



## **Public Policy Forum**

### **What Works in Redistricting Reform? Evidence from the States**

**Presented by  
Bruce Cain**

*June 15, 2007*

*Richard P. Nathan:*

I welcome you all to this Policy Forum. My name is Dick Nathan and I am proud to be the co-director of the Rockefeller Institute of Government. Today we have a really good subject, and a highly appropriate expert speaker.

In Bob Ward's second edition of our book, *New York State Government*, he has a chapter on reform. This is an exciting time with lots of talk in Albany about state government reform.

Governor Eliot Spitzer gave his pre-election address on government reform in this room on November 21, 2005, the year before the election. One of the top topics in the governor's speech was redistricting reforms. He used a strong word to say that what we've got now is "unconscionable." He described what many states have, which are "IRCs," independent redistricting commissions. He said he was going to look at the models for doing that.

We certainly are interested and would be happy to help, but nobody could help like our speaker today. Let me tell you a little about Bruce Cain and turn the platform over to him. I've known Bruce for a long time. He is at the University of California at Berkeley, and he's

the director of the Institute of Governmental Studies (IGS), a very important institution for public policy studies in the state of California.

He is also currently the director of the UC Washington Center for interns from California. They only have 1,000 of them each year. They have a building as big as a hotel, where they can accommodate that many people. I'm really impressed to hear about it. I'm going to visit there.

Bruce Cain is a summa cum laude graduate of Bowdoin College and was a Rhodes Scholar. His Ph.D. degree is from Harvard. He has written extensively on our subject and other subjects involving government structures and government process. He comes here at a time that is just perfect for us in Albany. Welcome Bruce, good to have you here.

*Bruce Cain:*

Thank you, I'm really pleased to be here. I have never been to Albany before. It also gives me a chance not only to see the State Capitol, but to visit with my sister, who claims that I never come to visit her, so she can no longer say that. I also have a sore back, so I get her to carry all my stuff all day. I like that as a big brother.

I am director of the IGS until the end of June. They just had a retirement party for me, because I'm actually switching over to the UC Washington Center. The nice news is there's a picture on the wall of me. The bad news is that all the other pictures are of dead people. I'm a little worried about that and what it means.

The other thing is the last time I gave a version of this talk a couple of months ago, it ended up in the California papers. I got in a lot of trouble with my friends in the legislature, because I have over the years been sort of a skeptic about reform. I still am very skeptical about the effects of reform, but I've come to believe that a properly designed commission has all the features of the good politics that I think you need to do a redistricting. I don't think you could have an apolitical redistricting.

So, I think there are various versions of commissions that could work and diminish the controversy somewhat. And that change, in my view or my acceptance of that, has caused kind of a stir in California, so it's much safer to be talking about redistricting in New York, and I'm glad to be out of the hot water there. I've been sending other people to the hearings,

and we're having as much discussion about redistricting reform because of Arnold's passion on this issue, as it sounds like you are having in New York.

So, what I want to do is talk about where I think this is all going, where it's come from, and to make some observations about some projects that we've been doing, trying to figure out what difference it makes. And then we can have a little discussion about how to proceed, or how states might proceed, and open it up to any other questions you might have.

I've been involved in redistricting since 1981 when I worked at the state legislature and ran a redistricting under Willie Brown and Phil Burton. I can't imagine two more dissimilar masters in legislative politics than those two people; but, believe it or not, I had to work with both of them plus Maxine Waters. Those of you who know Congress know that Maxine is no pushover either. So, I've been sworn at by the best for all kinds of things, some of which I was guilty of, and many of which I wasn't, but it doesn't matter.

I went from that into the next decade working a lot with the Justice Department on racial redistricting issues, and then in the last round of redistricting, I decided, "Well, I've been there, I've done that." I've done Congressional, I've done state, I've done city, I've worked with government, I've worked against the government, I've done every angle. So, now I'm going to work with commissions, and I worked with three commissions. I worked with the commission in San Diego that was the most transparent commission I've ever been involved in. They actually drew lines on television — nobody watched — but it was there for your viewing if you wanted to. Then I worked with the County of San Francisco and their Byzantine politics, which was essentially manipulated by the supervisors. And then I was the Special Master for Arizona, which had a highly lauded citizen commission, and I think probably of the three, the most functional of the commissions that I observed. So, I have now seen commission redistricting up close and personal and I now have done some work and research on it that I want to talk about.

Now, you might ask, where did this whole discussion of commissions come from, and I want to put a little historical context on this discussion, because if you've been in the business long enough, you know that there have been some phases that it has gone through. The first phase was the period from 1965 to 1982, initiated by *Baker v. Carl*, *Reynolds v. Sims*, the apportionment positions. And that phase I will call the apportionment phase, because

that was when I entered redistricting. At that point, the real concern was how equal you had to make the districts; that was the predominant issue.

As you know, the *Baker v. Carr* decision was in itself revolutionary, because it basically said not only did you have to have an equal right to vote (that is, everybody who was over 18 and was a citizen had an equal right to vote), but you had an equal right to an equally weighted vote. If you were in a district that was ten times larger than another district, then your vote was not equally weighted. So, you had an equal right to an equally weighted vote.

And then the question was, "Well, how equal does equal have to be?" If you were a redistrictor in the 1980s, you were trying to figure out exactly how equal to make the districts. It's not a simple matter, because the blocks and tracts are discrete things that can't be split up. The blocks for certain can't be split up. So, how equal did you have to be?

Now, in California we had a rather ingenious rule of thumb, which is the more mischief you were doing, the closer you had to be to zero deviation. So, Congressman Phil Burton made the districts literally on the numbers, as close to the number, plus or minus two or three people, because they knew they were up to mischief. It turned out there was a case in New Jersey that got thrown out precisely because there was mischief, so they were wise to that.

Now, that case never went anywhere. The court never really could develop that as a strategy, because everybody figured, "Hey, the way to make sure you don't let the court throw your plan out is to make the deviation to population as small as possible."

So, we eventually decided that congressional districts had to be as close to zero as possible, and there was a little bit more leeway in legislative districts. The end of phase one, beginning of phase two.

What was phase two? Well, phase two began with the passage, or the amended version, of the Voting Rights Act, and an era of increasing court activism and the pursuit of racial justice for disadvantaged minorities. What you had essentially was the court enforcing the Voting Rights Act in a series of cases that started with the so-called Eagle case.

To make a long story short, what the court was trying to do was to make sure that minority communities that existed in a reasonably compact area didn't get divided into too many pieces. But that gradually morphed as you went into the 1980s and 1990s from protecting against dividing a reasonably compact area into parts, to how imaginatively could you draw the district lines to enhance minority representation?

That morphing caught the attention of the courts and by 1993 the courts said, "No, you can go too far in trying to create minority districts." We had the *Shaw v. Reno* decision at the end of that second period of enhancing racial representation. Now, it's not completely dead, but it certainly has geographically bounded limits to it.

