34) Grofman, Bernard N. 1984. The general irrelevance of the zero sum assumption in the legislative context. In Manfred Holler (Ed.), Coalitions and Collective Action. Wuerzburg: Physica-Verlag, 100-112.

(35) Glazer, Amihai, Deborah Glazer, and Bernard N. Grofman. 1984. Cumulative voting in corporate elections: Introducing strategy into the equations. South Carolina Law Review, 35(2):295-309.

PROFESSIONAL ARTICLES (in print) (cont.)

(36) Feld, Scott L. and Bernard N. Grofman. 1984. The accuracy of group majority decisions in groups with added members. Public Choice, 42: 273-285.

(37) Owen, Guillermo and Bernard N. Grofman. 1984. To vote or not to vote: The paradox of nonvoting. Public Choice, 42:311-325.

(38) Shapley, Lloyd S. and Bernard N. Grofman. 1984. Optimizing group judgmental accuracy in the presence of interdependencies. Public Choice, 43(3):329-343.

(39) Grofman, Bernard N., Michael Migalski, and Nicholas Noviello. 1985. The `totality of circumstances' test in Section 2 of the 1982 extension of the Voting Rights Act: A social science perspective. Law and Policy, 7(2):209-223.

(40) Grofman, Bernard N. Criteria for districting: A social science perspective. 1985. UCLA Law Review, 33(1):77-184.

(41) Grofman, Bernard and Carole Uhlaner. 1985. Metapreferences and reasons for stability in social choice: Thoughts on broadening and clarifying the debate. Theory and Decision, 19:31-50.

(42) Taagepera, Rein and Bernard Grofman. 1985. Rethinking Duverger's Law: Predicting the effective number of parties in plurality and PR systems--parties minus issues equals one. European Journal of Political Research, 13:341-352. (Reprinted in J. Paul Johnston and Harvey E. Pasis (Eds.). Representation and Electoral Systems: Canadian Perspectives. Englewood City, N.J.: Prentice Hall, 1988.)

(43) Niemi, Richard, Jeffrey Hill and Bernard Grofman. 1985. The impact of multimember districts on party representation in U.S. state legislatures. Legislative Studies Quarterly, 10(4):441-455.

(44) Uhlaner, Carole and Bernard Grofman. 1986. The race may be close but my horse is going to win: Wish fulfillment in the 1980 Presidential election. Political Behavior, 8(2):101-129.

(45) Feld, Scott L. and Bernard Grofman. 1986. On the possibility of faithfully representative committees. American Political Science Review, 80(3):863-879.

(46) Brace, Kimball, Bernard Grofman and Lisa Handley. 1987. Does redistricting aimed to help blacks necessarily help Republicans? Journal of Politics, 49:143-156. (Reprinted in Ann M. Bowman and R.C. Kearney, State and Local Government. Boston, MA: Houghton Miflin, 1990.)

(47) Grofman, Bernard, Guillermo Owen, Nicholas Noviello and Amihai Glazer. 1987. Stability and centrality of legislative choice in the spatial context. American Political Science Review, 81(2):539-553.

PROFESSIONAL ARTICLES (in print) (cont.)

(48) Grofman, Bernard N. Models of voting. 1987. In Samuel Long (Ed.), Micropolitics Annual, Greenwich, CT: JAI Press, 31-61.

(49) Glazer, Amihai, Bernard Grofman and Marc Robbins. 1987. Partisan and incumbency effects of 1970s congressional redistricting. American Journal of Political Science, 30(3):680-701. (Reprinted in Susan A. McManus (Ed.), Reapportionment and Representation in Florida, Lake Geneva, Wisconsin: Paladin House, 1991.)

(50) Feld, Scott L., Bernard Grofman, Richard Hartley, Mark O. Kilgour and Nicholas Miller. 1987. The uncovered set in spatial voting games. Theory and Decision, 23:129-156.

(51) Feld, Scott L. and Bernard Grofman. 1987. Necessary and sufficient conditions for a majority winner in n-dimensional spatial voting games: An intuitive geometric approach. American Journal of Political Science, 32(4):709-728.

(52) Owen, Guillermo and Bernard N. Grofman. 1988. Optimal partisan gerrymandering. Political Geography Quarterly, 7(1):5-22.

(53) Schofield, Norman, Bernard Grofman and Scott L. Feld. 1988. The core and the stability of group choice in spatial voting games. American Political Science Review, 82)(1):195-211.

(54) Grofman, Bernard and Scott L. Feld. 1988. Rousseau's general will: A Condorcetian perspective. American Political Science Review, 82(2):567-576. (Reprinted in J. Paul Johnston and Harvey Pasis (Eds.), Representation and Electoral Systems: Canadian Perspectives, NJ: Prentice Hall of Canada, 1990. Translated and reprinted in abridged form as La volonte generale de Rousseau: perspective Condorceene. In P. Crepel and C. Gilain (Eds.), des Actes du Colloque International Condorcet. Paris: Editions Minerve, 1989.) (Reprinted in Literature Criticism, Vol. 104, Warren, MI: Gale Group; also reprinted in John T. Scott (ed) Jean Jacques Rousseau: Critical Assessments of Leading Political Philosophers, Routledge, 2006)

(55) Brace, Kimball, Bernard Grofman, Lisa Handley, and Richard Niemi. 1988. Minority voting equality: The 65 percent rule in theory and practice. Law and Policy, 10(1):43-62.

(56) Feld, Scott L. and Bernard Grofman. 1988. Ideological consistency as a collective phenomenon. American Political Science Review, 82(3):64-75.

(57) Grofman, Bernard and Michael Migalski. 1988. Estimating the extent of racially polarized voting in multicandidate elections. Sociological Methods and Research, 16(4):427-454.

(58) Grofman, Bernard, Scott L. Feld and Guillermo Owen. 1989. Finagle's law and the Finagle point, a new solution concept for two-candidate competition in spatial voting games. American Journal of Political Science, 33(2):348-375.

PROFESSIONAL ARTICLES (in print) (cont.)

(59) Grofman, Bernard and Lisa Handley. 1989. Black representation: Making sense of electoral geography at different levels of government. Legislative Studies Quarterly, 14(2):265-279.

(60) Feld, Scott L., Bernard Grofman and Nicholas Miller. 1989. Limits on agenda control in spatial voting games. Mathematical and Computer Modelling, 12(4/5):405-416. (Reprinted in Paul E. Johnson (Ed.), Mathematical Modelling in Political Science. Oxford: Pergamon Press, 1989.)

(61) Erfle, Stephen, Henry McMillan and Bernard Grofman. 1989. Testing the regulatory threat hypothesis: Media coverage of the energy crisis and petroleum pricing in the late 1970s. American Politics Quarterly, 17(2):132-152.

(62) Miller, Nicholas, Bernard Grofman and Scott L. Feld. 1989. The geometry of majority rule. Journal of Theoretical Politics, 1(4):379-406.

(63) Grofman, Bernard and Barbara Norrander. 1990. Efficient use of reference group cues in a single dimension. Public Choice, 64:213-227.

(64) Grofman, Bernard N. 1990. Toward a coherent theory of gerrymandering: Bandemer and Thornburg. In Bernard Grofman (Ed.), Political Gerrymandering and the Courts. New York: Agathon Press, 29-63.

(65) Erfle, Stephen, Henry McMillan and Bernard Grofman. 1990. Regulation via threats: politics, media coverage and oil pricing decisions. Public Opinion Quarterly, 54(1):48-63.

(66) Niemi, Richard G., Bernard Grofman, Carl Carlucci and Thomas Hofeller. 1990. Measuring compactness and the role of a competent standard in a test for partisan and racial gerrymandering. Journal of Politics, 52(4):1155-1181.

(67) Feld, Scott L. and Bernard Grofman. 1990. Collectivities as actors, Rationality and Society, 2(4):429-448.

(68) Hall, Richard L. and Bernard Grofman. 1990. The committee assignment process and the conditional nature of committee bias. American Political Science Review, 84(4):1149-1166.

(69) Grofman, Bernard, and Lisa Handley. 1991. The impact of the Voting Rights Act on black representation in southern state legislatures. Legislative Studies Quarterly, 16(1):111-127.

(70) Feld, Scott L. and Bernard Grofman. 1991. Incumbency advantage, voter loyalty and the benefit of the doubt. Journal of Theoretical Politics, 3(2):115-137.

PROFESSIONAL ARTICLES (in print) (cont.)

(71) Grofman, Bernard. 1991. Statistics without substance: A critique of Freedman et al. and Clark and Morrison. Evaluation Review, 15(6): 746-769.

(72) Grofman, Bernard and Lisa Handley. 1992. Identifying and remedying racial gerrymandering. Journal of Law and Politics, 8(2):345-404.

(73) Grofman, Bernard and Scott L. Feld. 1992. Group decision making over multidimensional objects of choice, Organizational Behavior and Human Performance, 52:39-63.

(74) Grofman, Bernard. 1992. Expert witness testimony and the evolution of voting right case law. In Bernard Grofman and Chandler Davidson (Eds.), Controversies in Minority Voting: The Voting Rights Act in Perspective. Washington, D.C.: The Brookings Institution, 197-229.

(75) Grofman, Bernard. 1992. What happens after one person-one vote: Implications of the U.S. experience for Canada" in John Courtney and David Smith (Eds.), Drawing Boundaries, Saskatoon, Saskatchewan: Fifth House Publishers, 156-178; translated into French, Que se passe-t-il après "une personne, une voix"? L'expérience Américaine, for Chief Electoral Officer of Canada, Elections Canada.). An earlier and shorter version appeared as "An expert witness perspective on continuing and emerging voting rights controversies: From one person, one vote to political gerrymandering." Stetson University Law Review, 1992, 21(3):783-818

(76) Grofman, Bernard. 1993. Would Vince Lombardi have been right if he had said, `When it comes to redistricting, race isn't everything, it's the only thing'? Cardozo Law Review, 14(5):1237-1276.

(77) Grofman, Bernard. 1993. Toward an institution rich theory of political competition, with a supply-side component. In Bernard Grofman (Ed.), Information, Participation, and Choice: An Economic Theory of Democracy' in Perspective. Ann Arbor, Michigan: University of Michigan Press, 179-193.

(78) Grofman, Bernard. 1993. The use of ecological regression to estimate racial bloc voting. University of San Francisco Law Review, 27(3): 593-625.

(79) Grofman, Bernard. 1993. Public choice, civic republicanism, and American politics: Perspectives of a `reasonable choice' modeler. Texas Law Review, 71(7):1541-1587. (A portion of this [pp. 1541, 1553-66] is reprinted in Tushnet, Mark and Lisa Heinzerling, The Regulatory and Administrative State. Oxford University Press, 2006 forthcoming.)

PROFESSIONAL ARTICLES (in print) (cont.)

(80) Brischetto, Robert, David R. Richards, Chandler Davidson, and Bernard Grofman. 1994. Texas. In Davidson, Chandler and Bernard Grofman (Eds.), Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990. Princeton, NJ: Princeton University Press, 233-257.

(81) Grofman, Bernard and Chandler Davidson. 1994. The effect of municipal election structure on black representation in eight Southern states. In Davidson, Chandler and Bernard Grofman (Eds.), Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990. Princeton, NJ: Princeton University Press, 301-334.

(82) Handley, Lisa and Bernard Grofman. 1994. The Impact of the Voting Rights Act on Minority Representation: Black Officeholding in Southern State Legislatures and Congressional Delegations. In Davidson, Chandler and Bernard Grofman (Eds.), Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990. Princeton, NJ: Princeton University Press, 335-350.

(83) Glazer, Amihai, Robert Griffin, Bernard Grofman and Martin Wattenberg. 1995. Strategic vote delay in the U.S. House of Representatives. Legislative Studies Quarterly, 20(1):37-45.

(84) Skaperdas, Stergios and Bernard Grofman. 1995. Modeling negative campaigning. American Political Science Review, 89(1):49-61.

(85) Grofman, Bernard. 1995. New methods for valid ecological inference. In Monroe Eagles (Ed.), Spatial and Contextual Models in Political Research. London: Taylor and Francis, 127-149.

(86) Grofman, Bernard and Peter van Roozendaal. 1995. Toward a theoretical explanation of premature cabinet termination: With application to post-war cabinets in the Netherlands. European Journal of Political Research, 26:155-170.

(87) Landa, Janet, Michael Copeland and Bernard Grofman. 1995. Ethnic voting patterns: a case study of metropolitan Toronto. Political Geography, 14(5):435-449.

(88) Grofman, Bernard and Lisa Handley. 1995. 1990s Issues in voting rights. University of Mississippi Law Journal, 65(2):205-270.

(89) Grofman, Bernard. 1996. Extending a dynamic model of protocoalition formation. In Norman Schofield (Ed.), Collective Decision Making: Social Choice and Political Economy. Boston: Kluwer-Nijhoff, 265-280.

PROFESSIONAL ARTICLES (in print) (cont.)

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(S9) Baker, Gordon E. and Bernard Grofman. 1988. What now for gerrymandering? Opinion-Editorial Page, The San Diego Union, November 18.

(S10) Loewen, James W. and Bernard Grofman. 1989. Comment: Recent developments in methods used in voting rights litigation. Urban Lawyer 21(3):589-604.

(S11) Grofman, Bernard. 1991. Voting rights, voting wrongs: The legacy of Baker v. Carr. A report of the Twentieth Century Fund. New York: Priority Press (distributed through the Brookings Institution), 1991.

(S12) Grofman, Bernard. 1991. Voting rights may be an issue in Santa Ana. Opinion-Editorial Page, Los Angeles Times (Orange County Edition), August 5.

(S13) Grofman, Bernard. 1991. Race and redistricting: No one is using the Voting Rights Act to "whiten" majority districts. Opinion-Editorial Page, Washington Post, October 21.

(S14) Grofman, Bernard. 1993. High court ruling won't doom racial gerrymandering. Opinion-Editorial Page, Chicago Tribune, July 9.

SEMIPROFESSIONAL PUBLICATIONS (in print) (cont.)

(S15) Grofman, Bernard. 1993. The Denny beating trial: justice in the balance. Opinion-Editorial Page, Chicago Tribune, November 3.

(S16) Reynolds, Andrew S. and Bernard N. Grofman. 1994. Everyone loses in South Africa boycott. Opinion-Editorial Page, Chicago Tribune, March 28.

(S17) Grofman, Bernard. 1994. An introduction to racial bloc voting analysis. With an annotated select bibliography on racial bloc voting and related topics. Atlanta, GA: Southern Regional Council.

OTHER PUBLICATIONS

(O1) Chicago. In David Glazier (Ed.), Student Travel in America. New York: Pyramid Publication, 1968. (Under pseudonym.)

(O2) Chicago: Hyde Park and the University of Chicago, the Loop and Near-North. In Where the Fun is: East of the Mississippi. NY: Simon and Schuster, 1969. (Under pseudonym.)

SOCIAL SCIENCES WORKING PAPERS AND RESEARCH REPORTS

(W1) Note: Confessions of a mad modeler, Research Report R6, School of Social Sciences, University of California, June 1978.

(W2) Note: The paradox of voting in a faculty appointment decision (with Steven Brown). Research Report R6, School of Social Sciences, University of California, Irvine, June 1978.

WEBSITE POSTINGS

(W1) A Comment on Lowi and Calise. Posted in June, 1999, on the website of the IPSA Research Committee on Conceptual and Terminological Analysis: http://www2.hawaii.edu/%7Efredr/grofman.htm

(W2) "Questions and Answers about Motor Voter: An Important Reform That Is Not Just for Democrats" Posted in 1995, on the website of the Center for Voting and Democracy http://www.fairvote.org/reports/1995/chp6/grofman.html

CURRENT RESEARCH

Much of my current research is in behavioral social choice, dealing with mathematical models of group and individual decision making, with a focus on electoral behavior and voter choice and issues connected with representation and redistricting, political parties and coalitions. I also have strong side interests in individual and group information processing; political propaganda, particularly political cartooning and satire; in law and social science, particularly in the domain of civil rights; in using computers as a teaching aid; and in statistical training for citizen literacy.

CONFERENCE GRANTS

1979	A Conference on Voter Turnout. National Science Foundation, Political Science Program (NSF SOC 78-19433, $14,400, with Richard Brody and Herbert Weisberg).
1980	A Conference on Representation and Apportionment Issues in the 1980s. National Science Foundation, Political Science Program (NSF #SES 79-26813, $20,200, with Arend Lijphart, Robert McKay, and Howard Scarrow; additional $8000 funding provided by the American Bar Association).
1982	A Conference on Information Pooling. National Science Foundation, Political Science Program (NSF #SES 82-09109, $26,300, with Guillermo Owen and Scott L. Feld).
1988	A Conference on "The Calculus of Consent": A Twenty-five Year Perspective (Liberty Fund, with Donald Wittman).
1989-90	A Conference on the Voting Rights Act: A Twenty-five Year Perspective (Rockefeller Foundation, $50,000, with Thomas Mann and Chandler Davidson, under the auspices of The Brookings Institution).
1991-92	Workshops on Politics and the Democratization Process, (National Science Foundation, Political Science Program SES# 91-13984 ($42,000, with Russell Dalton and Harry Eckstein).
1991-92	Planning grant on Japanese, Korean and U.S. Election Practices in Comparative Perspective (UC Pacific RimResearch Program, with Sung Chull Lee, Rein Taagepera and Brian Woodall, $14,700).
1994-95	A Conference on the Civil Rights Act of 1964 in Thirty Year Perspective. Joyce Foundation (#446740-49317, $18,500 with additional funding by the Federal Judicial Center).
1996	A Conference on Elections in Australia, Ireland and Malta under the Single Transferable Vote (UCI Center for the Study of Democracy, $11,000, with Shaun Bowler).
1997	A Conference on Electoral and Party Systems in Scandinavia: Origins and Evolution (UCI Center for the Study of Democracy, $11,000, with Arend Lijphart).
1998	A Conference on Mixed Electoral Systems that Emulate the German Model (UC Center for the German and European Studies, $10,000, and $5000 supplemental funding from the UCI Center for the Study of Democracy, with Matthew Shugart and Martin Wattenberg)
2000-01	A Conference on Comparative Redistricting (National Science Foundation Program in Political Science, $22,000, with $5,000 supplemental funding from the UCI Center for the Study of Democracy, the UCI Office of the Vice Chancellor for Research, and the School of Social Sciences; with Lisa Handley).
2004	A conference on Pluralitarian/Majoritarian Electoral Systems (Borchard Foundation, $25,000, with $2,500 supplemental funding from the UCI Center for the Study of Democracy; with James Adams and Shaun Bowler).

