
WHO HOLDS THE CRAYONS? HOW OTHER STATES REDISTRICT LEGISLATURES SYMPOSIUM

APRIL 30, 2013

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**WHO HOLDS THE CRAYONS?
HOW OTHER STATES DRAW LEGISLATIVE DISTRICT
LINES SYMPOSIUM**

Paul Simon Public Policy Institute

April 2013

Prepared from:

Who Holds the Crayons? How Other States Draw Legislative District Lines

April 30, 2013 – Inn at 835, Springfield, IL

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FOREWARD

One of the most important public policy issues facing Illinois is the way the state draws its legislative and congressional district lines.

Every ten years, following the census, the state goes through a sharp political debate over mapping those lines. It is a process in which the party in power draws district lines to favor it. If the General Assembly is unable to agree on a map, then the decision goes to an evenly balanced commission. If the commission is then unable to reach an agreement because of partisan gridlock, which often happens, the deciding vote on who gets to draft a plan is chosen by lot.

The result is often a lack of competition for legislative and congressional seats. That, in turn, can create public cynicism that citizen votes don't matter because the outcomes of elections are already predetermined. This lack of competition can also create an environment which can breed corruption, unethical behavior, incivility and fiscal mismanagement. Those things can happen when policy-makers don't think anyone can defeat them because they are in a safe district and when those same policy-makers must obey the legislative leaders who draw those district lines.

Efforts are underway in Illinois to change that system. Other states are making changes to their systems by having citizen commissions or non-partisan staffers draw the lines. So what Illinois can learn from them and their efforts at change in their states?

To answer that question, the Paul Simon Public Policy Institute at Southern Illinois University in Carbondale, with support from the Joyce Foundation and the McCormick Foundation, held a day long symposium on April 30, 2013 in Springfield to discuss the matter. Experts from the National Conference of State Legislatures and experts from Illinois and several other states participated in the session.

Attached you will find a summary of the discussion and a transcript of the discussions.

Thank you.

David Yepsen

Director, Paul Simon Public Policy Institute.

Introduction to the Proceedings

By: John S. Jackson

Visiting Professor, Paul Simon Public Policy Institute

This volume contains the Proceedings of the **“Who Holds the Crayons? How Other States Draw Legislative District Lines”** symposium held in Springfield, Illinois on April 30, 2013. This event was jointly sponsored by the Paul Simon Public Policy Institute at Southern Illinois University Carbondale, the Joyce Foundation and the McCormick Foundation. The Paul Simon Institute would like to thank our co-sponsors for their valuable support for this project. The symposium was attended by over eighty participants who included political activists and reformers, media representatives and public officials.

The symposium is the second in a two part series which started with the **“What’s In the Water in Illinois: Ethics and Reform Symposium on Illinois Government”** held in Chicago on September 27 and 20, 2012. The Proceedings from that symposium have already been published in hard copy and are available on line at our website: www.PaulSimonInstitute.org. The current volume will also be available at that site.

The purpose of this conference was to provide some perspective on how Illinois does redistricting and to compare the Illinois system with the plans in other states. Illinois has a plan which is mandated by the 1970 constitution. In many respects it is like other states in that the legislature is in charge of drawing up the initial maps, debating them, and attempting to pass a bill which would make the proposed maps state law. This includes both the state (Legislative Districts) and congressional (Representative Districts) maps.

However, if the Illinois General Assembly is unable to reach an agreement on new maps by June 30th then a bipartisan commission is appointed by the legislative leaders of both parties in both houses. This produces a commission of eight members and they then proceed to try to draw up maps which can be passed by a majority of the commission. If they are not successful in producing a map which at least five members can agree to by August 10th, then a tie-breaking ninth member is picked by the Supreme Court which provides two names, which cannot be of the same political party. That ninth member is then selected randomly by the Secretary of State who chooses one party’s nominee by publicly drawing the name from a hat.

That means that one party or the other is likely to prevail in the drawing of the map which must then be adopted by a majority vote of the commission. In three of the

redistricting years since 1970 the commission's map prevailed and one party was able to dominate the map-making outcome. In two other years, including 2011, the General Assembly adopted its own map without the use of the commission and in these cases also partisan considerations were paramount.