The other thing that was going on was consideration of political vote dilution, you know, how could the court stop partisanship? And the answer is there was a suggestion that the court would intervene in a case in 1986. As recently as a couple of years ago, the court reaffirmed that they really can't find a way to decide what fairness is, and I'll talk a little bit about that in a minute.

So, political gerrymandering never got any regulation. Racial gerrymandering got some help, but then limits and that was the second phase. Now, we're into the third area and that's the context in which I want to talk about commissions.

So, what is the third era? Well, the first era was the right to an equally weighted vote; the second one was a right to a meaningful vote; that is, your vote is wasted, even if you have an equal right to vote, and even if you are a meaningfully populated district. Your right is being diluted if your vote is wasted, if you are in a very safe district or not, etc. And that's where the court sort of hit a stone wall.

Now what happened in the post-Shaw era? That started in the mid 1990s, and that's where we are right now — concerns have gone from what I call the upper level concerns, the federal concerns, the constitutional concerns of equal population, to state concerns; that is, things that are sometimes in a state statute or a state constitution. That could be communities of interest, that could be protecting city and county lines, but most importantly in the recent discussion it has been the question of how much competition should there be as a result of the redistricting?

Prior to 2006, the midterm election, the rap was the following: The Republicans had been very successful in getting control of a number of state legislators. They used that to create congressional lines that were safe from any national shifts and, therefore, there was no way that the Republicans could lose control of the House. That led *The New York Times* and other, shall we say, reform-inclined constituencies to suggest that there had to be redistricting reform because there was no way that you could restore competition without it.

Now, of course, some of us pointed out that redistricting certainly didn't help things, and on the margin may have contributed to the decline of competitiveness, but the trend toward declining competitiveness long preceded the last round of redistricting. Every empirical analysis by a dozen scholars indicates that the major causes for the decline of competition have to do with either racial sorting, creating homogeneously White and non-White areas, and, to some degree, political sorting, people going as a result of lifestyle or religion into areas that are either more conservative or more secular. There was also just the general realignment in American politics as a result of race and social issues that made the coalitions much more pure.

So, there were these larger things that were much more important than the redistricting; but make no mistake about it, on the margin, redistricting can make a difference. So, it's somewhere between the exaggerated claims of a poor community and the complete denials of some people in the political sector. It's a marginal of government.

Now the question is, if competition is a major problem not just at the federal level, but at the state level, can redistricting be used as a tool to create more competitiveness? And so, I think there are two major reasons why people want commissions. One is a procedural argument and that would be the one that Eliot Spitzer cites in his speech, which is, "If there is a conflict of interest when legislators draw their own lines, and that just procedurally it looks cleaner if somebody else does it, even if they have political agendas, even if they have friends in politics, even if they have their own prejudices, it doesn't matter, at least they are not the people who are directly benefiting, in terms of running for office." So, there's that kind of conflict of interest, which is to ratchet down the political stakes somewhat.

That argument was much more powerful, I think, two decades ago than it is now, because so many state legislatures now have term limits. What I have observed is that many state legislators in term-limited states don't really care about the district that they are in anymore. If you look at California, your average assemblyperson is much more interested in the



senate seat that they could run for than they are in the contours of their existing assembly seat. Only those who are freshmen would really be concerned about that.

But that aside, one concern is the procedural and the other concern is, “Well, what can we do to enhance competition?” And, “Do any of these criteria work?”

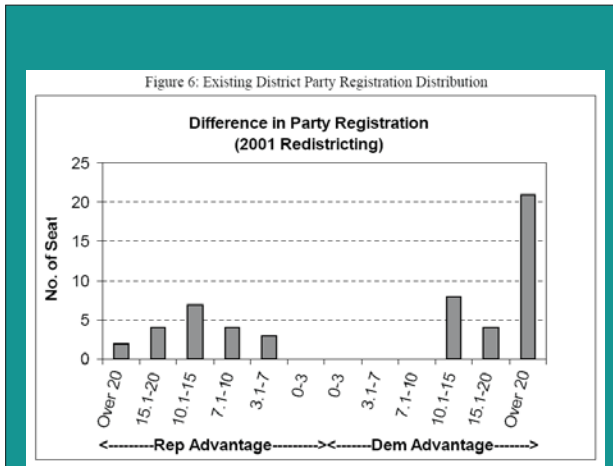
So, for those of you who may want to sleep through the rest of my talk, I’ll just give you my three bottom lines and then you can wake up for the question and answer period.

First, I still believe, as I always do, that redistricting is about tradeoffs. So, nothing we’re talking about here will change that, whether you’ve got a commission system or people in the legislature, you’re still going to have to make these political tradeoffs between fairness and competition, between splitting county lines and city lines, and equal population, all those tradeoffs are still there. And so it’s going to be a political process on which reasonable and unreasonable people disagree.

Second, the dynamics of commissions vary a lot according to the details of whether they are bipartisan or partisan. There are some, and I’ll talk about this in a minute, that are set up to be explicitly bipartisan. There are some that are just randomly partisan, because it’s some collection of state offices and if they all have to belong to one party, therefore, their commission is partisan.

And then there are some that flip in the middle, or at least proposals were put in the middle, because they start out as bipartisan, but if they can’t agree, then they bring in the tie breaker. New Jersey is the closest thing to that and a person could flip it one way or the other, depending upon what their prejudices are. So not all commissions are the same would be my second point, although ironically we’re not finding big differences in the rules and procedures, in terms of what the outcomes are.

Third, I think the best we can do is a transparent, bipartisan commission system, which will probably nudge the system toward less extreme options. That's the best we are going to do.



Okay, so what is an extreme outcome, you might ask? Well, this is California. After 2001, redistricting was done by a Democratic government and a Democratic governor named Ray Davis, who, of course, was not long for this world after the redistricting, and a Democratic legislature done in 2001. This shows you the difference between Democratic minus Republican registration, because we have good registration data in California.

And so over here are the heavily Democratic districts, and it won't surprise you that the ones over the 20 percent Democratic margin are the LA city and Bay area, either liberal White or, more often, non-White areas, Latino areas, African-American areas.

The first thing you notice, by the way, is that no matter what kind of redistricting you do, you are always going to have a certain amount of inefficiency to the Democratic party because of ghettoization of minorities is always inefficiently distributed. And so this is always going to be a problem when you are trying to make as many competitive districts as possible, but the underlying geography doesn't help you. Unless you want to violate the Voting Rights Act, unless you want to go against the 14th Amendment, unless you want to weaken minority rights, you are stuck with some inefficient Democratic seats that are going to win by huge margins. And that's true across the country, not just in New York and California. It is true everywhere.

The interesting thing is that the highly competitive area, which is zero to three registration point difference in favor of the Democrats or the Republicans (this is the Democrats, this is the Republicans), and all the way up to about 10 to 15 percent, is completely empty. Question: Was it empty before the redistricting? No. So what did they do?