2005 A conference on Spatial Social Choice, December 9-11(UCI Institute for Mathematical Behavioral Sciences, and the UCI Center for the Study of Democracy; with Donald Saari)

2006 Conference on Plurality and Runoff Methods in Canada, United States and United Kingdom (Canadian Embassy, $5,000, UCI Center for the Study of Democracy supplemental funding, $5,000; with Shaun Bowler), February 17-20.

RECENT CONFERENCE PAPERS (unpublished)

(C34) Feld, Scott L. and Bernard Grofman. Distinguishing between ideological and judgmental bases of transitive majority choice. Prepared for delivery at the Annual Meeting of the American Sociological Association, Chicago, August 1992; presented in revised form at the Annual Meeting of the Public Choice Society, Long Beach, California, March 24-26, 1995.

(C37) Grofman, Bernard. What is a constitution? Presented at U.C. Irvine conference on "Constitutional Design," June 1993.

(C38) Reynolds, Andrew S. and Bernard Grofman. Choosing an electoral system for the new South Africa: the main proposals. Presented at the Conference on Electoral Reform and Democratization, Columbia Institute for Western European Studies, Columbia University, April 18-19, 1994.

(C42) Grofman, Bernard. Are voting rights special? Presented at the Conference on the Civil Rights Act of 1964 in Perspective, Washington D.C. Federal Judicial Center, November 11-12, 1994.

(C43) Grofman, Bernard, Christian Collet and Robert Griffin. Does a rising tide lift all challengers? Rethinking the partisan implications of higher turnout. Prepared for delivery at the Annual Meeting of the Public Choice Society, Long Beach, California, March 24-26, 1995.

(C49) Grofman, Bernard and H. W. Wales. Ideal of the impartial jury. Prepared for delivery at the Conference of the Role of the Jury in a Democratic society. Georgetown University Law Center, October 29, 1995.

(C51) Grofman, Bernard, Michael McDonald, William Koetzle, and Thomas Brunell. Strategic policy balancing. Presented at the Conference on Strategy and Politics, Center for the Study of Collective Choice, University of Maryland, College Park, MD, April 12, 1996.

(C54) Grofman, Bernard, William Koetzle and Thomas Brunell. Rethinking the link between district diversity and electoral competitiveness. Prepared for delivery at the Annual Meeting of the American Political Science Association, Washington, D. C., August 29-September 1, 1997.

(C55) Caul, Miki, Rein Taagepera, Bernard Grofman. Determining the number of parties in stable democracies: Social heterogeneity and electoral institutions. Prepared for delivery at the Annual Meeting of the Western Political Science Association, Los Angeles, CA, March 9-21, 1998.

RECENT CONFERENCE PAPERS (unpublished) (cont)

(C58) McDonald, Michael and Bernard Grofman. Redistricting and the polarization of the House of Representatives. Prepared for delivery at the Annual Meeting of the Midwest Political Science Association Conference, Chicago, April 15-16. (A previous version of this paper was presented at the 1999 Western Political Science Association Conference, Seattle, March 25-27, 1999.)

(C59) Commisso, Ellen and Bernard Grofman. Liberty, equality, fraternity: Tripolarity, cycles and the dynamics of party competition in post-socialist Eastern Europe. Presented at the 1999 Annual Meeting of the American Political Science Association, Atlanta, Georgia.

(C65) Feld, Scott L. and Bernard Grofman. "Issue and electoral success: The paradox of nonmonotonicity." Paper presented at the Public Choice Society Annual Meeting, March 9-11, 2001, San Antonio, TX.

(C67) Gray, Mark and Bernard Grofman. Several (likely to be contentious) claims about the nature and prerequisites of democracy." Prepared for delivery at the Second London School of Economics Workshop on "Freedom and Democracy," London, June 15, 2001.

(C71) Feld, Scott L., and Bernard Grofman. Theoretical and empirical findings concerning candidates' optimal choices of issue dimensions: Implications for U.S. presidential elections. Paper presented at the Public Choice Society Annual Meeting, March 22-24, 2002, San Diego, CA. Presented in revised form at the UCI Institute for Behavioral Mathematical Sciences "Conference on Spatial Voting," December 10-11, 2005.

(C72) Grofman, Bernard and Samuel Merrill. What does it mean to offer a "solution" to the problem of ecological inference? Paper presented at the Conference on New Advances in Ecological Inference, June 17-18, 2002, Cambridge MA.

(C73) Feld, Scott L., Bernard Grofman and Leonard Ray. The market value of weighted votes: An alternative approach to voting power. Paper presented at the Public Choice Society Annual Meeting, March 21-23, 2003, Nashville, TN. (Earlier versions were presented at the London School of Economics Workshop on Voting Power Analysis, August 9-11, 2002, and at the Japanese-American Conference on Mathematical Sociology, Vancouver, May 24, 2002.)

(C74) Feld, Scott L. and Bernard Grofman. Stuck in space: The neglected importance of issue salience for political competition. Paper presented at the European Public Choice Society Annual Meeting, April 25-28, 2003, Aarhus, Denmark.

RECENT CONFERENCE PAPERS (unpublished) (cont)

(C77) Grofman, Bernard and Matthew Barreto. Ecological regression and ecological inference in the presence of systematic bias in the measurement of the independent variable. Paper presented at the Southern Political Science Association annual meeting, New Orleans, LA, January 7-10, 2004; a revised version presented at the American Political Science Association Annual Meeting, Chicago, IL, September 2-5, 2004.

(C82) Grofman, Bernard. Statistics and Social Choice: Connections Between Sports and Politics." Paper presented at the University of California, Irvine Institute for Mathematical Sciences Conference on Decisions, Sports, and Statistics" December 4, 2004.

(C86) Grofman, Bernard, Ines Lindner and Guillermo Owen. Optimal Resource Allocations in Presidential Contests. Prepared for delivery at the Annual Fall Meeting of the European Consortium for Political Research, Budapest, Hungary, September 8-12, 2005.

(C87) Winer, Stanley, Michael Tofias, Bernard Grofman, John Aldrich. "Supply versus Demand and the Rule of Ideology in the Growth of Government: The United States, 1930-2002." Paper presented at the Public Choice Society Annual Meeting, March 30-April 2, 2006, New Orleans, LA.

(C88) Brunell, Thomas and Bernard Grofman. "Testing Sincere versus Strategic Split Ticket Voting: Evidence from Split House-President Outcomes, 1900-1996." Prepared for presentation at the Center for American Political Studies "Democracy, Divided Government, and Split-Ticket Voting" conference, Harvard University, May 26-27, 2006.

(C89) Grofman, Bernard. "Varieties of Runoffs." Prepared for presentation at the "Plurality and Multiround Elections Conference," Montreal, June 18-18, 2006.

(C90) Schneider, Carsten and Bernard Grofman. "It Might Look Like a Regression Equation...but It Is Not! An Intuitive Approach to the Presentation of QCA and fs/QCA Results." Prepared for delivery at the International Conference on Comparative Social Sciences, Sophia University, Tokyo, Japan, July 15-16, 2006.

(C91) Merrill, Samuel and Bernard Grofman. "Do Regular Cycles Occur in American Politics." Prepared for presentation at the American Statistical Association meeting, Seattle, August 6-10, 2006.

(C92) Adams, James, Thomas Brunell, Bernard Grofman and Samuel Merrill. "Move to the Center or Mobilize the Base? Effects of Political Competition, Voter Turnout, and Partisan Loyalties on the Ideological Divergence of Vote-Maximizing Candidate." Prepared for delivery at the annual meeting of the American Political Science Association, Philadelphia, August 31-September 3, 2006.

RECENT CONFERENCE PAPERS (unpublished) (cont)

(C93) Gray, Mark, Paul Perl and Bernard Grofman. "More Than an Ocean Apart: The Americas and the College of Cardinals 1903-2005." Prepared for delivery at the Society for the Scientific Study of Religion conference, October 19-22, 2006, Portland, Oregon.

OTHER CONFERENCE PARTICIPATION

Invited speaker, Federal Judicial Center Conference for Federal Judges of the 6th and 8th Circuits, Orlando, Florida, January 13, 1992.

Chair, panel on "Issues and Controversies in Legislative and Congressional Redistricting." Annual Meeting of the Western Political Science Association, San Francisco, March 19-21, 1992.

Participant, National Endowment for Humanities Workshop on Athenian Democracy, UC Santa Cruz, June 21-July 30, 1992.

Chair, "Roundtable on Ethnic and Linguistic Conflict and the Art of Constitutional Design." Annual Meeting of the American Political Science Association, Chicago, September 3-6, 1992.

Invited speaker, Southern Regional Council "Conference on Voting Rights." Atlanta, October 1-3, 1992.

Invited panelist, "Roundtable on Uses of Operations Research in the Social Sciences." Annual Meeting of ORSA-TIMS, San Francisco, November 2-4, 1992.

Chair, panel on "Social Contract Theory," Conference on Democracy, Rationality and the Social Contract. Focused Research Project in Public Choice, University of California, Irvine, December 11-12, 1992.

Organizer, Conference on the Civil Rights Act of 1964 in Perspective, Washington D.C. Federal Judicial Center, November 11-12, 1994.

Discussant, panel on "Jury Decision-making." Annual Meeting of the Public Choice Society, Long Beach, California, March 24-26, 1995.

Invited participant, IGCC Conferences on "Ethnic Conflict," University of California, San Diego, May 11-12, 1994; Palm Springs, California, December 12, 1995.

Invited panelist. National Conference of State Legislatures Annual Meeting, Panel on "Redistricting Decisions of the Supreme Court." St Louis, Missouri, July 29-31, 1996.

Invited speaker. National Conference of State Legislatures. Special session on "Redistricting Issues." Seattle, Washington, April 3-5, 1998.

Invited panelist. National Conference of State Legislatures Annual Meeting, Panel on "Redistricting Issues," Chicago, July 14-17, 2000.

Roundtable participant. "The Changing Role of the Department of Justice in Redistricting" at the University of Houston Lanier Center for Public Policy Conference on "Census 200," December 8, 2000.

OTHER CONFERENCE PARTICIPATION (cont.)

Invited participant, University of Rome (La Sapienza) Conference on the Political Economy of the European Union, May 15-17, 2001.

Invited speaker, National Conference of State Legislatures Annual Meeting, Special Session on Redistricting, San Antonio, August 13, 2001.

Invited speaker, National Conference of State Legislatures Annual Meeting, Special Session on redistricting, Denver, Colorado, July 24, 2002.

Invited participant and presenter, Conference on Political Culture, Representation and Electoral Systems in The Pacific sponsored by the University of the South Pacific, Port Vila, Vanuatu, July 10-12, 2004.

Invited speaker, Conference on Game Theory and Its Applications, Institute for Mathematical Behavioral Sciences and Center for Decision Analysis, University of California, Irvine, September 18, 2004 (paper entitled "Models of political coalition building")

Invited discussant, "Judging Transitional Justice" Conference, Center for the Study of Democracy, University of California, Irvine, October 30-31, 2004.

Invited discussant, "Conference on Direct Democracy," Co-sponsored by the UCI Center for the Study of Democracy, January 14-15, 2005.

Invited discussant, Graduate Student Conference on "Democracy and its Development: 1990-2005." UCI Center for the Study of Democracy, February 26, 2005.

Invited speaker, Marschak Conference at University of California, Los Angeles, June 10, 2005.

Panel Chair, "Party Formation Barriers and their Effect on Ethnic Party Building and Success in New Democracies." Annual meeting of the American Political Science Association, September 2, 2005

Invited Discussant, "Party Formation Barriers and their Effect on Ethnic Party Building and Success in New Democracies." Annual meeting of the American Political Science Association, September 2, 2005.

Invited Discussant, "Changing the Rules of the Game in New Democracies: Political Participation and Electoral Regime Change in Eastern Europe and Latin America." Annual meeting of the American Political Science Association, September 4, 2005.

Invited Discussant, symposium on "Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate." Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, sponsored by UC Berkeley and the Institute for Government Studies, UCB, Washington D.C., February 9, 2006.

OTHER CONFERENCE PARTICIPATION (cont.)

Invited panellist, Voting Rights Conference "Voting Rights: Haven't they Already Overcome?" Duke University, Durham NC, April 7, 2006.

Invited discussant, workshop on "Danish Local Elections." Department of Government, University of Aarhus, Sandeborg, Denmark, August 10-12, 2006.

INVITED COLLOQUIA

May 4, 1990	Program in Law and Economics, Columbia University Law School
May 6, 1990	Program in Ethics and Public Policy, University of Chicago.
June 13, 1990	Department of Political Science, Kwansei Gakuin University, Nishinomiya, Japan.
June 16, 1990	Institute of Legal Studies, Kansai University, Osaka, Japan
June 25, 1990	Department of Social Psychology, Tokyo University, Japan.
Nov 7, 1991	Department of Political Science, University of Alberta,Canada
Nov 13, 1991	Department of Political Science, University of Calgary, Canada
April 17, 1992	Department of Government, Harvard University
Sept 12-17, 1992	Landsdowne Guest Speaker, Department of Political Science, University of Victoria, Canada
July 27, 1994	Department of Economics, Fern Universitet Hagen, Germany
October, 1995	Department of Government, Georgetown University
October, 1995	Department of Political Science, University of Houston
May 3, 2000	Department of Political Science, University of California, San Diego
Nov. 29, 2000	Department of Political Science, Duke University
Dec. 6, 2000	Department of Political Science, University of Houston
June 2, 2001	Department of Political Science, European University Institute, Fiesole, Italy
June 14, 2001	Department of Political Science, Nuffield College, Oxford University
Oct. 15, 2001	Department of Government, Harvard University
July 2, 2002	University of Hamburg, Hamburg, Germany
July 9, 2002	Berlin Science Center (Wissenschaft Zentrum)
Sept. 13, 2002	Royal Military College of the Netherlands, Breda

INVITED COLLOQUIA (cont.)

Sept. 17-20, 2002	Invited to prepare a series of lectures 2002 on Public Choice at the 2002 Universit of Tilburg, sponsored by the Dutch National Research Group on Social Science Theory
Sept.18, 2002	Department of Philosophy, University of Tilburg, Netherlands
Sept. 20, 2002	Department of Economics, University of Tilburg, Netherlands
Nov. 10, 2002	Guest Professor, Course on Voting Rights at the New York University Law School
April 15, 2003	Program in Decision Sciences, Carnegie-Mellon University
May 2, 2003	Department of Political Science, University of Southern Denmark
May 22, 2003	Department of Economics, Autonomous University of Barcelona
May 26-27, 2003	Department of Economics, Pompeu Fabra University, Barcelona
May 28, 2003	Department of Political Science, Pompeu Fabra University, Barcelona
July 29, 2004	Research School of Social Sciences, Australian National University Program in Economics & Social Ethics, Canberra, Australia
March 30, 2006	Political Science Department, Rice University, Houston, Texas (PowerPoint Presentation "Does Redistricting Matter: A Look at Evidence."
April 6, 2006	Joint colloquium, CSDP/LSS. Princeton University, Princeton, New Jersey.

GRANTS FOR INSTRUCTIONAL DEVELOPMENT, COMPUTER LABS, AND GRADUATE FELLOWSHIP SUPPORT

1992-93	Grant from UCI Committee on Instructional Development to develop a new course:"Introduction to Computer Use in the Social Sciences" ($15,500)
1992	Small grant from the National Endowment for the Humanities to attend the NEH Summer Institute on "Athenian Democracy." ($3,250)
1992-94	Grant for graduate student support in Public Choice (Sarah Scaife Foundation, $50,000, with Amihai Glazer)
1993	Grant from the UC Center for German and European Studies, University of California, to develop a new course to be co-taught with Professor Pertti Pesonen (Finnish Academy)on comparative political participation ($10,000)
1994	Grant from the National Science Foundation to develop a computer lab for the technology enhanced teaching of under-graduate statistics ($55,497, with Judith Treas).
1995-99	Grant from the UC President's Office (IAPIF) to develop a long-distance learning course "The United States in Comparative Perspective." ($17,174, with Arend Lijphart.
1997	Grant from Instructional Improvement Fund (UCI Division of Undergraduate Education) to develop "Computer-Based Tutorials, and Self-Grading Homework Assignments for SS10A, Introduction to Statistics" ($5,000)
1999-00	Seed grant from UC Center for German and European Studies for graduate research support ($3,000)
2000	Grant from UCI Division of Undergraduate Education (Hewlett Foundation) for Problem-Based Learning materials for Economics 10C statistics course ($4,500)
2000-01	Seed grant from the UC Center for German and European Studies, University of California, for graduate research support ($3,000)
2004-5	Grant from Institute of European Studies to co-teach a graduate seminar with Prof. Giorgio Freddi (University of Bologna) ($12,000)
2004-5	Grant from University of California, MEXUS Program to supervise doctoral research ($12,000 to Matthew Barreto)

CURRICULAR MATERIALS (in print)

(CM1) Grofman, Bernard N. 1979. Note: Mo Fiorina's advice to children and other subordinates. Mathematics Magazine 52(5): 292-297.

(CM2) Grofman, Bernard N. 1982. Modeling jury verdicts. University Modules in Applied Mathematics.

(CM3) Grofman, Bernard N. 1982. The pure theory of elevators. Mathematics Magazine, 55(1): 30-37.

(CM4) Straffin, Philip and Bernard Grofman. 1984. Parliamentary coalitions: A tour of models. Mathematics Magazine 57(5): 259-274.

(CM5) Grofman, Bernard. 1990. Pig and proletariat: Animal Farm as history, San Jose Studies, 16: 5-39.

(CM6) Grofman, Bernard and Craig Brians. 1998. Class notes and exercises: computer-based research methods for the social sciences. New York: Longmans.

(CM7) Grofman, Bernard. 2000. A primer on racial bloc voting analysis. In Nathaniel Persily (ed.) The Real Y2K Problem: Census 2000 Data and Redistricting Technology. New York: The Brennan Center for Justice, New York University School of Law, 2000.

COURSES TAUGHT

Elections and Voter Choice
Computer-Based Research Methods in the Social Sciences (SS3A)
Introduction to Public Choice, I and II
The United States in Comparative Perspective
Representation and Redistricting
Elementary Statistics (S10A)
Statistics for Citizen Literacy (SS10B)
Statistics for Public Policy Analysis (SS10C)
The Federalist Papers and the Art of Constitutional Design
Law and Social Science
Models of Collective Decision Making
Introduction to Decision Analysis
Introduction to Research Design
Game Theory Applications in the Social Sciences
Small Group Behavior
Introduction to Mathematical Models in the Social Sciences
Coalition Theory
Political Propaganda and Satire
Comparative Public Policy

PROFESSIONAL SERVICE

Chair, 1982-83, Lippincott Prize Committee for book-length work in political theory, American Political Science Association.