So, there are two major features of the Illinois system. It begins with the legislature and can end there if they can produce a map which a majority can adopt. If not, then Illinois becomes a commission state. However, the composition of the commission is unique among the states if there is need for the ninth, and tie-breaker member, who is selected randomly.

No other state does it this way, and it is this unique selection system which has drawn the most fire from many critics, although many reformers also do not like the fundamental role played by the legislature. It is often said that those states which allow the legislature to dominate the map making process allow the legislators to select their people rather than the other way around. This dominant role of the legislature in the drawing of the district lines means that considerations of incumbency and partisanship are usually first and foremost the defining criteria in the composition of the legislative boundaries. This often leaves the voters with very few real choices at the ballot box. This lack of popular accountability at election time is the feature which many reformers object to and which seems to violate the norms of popular and representative democracy. It was this set of facts which conditioned much of the day's discussion of what Illinois does, how it compares to other states, and what changes might be feasible in Illinois.

The comparisons with other states was particularly relevant because there are a number of other states which have experimented with new forms of redistricting over the 2000 and 2010 census cycles. This symposium was originally predicated on exploring those new plans and on exploring what the record was in the innovative states and discussing what their experiences might teach Illinois. In general the presentations which follow accomplished that mission admirably and there were many relevant insights gained from the presentations and discussions of the Day. This introduction will highlight some of those major insights.

Opening Session

1. Paul Simon Public Policy Institute Director **David Yepsen** opened with an explanation of the symposium's objectives. He also thanked the participants, staff, and sponsors for their hard work and support. He set the context for the day's presentations and for the participants and panels. David then introduced Janice Thompson.

2. **Janice Thompson** from the Midwest Democracy Institute talked briefly about her group's mission and how it fits with the purpose of this symposium. The McCormick Foundation, which supported the symposium, also supports her Institute. She said her group is interested in democratic reforms and stimulating popular interest and participation in making such reforms possible in the Midwest region. They are particularly interested in redistricting and welcomed the opportunity to work with the PSPPI on this symposium, and they hope to encourage future cooperation with the institute and other like-minded groups.
3. **Dr. Charles Leonard** made a presentation on the PSPPI's polling data. He explained the general criteria for drawing new districts which are found in the Illinois Constitution and the statutes. He noted the almost universal "compact and contiguous" requirements which are constitutional provisions in Illinois and the preservation of "communities of interest" which is found in many state statutes but not included in the Illinois constitution. Our surveys on various reforms have covered many of the potential changes which have been discussed for Illinois and he cited the level of support each has received. In summary, Leonard concluded that the public in Illinois is very disillusioned with the current system and state government in general and is ready for reform.
4. **Morgan Cullen** of the National Conference on State Legislatures spoke next. He is the NCSL's expert on redistricting and he covered the basic rules of the game which dictate the legal contest of redistricting. Cullen particularly talked about how various states approach the task and how they compare with Illinois. Cullen noted that in gross anatomy terms the state legislature is in charge of redistricting in thirty-seven states and in the remaining thirteen states some kind of commission is responsible. Those commissions can be partisan, bi-partisan, or non-partisan. In Illinois, both the legislature and a commission can be involved as was explained in the introduction above.

Panel 1: California and Arizona- Moderated by Dr. John S. Jackson of the PSPPI

1. **Maria Blanco** was a member of the California Citizens Redistricting Commission, and she presented the case study of their new system used for the first time in 2011. California had been trying for a decade to adopt a new system and their attempts failed until 2008 when the voters in a popular referendum adopted the new commission. The earlier problems in California clearly indicated that the legislators were drawing the district boundaries to protect incumbents and party interests and they were succeeding in that objective. For example,

between 2002 and 2010 there were 265 legislative races and in only one case was there a change of parties resulting from a competitive election. In addition, incumbent protection was rampant in both parties.

The new initiative provided for an elected commission composed of fourteen members. Citizens could volunteer to serve on the commission and 30,000 people responded by filling out the application. The State Auditor was placed in charge of the narrowing of the field because he was considered to be the most politically neutral statewide official. He used a review panel composed of one Democrat, one Republican and one “Declined to State” person to narrow the list to a top 60 candidates who met the qualifications.