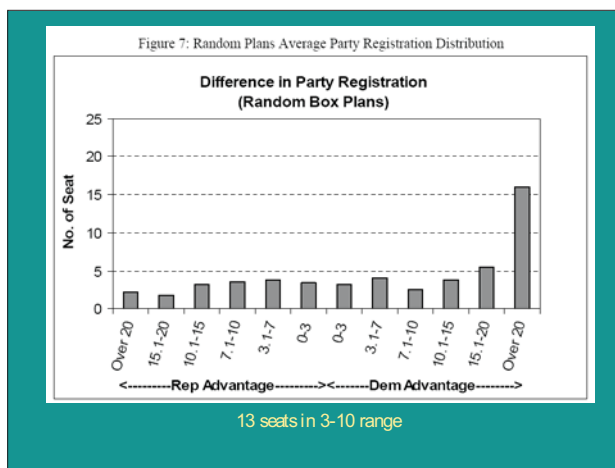


They could have done partisan gerrymander, but they had done that in 1980. I was there, I saw blood, and I have it still on my hands, okay? But you know what? It took us a decade to fight that one out. A simple rule of thumb is, don't do a partisan redistricting in a state that has Republican governors and has the initiative process, because you are just going to end up fighting about it for a whole decade, and that's what we did.

So, everybody reacted against that. You had new term limit of the legislators who weren't so much invested in their lines. They said, "Hey, let's just do a bipartisan deal." And so what happens in a bipartisan deal? Let's say Dick's a Republican, I'm a Democrat. What do I do? I give my Republicans to Dick. Dick's a happy man. More Republicans make him safer. What does he do? He gives me the Democrats. So, in the terms of social science, it's a improvement for both us, right? We're both made better off, nobody is worse off. And so those trades are a dime a dozen in politics.

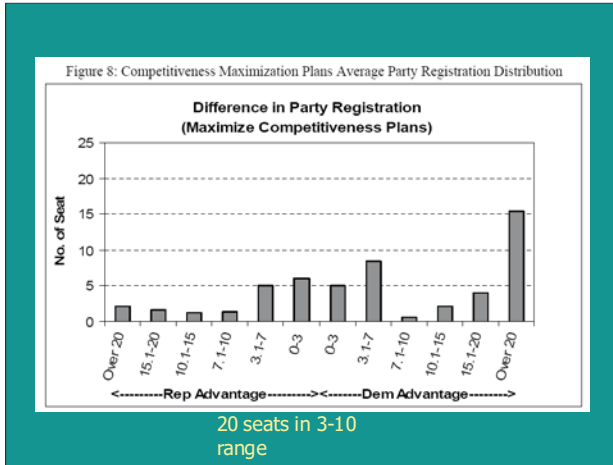
Ironically, the harder trades are the partisan trades that enhance the majority size, because you are telling somebody to take a weaker seat for the sake of the party. And there aren't too many altruists in politics. So you need a bastard like Phil Burton to make a plan like that really work. Without a bastard it's hard if you're going against self interest.

So, what did I do? Well, I said, "You know, it would be kind of interesting." This, by the way, I'm going to show you is the legislature's least favorite paper ever written by Bruce Cain, and I generally get along with the legislature quite well. But this one, they called me up and said, "If you publish this paper before the election, you're going to be sorry." Fortunately it wasn't due, so that wasn't a problem.



What we did was got a bunch of undergraduates and did sort of the version of 1,000 monkeys on a typewriter. And so my 1,000 monkeys did redistricting plans under different scenarios. One scenario was to draw random box lines — completely illegal. We just drew square boxes up and down the state. There are 53 congressional districts in California, and we just drew boxes; it's

completely illegal and violates all kinds of things, except that they are equally populated boxes.



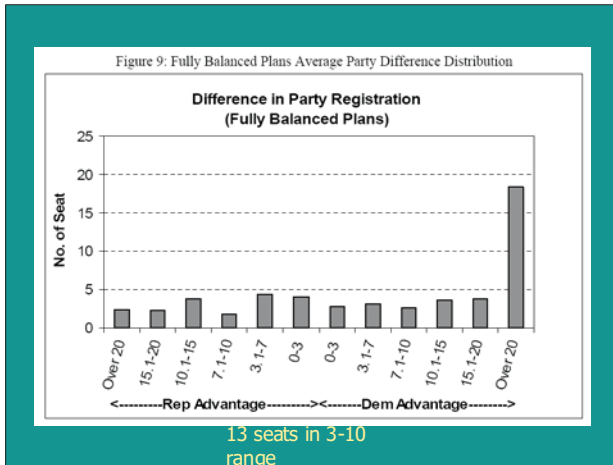
So, how many competitive seats? We drew about six to eight plans for each one of these scenarios, and got essentially 13 seats in the 3-to-10 percent range. And by the way, the 3-to-10 percent range was not randomly picked. If you went back and looked at the 1990 track record and you took the 52 seats and multiplied it times the five races, I think that's 260, you had 14 races that flipped. And in 14 races, all but one of

them was in this range between here and here.

So, they've done their homework, which you would expect, it's California after all. And so, they just took everything out of the range that had been most competitive in the previous decade. Now that one lesson changes somewhat because in the previous decade you still had a lot of disloyal Democrats. We had hardly any disloyal Republicans. Now in California that's flipped some, but we'll get into that some other time.

The second thing we said was, "Well, why don't we go out and create the most competitive seats that we could?" So, again, we made that the number one thing. And, on average, we were producing 20 seats out of the 52, so a little less than half. That's important for a couple of reasons. One, we were trying to create competitive seats with no concern for compactness, no concern for city and county borders, no concern for the Voting Rights Act, no concern for anything, other than getting competitive seats.

Notice, number one, the Democratic inefficiency. You're still, just because of the geographic problems, going to have these big areas — like the Bay area. The Bay area currently doesn't have any Republican representation; in fact, if you're a Republican and you come into the Bay area, you have to have a visa. You know you're not going to be able to create competitive seats. But you can, obviously, go from 13 to 20, so that's something.



Then we did some plans where we did everything possible to balance it all off. This is the closest thing to a legal plan. It still has a few more city and county splits than the pros in the legislature would do, because the kids aren't as good at it. But still, we were able to get about 13 seats.

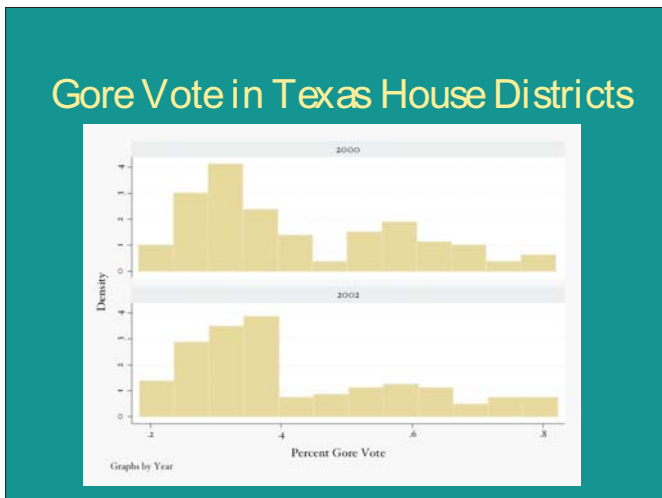
So, what does that mean? Well, that doesn't mean that 13 seats every election

are going to switch, or even that 13 seats are going to be competitive, because a good incumbent, somebody like an Ellen Tauscher, who was in a relatively marginal seat in the 1990s, was basically unbeatable because she had huge advantages in money, she reached out to the Republican party, and did she did a lot of case work and project work. All the stuff we know about incumbency advantage kicks in.