Section Program Organizer, Panels on "Positive Theory," Annual Meeting of the American Political Science Association, Washington, D.C., August 1984.

Member, 1985-86, Working Group on Collective Choice Institutions, appointed by the Committee on Basic Research in the Behavioral and Social Sciences, National Research Council.

Member, Executive Committee, 1986-89, Section on Representation and Electoral Systems, American Political Science Association.

Chair, 1988-92, George Hallett Book Prize Award Committee, Section on Representation and Electoral Systems, American Political Science Association.

Section Program Co-organizer, Panels on "Political Organizations," Annual Meeting of the American Political Science Association, Sept. 1990.

Member, 1990-91, Lasswell Prize Committee, International Society of Political Psychology.

Member, 1995-96, Carey McWilliam Award for Journalists Committee, American Political Science Association.

Chair, 1995-96, Richard Fenno Prize Committee, Legislative Studies Section, American Political Science Association.

Member, 1998, Luebbert Book Award Committee, Comparative Politics Section, American Political Science Association.

Member, 2000-2001, Advisory Board, UCLA Center for Governance.

Member, 2001-2002, Comparative Politics Prize Committee, Sage Award for best paper in comparative politics at the American Political Science Association Annual Meeting.

Member, 2002, International Political Science Association Longley Prize Committee, Longley Award for best article published on Representation and Electoral Systems.

External Reviewer, Ten-year review, Department of Political Science, University of Bologna, November 27-29, 2003.

Member, 2006, APSA Heinz Eulau Award Committee for best paper in Perspectives on Politics.

Member, Program Committee, First World Congress of Public Choice, Amsterdam,March 29-April 1, 2007.

REFEREEING

1972-82 Manuscript Review Board: Behavioral Science.
1975- Occasional referee: American Journal of Political Science; Theory and Decision; Public Choice.
1976- Occasional referee: Political Methodology; National Science Foundation, Political Science Program.
1977- Occasional referee; Journal of the American Statistical Association; Social Science Research).
1978- Occasional referee: Psychological Review; National Science Foundation, Law and Social Sciences Program; Journal of Personality and Social Psychology; European Journal of Social Psychology; Journal of Mathematical Sociology.
1979- Occasional referee: Social Networks; National Science Foundation, Applied Mathematics Program.
1980- Occasional referee: Law and Policy Quarterly; National Institute of Mental Health; American Political Science Review, National Science Foundation, Sociology Program; National Science Foundation, Economics Program; Journal of Conflict Resolution; Legislative Studies Quarterly.
1981- Occasional referee: American Mathematical Monthly, Decision Sciences, Economic Inquiry.
1982- Occasional referee: Social Science Quarterly;Sociological Methods and Research; Western Political Quarterly (now Political Research Quarterly), Guggenheim Foundation; National Science Foundation, Developmental and Social Psychology Program; National Science Foundation, Decision, Risk and Management Science Program.
1983- Occasional referee: Journal of Politics, Political Geography Quarterly (now Political Geography).
1984- Occasional referee: National Science Foundation, Information Systems Program; National Science Foundation, Program in Social Measurement and Analysis.
1986- Occasional referee: Review of Economic Studies.
1987- Occasional referee: British Journal of Political Science, Journal of Political Economy, Comparative Political Studies.
1988- Occasional referee: Social Choice and Welfare, Political Analysis, Polity.
1989- Occasional referee: National Science Foundation, Program in History and Philosophy of Science.
1991- Occasional referee: Demography.
1992- Occasional referee: European Journal of Political Research.
1993- Occasional referee: Electoral Studies
1994- Occasional referee: Comparative Politics; Cambridge University Press
1994- Occasional referee: Urban Affairs Quarterly
1996- Occasional referee: Canadian Journal of Political Science
1997- Occasional referee: National Science Foundation, Program in Geography
1998- Occasional referee: Southeastern Political Review, Social Science History
1999- Occasional referee: European Journal of Political Economy
2003- Occasional reviewer, Society for Industrial and Applied Mathematics (SIAM)

2004- Occasional reviewer, Law and Society
2005- Occasional reviewer, European Union Politics
2005+ Occasional reviewer, Scandinavian Political Studies
2005 Occasional reviewer, Journal of Law, Economics & Organization

UNIVERSITY SERVICE, UCI

1977-79	Member, University Committee on Lectures
1977-79	Faculty Advisor, UCI Chapter, Student Model United Nations
1983-84	Member, University Library Committee
1987-89	Member, University Privilege and Tenure Committee Hearing Panel
1988-89	Member, Tierney Chair Search Committee
1988-91	Member, University Committee on Rules and Jurisdictions
1991-92	Acting Chair, Focused Research Program in Public Choice
1994-96	Member, University Committee on Rules and Jurisdictions
1995-96	Member, Chancellor's Taskforce on Use of Educational Technology
1999-00	Co-Coordinator, MBS Colloquium Series
1999-05	Member, Executive Committee, Irvine Institute of Mathematical Behavioral Sciences, ORU
2000-01	Reviewer, UC Systemwide Multicampus Research Incentive Fund (MRIF)
2001-02	Member, UCI Search Committee for new Dean of Social Sciences
2002-05	Member, Executive Committee, Center for Decision Analysis

SERVICE TO THE SCHOOL OF SOCIAL SCIENCES, UCI

1978-79	Chair, Program in Politics and Society.
1979-89	Organizer, Program in Politics and Society Colloquium Series (one quarter per year).
1980-81	Special Schoolwide Selection Committee: Distinguished Student Scholars Program.
1981-82	Chair, School of Social Sciences Faculty.
1982-83	Acting Co-Chair, Program in Politics and Society (Spring Quarter).
1983-84 1988-89	Political Science Graduate Student Adviser.
1988-89	Chair, Recruitment Committee in Mathematical Political Science.
1988-91	Member, Recruitment Committee in Public Law.
1991-92	Chair, Committee for the Interdisciplinary Graduate Concentration in Public Choice.
1991-93	Member, Joint Recruitment Committee in African-American Studies and Political Science
1992-98	Member, Political Science Graduate Committee
1992-00	Member, Committee for the Interdisciplinary Graduate Concentration in Public Choice
1996-02	Member, Executive Committee, UCI Center for the Study of Democracy
1996-97	Chair, Recruitment Committee for Pacific Rim FTE in Political Science
1997-98	Coordinator, Political Science Graduate Admissions
1998-99	Member, Easton Prize Committee, Department of Political Science
1998-00	Member, Colloquium Committee, Institute for Mathematical Behavioral Science
1998-00	Member, Interdisciplinary Search Committee for positions in Mathematical Behavioral Sciences
1999-01	Member, Search Committee for position in Chicano/Latino Studies

SERVICE TO THE SCHOOL OF SOCIAL SCIENCES, UCI (cont.)

1999-00	Coordinator, Political Science Graduate Admissions
1999-01	Member, School of Social Sciences Executive Committee
2000-01	Member, School of Social Sciences Executive Committee
2001-02	Member, Interdisciplinary Search Committee for positions in Democratization and Democratic Transitions
2001-02	Member, Interdisciplinary Search Committee for positions in Mathematical Behavioral Science
2001-06	Member, UCI Center for the Study of Democracy Leadership Council
2001-06	Member, Executive Committee, Center for the Study of Democracy ORU
2002-03	Coordinator, Political Science Graduate Admissions
2002-04	Chair, Interdisciplinary Search Committee for position in Democratization and Democratic Transitions

Major Redistricting Cases in which Bernard Grofman Has
Participated as an Expert Witness or Court-Appointed Consultant

Consultant to	Case Name	Type
Republican Party of Colorado	Carstens v. Lamm, 543 F. Supp. 68 (D. Colorado, 1982)	Congress: failure of the legislature to act
Special Master, U.S. District Court, Southern District of New York	Flateau v. Anderson, 537 F. Supp. 257 (S.D. New York, 1982)	Congress and both houses of state legislatures: failure of legislature to act; minority voting rights.
Republican Party of Hawaii	Travis v. King, 552 F. Supp. 554; 552 F. Supp. 1200 (D. Hawaii, 1982)	State legislature: equal population
Democratic Party of Rhode Island and subsequently State of Rhode Island	Holmes v. Burns (Super. Ct., R.I. 1982) aff'd, No. 83-149 (R.I. S. Ct, April 10, 1984)	State house: minority vote dilution, compactness, communities of interest
Republican National Committee	Badham v. Eu, 721 F. 2d 1170 (D. Calif. 1983), dismissed for want of a federal claim, cert. denied	Congress: partisan gerrymandering
NAACP Legal Defense Fund	Gingles v. Edmisten, consol. with Pugh v. Brock, 590 F. Supp. 345 (E.D. North Carolina, 1984) heard sub nom. Thornburg v. Gingles, 106 S. Ct. 2752, 478 U.S. 30 (1986)	Multimember districts in the state legislature; Section 2 of the Voting Rights Act
U.S. Department of Justice	South Carolina v. U.S. (D.D.C.), 1984) settled out of court by preclearance of a new plan for South Carolina Senate	State Senate: Section 5 of the Voting Rights Act preclearance denial

Consultant to	Case Name	Type
State of Indiana	Bandemer v. Davis 603 F. Supp. 1479 (1984), (S.D. Indiana, 1983), reversed sub nom Davis v. Bandemer, 106 S. Ct. 2797, 106 U.S. 2797 (1986); initially consol. with Indiana Branches of the NAACP v. Orr 603 F. Supp. 1479 (1984) (S.D. Indiana, 1983)	State legislature: partisan gerrymandering, minority vote dilution
City of Boston	Latino Political Action Committee v. City of Boston, 609 F. Supp. 739 (D. Mass. 1985)	Boston City council: minority vote dilution
U.S. Department of Justice	Ketchum v. Byrne II (D. Illinois 1985), settled by consent decree	Chicago City Council: minority vote dilution
Mexican American Legal Defense and Education Fund	Gomez v. City of Watsonville (D. Calif., 1986), 863 F. 2nd 1407 (9th cir. 1988) cert. denied, 109 Sct. 1534 (1989)	Watsonville City Council: Section 2 of the Voting Rights Act
U.S. Department of Justice	U.S. v. City of Los Angeles (D. Calif., 1986), settled out of court by adoption of a new plan for L.A. City Council with an additional majority Hispanic seat	Los Angeles City Council: Section 2 of the Voting Rights Act
NAACP Legal Defense Fund	McGhee v. Granville County, No. 87-29-CIV-5) (E.D. North Carolina 2/5/88); 860 F. 2nd 110 (4th circuit 1988)	Granville County Board of Supervisors: Section 2 of the Voting Rights Act
U.S. Department of Justice	Garza v. County of Los Angeles Board of Supervisors 918 F. 2d 763 (9th cir. 1990)	County Board: Section 2 of the Voting Rights Act

Consultant to	Case Name	Type
Republican National Committee	Pope et al. v. Blue et al. 809 F. Supp. 392 (D. N.C, Western District, Charlotte Division, 1992)	Congressional redistricting in North Carolina: 14th Amendment
Republican Party of Wisconsin	Prosser et al. v. Election Board of State of Wisconsin 793 F. Supp. 859 (D.Wisc., 1992)	Wisconsin state legislative redistricting: Section 2 of the Voting Rights Act
State of North Carolina	Republican Party v. Martin 980 F2d 943 (4th Cir. 1992)	State-wide judicial elections in the State of North Carolina; partisan gerrymandering
Minority plaintiffs	Garcia v. City of Los Angeles, (D. Los Angeles, 1996)	City of Los Angeles Charter Commission: Section 2 of the Voting Rights Act
Republican Party of Wisconsin	Arrington et al. v. Elections Bd. of State of Wisconsin 173 F. Supp. 2d 856 U.S. (D. Wisconsin, 2002)	Wisconsin State legislative districting, Section 2 of the Voting Rights Act
Special Master, U.S. District Court, Southern District of New York	Rodriguez et al. v. Pataki et al., (S.D. N. Y., 2002)	Congress; failure of legislature to act; minority voting rights.
Special Master, US District Court, Georgia	Larios v. Cox 305 F Supp. 2d 1355 (N.D. GA 2004)	Georgia legislative districts; one person, one vote.

COMMUNITY SERVICE: 1993-2006

Interviewed by reporter for San Francisco Bay Guardian for story on possible voting rights lawlsuit in San Francisco, February 1, 1993.

Interviewed by C. David Kotok, Omaha World-Herald for a story on Ohio redistricting, March 1, 1993.

Interviewed by Tim Bovee, Associated Press, Washington, D. C. for story on race and poverty issues, March 24, 1993.

Informally consulted with staff attorney, Southern Office, American Civil Liberties Union regarding vote dilution case in Tennessee, April 22, 1993.

Interviewed by John Lee of US News and World Report for story on confirmation hearings for U.S. Assistant Attorney General for Civil Rights, May 5, 1993.

Interviewed by Ted Rohr of Los Angeles Times for story on redistricting in Los Angeles, May 17, 1993.

Interviewed by Jim Morill, Charlotte Observer for story on Shaw v. Reno, June 29, 1993.

Interviewed by reporter for "States New Service" for story about recent U.S. Supreme Court voting rights decision, Shaw v. Reno, June 28, 1993.

Interviewed by reporter for Associated Press for story on Supreme Court voting rights decision, Shaw v. Reno, July 1, 1993.

Interviewed by L.A. Bureau Chief for Asahi Shinbum (Japan's largest newspaper) for story on electoral reform in Japan, August 12, 1993.

Interviewed by a reporter from Newsday (Long Island, New York) for a story on recent Supreme Court case Shaw v. Reno, August 19, 1993.

Interviewed by reporter for WQED Public TV (Pittsburgh) for TV series on uses of mathematics, August 19, 1993.

Review of "Sleeping Beauty" performed by New York City Ballet, Orange County Performing Art Center. "The story isn't the thing with New York City Ballet." The Irvine World News, October 21, 1993.

Interviewed by reporter for New Jersey Law Journal for story on alleged abstention-buying vote fraud in the New Jersey gubernatorial race,
November 5, 1993.

COMMUNITY SERVICE: 1993-2006 (cont.)

Interviewed by reporter for Pacific News Service for story on role of foreign governments in lobbying of U. S. citizens with roots abroad, November 23, 1993.

Interviewed by Jim Boren for Fresno Bee for story on controversy over naming a street for Cesar Chavez, December 1, 1993.

Informally discussed South Carolina one person, one vote case with attorney for ACLU, March 13, 1994.

Informally discussed racial bloc voting issues with expert witness in Colorado Section 2 Voting Rights Act case, January-March 1994.

Informally discussed possible California voting rights litigation with attorney for Southern California ACLU, March 25, 1994.

Presentation, UCI Summer Minority Academic Enrichment Program, June 29, 1994.

Interviewed by Peter Dreier for story on voter registration, "Fear of Franchise: Detouring the Motor-Voter Law." The Nation, October 31, 1994; 491-492.

Interviewed by Steve Scott, California Journal for story on the impact of Shaw v. Reno and census undercount decisions, November 10, 1994.

Informally discussed election issues involved in running for one office while still holding another with staff member, California Assembly, December 12, 1994.

Informally discussed issues related to age discrimination with attorney for City of Boston, December 12, 1994.

Videotaped a 2 minute interview, February 13, 1995, on Motor-voter (NVRA), broadcast on The McNeil-Lehrer News Hour on Public Television.

Interviewed by reporter for Montgomery, Alabama Advertiser for story on the 30th anniversary of the Voting Rights Act and the March on Selma, March 14, 1995.

Interviewed by Jenny Labalin, reporter for Indianapolis Star, for story on redistricting in Indiana, March 23, 1995.

Interviewed by Sid Hurburt, reporter for USA Today for editorial on term limits, March 24, 1995

Interviewed by reporter for Charlotte Observer for story on the Supreme Court case mandating use of voting age as an apportionment base for local elections, April 3, 1995.

Interviewed by a reporter for Congressional Quarterly for story on Georgia and Louisiana congressional districting litigation, April 17, 1995.

COMMUNITY SERVICE: 1993-2006 (cont.)

One of two guests interviewed on the hour-long "Talk of the Nation" talk show on National Public Radio, April 19, 1995.

Interviewed by Robert O'Neill, Chicago Tribune for story on congressional redistricting lawsuits, June 3, 1995.

Interviewed by Juliana Gruenwald, Congressional Quarterly, for story on congressional districting and voting rights, July 9, 1995.

Interviewed for story on use of computer technology in politics for George magazine, September 28, 1995.

Interviewed by Rosalie Hernandez, Orange County Register for story on Orange County voting reform, October 12, 1995.

Informally discussed nature of incumbency advantage with attorneys for Jennifer and Block involved in a redistricting lawsuit, April 3, 1996.

Interviewed by a reporter for The Economist for story on redistricting, June 18, 1996.

Interviewed by Julianna Grenwald, Congressional Quarterly, for story on North Carolina and Louisiana redistricting cases, June 20, 1996.

Interviewed by reporter for Austin, Texas newspaper for story on the role of expert witness in redistricting litigation, July 25, 1996.

Interviewed by Michelle Kay, reporter, Austin American Statesman for story on congressional redistricting in the South, July 29, 1996.

Interviewed by reporter for story on racial color-blindness, July 29, 1996.

Consultant for plaintiffs in Garcia v. City of Los Angeles, a Section 2 Voting Rights case involving the election procedures for the Los Angeleles City Charter Commission, December 1996.

Informally consulted on racial bloc voting issues with expert witness for minority plaintiffs in a South Carolina redistricting case, June 19, 1997.

Informally consulted with ACLU attorney in Colorado School Board redistricting case involving Voting Rights Act issues, February 18, 1997.

Interviewed by Meredith Bell, Harvard undergraduate, for her Senior honors thesis on racially polarized voting in the U.S., February 24, 1997.

COMMUNITY SERVICE: 1993-2006 (cont.)

Consultant for California Attorney General in re California Democratic Party v. Jones, litigation challenging Proposition 198 (blanket primary), April-July, 1997.

Interviewed by Beth Reinhart for story on voting rights issues in school boards, December 13, 1997.

Interviewed by Daniela Walsh for Orange County Register story on folk art collecting in Orange County, January 25, 1998.

Interviewed by Danny David, Princeton undergraduate, for his senior honors thesis on negative campaigning, February 23, 1998.

Interviewed by Tom Frank, reporter at Newsday about voting rights lawsuit in New York, May 29, 1998.

Informally consulted with an Assistant Attorney General, State of Washington, re voting rights/disenfranchisement issues, August 19, 1998.