At this point the state legislative leaders got involved and were able to review the top 60 applicants. They had the right to strike potential members without review or specification of cause. Blanco stated that this was the only phase of the selection process that she had some doubts about since the power of the legislative leaders was effectively unlimited at this stage where the pool was cut to only 36 people.

After that, the pool was then randomly cut to a total of eight. Those eight then met and selected the remaining six members of the commission. This created two classes of members, i.e. those who were randomly selected and those who were selected by their peers.

The California amendment also incorporated several fairly objective criteria to guide the commission in its work. Those criteria included first of all, equal population, second compliance with the Voting Rights Act, third contiguity, fourth preserving geographic and political lines and protecting communities of interests, fifth was compactness, and finally, nesting house districts entirely within a senate district. (p. 4). Other speakers throughout the day repeatedly referred to the importance of including such objective criteria in any constitutional amendment or legislation governing the redistricting process.

Blanco stated that the resulting fourteen member commission was very diverse and represented the votes of California quite well. They took their job seriously, held numerous public meetings throughout the state and worked in a transparent and serious manner to fashion a map which met the constitutionally required redistricting criteria.

Blanco then raised the question of whether the commission worked and concluded that it did. It worked to produce a map which was adopted in a timely manner and one which met the legal criteria. The map had to be adopted by a super majority of three Democrats, three Republicans and three “Decline to State” and it passed that test. It also worked to increase competitiveness in a more limited fashion. There were more competitive districts than in the past but not as many as supporters had hoped. There were also controversies and challenges to the map, but in the end the produce of the commission’s deliberations was adopted and withstood those challenges. She also made some recommendations on how the process could be improved next time and in other states.

2. **Colleen Mathis**, who is originally from Illinois, was Chair of the Independent Redistricting Commission in Arizona. She was the political Independent on the Commission and was unanimously chosen to be the chair by her peers. The Commission was the product of a popular referendum, Proposition 106, adopted by the voters in 2000. So, 2011 was the second time this new Commission plan had been used. The plan adopted by initiative also had several criteria for redistricting which had to guide the work of the commission most notably compliance with the Voting Rights Act, recognition of communities of interest, and compact and contiguous districts.

The redistricting Commission is organized by the Commission on Appellate Court Appointments which runs the selection and vetting of the proposed members. They were deemed to be the most neutral governmental agency to do this in Arizona. The members must meet a set of criteria specified in the law designed to ensure their objectivity. The party leaders in the House and the Senate select two Democrats and two Republicans to the initial commission. Those four then selected the fifth, an Independent (Mathis) who chaired the commission.

They selected staff, especially legal counsel and mapping consultants. They had to comply with their state procurement law which Mathis thought was a liability since it did not allow for an open and transparent selection process. The commission held extensive and well publicized hearings throughout the state. They also had their mapping experts draw up draft maps which they then considered and publicized. They started with a basic grid map and then included adjustments for all the other criteria which had to be considered.

The public hearings included those held before the draft maps were released and a second round after the draft maps were released in order to obtain public

feedback on them. The public also submitted maps to the commission which they considered. After the proposed maps were released, Republican Party leaders, especially the Governor and some Republican Congressional leaders were unhappy with the results which they thought favored the Democrats. So, Governor Jan Brewer attempted to fire the Chair, Mathis, which precipitated something of a political crisis. The Arizona Supreme Court stepped in and ruled unanimously that the Chair could not be replaced in this circumstance, and the Commission went back to work. They gathered further input and then adopted a map.

Mathis deemed the process to be a success in Arizona. They produced a map which was able to pass preclearance by the Department of Justice as having met Voting Rights Act requirements. They produced four congressional districts which were likely safe Republican districts, two Voting Rights districts which the Democrats were likely to win, and three competitive districts which the Democrats won in close elections in 2012 but which will be competitive again. In the state Senate, 17 Republicans and 13 Democrats won seats which corrected some of the earlier Republican advantage.