Because the underlying registration suggests it's a marginal seat, it really tells you, "Well, if the incumbent is weak or made a mistake, or if the seat becomes open, then you might have a shot at it."

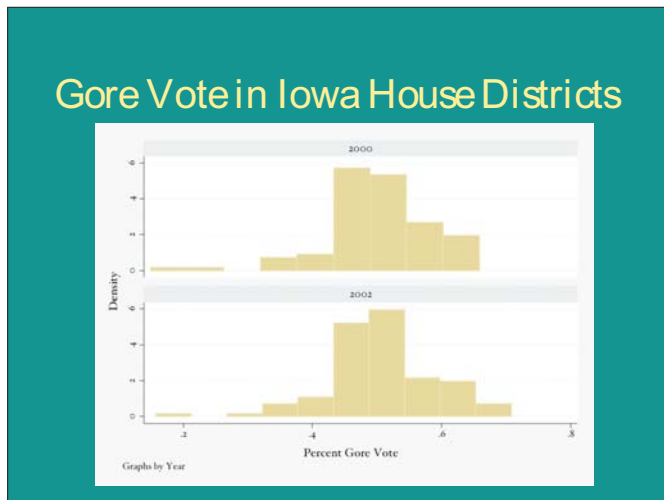
If you go back to the 1990s, that redistricting had been done by the court and it had roughly about 13 seats in that competitive range and, as I said, only 14 races flipped out of 260 in the whole decade. So, you are not going to get a lot of competition and turning. So, when Arnold or Governor Spitzer start talking about competition, they have to understand,

they are not going to be able to produce a lot of competition. They'll get maybe more than they will get now, but they are not going to get the kind of turnover that people thought.



Now, you can do the same thing with other states. They don't have registration or we couldn't get registration from Texas, so we used the Gore presidential vote, and this is the

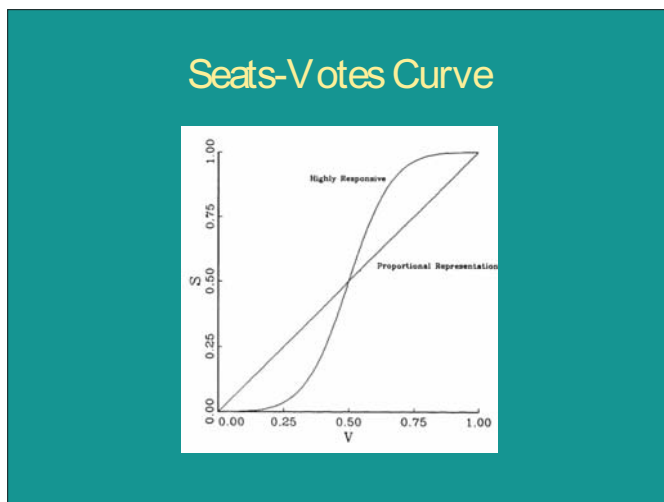
distribution. This, of course, was the much disputed Texas plan, and you can see that what the Republicans did between 2000 and 2002; they shifted lines over into the Republican direction, creating a lot more safe Republican seats, and then more seats that are in that sort of the marginal area that they can change.



And then the reason people look to Iowa and other places is you can see that the nonpartisan legislative bureau in Iowa produced a plan in 2002 that was roughly similar to what they had before with a lot of seats in the competitive range. Now of course what's left out of that is Iowa doesn't have a lot of, shall we say, population diversity. And so it doesn't have those highly ghettoized areas that produce the kind of homo-

geneity that we see in our states, in New York and California.

I'm not going to dwell too much on this, but I'll throw it out there because I think it may come back to you guys in the guise of some court decisions in the future. So, if it gives you a headache now, at least it will give you a start on what they are going to talk about in the future.



So, this is the ratio. It says: As votes go up, how many seats get up? And this line right here is the proportional representation line. It says, "Well, if Party A gets 25 percent of the vote, they get 25 percent of the seats." That's a nice, simple standard of fairness that most democracies in the world use when they assess the fairness of their system.

In theory, it seems like a good thing that we would do in the United States. In practice, it's off the books and the reason is the court has declared in more than one instance that proportional representation is not a constitutionally enshrined standard. And so, you can adopt it as an optional standard, but the court is never going to throw out a plan because it fails to do that.

So, this line represents what we typically see in single-member district systems, geographic-based systems, like the one we have in the United States. And what typically happens in those systems is that if you are below 50 percent, you tend to get lower than your share of seats, and if you are above it you get more.

Now this is where the tricky part is going to come, okay? Political scientists, who have nothing better to do with their time than to think of abstract concepts, have thought of two that are actually reasonably related to the real world, and so that's an achievement. And the two concepts are responsiveness and bias.

**Redistricting Outcomes**

	Unresponsive	Responsive
Low bias	Incumbent protection	Non-partisan
High bias	Partisan gerrymander	"Risky" partisan gerrymander

Responsiveness means, "How steep is this line?" That is to say, "How responsive to small changes in the vote is it?" So, in a highly responsive system you might have a vote change of, say, two or three percent, and you get five or six percent of the seats changing. The intellectual idea behind that is that the system is responsive. Take 2006, for example.

If you don't like the war and you'd like to send a signal to the president, what's the signal you'd like to send, the change in the composition of the Congress, right? And what the reformers were worried about was that you wouldn't get that responsiveness, even though the popularity of the war had sunk and presidential popularity had sunk. What if we had had an election that didn't reflect that? What would have been the signal that the administration would have gotten? Well, of course, what signal had they gotten anyway? But, never mind. So, the point is that you want some degree of responsiveness, particularly around the 50 percent section.

And the other thing is bias. Bias turns out to be how symmetric is this curve? So, if in the political science ideal, and those of you who have been involved in redistricting are immediately going to see how impractical this is, but you can see what its allure is as well. What people have been talking about for years is the idea that, “Well, we can’t have proportionality, but we can have something called symmetry.” Is the curve symmetrical? And that technically means, does the curve cross at 50/50? Does it go through this point right here?