Interviewed by Ann Scott-Thysen of the Christian Science Monitor for a story on the effects of 1990s districting on the 1998 election and the effects of the 1998 election on districting in 2001, October 17, 1998.

Interviewed by Dieter Osterman of the Frankfurter Rundschau, March, 2000 for a story on U.S. presidential elections.

Interviewed by Francine Keefer, Wall Street Journal for story on likely partisan effects of the decennial reapportionment, April 12, 2000.

Interviewed by Ron Orol, Fortune Magazine re redistricting and legislative races, October 4, 2000.

Interviewed by Robert Benincasa, Gannett News Service re redistricting related issues, October, 2000.

Interviewed by Jeremy Linert, Times Leader, Wilkes-Baare, Pennsylvania, re redistricting, October, 2000.

Interviewed by David Brown, Washington Post re statistical issues in Florida Presidential recount, November 14, 2000.

Interviewed by Dan Borenstein re redistricting, February 13, 2001.

Interviewed by Rick Pearson, Chicago Tribune for a story of Chicago City Council redistricting, March 29, 2001.

COMMUNITY SERVICE: 1993-2006 (cont.)

Interviewed by Greg Geroux, Congressional Quarterly, for story on voting rights and redistricting, July 20, 2001.

Informally consulted with the office of a member of Congress from New York regarding congressional redistricting in that state, July 23, 2001.

Participant on panel on "Talk of the City," a live daily talk show on National Public Radio (KPCC FM), July 16, 2001.

Interviewed by reporter for the Los Angeles Times about at-large elections and racial vote dilution, October 12, 2001.

Presented a short talk on (and display of) African and Native American masks to a troop of Cub Scouts, December 24, 2001.

Interviewed by Alison Mitchell, New York Times, for story on redistricting, January, 2002.

Interviewed by Dieter Osterman, Frankfurter Rundschauu, for a story on U.S. Presidential elections, March, 2002.

Inteviewed by Jerry Zrenski, Buffalo News, for a story on New York reapportionment, June 10, 2002.

Interviewed by J. R. Ross, reporter for Associated Press, on Wisconsin legislative redistricting, September 30, 2002

Interviewed by Peter Dieter Osteman, Frankfurter Rundschauu, for a story on Governor Davis recall referendum, June, 2003.

Informally consulted by Adriene Fernandes, Staff Member, US Department of Justice, August, 2003.

Informally consulted with Ethan Kurzweil, New York City Board of Education, on plans for revamping New York City Community School Boards, September 26, 2003.

Interviewed by Edward Walsh, Washington Post regarding Texas and Colorado redistricting cases, October 20, 2003.

Informally discussed voting rights litigation issues with Jeremy Karlan, Brennan Center, New York University Law School, October 23, 2003.

Communicated with Caitlin Casey, reporter for the Atlantic Monthly for a story on congressional districting, October 29, 2003.

COMMUNITY SERVICE: 1993-2006 (cont.)

Interviewed by David Herszenhosen, New York Times for a study of changes in New York City Community School Boards, November 11, 2003.

Interviewed by Janet Klein for a potential story on redistricting for CBS "60 Minutes," January 15, 2004

Interviewed by Kenneth Jost, Congressional Quarterly for a story on partisan gerrymandering, January 26, 2004.

Discussed redistricting issues with Becky Vlamis, Associate Producer of a radio program on Chicago Public Broadcasting, February 29, 2004.

Participated in CSD-sponsored mini conference at UCI with staff, Netherlands Ministry of the Interior, to discuss proposed reform of the method for electing members of the National Parliament in The Netherlands, May 13, 2004.

Interviewed by Jennifer Dixon, Detroit Free Press, August 29, 2004 for story about term limits.

Discussed issues of redistricting with Director and staff for Democratic Governance (Los Angeles), December 17-18, 2004, August, 2005.

Interviewed by Erik Skindrud for story in Orange County Weekly on the firing of Michael Ramirez and Robert Scheer, November 17, 2005.

Discussed voting rights issues with Anna Pomykala, a consultant to the Ford Foundation, March 7, 2006.

Interviewed by Carolee Walker U.S. State Department, for article in Washington File on *LULAC v. Perry*, a Texas congressional redistricting case, July 7, 2006.

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WHEN JUDGES CARVE DEMOCRACIES: A PRIMER ON COURT-DRAWN REDISTRICTING PLANS

Nathaniel Persily [a1]

Introduction

Sixty years ago when the Supreme Court first considered a constitutional challenge to a congressional district map, the idea of judges drawing redistricting plans seemed unthinkable. As Justice Felix Frankfurter explained in Colegrove v. Green, [1] "Of course no court can affirmatively re-map . . . districts so as to bring them more into conformity with the standards of fairness for a representative system. At best we could only declare the existing electoral system invalid." [2] As much as the topic of redistricting itself may have seemed an invitation into the political thicket, no thicket was thought to be thicker than the one that might ensnare a court tasked with the daunting job of actually drawing a districting plan itself.

My, how times have changed. In the many redistricting struggles that now follow each census, plaintiffs routinely turn to the courts, not only to strike down plans as illegal, but also to draw remedial plans to take their place. Courts are not mere referees of the redistricting process; they have become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections. Judges, however, will learn very few lessons from the relevant case law or secondary literature that can guide them when they are placed in the position of drawing their own plans. Consequently, the remarkable variation in process and substance of court-supervised redistricting efforts should come as little surprise.

This Article attempts to describe the lay of the land for court-drawn redistricting plans and offers some direction as to the principles courts might want to follow in the future. Part I describes the applicable law, Part II sets forth the procedures involved in a court-supervised redistricting effort, and Part III describes substantive decisions that courts must make when crafting the plan.

My goal with this Article is less to argue for one particular set of procedures or substantive guidelines than it is to describe the costs and benefits of various approaches. Although uniform guidelines are sorely needed to provide ***1132** ground rules for court plans, the unique context in which a court intervenes will usually influence a plan more than will the universal factors that confront every court that draws a new map. With that said, much can be gained by recognizing the hurdles that each court inevitably faces; even if by necessity, they must jump over them in different ways.

I. Unique Legal Constraints

As a threshold matter, court-drawn plans must comply with the law. The legal constraints on a court-drawn plan, however, differ somewhat from those applicable to a legislative plan. Some of these constraints are more stringent for court-drawn plans while others are less so, and some will depend on whether the court is a federal court or a state court. It is helpful to think of three different categories of constraints: (1) those that are uniquely applicable to court-drawn plans; [3] (2) constitutional constraints shared by court-drawn and legislative plans; [4] and (3) requirements of the Voting Rights Act. [5]

A. First Principles

Courts become involved in the process of line-drawing either when the state has failed to construct a map following a census or after the court has declared the state's current plan unconstitutional or otherwise illegal. Although it may seem obvious, it is important to remember that the court's involvement occurs only after someone initiates a lawsuit. The reasons for that suit and the basis for the court's decision will often determine the extent and character of judicial involvement in crafting a remedial plan. However, redistricting litigation is not completely unlike other litigation in that, at its heart, a plaintiff's claim seeks a judicial declaration that some state action--in this case, a law that specifies the boundary lines of districts--violates the Constitution or other legal requirement.

The difference between redistricting and most other litigation, though, is that once the court declares the plan a nullity, something needs to be done; specifically, the crafting of a new plan. At the time of Colegrove and into the 1960s, it appeared to many judges that the only potential remedy for an unconstitutional districting plan was to order at-large elections statewide.[6] Now courts routinely cure the violation discovered in the litigation by crafting their own remedial plan.

1. Deference to the State Redistricting Authority

a. Giving the Legislature a Second Bite at the Apple

Deference to the legislature[7] is the starting point for judicial involvement in the redistricting process. This general rule of deference manifests ***1133** itself in different forms throughout the stages of a court's involvement. At the stage of remedying the legal violation discovered in a plan, courts ordinarily will allow the legislature to correct its mistakes and give it a second chance to pass a plan without any of the legal deficiencies the court identified.[8] This deference flows from the widespread recognition in the case law that redistricting is a political matter primarily and appropriately entrusted to the political branches. As the Supreme Court explained in Abrams v. Johnson,[9] "The task of redistricting is best left to state legislatures, elected by the people and as capable as the courts, if not more so, in balancing the myriad factors and traditions in legitimate districting policies."[10]

In other words, courts tend to draw their own plans only as a last resort. This general rule has tremendous procedural and substantive implications for the judicial line-drawing process. First, as discussed in Part II, a court is necessarily rushed in constructing a plan if it gives the legislature until the last moment to draw its own plan. Second, the compressed time frame in which a court must operate limits the possible factors it can take into account in crafting the plan. With the luxury of time would come an ability to mediate among the opposing forces that wish to shape the line-drawing process in one way or another. In theory, a court with time on its hands could also repeatedly "improve" its plan after receiving continued input from interested parties. Such deliberation and deal making is the stuff of the legislative, not the judicial, process. Court-drawn plans, in contrast, are emergency interim measures adopted to ensure that elections can go forward under some set of legally defensible lines.

***1134** b. Deference to State Courts

The general rule of federal court deference to state redistricting policies extends to any state body, including state courts, that may be in charge of the process of redrawing districts.[11] The Supreme Court has explicitly held that a federal court may not enjoin or otherwise interfere with a state court in the process of crafting its own redistricting plan:[12] "Absent evidence that these state branches [including courts] will fail timely to perform that duty a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it."[13]

Thus, in a race between federal and state courts to redistrict, the state court will win if it constructs a legal plan in time for use in the upcoming election. Indeed, a race to different courts (or more specifically, forum shopping) is often what this rule of deference will promote. Those who believe that the available state court might craft a more favorable plan than would a prospective or currently involved federal court will do what they can to ensure a state court hears the case. As a result, occasionally both state and federal courts will draw plans at the same time. Although the state court plan must win if done in a timely fashion,[14] unique legal constraints that apply to state court plans but not federal plans, such as the preclearance

requirements of section 5 of the Voting Rights Act, [15] can delay a state court plan long enough that the federal plan must then go into effect. [16]

c. Deference to State Policies

The deference due the state legislature does not end once a court reluctantly gets involved in line-drawing. According to the rules set forth in Upham v. Seamon, [17] a federal court plan ought to reflect the policy decisions made by the legislature even though the legislature has abdicated its responsibility to redistrict:

Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward, it is faced with the problem of reconciling the requirements of the Constitution with the goals of state political policy. An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect. [18]

***1135** Upham built on the Supreme Court's decision in White v. Weiser, [19] which held that
a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution. [20]

As emphatic as the Supreme Court's pronouncements concerning deference to state policies have been, on just a few occasions, none of which occurred in the past two decades, has the Court overturned a map because the crafting court did not defer sufficiently to state redistricting policies. [21] Perhaps this is because courts usually adopt what might be described as "least-change" plans--that is, plans that remedy the identified constitutional violation but go no further. [22] Or perhaps the success of court-drawn plans derives ***1136** from the difficulties inherent in discerning whether a nondeferential plan went too far, or from the sympathy the Supreme Court has for a lower court that must rush to put a plan in place before upcoming elections. [23] In most cases where a court radically redraws a plan, it does so because the underlying legal violation is so pervasive (as in a wildly malapportioned plan) that the court cannot replace the illegal plan with one that merely nips at the edges.

If taken seriously, though, the idea of deference to state policies can be a sticky wicket. In the typical case, such deference could extend to traditional, though not legally required, districting principles such as compactness, contiguity, retaining the cores of prior districts, respecting political subdivision boundaries, and protecting communities of interest. [24] But many states also have long traditions of nefarious conduct, such as malapportionment or racial discrimination, which the Supreme Court has made clear courts cannot respect. Beyond these, however, are all policies--even those that serve the narrow interests of the original line-drawers--deserving of deference so long as they are not illegal or unconstitutional? In particular, should the court defer to the partisan or incumbency-related motives underlying the enjoined plan?

In White v. Weiser, the Supreme Court came quite close to saying outright that a federal court should defer to a state policy of avoiding contests between incumbents. [25] Several lower courts have followed the lead of that decision and explicitly incorporated incumbent-protection concerns into their plan. [26] As discussed later, courts that take account of incumbency do so in order to preserve the constituency-representative relationship that existed under the enjoined plan, [27] and to avoid charges that its plan is biased against ***1137** one party. [28] However, in protecting all incumbents equally, a court plan will also diminish electoral competition and codify the partisan bias of the underlying plan. [29]

No court has yet found an unconstitutional partisan gerrymander, [30] and most judges admit to the inevitability of partisanship influencing, if not dominating, plans crafted by politicians. Although a court might not strike down a plan because of excessive partisanship, some judges are naturally hesitant to institute a court plan that consecrates or acquiesces to the partisan motives that underlie the districts in the struck-down plan. After all, the Supreme Court has admonished courts that their redistricting

plans should be drafted "in a manner free from any taint of arbitrariness or discrimination."[31] Consequently, the impulses of deference and political neutrality run counter to each other. For the most part, however, courts opt for deference and leave for another day[32] the question of whether the deferential remedial plan is too partisan, or too incumbent friendly, in its effect.

2. Preference for Single-Member Districts

On several occasions the Supreme Court has emphasized that court-drawn plans should employ single-member, as opposed to multimember, districts.[33] This admonition can best be described as a rule the Court has given to lower courts acting in their equity capacity to devise remedies for legal violations. In other words, there is certainly no textual support for this preference for multimember over single-member districts.[34] Rather, the preference ***1138** for single- over multimember districts comes from the history of courts reluctantly and hurriedly adopting multimember district plans to remedy early malapportionment controversies,[35] as well as a parallel line of cases in which plaintiffs challenged multimember districts as diluting minority votes.[36]

The first opportunity for the Court to state its preference for single-member districts was its stay of the district court's plan in Connor v. Johnson.[37] That plan employed multimember districts for a few counties because the crafting court said that insufficient time remained before the candidate filing deadline to break up these multimember districts into single-member districts (as parties to the litigation had proposed).[38] The Supreme Court reversed because it did not believe the claims of the district court (given the fact that, at the time of its decision, the court had before it single-member district plans), and because it considered single-member districts to be preferable.[39] Three years later, in a new incarnation of the same litigation over Mississippi's legislative districts, the Court explained its preference:

Because the practice of multimember districting can contribute to voter confusion, make legislative representatives more remote from their constituents, and tend to submerge electoral minorities and overrepresent electoral majorities, this Court has concluded that single-member districts are to be preferred in court-ordered legislative reapportionment plans unless the court can articulate a "singular combination of unique factors" that justifies a different result.[40]

In the intervening years, the Court had decided Chapman v. Meier,[41] which to this day remains its most complete explanation for the preference for single-member districts:

First, as the number of legislative seats within the district increases, the difficulty for the voter in making intelligent choices among candidates also increases. Ballots tend to become unwieldy, confusing, and too lengthy to allow thoughtful consideration. Second, when candidates are elected at large, residents of particular areas within the district may feel that they have no representative specially responsible to them. Third, it is possible that bloc voting by delegates ***1139** from a multimember district may result in undue representation of residents of these districts relative to voters in single-member districts.[42]

Given that the most prominent racial vote-dilution cases under either the Fourteenth Amendment or the Voting Rights Act have involved multimember districts,[43] it is hardly surprising to find the Court reluctant to embrace multimember districting as a remedy that lower courts should follow in their redistricting plans. As contemporary scholarship has argued, however, many of the alleged shortcomings of multimember, plurality-based systems could be remedied with different types of proportional voting rules.[44] In fact, civil rights advocates who were at the forefront of breaking down multimember schemes that diluted minority votes now urge the adoption of such schemes, modified to dodge what are seen as shortcomings of the single-member district system with respect to minority empowerment.[45]

B. Unique Constitutional Constraints on Court-Drawn Plans: The Stricter Requirement of Population Equality

All of the constitutional constraints that exist for legislative plans also exist for court-drawn plans; however, the equal population constraint is stricter for court plans. Courts, like legislatures, must make sure that the plan they adopt or construct is not

intentionally discriminatory[46] and does not use race as the predominant factor,[47] unless necessitated by the Voting Rights Act.[48] Insofar as one might discern (or the Court might create) a constraint on partisan gerrymandering,[49] such a prohibition would apply to court-drawn plans as well. For the most part, though, the stricter one person, one vote requirement for court-drawn plans is the only notable, and often troublesome, constitutional restriction about which courts concern themselves.

***1140** As with plans devised by the legislature, the equal population requirements for court-drawn congressional plans are stricter than those for noncongressional plans.[50] Congressional plans must make a good-faith effort to achieve precise mathematical equality,[51] but courts will allow the legislature to depart from mathematical equality in other redistricting plans. Although courts will tend to uphold most noncongressional plans drawn by the legislature with overall deviations under ten percent that can be justified by some legitimate state interest,[52] court-drawn plans must abide by a stricter standard of population equality.[53] Alas, the Court has not identified with precision exactly what percentage deviation the Equal Protection Clause allows or prohibits for court-drawn, noncongressional plans; all we know is that courts should pay greater attention than legislatures to the equal population requirement. As the Court has explained on several occasions, "[U]nless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature . . . must ordinarily achieve the goal of population equality with little more than de minimis variation."[54] This tighter leash around courts' necks derives from the fact that they are not in the best institutional position to decide on state policies that might justify departures from one person, one vote.[55] The strict rule of population equality illustrates the general lack of other guiding principles for court-drawn plans. Put differently, the Court has expressed very little of what might be considered a coherent philosophy of representation, but it knows one thing: districts should have equal numbers of people in them. Thus, that confidence in the conviction of the equal population requirement leads naturally to courts' attempts to perfect that requirement at the expense of other interests in which they are less expert.

***1141** The stricter the rule of population equality constraining a plan, the longer it will take to construct it, and the less attention will be paid to other redistricting principles. Mapmakers can spend an enormous amount of time "zeroing out" a plan--that is, adding and subtracting census blocks from districts in order to make them as equal as possible. Once the basic components of a plan are in place, it can take another day or two to bring the plan to a strict standard of population equality. Courts should keep this in mind if they expect to allow changes to their plan, or to order changes to a plan drawn by a hired expert. For plans where the court is intimately involved in the drawing of districts, it may be useful for the court first to view a draft plan, and then the expert can incorporate their changes while zeroing out the plan.