She cited a disadvantage of having to return to the state legislature for funding which was often difficult to obtain and her earlier criticism of the use of the state's procurement act. On balance, though, Mathis was an enthusiastic proponent of the Arizona Commission model and thought it had some feature worthy of emulation in Illinois.

Panel #2: Iowa and Illinois- Moderated by Dr. Linda Renee Baker, PSPPI

1. Dr. Craig Curtis- Associate Professor of Political Science at Bradley University

Dr. Curtis started his presentation with various definitions of democracy and their implications for the redistricting challenge. He reflected on his background of growing up in Mississippi which at that time was a state ruled by a power elite which only wanted to perpetuate its own rule and control of public offices. Professor Curtis defined democracy in terms which requires that there be periodic free elections and demands that the people can exercise the right to throw their rulers out of office. Thus, voting rights become the key to democracy. Abusive redistricting practices can seriously erode those basic democratic rights so how you draw the lines is fundamentally important as a test of the quality of democracy. The lack of competitiveness, the over emphasis on incumbency and partisanship are threats to democratic accountability. He maintained that these were also threats in the State of Illinois today.

2. **Dr. Don Racheter**- the Public Interest Institute in Iowa

Dr. Racheter reviewed the history of Iowa's unique approach to redistricting which relies heavily on the work of the Legislative Services Agency. Legislative staffers draw the proposed district lines. It is the most technocratic and politically neutral system in the nation. A citizens commission then conducts hearings around the state on the proposed plan which is then submitted without change to the Legislature for a non-amendable up or down vote. If rejected, the process is repeated and a second plan is submitted to the Legislature for another non-amendable up or down vote. If that plan is rejected, a third plan is submitted and that one can be amended by lawmakers.

The map-makers are not allowed to consider incumbency, partisanship, or past voting records. The map of Iowa is fairly uniform with a rectangular shape, and the state is not required to pre-clear plans for compliance with the Voting Rights Act. This makes the map-making process much more neutral and driven by the technology. It also means that incumbents sometimes get thrown together and some get beat.

Iowa also requires this system be used to draw congressional district lines. As was discussed in the question and answer period later, at the congressional level this can be a disadvantage in competition with the rest of the states where seniority is a real advantage for some state delegations. Racheter discussed some of the positive implications of the Iowa model and advocated it as having advantages over the Illinois system.

3. **Brad McMillan**- Institute for Principled Leadership in Public Service at Bradley University

McMillan was a member of the Illinois Reform Commission. He discussed the commission's history and its attempts to change the way Illinois does business, including redistricting, before the last election. He analyzed the problems of legislative dominance of the current system and its tendency to favor incumbents and to protect partisan interests first and foremost. He was also active with the Illinois Fair Map Coalition and discussed its experiences in trying to get a petition drive to change the constitution in order to change the way the state does redistricting. They were ultimately unsuccessful in getting enough signatures on the petition to get the question on the ballot.

He concluded that the people must get involved and see the implications of not being able to effectively influence the way the map is drawn in Illinois. He also made some recommendations for future reformers to consider based on his

experience with the essentially failed reform drive from 2010-2011. McMillan said that he expected to be active in the new phase of the reform effort and urged others in the audience to do likewise.

Keynote Address- Peter Wattson, Former Secretary of the Senate of Minnesota.

Mr. Wattson is one of the nation's leading experts on redistricting and he advises states routinely on the legal aspects of the process. He also travels extensively for the NCSL and has been one of their consultants for many years. He basically discussed what political scientists call "the rules of the game." He covered all the basic concepts and the landmark U. S. Supreme Court decisions on reapportionment and redistricting.

Wattson is especially experienced in understanding the basic law and interpreting what it means for the decisions that the states must make in this field every ten years. He made the important point that there is a major difference between Section 5 of the Voting Rights Act (prior clearance required from the DOJ based on some states' and counties' record of prior racial discrimination which the U. S. Supreme Court is reviewing now) and Section 2 which covers the requirements for districts to be essentially equal in population based on the equal protection clause of the 14th Amendment.