But what it means substantively is the following: If Party A gets 55 percent of the seats with 51 percent of the vote, does Party B also get that same share of seats for that same share of votes? So it switched positions. Now what’s impractical about that is that it’s all based on the common facture and how you simulate that kind of factual. This is where political scientists who do this kind of statistical work revel and make a lot of money is trying to tell the court that, “Well, we’ll produce the scenarios that tell you whether it’s symmetrical or not.” And, of course, the court says, “I don’t think we even understand this concept. I’m not sure we want to pay for it.” And that was wise, I think.

I think it’s quite possible the court will come back and consider this as a standard. Now, the reason I say that is that there are actually a lot of different types of things when we talk about partisan and bipartisan gerrymanders. And the one we had in California is pretty clearly a low-biased, unresponsive plan. That is, it wasn’t prejudiced against the Republican party. Nobody said that. It was the fairest thing that a majority party did to a minority party in the whole country. It’s just that it created unresponsiveness by clearing out the middle.

And then the other thing that I believe the redistricting in New York in 1974 represents is the risky gerrymander, where one party overreaches and draw lines for the legislative districts that are a little too close for comfort and then Watergate comes and it wipes out the majority party. And my memory is that what’s happened in New York. And that’s the risky part of the gerrymandering.

You can have a milder version of a partisan gerrymander, which says, “Well, we’re not going to cut it that close, we’re just going to, you know, create it so that a few seats have that advantage.”

And then there's what I think a lot of reforms want, which is a plan that has a small degree of bias and high degree of responsiveness. Of course, how do you measure the bias? The bias is again based on the statistical information. So, you know, that's what they want.

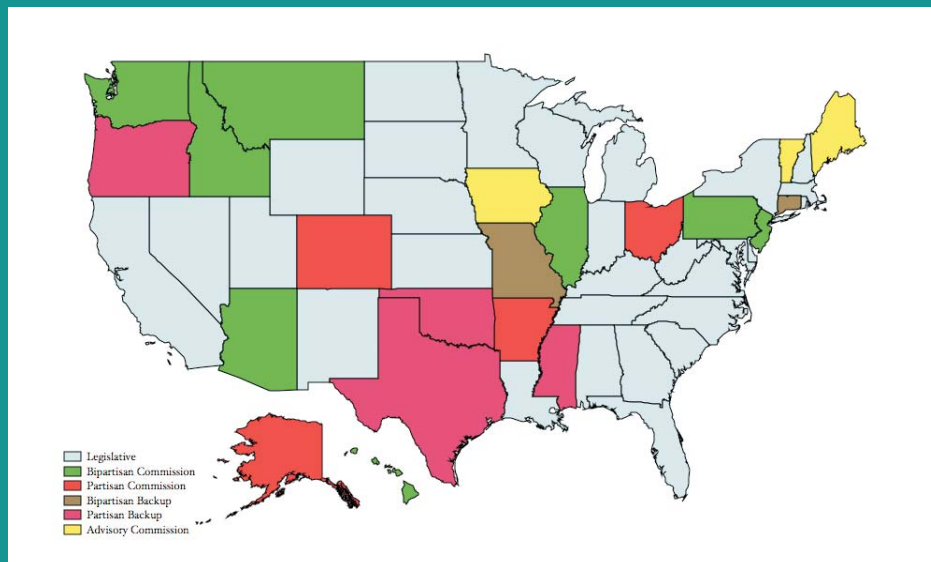
## Redistricting Institutions

- Legislature
- Commission
  - Advisory
  - Sole agent
  - Backup to Legislature
- Courts

Again, I'll run through this quickly, because this is a fairly sophisticated audience and you know this: Who does the redistricting? The legislature, typically; increasingly now we have commissions. There are commissions that serve as advisors. There are commissions, such as in Arizona, that are the agent. And then there are commissions in some states that when the legislature can't do it, it falls to them, and then you

have the courts. Courts, in most instances, get it after the legislature fails or locks.

## Redistricting Mechanism By State



*Tom Lukacs:*

I'm with the NYS Division of the Budget. How often does that happen in states where they have a backup to the legislature that the legislature can't come to an agreement, exception to the rule?

*Bruce Cain:*

It's the exception, but it's not insignificant, and I don't know the number off the top of my head. I mean, most typically, whether it happens in the divided government situations. But since there are only a handful that have it as a backup to the legislature, how frequently have they found themselves in a divided government situation? We have those data, I've just never looked at it, but I will know next time.

### Iowa: Institutions and Procedure

1. Legislative Service Bureau produces first plan for legislature: corrective amendments only.
2. LSB produces second plan, same rules.
3. LSB produces third plan, can be amended freely by legislature.
4. Supreme Court steps in if plan not adopted by 9/15/xxx1

And so you can see that there's a fair amount of variation on the different types of processes around the country. Now one that's often brought up as the Iowa model, which I just don't see working in California and New York, honestly, because the Iowa model is sort of like the British Model. It basically has something called the "Legislative Service Bureau" that presents a first plan to the legislature, and then the legisla-

ture gets to amend it. As you see, they go back and forth. And then the court steps in if they doesn't do it by a certain date. They have a lot of confidence in the Legislative Service Bureau.

I can't speak for New York, but I know in California the equivalent of the Legislative Service Bureau would be Legislative Analyst's Office (LAO). I wouldn't want to touch this with a 10-foot pole because in a highly partisan state you could end up pissing off the wrong people and you're out of there. So, I just don't know if they would do it or their budget would be cut, and I think it's a hot potato, and it's not what they want and it wouldn't help



them. Nobody has actually even proposed that in California. We wouldn't do that to them, they are very nice people.

## Requirements

### *First tier*

- Equal population: 10% federal standard or stricter
- Voting Rights Act §5 (if applicable)

### *Second tier*

- Compactness
- Competitiveness
- Geographic
- Respect for communities of interest
- Nesting of lower house districts

## States sometimes forbid...

- Use of political or registration data (e.g. MT, KY)
- Knowledge of incumbent homes (AZ, IA, ID)
- Commission members from running in new districts (AK, AZ, HI, ID, MO, MT, WA)
- *Drawing lines to favor individual or party*

These are some examples of reforms that states have adopted. Sometimes they say you can't use political data. I'm generally not in favor of that. I think that's a huge mistake, particularly if you've got voting rights issues, or you are trying to explicitly be fairminded. I think if you do it blindly, you are basically going to allow the staff to have enormous power over what's going on. As we all know, there are people in Albany who know every single precinct up and down the state and they can do a gerrymander in their head. They don't need data. And so all you are doing is giving an advantage to a small number of people over the larger public. Whereas I think with the data, everybody can assess the effects and do speculations. So I don't have any fondness for that.

Knowledge of incumbent homes turns out not to matter very much, because you can basically get your arguments made by other people in the commission, or whatever.

But there's no question that we have done some statistical work. This one does create more open seats. Statistically, the states that have that produce more open seats because, by definition, if you are not paying attention to where incumbent homes are and you have residency requirements, you are going to take some people out of their districts, or you are going to have collapse these on one another. So that one works if you are into incumbent chaos.