C. Voting Rights Act

As the Court has interpreted it, the Voting Rights Act places peculiar constraints (if one can call them that) on court-drawn redistricting plans. As far as I am aware, no court plan has ever been held to violate the Voting Rights Act. Perhaps this is because courts generally comply with it, or perhaps because the Act is largely considered inapplicable. In any event, courts go through the motions of reciting the applicable law and explaining why their plan does not run afoul of the prohibition on race-based vote dilution found in section 2 of the Voting Rights Act[56] and, for covered jurisdictions, does not run afoul of the prohibition on retrogression found in section 5 of the Act.[57]

1. Section 2

Section 2 of the Voting Rights Act prohibits redistricting plans that dilute minority votes or cause minorities to have "less opportunity . . . to elect representatives of their choice."[58] Specifically, section 2 applies to any "voting qualification or prerequisite to voting or standard, practice, or procedure . . . imposed or applied by any State or political subdivision."[59] The relevant questions for our purposes then are: (1) whether the court that draws the plan is a "[s]tate or political subdivision" as contemplated by the Act or, if not, (2) whether section 2 nevertheless covers the plan, because the state will enforce the plan.

*1142 While declaring that "[o]n its face, § 2 does not apply to a court-ordered remedial redistricting plan," the Supreme Court has assumed, without deciding section 2's reach, that federal courts should comply with section 2.[60] To some extent, the question of section 2's coverage is purely academic--given that the Supreme Court has admonished courts to follow it and no court plan has been held to violate section 2. One searches the legislative history of the 1982 Amendments to the Voting Rights Act[61] in vain, however, to find a specific answer to the question of section 2's coverage of court-drawn plans.[62] All we know is that, with the 1982 Amendments, Congress specifically wanted to overturn Mobile v. Bolden,[63] which required proof of discriminatory intent in addition to effect for constitutional vote dilution claims.[64] There is no particular reason to believe that the statute's preoccupation and prevention of the potential discriminatory effects of a redistricting plan should depend on the actor that constructed the plan. Indeed, Congress wanted to prevent dilutive plans regardless of the intent--and arguably the identity--of those who constructed them.[65] On the other hand, the case law preceding and including Bolden dealt with legislatively enacted plans,[66] and the words of the statute, while ambiguous as to their coverage, certainly do not go out of their way to include court-drawn plans.[67]

Although the standard for vote dilution is the same for legislative and court-drawn plans, the unique redistricting principles that guide a court could affect how its plan complies with section 2--that is, exactly how it designs districts where minorities have an equal "opportunity to elect their candidates of choice."[68] In particular, a court's refusal to look at partisanship and incumbency might lead it to design districts with higher minority concentrations than it would if it knew the political complexion of the district or the identity (and race) of the incumbent. For example, it might be the case that for districts without an incumbent (open seats) a district's voting-age population need only be fifty percent black for African-Americans to have an equal opportunity to elect their candidates of choice. However, if there is a white *1143 incumbent, the district would need to be sixty percent black, and if there is a black incumbent, it need only be forty percent black.[69]

Moreover, the percentage needed to comply with section 2 will also depend on the partisanship of white voters in the designed district and their willingness to vote for the candidate favored by the African-American community.[70] For example, a forty-percent black district might be an effective minority district (for purposes of section 2) if half the whites in the district are Democrat, but will likely not be effective if all the whites in the district are Republican. The decision not to consider partisan factors will lead a court to err on the side of caution--drawing districts with minority concentrations that exceed what might be necessary if it knew the political predispositions of white voters and the identity of the incumbent, if any, that would run from such a district.

2. Section 5

Section 5 of the Voting Rights Act requires certain covered jurisdictions to submit their redistricting plans to the attorney general or the United States District Court for the District of Columbia for preclearance to ensure that such plans do not have the purpose or effect of retrogressing with respect to minority voting power.[71] Several questions arise concerning court-drawn plans and section 5. Which, if any, court-drawn plans must be precleared? For even those plans that do not need to be precleared, should they abide by the nonretrogression requirement anyway? If so, what is the appropriate benchmark against which a court should measure retrogression?

To begin with, the Supreme Court has made abundantly clear that section 5 does not require federal courts to preclear plans they have prepared and adopted.[72] However, that principle implies several qualifications. The first is that this rule applies only to federal courts.[73] State court plans must be precleared just as any "standard, practice or procedure with respect to voting" that a covered state or jurisdiction seeks to "enact or administer" must be precleared.[74] Moreover, plans proposed by the state and adopted by a federal court must be precleared.[75] "[W]henever a covered jurisdiction submits *1144 a proposal reflecting the policy choices of the elected representatives of the people--no matter what constraints have limited the choices available to them--the preclearance requirement of the Voting Rights Act is applicable."[76]

The tricky cases are the intermediate ones that occupy a gray area between court-adopted and court-drawn plans. Often courts will pick and choose from various plans offered by the parties to the litigation or other interested groups, including various officials representing the "state." The degree of innovation required by a court before a plan can be said to be court-drawn will depend greatly on the facts of the individual case. Moreover, courts will often modify their plans to accommodate objections or suggestions made by political parties and various politicians.

These rules concerning preclearance place a court in a difficult position and raise a number of questions if the court wishes to involve outside participants in the construction of the court's plan. Which accommodations are significant enough to require preclearance? Should the need for preclearance of a partially adopted plan depend on the position of power held by the proponent of such changes? The difficulties created by the preclearance requirement for court-adopted plans provide a disincentive for the court to hold hearings or accept proposals upon which it could model its plan. Of course, if the Act did not require preclearance of such plans, then jurisdictions might be able to end-run the preclearance requirement. They could refuse to pass a plan, and instead, they would later propose it to the local district court charged with constructing a plan that must defer to legislative policies (as reflected in the proposed plan).

Even for plans a federal court creates on its own, the Court has specified that they ought to avoid retrogression--that is, they should avoid making minority voters worse off. Echoing the Senate committee report accompanying the 1975 reauthorization of the Voting Rights Act, the Court in McDaniel v. Sanchez explained, "[I]n fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." [77] The Court later described this as "a reasonable standard, at the very least as an equitable factor to take into account, if not as a statutory mandate." [78] Therefore, even though they do not need to preclear their plans, courts should make sure that their plans for covered jurisdictions do not make minorities worse off.

The question remains: worse off as compared to what? What should be the benchmark against which a court should measure retrogression for purposes of its plan? The answer, according to Abrams v. Johnson, is that retrogression should be measured against the last legally enforceable plan--meaning the last plan that was in effect and complied with the Constitution and Voting Rights Act. [79] This will often mean the plan immediately preceding the one that the court has just enjoined and now seeks to remedy, but in ***1145** some cases the preceding plan was also unconstitutional or illegal. [80] This rule produces the somewhat ironic twist: in cases where a court strikes down a new plan on one person, one vote grounds, it may end up using as a benchmark for section 5 purposes the plan passed ten years earlier, which is now even more malapportioned due to population shifts than the one the court just struck down.

From the standpoint of administrability, if not fealty to the original intent of section 5, [81] the Court's most recent decision lowering the bar for what constitutes retrogression should allay any fears that a court might have about its plan's compliance. Georgia v. Ashcroft [82] significantly defangs section 5, [83] which many previously (and apparently erroneously) had interpreted as focused on maintaining majority-minority districts. [84] Under Georgia v. Ashcroft, a plan enacted by the legislature need not match the proportion of such districts in the benchmark plan and can instead opt for fewer majority-minority districts and a greater number of "influence districts." [85] Without delving too deeply into that decision, [86] suffice it to say that covered jurisdictions do not need to worry as much about section 5 as they did previously.

Following Georgia v. Ashcroft, questions such as the appropriate benchmark are likely to recede in importance as jurisdictions justify their plans as maintaining an appropriate mix of districts where minorities can influence or control who gets elected. Whereas before Georgia v. Ashcroft jurisdictions would assiduously attempt to maintain the same number of majority-minority districts with nearly the same racial percentages, now they can more easily opt for lower concentrations of minorities among a greater number of districts.

Perhaps this new, flexible rule of retrogression applies to court-drawn plans and perhaps not. On the one hand, a court plan that reduces the number of majority-minority districts in favor of a greater number of influence districts does not make minorities

worse off and does not retrogress according to the Georgia v. Ashcroft standard. However, the decision to opt in favor of influence districts when the state has a policy of creating majority-minority districts may go against the general rule of deference that governs court-drawn plans. The same could be said of a court plan's move to majority-minorityyy *1146 y districts from a legislature's plan that created influence districts. Although as a technical matter either strategy appears fully compliant with section 5, the decision over which strategy to follow could be another one of those legislative decisions to which the courts should defer.

II. Process [87]

A quick review of any random sample of court-drawn redistricting plans would illustrate the remarkable variety of processes that courts employ when they are confronted with the "unwelcome obligation" of drawing a district map. Courts vary considerably in how and when they draw their maps, whom they get to help them, who will have input into the process and when, and whether they will make changes to a plan once it is released. In part, this variety (or inconsistency) derives from the unique context that drives each redistricting process, and in part, it comes from the lack of any data that can guide courts once confronted with the task. The choice of different procedures can have a dramatic impact on the final plan that emerges. In this Part, I describe the various approaches and assess the costs and benefits of each.

By way of introduction, I should stress the unique environment that confronts a court as it begins to construct a redistricting plan. It should go without saying that court-drawn plans can present one of the most intense interbranch conflicts that our constitutional system allows. After all, decisions that a court makes in constructing its plan will often lead to legislators losing their jobs and in some cases might significantly alter who controls legislative chambers. The courts usually get involved only after negotiations between the political parties break down, having produced a poisonous environment of partisan acrimony. The affected parties will analyze each decision a court makes for any hint of bias, be it partisan, personal, or institutional. Moreover, because the construction of such plans is a group effort, there always exists a temptation for each participant to disclaim responsibility and point the finger of blame toward other participants, once the losers in the process take aim and try to discredit the court, the plan, or its drafters.

No redistricting plan--and certainly no court plan drawn under exigent circumstances--is perfect. Indeed, if a plan were possible that could please everyone, then the court would likely not be involved. The most a court can hope for is a plan that is immune to legal challenge and can be justified by coherent principles, as well as a process that is widely regarded as fair, nonpartisan, and transparent.

A. When and Why Should Courts Redistrict?

The nature of the litigation that forces court involvement will often determine the timing and pace of development of a court-drawn plan. If I had just one recommendation to make (from the standpoint of one who draws maps), I would urge courts to avoid waiting until the last minute to begin drawing maps and not to rush the line-drawing process. The series of frenzied *1147 twenty-four-hour days that often precede a court-drawn plan is suboptimal, to say the least, for construction of plans that will determine representation for a state for years to come. On the other hand, from the standpoint of the jurisdiction, the court should only act with its own map once the political branches have failed to pass their own plan. Giving the legislature every opportunity to complete its plan flows from the general rule of deference described above. It also makes sense from the standpoint of saving the jurisdiction money, because the cost of construction of a court-drawn plan (along with all the supporting materials and participants described below) can often reach well beyond half a million dollars for a statewide plan.

One way to reconcile the conflicting pressures of time and deference is for a court to begin drawing its map at the earliest point when it becomes clear that the state will not be able to craft a legal plan in time for elections. That impasse may be reached soon after the court issues its decision striking down the extant plan, or it may be reached only after the parties have pulled their hair out for months and failed to reach a compromise. Moreover, courts should recognize that by beginning to draw their own map, they do not necessarily prevent the legislature from making headway on its own plan contemporaneously.

Courts must be aware of several salient dates when deciding on the timetable for their plan: the dates for the beginning and end of the qualification period for candidates and parties for the primary election ballot; the date when military, overseas, and other absentee ballots must be mailed for the primary election; and the other dates specified for printing ballots and running the elections. Sometimes in the course of a redistricting struggle and creation of a plan, courts will adjust these dates in order to ensure that candidates are not prejudiced by the failure of the state to develop its own plan. However, in order to give the state enough time so that the process for ballot qualification, ballot printing and mailing, precinct redefinition, and election administration can go forward, a court should have as its goal the imposition of a plan no later than one month before candidates may begin qualifying for the primary ballot. This means that the court should begin drawing its plan about three months before the beginning of ballot qualification in order to build in time for possible hearings and adjustments to the plan. [88]

Given the current state of technology, experts can draw a redistricting plan for any statewide plan (either legislative or congressional) in about a week. A quick plan, however, is not necessarily a good plan. Indeed, a computer can draw a statewide equipopulous plan by itself in a matter of hours or even minutes, but it is unlikely to be one a court (or anyone) would want to adopt. Furthermore, the time required to produce a plan is a function of the number and character of the constraints placed upon it. For example, drawing plans for areas where section 2 or 5 of the Voting Rights Act might present ***1148** serious constraints will take longer (all other things being equal) than will drawing a plan for an all-white area. Drawing a plan that takes into account partisanship, incumbency, or communities of interest will take longer than one that ignores such factors. Allowing one month for the drawing of a plan and an additional month for hearings and potential modifications to it should build in enough of a cushion so that all concerned can proceed in a nonfrenzied fashion.

B. Three Models of Judicial Mapmaking

Given how many times courts have drawn their own redistricting plans in the last forty years, the lack of uniformity as to process is somewhat surprising. Here, I describe three procedural models for court-drawn plans, although an infinite number of permutations and alternatives are also possible. The modal arrangement involves the appointment of a special master who then submits a plan to the court for its approval or modification. The second involves more active participation by the court, which hires its own expert to help the judges draw the plan themselves. Finally, some courts will merely ask interested parties to submit alternative plans, and the court will choose to adopt or modify one of them.

1. The Special-Master Model

Courts will often appoint special masters, pursuant to Rule 53 of the Federal Rules of Civil Procedure, to supervise the production of a court-drawn plan. [89] Courts use special masters for this task in order to place some distance between themselves and the plan. Because the drawing of district lines can be such a sensitive political task, the appointment of a special master, particularly a retired judge or in some cases a redistricting expert, allows the court to disclaim responsibility for the specifics of a plan. Instead, the court's role under this arrangement could be to set the principles, if any, that the special master will follow in construction of a plan, as well as to approve, reject, or entertain objections to the plan. This model is resource-intensive since it often requires the employment of a legal team to help the special master develop a report to accompany the plan, as well as the employment of one or more experts to assist in production of the plan and the accompanying affidavits. Under such a system, the special master often becomes an advocate and defender of his or her plan, and responds to objections the parties and the judges raise.

The degree of isolation of the special master and his or her distance from the court depends on the particular context of the litigation. In some cases, the special master is in frequent contact with the court, even showing it drafts of the plans, and in others, the court only receives the plan when the parties to the litigation do.

***1149** 2. The Court-Controlled Model

Sometimes courts will eliminate the middleman and simply hire an expert to help them draw their own plan or even draw it themselves. This model can be effective (and inexpensive) for judges who have a good idea as to what they think the plan should

look like or who are less afraid of the potential fallout. Also, for plans that are remedying limited, specific, and identifiable defects in the extant plan, this approach seems most appropriate. Such a case might include, for example, a redrawing of just a few districts that may have been found to violate the Voting Rights Act or Shaw v. Reno.[90] Even for more detailed and extensive plans, though, this approach will sometimes be best where the court faces extreme time constraints, such that the special-master model might be too cumbersome.

The cost of such an approach, however, is that the court cannot then disclaim responsibility for its map. As an active participant in the drafting of the plan, the court should be prepared for the partisan accusations that will often fly upon the plan's release.

3. The Adopted-Plan Model

A court might decide to place the burden of proposing a remedy on the parties to the litigation or, for that matter, any interested party willing to suggest a redistricting plan. Under this procedure, the court sits back and evaluates alternatives, and selects from a buffet of options presented to it. This process may or may not require the assistance of an expert to help evaluate the submitted plans, depending on whether the court feels confident that it can adequately assess the compatibility of the proposals with certain legal and other requirements.

As with the other models, there are costs and benefits to this approach. On the one hand, by outsourcing the drafting process to others, the court has the luxury of choosing from several plans and can do so with less cost than if it hired a team to draw the plan. However, the risk always exists that the court might find all proposals deficient, either because they violate the law or because they arise from narrow and often partisan interests. If, for example, the court is placed in the position of deciding between a plan proposed by the Democrats and another by the Republicans, either choice is fraught with political dangers. Thus, this process might be best used when the likely proposals do not appear politically risky for the court, as might be true for a local elected body.

This approach can be merged with either of the two previous approaches to produce a hybrid in which the court or the special master begins by accepting proposals offered by parties and other interested groups. If one proposal is clearly preferable, then it could be adopted, saving the court time. If not, then the court or special master might work off of one or more of the plans to produce a hybrid believed to be superior.

***1150** However, an additional drawback to the adopted plan approach and perhaps to its variants is that the plan might be subject to section 5 preclearance if it is a plan for a covered jurisdiction. As noted above, the rule from McDaniel v. Sanchez requiring preclearance of plans "reflecting the policy choices of the elected representatives of the people" applies to plans adopted, though not drawn, by a federal court.[91] Indeed, for a federal court deciding which approach to take in imposing a plan for a covered jurisdiction, the court (and perhaps even the jurisdiction) has the somewhat perverse incentive to avoid entertaining suggestions from the political branches. The more influence that the jurisdiction's elected officials or their proxies have over the court's plan, the closer the court comes to adopting a plan that could be held up for sixty days by the Department of Justice.

C. The Personnel Involved in Drafting a Court Plan and the Division of Responsibilities Between Them

Depending on which of the above approaches a court pursues, different people will be involved in the line-drawing process. By the end of a redistricting process supervised by a federal court, it is not unusual to have witnessed involvement by some combination of the following people: each member of a three-judge panel, one retired judge or other special master, a legal support team of two or more lawyers, somewhere between one and three redistricting experts who actually draw the districts, an expert on local political geography, perhaps an expert to perform racial bloc-voting analysis, a handful of technicians and computer specialists, someone in charge of security for both the data and rooms where the line-drawing takes place, and a staff of people producing and handling the enormous amount of documentation that often accompanies a plan. The challenge in selecting people to work on the plan is to find experts in their respective fields who are insulated from political pressure and who have a credible claim to impartiality and nonpartisanship. This is easier said than done.

In order to rein in spiraling costs of developing a plan, courts will usually request and receive extensive support from a jurisdiction's redistricting office. Relying on state officials can often place them in a delicate position, though, especially if they owe their jobs to incumbents whom the court's plan could potentially threaten. Moreover, many of these officials may have helped craft the plan that the court recently struck down and may feel some sense of obligation to the bargain that gave birth to that plan. In some cases, they will be working on plans for their legislative bosses as the court works on its own plan, so they will be forced into the impossible position of being a partisan tool on one day and a neutral line-drawer the next.

The delicacy of "seizing" a redistricting office illustrates a fundamental personnel problem that affects any court developing its plan. Ideally, courts should hire people who are skilled in the art of redistricting, knowledgeable about the state, and politically unbiased. It is remarkable how rarely these three qualities exist together in potential assistants to the court. Redistricting experts that are also knowledgeable about the state have usually been tapped ***1151** by one party or another and have an obvious conflict, or their appointment will lead to apoplectic objections from participants in the litigation. As a result, courts will often turn to experts from outside the state and try to use hearings or other means to give the line-drawers the information they need to construct the map. Of course, outsiders will be accused of a lack of sensitivity to local politics and communities of interest, which to some extent is what makes them more qualified in the court's eyes.

D. Gag Orders, Confidentiality, and Security

At the risk of beating a dead horse, let me reemphasize the sensitive nature of the task performed by those who assist the court in constructing a plan. As the court begins the line-drawing process, everyone is eager to know who is "winning" under the court plan. Moreover, inside knowledge might lead to a change in the bargaining position of the parties, who may be attempting to iron out a deal before the court releases its plan. As a result, it is imperative that the computers and rooms are secure and off-limits to any legislators or interested parties who often just happen to be roaming nearby. Further, it is often in the interest of those working on the plan, let alone the court, to have a gag order in effect that prevents them from discussing their work on the plan with any outsiders. State employees in particular, who are likely to be pressured by the state legislators with whom they work on a daily basis, may want to have some document that they can wave in front of the many people who want to pump them for information.

E. Where to Begin?

1. When, if Ever, Should Hearings Be Held?

Depending on the time constraints placed on a plan and the model the court chooses to follow, a court or a special master may wish to hold hearings before it begins the process of drawing its own map. The court could limit participation in the hearing to the parties to the underlying litigation, or it could open it to the public. The substantive scope of the hearing could run the gamut from proposed principles to guide the court or special master in construction of the plan, to proposals of actual plans, partial plans, or individual districts. Such hearings can aid the court in providing building blocks for its plan as well as justifications for the districts it later draws. Moreover, given the now-widespread availability of computer mapping software, such hearings can constitute remarkable examples of participatory democracy with all kinds of groups attempting to identify their community of interest and to have their say over the court plan. Of course, when time is of the essence, these hearings can constitute a major distraction from the actual work of drawing a plan. One time-saving alternative is to allow written submissions from all interested parties and to place them on a publicly available website. Also, in the event the court does not have hearings at the front end, it can always hold them after it releases its plan.

***1152** 2. Choosing an Initial Plan as a Template

One of the more important decisions to be made at the front end of a redistricting process concerns what plan, if any, the line-drawers should work from in constructing the court's plan. This will depend on the context of court involvement and whether its role is to make minor modifications to the plan it just struck down or to draw a more comprehensive plan. Among the possible starting points are: (1) the existing plan; (2) a preexisting plan from a prior redistricting; (3) plans submitted by the parties or outsiders; or (4) working from scratch. To some extent this decision will be driven by an assessment as to which plan best

articulates the state's redistricting traditions and principles. The default option, based on the considerations mentioned in the discussion of deference above, is to work off of the existing plan, but often the constitutional or other legal infirmities in that plan will disqualify any plan that merely tinkers at its edges. Additionally, in some cases, doing so is literally impossible, such as when a state loses or gains a significant number of congressional districts.

Often it makes sense for the court to pick out sections of proposed plans and merge them together. For example, a court might decide to accept a Republican-authored plan for Republican areas of a state, a Democratic plan for Democratic areas of the state, and for the court to draw its own lines for competitive regions. Needless to say, the decision to work off of only one political party's plan invites criticism on grounds of bias. Also, a court should beware of nonpartisan explanations offered for plans proposed by partisan actors. Rarely will a political actor propose a district by saying, "This helps out me and my friends but hurts my opponents, and therefore the court should adopt this plan." More likely, partisans will justify their plans by emphasizing the proposal's respect for traditional redistricting principles, and in particular, representation of communities of interest.

3. Which Data to Use?

Any data that can be tied to a geographic point or area can be incorporated into a redistricting program. In other words, any information that can describe a piece of land or its occupants can be part of the information that line-drawers see and consider as they draw a redistricting plan. Certain types of data are more difficult to come by (e.g., credit card data or magazine subscription lists) than others (e.g., publicly available census data), and states vary significantly in which data they make publicly available. Before beginning construction of its map, the court should decide what data they would like loaded into the redistricting program, as well as which redistricting program the mapmaker should use.[92] Furthermore, opposing parties to the underlying litigation will often want to verify the accuracy of the data that the court will be using to construct its plan.

***1153** a. Census Data: The P.L. 94-171 File

The data that the Census Bureau makes available in time for decennial redistricting are presented in the Pub. L. No. 94-171 redistricting dataset.[93] This dataset is specifically designed to allow jurisdictions to comply with one person, one vote and the Voting Rights Act. Therefore, it only provides the following data: aggregate population and voting age population totals broken down by race and Hispanic origin.[94] It provides these data for every level of census geography: census blocks, block groups, tracts, etc.[95] Courts should also make a decision as to the level of geography at which the plan should be drawn. The smaller the level of geography the more easily one can comply with one person, one vote, as well as other constraints. Redistricting at the block level (which is what most line-drawers do) will often increase the odds that districts will be less compact and that precincts will be split, unless such features are assiduously respected.

In the event the court redraws lines at some point after the first two years of a census cycle, other census data might also be available. Those data would come either from short-form data (such as citizenship status) released later, census projections, or data gathered from the long form of the census or another census survey. The long form of the 2000 Census asked questions of one of six respondents concerning, for instance, the condition of their dwelling, certain socioeconomic characteristics, and family information--most of which is irrelevant to the redistricting process.[96] Furthermore, certain projections of census data might also be available, although their reliability will obviously be shaky as one gets farther down the level of geography and farther away from the original census, and might not be available at the block level.

***1154** Relying on beginning-of-the-decade census data for a mid-decade redistricting naturally ensures that the plan will not take into account population changes that have taken place since the last census. In addition, relying on census projections--even assuming they are available for the necessary level of geography--opens the plan up to the charge that the underlying data are mere unreliable speculations, as opposed to an actual enumeration of the area's population. For the most part, courts drawing congressional plans will play it safe and use the outdated census numbers, which remain the "best census data available,"[97] in order to comply with the strict requirement of population equality. For noncongressional plans, a court could also use the old data while paying attention to the census projections so as to justify deviations from perfect population equality in faster growing parts of the state.

b. Political Data

As described in the next Part, the decision whether to pay attention to the partisan or incumbency-related effects of a plan may be the most important decision a court makes. If the court does wish to know the political effects of its plan, many different types of data might be available.

For the states that collect it, the easiest data to acquire are party registration data, which indicate how many Democrats, Republicans, independents, etc., live in a particular area. Those data provide a rough cut of the political character of an area, but they are not terribly reliable in predicting the partisan advantage or competitiveness of a district. Because in some areas, and for some population subsets (e.g., rural Southern whites), party identification and voter preferences often may not be coterminous, registration statistics will not give an accurate picture of the likely outcome of an election in that district. Moreover, in areas with a large number of independents, the registration data will give no answer as to the likely partisan predisposition of the district.

Therefore, to assess the true political complexion of an area, one needs to examine previous election data. But which elections will be most revealing? The difficulty here is that most elections are not competitive, so their results will misrepresent the expected vote a candidate of a given party will achieve in a future election. Using presidential-election returns from Texas in the last election, for example, would not produce reliable predictions for redistricting of the Texas legislature because the data are warped by the fact that an incumbent president, who was also a former governor of the state, was the Republican candidate and his opponent did not waste time competing for votes in that state. The same can be said for most congressional elections in which the incumbent usually trounces a low-quality challenger.

In attempting to construct the "normal vote" for an area, ideally several elections will need to be aggregated together to get an idea of how the average Democrat or Republican candidate will perform in the district, holding all other qualities of the candidate or unique characteristics of the election ***1155** equal.[98] The political parties develop for themselves (and keep tightly guarded) intricate models of political performance that they use when drawing their plans. Time constraints can prevent courts from developing similar statistics, but looking at the last few competitive statewide elections or down-ballot races[99] as proxies for political performance can provide a rough idea of the advantage, if any, that a party will have in a particular district. Finally, almost all states provide in their redistricting datasets the location of incumbents' residences. In fact, sometimes a redistricting program will designate their residences by a small elephant if the incumbent is a Republican or a little donkey where the Democratic incumbent resides. If the court wishes to pay attention to incumbent residence--in order to avoid incumbent pairings, for example--such data can easily be loaded into the program if they are not there already. Of course, anyone's address (including that of potential challengers or other potential candidates) could be loaded into the program as well, and datasets controlled by parties will include them.

c. Community-of-Interest and Topographical Data

In addition to the obviously relevant data described to this point, jurisdictions might also include a variety of data designating community characteristics. Locations of schools, universities, prisons, churches, army bases, country clubs, airports, factories, farms, and the like can be called up on the computer screens, as well as socioeconomic, cultural, or other community-describing data that might be incorporated into the program.

The same can be said for data that describe the land, as opposed to the people. One can identify where forests, wetlands, mountain ranges, bodies of water, islands, parks, etc. are located, as well as transportation lines, such as roads, railroads, subways, bridges, and highways. Such topographical and transportation features might be useful guideposts for drawing district boundaries, as they often form natural (or artificial) barriers between regions that allow for the creation of "neat" districts with easily identifiable edges.

d. Political Boundary Data

In addition to census categories of geography, which normally form the building blocks of districts, a variety of politically significant boundary lines receive great attention in the process of building a redistricting plan. Indeed, for some states these boundaries have important legal statuses because the law prohibits unnecessary or excessive splits of political subdivisions. Political subdivisions come in many forms: counties, parishes, cities, towns, school districts, judicial districts, water districts, etc. In general, county lines are relatively fixed, but for some political subdivisions the lines are hardly static: ***1156** city lines will often change frequently due to patterns of annexations and secessions. This is all the more true for precincts, some of which may change yearly to accommodate rapid population growth. Ideally, to minimize disruptions to electoral administration, a court should strive to use precincts as the building blocks of a plan. However, both time and concerns about compliance with one person, one vote and other legal requirements lead to redistricting at the census block level.

It is often helpful to look at other districting arrangements when constructing a plan for another representative body. For example, if one is charged with the responsibility of drawing a plan for a state's lower house, it may be helpful to look at the lines drawn for the state's senate. Or, if one is drawing a congressional map, it may be useful to examine the boundaries of the legislative districts. The state's redistricting computer will typically include all kinds of existing and past districting arrangements for every representative body from town council to school board to Congress.

F. Incorporating Objections to the Plan

Even if the court does not hold a hearing before work on the plan begins, it will often hold a hearing after releasing the plan in order to receive objections and comments. Before entertaining objections, it is important for the court to decide what kind of objections, if any, it is willing to accommodate. Obviously, the court will consider all legal arguments and, if valid, accommodate them. But what about objections clothed as arguments to make the plan "better" ? Will arguments as to partisan bias in the plan or unfair pairing of incumbents be the kind of objections that will lead to changes in the plan? Will the court accommodate objections as to respecting political subdivision lines or communities of interest? What about deals that incumbents in adjoining districts have worked out among themselves? What about arguments as to the difficulties of administering elections under this new set of lines? With each accommodation of objections or suggested changes, the court will be forced to justify: why this change and not others? Moreover, with each change will come a new round of objections, because expectations that were settled before the change become unsettled once a new line is drawn. Stakeholders who remained silent under the previous plan will now have objections they consider equally valid to those that the court accommodated and that placed them in their worsened position. In other words, once the court starts making changes, it will be difficult to stop. The omnipresent fear of unraveling should provide a healthy counterbalance to the natural inclination to please as many people as possible.

G. Giving the Legislature a Third Bite at the Apple

Once the court releases and adopts its plan, should it nevertheless still allow the legislature one last shot to pass its own plan? Obviously, if the state fails to pass a plan before the court finishes its own, it is unlikely to do so soon afterward. But in some cases, the political parties may have been holding out for the court's plan to see how they might fare.

***1157** When the court releases the plan and establishes a new default, the obstacles to compromise may melt away. For example, if both parties see the court's plan as threatening their incumbents equally, perhaps they will both agree to a statewide incumbent-protecting gerrymander. Compromise prior to the release of the court's plan is often difficult if either party believes the court will draw a more favorable plan than the one its opponent is offering. Once the results of that gamble are known and the parties' bargaining positions change, new possibilities may arise.

The court should decide at the front end of a redistricting process if it plans to give the legislature a third bite at the apple once it releases the plan. The court probably does not want to inform the parties of its intentions; otherwise, they might be even less likely to iron out a compromise in the intervening period. However, by deciding at the front end whether the legislature will be given another chance, the court can organize the calendar for development of its plan accordingly. For redistricting plans for jurisdictions covered by section 5 of the Voting Rights Act, a court considering whether to give the legislature another chance

must also acknowledge the possibility that its plan might go into effect if the legislature's plan cannot receive preclearance quickly.

The law is far from clear as to whether a court must or should allow a legislative plan to supplant its own plan if it can be done in time for upcoming elections. On the one hand, the principles of legislative deference described above would suggest allowing this third bite at the apple. [100] On the other hand, once the state has abdicated its role as redistricter, its argument that the court should invest an incredible amount of time, effort, and resources into constructing a plan--but nevertheless allow the state another chance--rings pretty hollow.

III. Substance

The applicable law, by itself, is insufficient to direct the production of a districting plan. The ultimate form of a plan depends on important decisions that the relevant actors will make concerning nothing less than the undergirding philosophy of the plan. To be sure, the state's traditional districting principles will provide additional guidance, but such principles are open to multiple interpretations, and a mapmaker can draw a near-infinite number of plans that comply with such principles, as well as the applicable law. In the event that the court is not merely touching up a plan it just struck down, it will usually ask its experts to draw compact, contiguous districts based on political subdivision lines. Beyond those principles, courts will vary considerably in the degree of attention they will pay to maintaining the cores of districts or protecting incumbents.

A. Traditional Districting Principles

Given the Supreme Court's fascination with "traditional redistricting principles" in its racial gerrymandering cases, it is unsurprising that courts ***1158** charged with drawing their own maps latch onto those principles for guidance. [101] The "big three" on such a list would include compactness, contiguity, and respect for political subdivision lines, [102] although which principles are "traditional" will always depend on the particular state. Just behind those three come respecting communities of interest, respecting the cores and/or configurations of prior districts, and protecting incumbents. [103] Of course, many of these principles might run headstrong into legal requirements such as the Voting Rights Act or one person, one vote, which will often force the creation of noncompact districts that break up political subdivisions or significantly change previous districts.

It is important to note at the outset that there are no such things as "neutral" districting principles, no matter how strong the historical pedigree or embodiment in tradition some principles can claim. Anyone with sophisticated knowledge of the political geography of the state can tell you who wins under the application of one or another "neutral" districting principle. The effect of ordering the creation of compact districts that adhere to political subdivision lines, for example, will bias a plan in favor of the political party that is more evenly and efficiently dispersed throughout the state. [104] This is not to say that such principles come anywhere near approaching the bias produced by a political gerrymander. However, once the court announces the principles that will guide its plan and prioritizes them, all interested parties will have a good idea as to who will likely be advantaged.

1. Compactness

The first inclination for almost any person in charge of redrawing a map is to say "let's clean it up." Indeed, noncompact or bizarre-looking districts usually indicate that "something is up" --meaning that some intentional decision has been made to group people into a strangely shaped district. Aesthetic characteristics by themselves, though, provide a poor philosophical justification for drawing district lines, except insofar as certain mathematical measures of compactness can fairly be said to be politically neutral. Compact districts may have the advantage of providing coherence to a districting arrangement, and in theory, they give voters and candidates clearer signals as to the boundaries of the "district community." However, this is not necessarily so. One could draw compact districts that group unrelated communities on different sides of a mountain or river, that cobble together areas unconnected by roads so candidates must travel outside their district in order to get from one part of it to another, or that stick adjoining communities together despite the absence of any unifying characteristics. Nevertheless, the widely perceived neutrality of compactness measures provides a court plan with a credible claim to nonpartisanship. [105]

***1159** Compactness not only lies in the eye of the beholder, but it can be measured in several ways such that a district that is very compact according to one measure could be noncompact as compared to another. One set of measures compares the area of the district with that of the smallest circumscribing circle, square, or rectangle. Others measure the ratio of the perimeter of a district to its area. Still others might be more sensitive to the number of protrusions from a district, as well as the district's length or thinness. Several of these measures actually contradict each other, which is to say that as a district's score increases according to one measure, it decreases according to another measure. [106] If compactness is a value that the court plan intends to further, settling on one or more of the various measures at the outset can guide the line-drawer in maximizing its value.

2. Contiguity

A district is contiguous if one can walk to each part of the district without having to go through another district. [107] Contiguity is usually not a difficult value to further in a plan. Courts should be aware of a few pitfalls, such as what to do in cases of point contiguity (where two parts of a district connect to each other at a single intersection of two lines) or water contiguity (where one must travel through water in order to go from one part of the district to another) or functionally noncontiguous districts (where the parts of a district appear connected on the map, but the absence of certain roads or bridges means that one cannot travel to all points in the district except by swimming or walking around the district). For the most part, however, the greatest danger with respect to noncontiguity occurs by accident, when line-drawers overlook an errant census block in the middle of a district that they have assigned to another district far away.

3. Respect for Political Subdivision Lines

Respecting political subdivision lines, which is sometimes required by the state's constitution, usually refers to avoiding "splits" of counties, cities, or other municipalities. Courts should be clear as to the hierarchy of political subdivisions that need to be protected and how violations of political subdivision boundaries will be measured. If one must choose between splitting a city between two districts or a county between two districts, for example, which political subdivision should one subordinate? In general, courts prefer to avoid splits of the largest subdivisions (usually counties) and tolerate a ***1160** greater number of splits of cities and (especially) precincts. Also, should all breaks of political subdivision lines be treated equally? In other words, should a small intrusion into a county in order to bring a district up to population equality "count" as much as cutting a county completely in half?

There are many different ways to measure respect for political subdivision lines. With counties, for example, one can count the number of counties that are kept whole--meaning that no district line intersects with a county line--and how many counties are split between two, three, and four districts. However, one must decide whether the number of counties that are split or the number of times a county is split is to be minimized. For example, if one is forced to choose between splitting one county into five districts or two counties each into two districts, which decision should one make? One could also articulate this principle from the district's perspective: in other words, how many districts straddle two counties, how many straddle three, etc. One must then decide whether to prefer one district that contains parts of four counties, for example, over two districts that each straddle two counties.

As with compactness measures, there is no normatively superior method for assessing compliance with a political subdivision requirement. Indeed, advocates for political subdivisions sometimes prefer that the city or county be split between two districts as opposed to being unified in one because then they will have influence over a greater number of representatives. At the same time, when a map splits one county (but not its neighbors) among several districts, advocates for the cannibalized county will likely complain that they will now be ignored by each representative that has just a slice of the county. Similarly, insofar as representatives sometimes wish to have relationships and frequent contact with the local political bodies of the counties they represent, a greater number of partial counties per district might hinder the forming of such relationships.