In California, we already have incumbent chaos, called term limits. So, there's no appetite for more incumbent chaos. Believe it or not, we're actually thinking about trying to stabilize the situation a little bit more, because everybody is sick of having to meet new faces every six years and explaining the same issues over and over again.

Prohibitions on commission members, on funding and new districts: We don't get much result there, although we're not completely done with that. And then drawing lines to favor an individual party is unenforceable, as far as we can tell. I'm not going to spend time talking about the data or any of that, because that's for academia.

One more point, and then we'll go to questions. The point of all the stuff I didn't show you is it's an elaborate statistical analysis that suggests that bipartisan commissions do reduce bias, meaning favoring one party over another, which is an obvious point to every political person in here. But you know, good political science sometimes leads to a "duh," because some people don't believe "duh." So bipartisan plans do this. However, they don't have an effect on responsiveness. And, of course, the classic case of that is the Arizona commission, which reduced bias, but didn't produce more competitive seats; whereas, Iowa is an example of a commission that did produce competitive seats, but they already had competitive seats and they have fewer constraints.

So, the answer is that commission effects are in some cases statistically significant, but relatively modest. So they don't produce major transformations in the political barn. Let's go to questions.

*Tom Luckacs:*

You said that they were trying to limit the incumbent chaos, toying with the idea there in California. Is it to the extent that they are even suggesting eliminating term limits?

*Bruce Cain:*

This is what I've actually been spending the last five years of my life on. It's a term limits study we did for the National Conference of State Legislatures (NCSL). In California, we have the governor in favor of term limits reform. What we mean by term limits reform is not abolishing term limits; that's impossible. There are five states that turned back term limits, but they were done through the courts or with statutory term limits. Nobody has

successfully turned back constituently enacted term limits, which is what a lot of initiative states have. And if you look at a map of term limits, you'll see the states that have the initiative process are the ones that also have term limits. So my first piece of advice to any state that wants to keep away the terms limits is don't get the initiative, a really simple calculus.

Anyway, the governor is mildly in favor of a term limits requirement, because I think what he really wants is redistricting reform. But Arnold, God bless him, is a wheeler and dealer and he'll take a deal when he sees it, and on the table is a trade between redistricting reform and term limits reform. The legislature wants term limits reform for obvious reasons. But it's also true now that increasing numbers of people in the reform community, in the nonprofit community, and journalists believe there has to be term limits reform. We have a huge study of this that you can read. Basically, what's happened is that the committee system has completely fallen apart in the Assembly and the leadership system has politically fallen apart.

The only reason that the current speaker is reasonably effective is that he was put in there as a freshman, and in his first couple of years nobody was talking to him. I mean, the budget negotiation just flew right by him. But now, after a couple of years in office he's actually a player and they are reaping the benefits of that. We don't know whether they are going to try that again and put a freshman in there, because who becomes speaker is really a function of how much money they raise and, you know, how they do their politics.

In the past what you had were speakers who served two terms. They served a term, got elected in their second term, and then a year and a half later were out, so they basically got two budgets and one election cycle. The reason they didn't get the second election cycle was that nobody could trust them to raise money for themselves, but for the caucus they were raising money for themselves looking for the next office. So you kicked them upstairs and made them Speaker Emeritus so that you could get back to business.

The bottom line is there is a growing consensus that we need to amend term limits. California have the strictest term limits in the country. We have six and eight, and lifetime bans. Other states don't have lifetime bans and many of the states are in the 8- to 12-year range. So we're trying to persuade people to do that, and I don't get involved in many of these battles, but this is one that I said, "Yes, you can use my name. I will do whatever ads you want. I will speak to it in my research, whatever."

I really think the people who have been screwed by the system are the people who don't have money. I mean the prison guards have thrived under the term limits. They've gone from nowhere to one of the most important players in state politics in California and it's reflected in the budget. The University of California and other worthy causes have gone down in the budget. Why? Because we don't play the fund-raising game. Now, that may be a mistake, but we don't. The groups that used to trade on relationships are weaker, and the ones that use money are stronger. There are many other arguments, but that's just the one that strikes me.

*Frank Thompson:*

As you well know, one of the diagnoses of American politics as to what ails it is intense polarization. One of the notions was that if we got more competitive districts, you get more moderation, better ability, get compromise, etc. As you pointed out, we may get a little from this, but we're not going to level off, but you probably get a lot. So, my question is: If this is, in fact, a serious problem, are there other institutional things you ought to be focusing on, such as having wide open primaries as opposed to, you know, party primaries when people aren't putting it on the ballot? Or any other institutional change that might ameliorate or encourage more moderation as opposed to appealing to sort of a hardcore party base?

*Bruce Cain:*

Well, I think you answered your question. I think there are better things that would be more effective than trying to do a redistricting forum. Just because you are in a competitive district doesn't make it less partisan. So the activist can be every bit as competitive in a competency as they are in noncompetency. And, moreover, once people get into office, the polarization kicks in because of the parties, and the need for money, the leadership requiring your vote, and the interest groups. You know, to run in California for state legislature is an expensive thing.

My students who want to go run for the Democratic party in the legislature, they are told the first thing they have got to do is go see the unions. "Well, you know, what do the unions say?" They are going to say, "You're going to meet with me." There's about 30 percent of your issues decided right there.

There are a lot of things that, as you say, have created a polarization: the money, the leadership. So, what can you do? Well, on the margin there are a bunch of things you can do; none of them are going to be the panacea. I'm not a big fan of open primaries, because I think they can be used manipulatively by the consultants, and so I worry a lot about that.

We had a brief experiment on that, as well. I think I take your point that there is some evidence that it produces a little bit more moderation. There was also some evidence of abuse, and I just didn't like that. But I think we know, in California, we have a natural experiment, which is that all our offices below the state legislature for the most part are nonpartisan. Everybody that I've ever interviewed who has gone from local government up to the state legislature says, "Wow, things are so much more partisan." And then when they come to Washington they say, "Wow, it's even more partisan in Washington."

So, as you go up the food chain, you become more partisan in California. The lower part of the food chain is nonpartisan offices. So, yes, that does have an effect. Now, nonpartisanship is not without its problems because it can lead particularly less well-educated voters to be confused about what's in their interest and who is working for them. And it does propose a certain amount of parochialism. It's the old adage that everything is an imperfect system; pick your form of imperfection.

It would be interesting. I mean, Nebraska right now is the only one that deviates from the bicameral model. It would be interesting if a state were to try a nonpartisan model and see what would happen. But again, probably all these things are on the margin. I still think that the interest groups and the money would find their way and that there would be a coalition of lines, but they might not be as rigid as they are right now.

*Richard P. Nathan:*

I was struck by your remark about the 10-foot pole. A comedian, Burt Lahr, said he invented an 11-foot pole, which is even worse. Something you wouldn't touch with an 11-foot pole is worse than what you wouldn't touch with a 10-foot pole.

New York has got maybe a special, maybe a not so special case, and that is a deal. The Senate is going to be Republican and the Assembly is going to be Democratic. We'll take care of us, you take care of you. And that's been the way it's been, and I'm sure grossly oversimplified, for a very long time. It may change now.

Are there other states where that kind of deal-making really is the way districting is viewed and done? And if there are, or even if there aren't, do you have any special thoughts about the Independent Redistricting Commissions (IRCs)? Governor Spitzer said, "You know, I'm going to look at all the different possible commission arrangements and then I'm going to come up with my plan." Is there anything in your knowledge of different state commission arrangements that suggest themselves to you for people like us?

*Bruce Cain:*

Well, yes, there are deals. We had deals in California, but they went out the window with term limits. And the reason is this: The deal we had was the Senate took care of their lines, the Assembly took care of their lines, and the Congress took care of their lines, and then we all came together and we had a deal. And that was the way it was done in 1982. Now, we didn't completely agree to obey all these rules. I was involved in 1982 with breaking one of those rules, because when Maxine Waters became chair of the Assembly in redistricting, she wanted to run for Hart's congressional seat and Phil didn't particularly want her in the caucus. She wanted the lines changed, to take out White, conservative areas. I figured out how to do that, much to the annoyance of Phil Burton. I was writing a book at the time, and I had figured out a clever way to do it, and I wanted to use it in the book. So I figured I could do two things: I could make Maxine happy and I got something for my book.

So we had that deal, but then it fell apart. You're now an assembly person. You've got six years in the Assembly. And let's say you are in the second or third term, so what are you thinking about? Are you worried about how your lines are constructed? Let's take the third term to make it absolutely clear. You're a third-termer, you've termed out, and redistricting is on the rise. What you are going to be concerned with? Well, you're going to be concerned with where the Senate lines are. You're not going to care about Assembly lines.

So, we had a lot more cross-House bargaining, which really meant that it turned out the leadership got to make the call. It's very hard for members to get into a discussion with the other house. So, we had couple of people, a friend of mine who ended up in the Assembly, and she was very unpopular with the leadership because she was a very aggressive, lefty, Santa Barbara representative. They basically made it impossible for her to run in the Senate, and they utilized it explicitly to keep her out of that. She could never break into that, because it was all decided at the highest levels.

So that is one way to get order in the process, not necessarily justice, or not necessarily good news or bad news, but then again it produces order. So I think those agreements are generally a good idea.

We were always very conscious to try to keep redistricting out of the budget negotiations and to try to keep everybody connected to just one set of lines, because once you start making deals that go across two or three sets of lines, it gets really messy and complex, and it's hard enough as it is.

In terms of the commissions, again, you have a choice, and I don't know that there's any good government way to decide these choices, it's really a personal matter.

You can have people, and San Francisco is a good example of this — where the mayor, county board supervisors, registrar, and every office had an appointee, and since you knew the angle of every appointer, you knew where every appointee was, so the politics was kind of set from the start and there was no mystery. And then it was just a matter of how it played out.

Now the other model is the Arizona model, or the San Diego model, where the court or some neutral body picks from a list of people, or people to volunteer. In that one, the prejudices aren't known to start with. You have to sit there for a while and watch and then they emerge. "Oh yeah, this person has been talking to the Latino congress," "This person is pushing for the homeowners in the northern county area," etc.

In Arizona, it was pretty clear who was talking; they've been divided by the Democratic and Republican party and it's pretty clear since you can't prohibit people from talking to other people. The party had made clear what they wanted to do with respect to minority representation.

Plus, people come to the hearings who are in the party and they'll say all the things that legislators would have said anyway. So it really comes down to the matter of how do you want your politics? Do you want it upfront and predictable? Or do you want it bubbling up from below? It's almost like an entertainment, rather than a point about democracy per se, because there will be prejudice.

The third way that people are talking about in California I have no historical example of. I really think it's bad public policy, but so often my career profits from people doing things that are really stupid. So, I'm almost hoping that they do this, so that I can write about it. California is thinking about a system that is basically like a jury selection system, where they would take 100 citizens at random from the population and stick them on this commission. When they see those census numbers and they find out how many hearings they have to go to and listen to people whining about their neighborhoods and their organizations, you will be lucky if you have 20 people at the hearing. So I hope that you look from the point of view of a political scientist; as a California citizen, obviously, that's a disaster. And so it could work out and it would be like a city council.

So, probably none of them were disastrous, although the third one would certainly be adventurous.

*Assemblyman Jack McEneny:*

I'm the State Assembly member in my district, which extends very basically to the south and below the mountains. First, I understand government and I understand history. Political science of all our disciplines is almost a desperate effort to try and put rules into a world of variance. You know, Watergate happened and predictability for redistricting is suddenly out the window. Massachusetts is overwhelmingly Democrat and both houses are, and that's why there are likely Republican governors, go figure.

I've done a lot of redistricting on a local level, city and the county level, and some of the state redistricting. And I watched the reform movement, which always seems to come out of frustration; people either want to unload people, or get in there themselves and do the job.

I go to these forums and they show the maps of these horrible configurations. I used to be the county historian and I wrote the history book on the City of Albany quite literally. And they put up a map, and they say it looks like "Lincoln's Hat." And it looks just like Lincoln's hat, it goes up and across, and straight down, and has a blob on the bottom. Everybody laughs at what these wicked politicians have done. And as an historian, I recognize that's as the 200-year-old county line of Fulton County, New York. That's just the way it is. There was another one they called the "Crab," because it has like a horseshoe wrapped around something. Well, this is the urban area, these are the suburban areas, and they all



pretty much cross. These are people who are content being associated with one another, who elect somebody they are comfortable with.

And the question is: Should the higher role be competitiveness or should the goal be representation? Now the Albany County Senator, Neil Breslin, has the only district in the State of New York that is absolutely perfect. It's the same population as the county population, so the Albany County line is Senator's Breslin's district.

Now, is it competitive? Probably not. The City of Albany hasn't seen a city councilman other than a Democrat since 1931. That's the way that people are here; the county is overwhelmingly Democrat. So he doesn't have a competitive district, other than in a primary. I've been in primaries several times and I've gone against incumbents in a primary, once successful and once not.

The primary takes care of the nonrepresented, the poorly represented, and the one-party dominated district. The goal, I would think, should not be competitiveness. The goal should be the quality of the representation. If you want to make Neil Breslin's district competitive, throw in southern Saratoga County and cut out half of Albany County, and tell me what good that would do in representation. You wind up with somebody who knows an area intimately to the level of streets and alleys, and small towns up in the mountains, and then you put them in a new area, and I assure you it would be a competitive district, but I don't think it would be as well represented. And if that senator isn't doing the job, to me the fail safe is you'll face a primary, and I've had primaries, as well. And I think that the competitiveness being a goal, sometimes that's misleading, because somebody assumes competitiveness is synonymous with good government.