Finally, protection of political subdivision boundaries often conflicts with the applicable legal constraints and other traditional districting principles. Because some political subdivisions are themselves quite strangely shaped, drawing districts around them might lead to a lower compactness score according to certain measures. As with compactness, however, fidelity to this principle might lead one to draw districts that split communities that happen to straddle a political subdivision boundary. Indeed, in order

to prevent vote dilution and a violation of the Voting Rights Act, one might need to cross a boundary to unify two minority communities that happen to be divided by a city or county line. Moreover, the greater attention one pays to precise mathematical equality between districts, the greater the number of political subdivisions that will be split.

4. Communities of Interest

Respecting communities defined by common interests, although a value central to any theory of representation, is the most slippery of traditional districting principles. As mentioned above, claims of protection of communities of interest often serve as pretexts for the advancement of partisan goals in the redistricting process. Drawing a district around a heavily pro-union town is tantamount to creating a Democratic district, for example, just as ***1161** drawing a district around a Christian Evangelical community would lead to the creation of a Republican district. A court should treat all advocates' claims of communities of interest with skepticism, or at the very least, opponents should be given the chance to enlighten the court as to the partisan interests underlying such seemingly neutral declarations.

With that said, many possible plans for a given jurisdiction could comply with the allegedly neutral requirements of compactness, contiguity, respect for political subdivision lines, and the applicable law. Therefore, information as to the defining features of a community can often give some direction for particular decisions as to whether a line should go this way or that, when the other principles provide no guidance. When a court searches for justifications for its districts, arguments based on communities of interest can often supplement other traditional districting principles in order to bring a sense of coherence to the plan. When one must decide between drawing a line in a random direction or in a way that captures an identifiable community, one might as well draw a line that keeps intact the community of interest.

Among the most persistent criticisms of court-drawn plans is that, in their haste and based on their lack of knowledge, courts tend to overlook communities of interest. If true, this would be a serious criticism, but when compared to partisan or incumbent-protecting gerrymanders, court-drawn plans, even unwittingly, tend to do as well, if not better, in the protection of such communities.

5. Preserving Cores or Configurations of Prior Districts

Court plans, especially "least-change" plans, will often try to maintain the cores and configurations of existing districts to the extent possible. By respecting the current district cores or configurations, a court plan maintains the identity of the district and usually preserves continuity of representation for voters and their representatives. Of course, the court's ability to preserve the current district shapes will depend on the extent of the legal violations in those districts and the degree of deference owed to the existing plan. Moreover, some truly serpentine districts do not have a core to respect, so any change might seem like a drastic alteration to the district.

The decision to preserve existing districts has obvious political consequences. By adopting this principle in its plan, the court reinforces the partisan bargain (or lack thereof) underlying the plan it has invalidated. It gives its imprimatur to the current district arrangements regardless of their political bias and regardless of the additional protection such a strategy gives to incumbents. More than anything--perhaps even more than avoiding a pairing with another incumbent--incumbents want to keep the districts that elected them intact. Thus, the decision to follow a principle of preserving district cores or configurations inadvertently is often a decision in favor of preserving safe seats for incumbents.

B. Incumbent Protection

Should court-drawn plans go out of their way to protect incumbents? On the one hand, such a principle, if followed by a court, is fraught with ***1162** danger. Once it starts paying attention to the effect of its map on certain incumbents, the court may be forced to explain why it protected some incumbents, but not others. Many find it wholly inappropriate for a court to heap onto incumbents advantages additional to the many they already enjoy. It might be all well and good for a legislature to protect its own, but why should a court be in the business of placing a thumb on the scale in favor of incumbent reelection? [108]

On the other hand, insofar as continuity of representation--let alone seniority and experience--are values of good governance that courts should hope to further, ignoring the effect of a plan on incumbents could lead to one that radically reshapes a

jurisdiction's government. [109] Elsewhere I have discussed in greater depth the arguments in favor of incumbent protection. [110] The arguments are most powerful for courts considering congressional redistricting plans, because a court's decision to disadvantage incumbents could actually lead to less political power for the state vis-à-vis other states. Because seniority translates into power in the House of Representatives--e.g., leadership or committee positions--a court plan that culls the number of returning incumbents could have a noticeable effect on the relative power of the state in Congress. The argument in favor of incumbent protection of state legislators has greater force in states with term limits: if incumbents have a short life span to begin with, courts might be less eager to interrupt the constituent-representative relationship than they would under conditions where incumbents can entrench themselves.

If a court decides to protect incumbents, how should it do it? The first task for a court to perform is to identify who the actual incumbents are. This sounds easier than it actually is, because the court must learn which incumbents are planning to run for reelection. It makes little sense to draw a district for a particular incumbent if that incumbent is not running for office again. Moreover, if the court is releasing drafts of its plan, incumbents may change their campaign plans as their district becomes more or less likely to reelect them.

Having identified the incumbents and where they reside, most courts that go down this path will endeavor to reduce the number of incumbent pairings--that is, reduce the number of districts that contain the residences of two or more incumbents. Pairings too can be deceptive, however, especially when (as in races for the U.S. House of Representatives) a congressman can run from a district in which he or she does not reside. [111]

***1163** In order to truly protect an incumbent, a court should pay attention to the character of the district into which the incumbent will be placed, rather than merely whether another incumbent will be joining him or her. The best way to protect incumbents is to ask them to propose their own districts or to keep them in their current district with minimal changes. A somewhat less gross way to protect them is to return them to a district with a partisan distribution of voters similar to their former district--in other words, keep a Republican incumbent's district Republican, and a Democrat's Democratic. Simply removing incumbent pairings, while placing incumbents in radically redrawn and sometimes politically hostile districts, may do very little to serve the alleged values of protecting incumbents.

One final note: there is an intermediate way to incorporate incumbent protection without turning the court into the handmaiden of politicians who already have tremendous advantages over their opponents in elections. One could draw a plan without paying attention to incumbency and then, as an after-the-fact "quality check," make minimal adjustments to the nonpartisan plan in order to reduce incumbent pairings or to return incumbents to their prior districts. By placing incumbent protection last in the queue of principles to apply, the court avoids anchoring each district around an incumbent from the beginning, while at the same time accommodating a limited number of objections or adjustments that could control the potential havoc that the plan might wreak on the state's legislative delegations.

C. Promotion of Competitive Districts

At the opposite end of the good government spectrum from incumbent protection comes the principle that the court should promote competition. Not only should it avoid giving incumbents a leg up, the argument goes, the court should actively try to promote a robust competitive democracy.

Even if a court is hell-bent on promoting competition, how should it do so? [112] Practically speaking, it is often very difficult to create genuinely competitive districts, while at the same time respecting the kinds of traditional districting principles described above. Residential self-segregation of Democrats and Republicans, as well as the strictures of the Voting Rights Act, make the construction of politically competitive districts quite difficult. Often, the only way to turn an urban Democratic district into a competitive district, for example, is to turn the city into a pizza, with slices radiating out from the inner city and extending to the suburbs and rural areas. In doing so, a court might also run the risk of diluting the minority vote by grouping it with a largely white, suburban, and rural vote.

Furthermore, in order to get a handle on the potential for a hypothetical district to be competitive over the long term, one needs to know whether an incumbent will be running for reelection or whether the district will be an open seat. A court seeking to maximize competition might thus create a district around a Republican incumbent that is more heavily skewed Democrat ***1164** than it would be if that incumbent chose not to run for reelection. Of course, the court gets into real difficulties if, after it announces its plan, the incumbent, seeing his new, unfavorable district, decides not to run.

As mentioned in Part II, the key to producing competitive districts, as with gerrymandered districts, is to employ accurate data that can do a good job of predicting electoral outcomes. Courts, like anyone who must make these approximations on the fly, are not very good at this. The most courts can hope for is that their plans do not go out of their way to stifle competition.

D. Partisan or Political "Fairness"

Quite obviously, the one thing a judge cannot do is attempt to use the redistricting power intentionally to further the interests of his or her favored party. But what if, at the other extreme, the judge wants to assiduously avoid appearing biased or unintentionally producing a plan that is? To further that goal, a court must remove the veil of political ignorance from its eyes and pay attention to the likely partisan victors under its plan. [113] In particular, the court would look at the relative effects of its plan on each party's incumbents and the expected share of seats each party will win. In the abstract, this task appears fraught with the dangers captured by the political thicket metaphor, and if the court appears to be picking winners and losers, the court's plan will lose all credibility. At the margins, however, the court can check to make sure its plan has not had the effect of producing a wildly unrepresentative legislature, or punishing one party's incumbents disproportionately. For example, should the court sit idly by if, when it releases its plan, it sees that it has only paired Republican incumbents against each other, chopped up Republican districts but left the Democratic ones intact, or overrepresented Democrats by creating a heavily disproportionate number of districts in which their supporters constitute a majority?

The same could be said for the racial fairness of a plan. Even apart from bald violations of the Voting Rights Act, a court may want to avoid opening itself up to the accusation that it paired minority incumbents but not white incumbents, or that it paired women incumbents but not male incumbents. Although the urge to ignore incumbency data looms large, the danger of what might happen as a result often forces courts to peek at the effects of their plans before releasing them. Rarely will everyone involved in redistricting litigation agree that a court-drawn plan is "fair." By looking at the partisan data while constructing its plan, however, a court might be better able to avoid the accusation that its plan is severely biased (in its effects, if not its intent) against one of the parties.

***1165 Conclusion**

This Article has attempted to lay the groundwork for a more systematic investigation into the patterns of behavior when judges become mapmakers. The law places a number of constraints on judges as they take on the "unwelcome obligation" of venturing deep into the political thicket to draw district lines. Despite these constraints, courts have experimented with a variety of approaches to court-drawn plans. They differ greatly in the procedures they follow and the substantive guidelines that produce the plan. We have come a long way since Colegrove, [114] when the idea of judges drawing maps seemed unthinkable. We still have a way to go, however, to develop "best practices" to guide judges when they are carving democracies.

Footnotes

a1 Professor, University of Pennsylvania Law School. Thank you to Jon Burke for help researching this topic and to Michael Carvin, Jonathan Katz, Luke McLoughlin, and Michael Pitts for helpful comments. I am also grateful to the three courts and associated special masters who have appointed me to draw statewide redistricting plans for New York, Maryland, and Georgia. Needless to say, the opinions expressed here are solely my own, and no communications with those courts or information from those cases is included in this Article.

1 Colegrove v. Green, 328 U.S. 549 (1946) (plurality opinion) (arguing that redistricting controversies should not be justiciable).

2 Id. at 553.

3 See infra Part I.A.

4 See infra Part I.B.

5 See infra Part I.C.

6 See Branch v. Smith, 538 U.S. 254, 266-70 (2003) (discussing the statutory basis for statewide at-large elections and examples of courts in the 1960s that ordered statewide at-large elections for congressional delegations); Colegrove, 328 U.S. at 555.

7 When speaking of deference to the "legislature," I am also referring to deference to whatever political body is tasked (usually by the legislature) with the job of crafting redistricting plans. This could be a commission or some other official at the state level, or any number of government entities (city council, county commission, counsel's office) at the local level.

8 See, e.g., Wise v. Lipscomb, 437 U.S. 535 (1978).
When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan. The new legislative plan, if forthcoming, will then be the governing law unless it, too, is challenged and found to violate the Constitution. [A] state's freedom of choice to devise substitutes for an apportionment plan found unconstitutional, either as a whole or in part, should not be restricted beyond the clear commands of the Equal Protection Clause.
Id. at 540 (alteration in original) (quotation omitted); see also White v. Weiser, 412 U.S. 783, 794-95 (1973) ("[J]udicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." (quotation omitted)).

9 Abrams v. Johnson, 521 U.S. 74 (1997).

10 Id. at 100; see also Weiser, 412 U.S. at 794-95 ("From the beginning, we have recognized that reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.... We have adhered to the view that state legislatures have 'primary jurisdiction' over legislative reapportionment." (citation omitted)).

11 Growe v. Emison, 507 U.S. 25, 33 (1993) ("In the reapportionment context, the Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself.").

12 Id.

13 Id. at 34.

14 See id. at 33-34.

15 See infra Part I.C.

16 See generally Branch v. Smith, 538 U.S. 254 (2003).

17 Upham v. Seamon, 456 U.S. 37, 41 (1982).

18 Id. at 43 (citation and quotation omitted); see also Johnson v. Miller, 922 F. Supp. 1556, 1559 (S.D. Ga. 1995) (finding that a minimum-change plan acts as a surrogate for the intent of the state legislative body), aff'd sub nom. Abrams v. Johnson, 521 U.S. 74 (1997); Kansas ex rel. Stephan v. Graves, 796 F. Supp. 468, 470 (D. Kan. 1992) (noting that the court's goal should be to adopt a plan that comes the closest to deferring to the state legislature's will, as expressed in the unconstitutional plan, and intrudes on state policy as little as possible); Balderas v. Texas, No. 01cv158, 2001 U.S. Dist. LEXIS 25006, at *6-7, *11 (E.D. Tex. Nov.

28, 2001) (per curiam) (holding that court modifications must be limited to those necessary to cure the statutory or constitutional defects in a state's plan).

19 White v. Weiser, 412 U.S. 783 (1973).

20 Id. at 795; see Abrams v. Johnson, 521 U.S. 74, 79 (1997) ("When faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act."); see also Connor v. Finch, 431 U.S. 407, 414-15 (1977) ("We have repeatedly emphasized that legislative reapportionment is primarily a matter for legislative consideration and determination, for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies.... The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name. In the wake of a legislature's failure constitutionally to reconcile these conflicting state and federal goals, however, a federal court is left with the unwelcome obligation of performing in the legislature's stead, while lacking the political authoritativeness that the legislature can bring to the task. In such circumstances, the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner free from any taint of arbitrariness or discrimination." (quotation omitted)).

21 See Upham, 456 U.S. at 44 (overturning remedial plan that remedied a two-district violation by redrawing the entire state plan); Whitcomb v. Chavis, 403 U.S. 124, 160-61 (1971) (overturning court plan that unnecessarily eliminated multimember district). One could add Connor v. Johnson to the list of overturned nondeferential plans, except that it is unclear whether the Supreme Court stayed the district court's plan because it did not defer to the state plans that used single-member districts, or because its plan violated the general norm for court-drawn plans against the use of multimember districts. See Connor v. Johnson, 402 U.S. 690, 693 (1971) (staying district court plan that used multimember districts rather than single-member districts); see also infra notes 33-45 and accompanying text. White v. Weiser is also a potential candidate, although it is unclear whether the Court struck down the district court's plan because it was more malapportioned than others before it or because it did not defer to state policies concerning avoiding incumbent pairings and preserving districts. See White, 412 U.S. at 794-95, 797. Of course, the Supreme Court has overturned court-drawn plans for other reasons, such as violating the one person, one vote rule. See, e.g., Connor v. Finch, 431 U.S. at 425-26 (overturning malapportioned court plan that deferred to state's historic practice of keeping political subdivisions together); Chapman v. Meier, 420 U.S. 1, 27 (1975) (same).

22 See David Butler & Bruce Cain, Congressional Redistricting: Comparative and Theoretical Perspectives 111-12; see also Johnson v. Miller, 922 F. Supp. at 1559; Stephan, 796 F. Supp. at 470; Balderas, 2001 U.S. Dist. LEXIS 25006, at *6-7, *11.

23 See, e.g., Mahan v. Howell, 410 U.S. 315, 333 (1973) (emphasizing the difficulty of a rushed court-created plan).

24 See infra Part III.A.

25 White, 412 U.S. at 797 ("But here, the District Court did not suggest or hold that the legislative policy of districting so as to preserve the constituencies of congressional incumbents was unconstitutional or even undesirable. We repeat what we have said in the context of state legislative reapportionment: 'The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness.'" (citation omitted)).
Justice Thurgood Marshall submitted a separate opinion in White v. Weiser, disagreeing on this point and emphasizing that "the judicial remedial process in the reapportionment area--as in any area--should be a fastidiously neutral and objective one, free of all political considerations and guided only by the controlling constitutional principle of strict accuracy in representative apportionment." Id. at 799 (Marshall, J., concurring in part); see also Bush v. Vera, 517 U.S. 952, 964 (1996) ("We have recognized incumbency protection, at least in the form of avoiding contests between incumbents, as a legitimate state goal.").

26 See Johnson v. Miller, 922 F. Supp. at 1565 (finding that the protection of incumbents was a legitimate consideration for a court-drawn plan); Colleton County Council v. McConnell, 201 F. Supp. 2d 618, 647 (D.S.C. 2002) (finding incumbent protection to be a traditional state interest in South Carolina).

27 See, e.g., Arizonans for Fair Representation v. Symington, 828 F. Supp. 684, 688-89 (D. Ariz. 1992) (three-judge court) ("The court [plan] also should avoid unnecessary or invidious outdistricting of incumbents. Unless outdistricting is required by the Constitution or the Voting Rights Act, the maintenance of incumbents provides the electorate with some continuity. The voting population within a particular district is able to maintain its relationship with its particular representative and avoids accusations of political gerrymandering." (citation omitted)).

28 See, e.g., Prosser v. Elections Bd., 793 F. Supp. 859, 871 (W.D. Wis. 1992) (discussing the court plan's lack of incumbent pairings and the correlative avoidance of "perturbation in the political balance of the state").

29 Arguably, this is what happened in Texas in the 2002 redistricting, in which a federal court adopted a "least-change" plan that kept a majority of the Texas delegation Democratic, despite the fact that Texas is a Republican state. See Balderas v. Texas, No. 01cv158, 2001 U.S. Dist. LEXIS 25006, at *13 (E.D. Tex. Nov. 28, 2001). The 2004 Texas re-districting went to the opposite extreme, drawing a map that enhanced the Republican advantage. See Session v. Perry, 298 F. Supp. 2d 451, 498 (E.D. Tex.) (per curiam), vacated sub nom. Henderson v. Perry, 125 S. Ct. 351 (2004).

30 In Vieth v. Jubilerer, a fractured Court left open the possibility that it might develop a future test for partisan gerrymanders more stringent than the toothless one of Davis v. Bandemer. Vieth v. Jubilerer, 541 U.S. 267, 281, 317 (2004); see also Davis v. Bandemer, 478 U.S. 109 (1986). Perhaps in the upcoming case out of Texas, Session v. Perry, the Court will have a chance to clarify the rules on partisan gerrymandering. See Session, 298 F. Supp. 2d at 498.