Now, in the New York State Senate, we have a two-to-one enrollment, more than that, of Democrats over Republicans. So one would assume if everybody fell in line proportionately that two-thirds of the State Assembly would be Democrat and two-thirds of the State Senate would be Republican, give or take. The State Senate is closer to 50/50 with Republicans dominating. I mean, you can look at that and say, "How does that happen?" You can go to the State Assembly, no matter how you draw the line, but you're still going to wind up with a two-to-one that reflects the enrollment.

So I see a lot of what's going on with the competition. The competition could also result in just very bad representation. You take two neighborhoods and one is predominantly one

ethnic group and the other is another. Let's say it's Irish and Italian. Splitting them up will make it competitive, but you may not have the same level of confidence, representation, or knowledge of the people.

*Bruce Cain:*

Hopefully, you don't think that you're disagreeing with me. I think, maybe one amendment that might put me in a slightly different position than you is that I think a world with no competitive seats is probably undesirable, and especially if it's artificial.

So, I guess what I'm for is some portfolio where at least we have a few seats that are competitive for the reason that I said, which is that we do want to be able to send a signal when things are going bad, and you can't if there aren't any competitive seats.

And the second reason is a purely selfish reason, which is I'm in the business of writing about elections, and if they are all determined in the primary, thank you very much, it's very boring. So I have an entertainment requirement here. And you are, as you know, entertainment. And your suffering is more fun than you enjoying yourself. And you can be a good sport and suffer occasionally.

So, those are my two considerations. But other than that, everything you say is absolutely right. First of all, looking at compactness as your criteria for whether districts are well grounded or not is clearly a nonstarter, because, as you say, a lot of counties and cities are going to be irregular themselves.

*Assemblyman Jack McEneny:*

I love hearing you say that the best way to gerrymander and not get caught is to draw very straight lines.

*Bruce Cain:*

There is another interesting thing, and you've probably done this, too. I've gone to a lot of hearings in my day, and I have never heard a neighborhood say, "Make our district competitive. I want to work harder and spend more money, and worry about the fact that I'm going to be represented by somebody I don't like."

I'm going to be very academic, so you may wince. But, you know, in a calculus where you are maximizing the total happiness, it turns out that a competitive election actually maximizes the number of people who are unhappy, because if it was 70/30 district, then only 30 percent of the people are unhappy at the end. But if it's a 51/49 district, 49 percent of the people are unhappy. And I've been on the losing end in 51/49 seats, and I didn't feel very good about the process.

So, you don't have people coming to the hearings saying, "I want my district to be competitive." They say what you expect them to say, which is, "Well, keep my district the same, it will be much better." Those guys can be competitive.

*Assemblyman Jack McEneny:*

There is one structural difference in New York State, like in Maryland or in Massachusetts, it's 55 and 165. So, they have to talk to each other and they have to draw up a big Senate seat and then divide it by three. In New York State we have incompatible numbers. It could be changed, but nobody seems to want to change it. So there are now 62 Senate seats and 150 Assembly seats. We're set by constitution and they can pick anything from 55 to 65. But it's never a number that's compatible, so that you wind up with a scenario where they basically screw their own minority in the opposite house, do whatever they want in their own house, hold their nose, and vote for a compliant bill.

What happens is both houses then can appeal to the extremes of their particular dominant party and go back and say, "I voted exactly the way you wanted." But only recently have we ever gotten to conference committees, and that's been a major flaw for years. Now we're starting to use them much more, but nowhere near enough. But if you have a compatible number where you are putting Assembly districts inside Senate seats, then they have to talk to each other in the process and it reduces voter confusion.

*Bruce Cain:*

Well, that's interesting. It turned out irrelevant to a very hot controversy in California, which is the concept of nesting. There's a big debate within the legislature and the reform community as to whether they should require a nesting. What is nesting? Well, we don't have to worry about compatibility. There are 80 in the Assembly and there are 40 in the Senate. But the issue is the geographic comparability. Do you take a Senate seat and split it

in two? Or aggregate up to Assembly that splits into a Senate? Well, first of all, that has major implications right there.

And, second, it turns out that nesting is not very good, particularly in a term-limited environment, where you are up and out in six years. Think about it. If you are nested in a district perfectly for a Senate seat, so Albany didn't go up into the Republican areas, but it stayed in a Democratic area. And you had another Assembly district that you were nested with, then how often would you cosponsor to that person? How often would you make that person look good if you know that both of you are going to end up running for that Senate seat? So, it has been problematic that way, and it undermines party unity.

*Assemblyman Jack McEneny:*

Back in the 1960s I used to have friends over in Boston. One of them was saying about ED Brooke, "Watch this guy." He was telling me what had happened and how Brooke had gotten there. He demanded a very heavy Democratic edge in enrollment. Massachusetts has open primaries, which I'm against, because those who don't like your party will make sure you have the worst possible candidate. And you have to be enrolled in that party and then for that year you're stuck in that party.

And when Ed Brooke was moving up the ladder, there were a number of people who, for very racist reasons, said, "Look, let's go get the Black guy in the Republican Party and he'll never win." And Brooke was so good that he did win. I always thought he was a superb senator, and that for a while there, they were talking about him as the first Black vice presidential candidate. It backfired on the people who did it, but that's the problem with open primaries. So if you really don't like the incumbent, you sacrifice your enrollment. You can always put in the absolute weakest or most inappropriate candidate.

*Bruce Cain:*

Well, just a footnote to that. Barbara and I lived within half a mile of Ed Brooke's house. I liked him.

*Richard Nathan:*

I'm going to ask one question and then thank our speaker. We've got a lot of people talking about campaign finance, districting reforms, budget reforms. I was struck, Bruce, by what you said about the prison guards. And the fact that they've got money to use and they are in the contributions and political money game, whereas college professors are not.

So, I wonder as I'm thinking, "Well, if you had to sort out all these complicated things that are part of these reform agendas, where would you go? As you think about what Frank was asking, if what you care about is "bringing your bias to the fray," and you said you are somewhat committed now to improving the political process, where do you think you would particularly want to go in terms of types of institutional reform issues and changes you could consider?"

*Bruce Cain:*

Well, number one, we need term limit reform badly in California, so that's where I'm putting my crisis.

Number two, I'm a great believer when all else fails, in transparency. Now transparency can go too far. But having said that, I believe that if you have the redistricting hearings in public, and you let people comment, that would solve a lot of problems. Because the things that are most embarrassing, you're not going to want to do once everybody sees it. So I think transparency is the answer.

I feel the same way about campaign finance reform. I think the most important thing we can do with campaign finance reform is to sign every donor in this country a unique identification number, like a social security number, and then we can track money all around the country at all levels, and that would be far more important than all of the very elaborate apparatuses that we have.

*Richard Nathan:*

We could just to do that with REAL ID, we could click and be tracked.

*Bruce Cain:*

That's right. We could can convert this as an immigration number too.

*Richard Nathan:*

Bruce, we thank you. This was really educational and very interesting. And wonderful to have you visit us.