31 Connor v. Finch, 431 U.S. 407, 415 (1977). But cf. Fletcher v. Golder, 959 F.2d 106, 109 (8th Cir. 1992) (upholding court-adopted plan that did not investigate the political motivation underlying the plan or its political consequences).

32 That is, the day, if and when, the Supreme Court develops a coherent standard for partisan gerrymandering.

33 Wise v. Lipscomb, 437 U.S. 535, 540 (1978) ("[A] court-drawn plan should prefer single-member districts over multimember districts, absent persuasive justification to the contrary."); see also E. Carroll Parish Sch. Bd. v. Marshall, 424 U.S. 636, 639 (1976) (same); Connor v. Johnson, 402 U.S. 690, 692 (1971) (same).

34 Indeed, the Constitution does not mention districting at all, and "[i]n colonial days multiple districts were the rule, single ones the exception." Whitcomb v. Chavis, 403 U.S. 124, 158 n.39 (1971) (quotation omitted).

35 See, e.g., Mahan v. Howell, 410 U.S. 315, 332-33 (1973); see also Lucas v. Colo. Gen. Assembly, 377 U.S. 713, 731 (1964) (suggesting in the context of a one person, one vote dispute that voters might not like multimember districts).

36 See Whitcomb, 403 U.S. at 158-59 ("[C]riticism (of multimember districts) is rooted in their winner-take-all aspects, their tendency to submerge minorities and to over-represent the winning party as compared with the party's statewide electoral position, a general preference for legislatures reflecting community interests as closely as possible and disenchantment with political parties and elections as devices to settle policy differences between contending interests.").

37 Connor v. Johnson, 402 U.S. at 692 ("[W]hen district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter.").

38 Id.

39 Id.

40 Connor v. Finch, 431 U.S. 407, 415 (1977) (citation omitted).

41 Chapman v. Meier, 420 U.S. 1 (1975).

42 Id. at 15-16 (citations and footnote omitted).

43 See Thornburgh v. Gingles, 478 U.S. 30, 50-51 (1986) (striking down the use of multimember districts under the Voting Rights Act because it diluted minority votes); Mobile v. Bolden, 446 U.S. 55, 66 (1980) (upholding multimember districting scheme against challenge of constitutional vote dilution); White v. Regester, 412 U.S. 755, 756 (1972) (striking down multimember districts as "invidiously discriminatory"); Whitcomb v. Chavis, 403 U.S. 124, 156-57 (1971) (upholding multimember districting plan against constitutional challenge).

44 See, e.g., Richard H. Pildes & Kristen A. Donoghue, Cumulative Voting in the United States, 1995 U. Chi. Legal F. 241; Larry T. Aspin & William K. Hall, Cumulative Voting and Minority Candidates: An Analysis of the 1991 Peoria City Council Elections, 17 Am. Rev. Pol. 225 (1996); Robert Brischetto, Cumulative Voting as an Alternative to Districting: An Exit Survey of Sixteen Texas

Communities, 84 Nat'l Civic Rev. 347, 347-54 (1995); Richard Engstrom et al., Cumulative Voting as a Remedy for Minority Vote Dilution: The Case of Alamogordo, New Mexico, 5 J.L. & Pol. 469 (1989).

45 See, e.g., Lani Guinier, No Two Seats: The Elusive Quest for Political Equality, 77 Va. L. Rev. 1413 (1991); Lani Guinier, Tyranny of the Majority: Fundamental Fairness in Representative Democracy (1994).

46 See Bolden, 446 U.S. at 62.

47 See Shaw v. Reno, 509 U.S. 630, 643 (1993); Miller v. Johnson, 515 U.S. 900, 916 (1995).

48 See Bush v. Vera, 517 U.S. 952, 976 (1996); Miller, 515 U.S. at 921; Abrams v. Johnson, 521 U.S. 74, 91 (1997).

49 See Vieth v. Jubelirer, 541 U.S. 267, 281 (2004) (plurality opinion).

50 See Wise v. Lipscomb, 437 U.S. 535, 541 (1978).

51 Karcher v. Daggett, 462 U.S. 725, 730-31 (1983).

52 See Brown v. Thompson, 462 U.S. 835, 842 (1983); Larios v. Cox, 300 F. Supp. 2d 1320 (N.D. Ga.), aff'd, 124 S. Ct. 2806 (2004) (striking down a state legislative plan with a total deviation under ten percent because no legitimate justification underlay the deviation).

53 Chapman v. Meier, 420 U.S. 1, 26-27 (1975) (stating that a court-ordered plan should "ordinarily achieve the goal of population equality with little more than de minimis variation" and "must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.").

54 Id.; see also Johnson v. Miller, 922 F. Supp. 1556, 1561 (S.D. Ga. 1995) ("Since federal courts are held to stricter standards than legislatures in redistricting, we were particularly constrained to create a remedy with the lowest population deviation practicable." (citation omitted)), aff'd sub nom. Abrams v. Johnson, 521 U.S. 74 (1997); Burton v. Sheheen, 793 F. Supp. 1329, 1343 (D.S.C. 1992), vacated on other grounds, Statewide Reapportionment Advisory Comm. v. Theodore, 508 U.S. 968 (1993) ("Given that compliance with the principles of one man, one vote is the preeminent concern of court-ordered plans, the very real possibility exists that certain state policies will be compromised in a court-ordered plan which could have been better served had judicial intervention not been necessary.").

55 Connor v. Finch, 431 U.S. 407, 414-15 (1977) ("[A] state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name.").

56 Voting Rights Act § 2, 42 U.S.C. § 1973(a) (2000) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.").

57 Id. § 1973c (requiring preclearance by the attorney general or United States District Court for the District of Columbia for any changes in redistricting plans enacted by covered jurisdictions).

58 Id. § 1973(b) (describing when a "State or political subdivision" has violated subsection (a)); Thornburgh v. Gingles, 478 U.S. 30, 51 (1986). See generally Johnson v. DeGrandy, 512 U.S. 997 (1994).

59 42 U.S.C. § 1973(a).

60 Abrams v. Johnson, 521 U.S. 74, 90 (1997) ("On its face, § 2 does not apply to a court-ordered remedial redistricting plan, but we will assume courts should comply with the section when exercising their equitable powers to redistrict."); Colleton County Council v. McConnell, 201 F. Supp. 2d 618, 628 (D.S.C. 2002); Smith v. Clark, 189 F. Supp. 2d 529, 539-40 (S.D. Miss. 2002). Just as with section 5 of the Voting Rights Act, federal court plans and state court plans may deserve different treatment under section 2.

See McDaniel v. Sanchez, 452 U.S. 130, 153 (1981). Section 2 undoubtedly covers a plan drawn by a state court, just as it covers plans drawn by any other state official.

61 Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (codified at 42 U.S.C. §§ 1971, 1973, 1973b-1973c, 1973aa-1a, 1973-aa6 (2000)).

62 See S. Rep. No. 97-417 (1982), reprinted in 1982 U.S.C.C.A.N. 117.

63 Mobile v. Bolden, 446 U.S. 55, 63 (1980) (requiring both discriminatory intent and effect to prove unconstitutional racial vote dilution).

64 Id. at 62.

65 See infra note 69.

66 See, e.g., White v. Regester, 412 U.S. 755, 756 (1972); Whitcomb v. Chavis, 403 U.S. 124, 156-57 (1971).

67 See 42 U.S.C. § 1973(a) (2000).

68 Id.

69 See Bernard Grofman et al., Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence, 79 N.C. L. Rev. 1383, 1407 (2001) (describing the importance of incumbency and partisanship for a district's ability to give minorities an equal opportunity to elect their candidates of choice).

70 See id.; Sam Hirsch, Unpacking Page v. Bartels: A Fresh Redistricting Paradigm Emerges in New Jersey, 1 Election L.J. 7 (2002) (discussing Page v. Bartels, 144 F. Supp. 2d 346 (D.N.J. 2001) (three-judge court) (per curiam), a case in which reduced minority concentrations in districts were found to comply with section 2 of the Voting Rights Act).

71 See 42 U.S.C. § 1973c; Georgia v. Ashcroft, 539 U.S. 461, 477-78 (2003) (most recent case interpreting section 5 and defining retrogression).

72 Connor v. Johnson, 402 U.S. 690, 691 (1971).

73 Branch v. Smith, 538 U.S. 254, 262 (2003) ("The Act requires preclearance of all voting changes, and there is no dispute that this includes voting changes mandated by order of a state court." (citation omitted)).

74 See id.; Abrams v. Johnson, 521 U.S. 74, 95 (1997).

75 McDaniel v. Sanchez, 452 U.S. 130, 153 (1981) (holding that the preclearance requirement of the Voting Rights Act applies to a reapportionment plan submitted to federal courts by the county legislative body).

76 Id.

77 McDaniel, 452 U.S. at 149 (quoting S. Rep. No. 94-295, at 19 (1975), reprinted in 1975 U.S.C.C.A.N. 774, 785) (internal quotations omitted).

78 Abrams, 521 U.S. at 96.

79 Id.

80 For criticism of the Court's approach in Abrams, see Pamela S. Karlan, The Fire Next Time: Reapportionment After the 2000 Census, 50 Stan. L. Rev. 731, 748-49 (1998).

81 Compare Pamela Karlan, Georgia v. Ashcroft and the Retrogression of Retrogression, 3 Election L.J. 21 (2004) (criticizing the Court's most recent decision interpreting retrogression), with Michael J. Pitts, Georgia v. Ashcroft: It's the End of Section 5 as We Know It (and I Feel Fine), 32 Pepp. L. Rev. 265 (2005) (defending the decision).

82 Georgia v. Ashcroft, 539 U.S. 461 (2003).

83 Id. at 477-83 (providing guidelines for determining when a reapportionment plan diminishes a "minority group's effective exercise of the electoral franchise" in violation of section 5).

84 See Beer v. United States, 425 U.S. 130, 141-42 (1976) (establishing the standard for retrogression later modified by Georgia v. Ashcroft).

85 Georgia v. Ashcroft, 539 U.S. at 482.

86 For a more extensive analysis of Georgia v. Ashcroft from a fan of the decision, see Richard H. Pildes, The Constitutionalization of Democratic Politics, 118 Harv. L. Rev. 28 (2004); see also Pitts, supra note 81.

87 Most of the foregoing derives from my personal experiences in assisting courts and special masters in drawing redistricting plans.

88 Rarely does a court meet the timetable I am specifying here, but releasing the final version of a plan one month prior to the beginning of the petitioning period is a reasonable goal that would also give potential candidates sufficient notice as to the location of their districts and a reasonable time to decide whether they wish to run.

89 See Fed. R. Civ. P. 53 (providing guidelines for the appointment and activities of masters).

90 Shaw v. Reno, 509 U.S. 630, 658 (1993) (holding that a reapportionment plan was unjustified in the manner in which it served to segregate voters, in violation of section 5).

91 See supra notes 75-78 and accompanying text.

92 See Lisa Handley, A Guide to 2000 Redistricting Tools and Technology, in The Real Y2K Problem: Census 2000 Data and Redistricting Technology 28, 30-31 (Nathaniel Persily ed., 2000).

93 See Act of Dec. 23, 1975, Pub. L. No. 94-171, 89 Stat. 1023, 1023 ("An Act ... to provide for the transmittal to each of the several States of the tabulation of population of that State obtained in each decennial census and desired for the apportionment or districting of the legislative body or bodies of that State....").

94 Note that the census redistricting datafile includes all types of people who are ineligible to vote, such as children, prisoners, and noncitizens.

95 See generally Nathaniel Persily, Color by Numbers: Race, Redistricting and the 2000 Census, 85 Minn. L. Rev. 899 (2000) (describing publicly available census data and its drawbacks for redistricting). The 2000 Census allowed respondents to check off more than one racial category. The redistricting dataset thus presented racial and ethnic data in 126 independent categories. Each combination of the six single-race categories amounted to sixty-three different categories, times two for the Hispanic/non-Hispanic origin question. In some cases, courts may need to decide on how they will aggregate multiracial data--for example, should those who check off black and something else be counted as black or something else. I have discussed the issues presented by the multiracial check-off elsewhere. See id.; Nathaniel Persily, The Legal Implications of a Multiracial Census, in Joel Perlmann & Mary Waters, The New Race Question 161 (2002). The Supreme Court has given some guidance on this issue. In Georgia v. Ashcroft, it explained that in cases where the dilution of black votes is at issue, anyone who checked off black, even if they checked off some other category also, should be counted as black. Georgia v. Ashcroft, 539 U.S. 461, 473 n.1 (2003).

96 See Persily, supra note 95. The new "American Community Survey" asked yearly of 250,000 respondents will replace the long form of the 2010 Census and subsequent censuses. See United States Census Bureau, American Community Survey, http://www.census.gov/acs/www/ (last visited May 20, 2005) (explaining the new survey).

97 Karcher v. Daggett, 462 U.S. 725, 731 (1983).

98 See Andrew Gelman & Gary King, Enhancing Democracy Through Legislative Redistricting, 88 Am. Pol. Sci. Rev. 541, 559 (1994). See generally Andrew Gelman & Gary King, A Unified Method of Evaluating Electoral Systems and Redistricting Plans, 38 Am. J. Pol. Sci. 514 (1994).

99 Down-ballot races are elections for offices concerning which the average voter knows very little about the candidates (e.g., state comptroller) and is more likely to vote based on partisan affiliation.

100 See supra Part I.A.1.a.

101 See, e.g., Shaw v. Reno, 509 U.S. 630, 642 (1993); Miller v. Johnson, 515 U.S. 900, 917 (1995); Bush v. Vera, 517 U.S. 952, 958-65 (1996).

102 See, e.g., Shaw, 509 U.S. at 647.

103 See, e.g., Vera, 517 U.S. at 964, 977.

104 See Vieth v. Jubilerer, 541 U.S. 267, 291 (2004) (plurality opinion) (describing the anti-Democratic effect of adopting certain traditional districting principles).

105 See Daniel R. Polsby & Karl Popper, The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering, 9 Yale L. & Pol'y Rev. 301, 339-51 (1991) (discussing quantitative measures of compactness); Joseph E. Schwartzberg, Reapportionment, Gerrymanders, and the Notion of "Compactness," 50 Minn. L. Rev. 443, 443-44 (1966) (discussing proposed legislation that would have required compact districts).

106 See Richard Niemi et al., Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering, 52 J. Pol. 1155, 1158-65 (1990); Gerald R. Webster, Rethinking the Role of Geographic Compactness in Redistricting, in Beyond the Color Line: Race, Representation and Community in the New Century 117, 120-31 (Alex Willingham ed., 2002).

107 See Michael McDonald, United States Elections Project: Enhancing Competitiveness in Redistricting, http://elections.gmu.edu/enhancing.htm (last visited May 20, 2005).

108 See generally Samuel Issacharoff, Gerrymandering and Political Cartels, 116 Harv. L. Rev. 593, 622-30 (2002) (arguing in favor of nonpartisan redistricting).

109 Not always such an awful development, to be sure.

110 Nathaniel Persily, In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders, 116 Harv. L. Rev. 649 (2002) (responding to Issacharoff's argument for nonpartisan redistricting methods).

111 Courts should be acutely aware of the residency restrictions for candidates. Some states require that candidates reside in their district for a certain amount of time before they can run for election. A court-drawn plan could lead to a situation where certain candidates cannot run from any district. For example, if a state requires that candidates reside in a certain district for one year before running from it, a candidate that has recently moved into that district (as now redrawn by the court) may be ineligible to run both from the new district and from the district that contains his prior residence.

112 See McDonald, supra note 107.

113 See Gaffney v. Cummings, 412 U.S. 735, 753 (1973) ("It may be suggested that those who redistrict and reapportion should work with census, not political, data and achieve population equality without regard for political impact. But this politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results ....").

114 Colegrove v. Green, 328 U.S. 549 (1946) (plurality opinion).

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CERTIFICATION OF SERVICE

This is to certify that on this 30th day of December, 2011, a copy of the foregoing Appendix was mailed electronically to the following counsel of record, who have consented to electronic delivery, in compliance with the requirements of Practice Book § 62-7.

Aaron S. Bayer
Wiggin & Dana, LLP
One CityPlace
185 Asylum Street
Hartford, CT 06103-3402
Telephone: (860) 297-3700
Facsimile: (860) 525-9380
abayer@wiggin.com

Attorney General George Jepsen
Solicitor Gregory T. D'Auria
Maura Murphy-Osborne
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Telephone: (860) 808-5318
Facsimile: (860) 808-5387
george.jepsen@ct.gov
gregory.dauria@ct.gov
maura.murphyosborne@ct.gov

This is to further certify that on this 30th day of December, 2011, a copy of the foregoing Appendix was mailed electronically and served by first class mail, postage prepaid, to the following counsel of record:

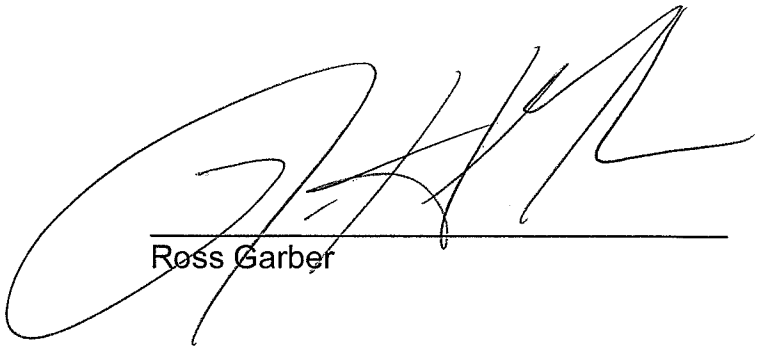
Andrew McDonald
General Counsel, Governor's Office
Connecticut State Capitol
210 Capitol Avenue
Hartford, CT 06106
Telephone: (860) 524-7316
Facsimile: (860) 524-7931
andrew.mcdonald@ct.gov

Jeremy Golubcow-Teglasi
David N. Rosen
David Rosen & Associates, P.C.
400 Orange Street
New Haven, CT 06511
Telephone: (203) 787-3513
Facsimile: (203) 789-1605
drosen@davidrosenlaw.com

William M. Bloss, Esq.
Koskoff, Koskoff & Bieder, P.C.
350 Fairfield Avenue
Bridgeport, CT 06604
Telephone: (203) 336-4421
Facsimile: (203) 368-3244
bbloss@koskoff.com

This is to further certify that a copy of the foregoing Appendix will be hand-delivered at the hearing on this 30th day of December, 2011 to the following self-represented party, since no address or e-mail contact information is available:

John Hartwell



Ross Garber