These Voting Rights considerations also lead to special reference to majority-minority districts being required and how those are constructed which often leads to very irregular districts. He advises states on what to do and not do in redistricting in order to achieve the maximum odds for court approval of the plans produced. Wattson also considered the various possibilities for partisan gerrymandering and what the courts have said about this elusive subject and the fact that so far there are no clear standards to use in identifying such a gerrymander.

Panel 2- Florida and New Jersey- Moderated by Dr. Chris Mooney, University of Illinois Springfield

1. **Dr. Seth McKee** of the University of South Florida
Dr. McKee presented a case study of how the redistricting process works in Florida. This was also the history of the "Fair Districts Florida Movement" which took the lead in getting their redistricting plans adopted. It was the result of Amendments 5 and 6 to the Florida constitution being adopted in

2010 by over a three fifths majority of the voters. This amendment was adopted over the strong objections of the Republicans in the Florida legislature who suspected that a new plan might reduce their overwhelming hold on the Florida House and the Senate. The new plan ultimately helped the Democrats although not enough to gain the majority in either body. They also adopted some objective redistricting criteria including compactness and contiguity as well as respect for the Voting Rights Act.

McKee assessed the partisan composition of the Florida legislature before and after the amendments were adopted. He concluded that the Republicans enjoyed supermajorities before the amendments which were far out of proportion to the votes cast statewide (the votes to seats ratio). The Republicans still enjoyed the majority in both houses after redistricting although those majorities were not quite as marked. He maintained that the real litmus test should be how many new constituents the incumbents get after redistricting. Before the amendments, the Democrats lost more incumbents; after redistricting the Republicans lost more incumbents although they still had a majority of the delegations. He concluded that amendments 5 and 6 increased competition at least marginally although no votes to seats parity has been achieved by any means and the Democrats are still disadvantaged in Florida

2. **Nicholas Stephanopolous** of the University of Chicago

Dr. Stephanopolous analyzed New Jersey even though he lives in Chicago. New Jersey uses two bipartisan commissions, one for the Congress and one for the state legislature. The state legislature redistricting is done by the Apportionment Commission. It came about after the 1960s reapportionment revolution. In essence, New Jersey adopted a constitutional amendment which established the commission. It is composed of 11 members. Five members are selected by the chair of each of the two major parties in New Jersey for a total of ten. They adopt a plan if possible. If they cannot agree, which is usually the case, then the New Jersey Supreme Court selects the 11th member who chairs the commission and acts as the tie-breaker.

The congressional map is drawn by a Redistricting Commission established in 1995. It is composed of 12 members appointed by the parties. They can agree to select a Chair, but if not, the Chair is again selected by the New Jersey Supreme Court.

While this model is not too unusual among commission states, what is unique is that the Chair of the commissions has typically been an academic from

either Princeton or Rutgers. These have typically been prestigious members of the Political Science or Law faculties. These academic chairs have taken a very strong hand in leading their commissions and advocating some criteria which have prevailed. They have been especially aggressive on partisan fairness trying to ensure that both parties are treated fairly or equally (i.e. no systematic bias in the votes to seats ratio).

Stephanopolous' research is complex but it indicates that nationally the commissions have done a fairly effective job of improving competitiveness, but not improving party fairness. Eliminating considerations of incumbency may be the key to this outcome. However, in New Jersey the opposite result obtains, i.e. commissions have done a better job of increasing partisan fairness than on increasing competitiveness. He then provides some hypotheses as to why these anomalous results may obtain. He attributes much of the success of the New Jersey commission's increasing partisan fairness to the influence of an active and committed academic chair. He closed by recommending nonpartisan commissions (e.g. the type used in Australia) although bipartisan commissions are more popular. Much discussion ensued regarding the import of all of these findings for potential change in Illinois.

Be Careful What you Wish For: Discussion

David Ellis – Former Chief Legal Counsel to Illinois House Speaker Mike Madigan and **David Yepsen**, Director Paul Simon Public Policy Institute- Ellis and Yepsen discussed the findings of the panels and emphasized the pragmatic politics requirement for getting things done in Illinois. They particularly focused on the pitfalls and perils of reform. Ellis wanted the emphasis placed on the process. He said the process should above all be transparent. He wanted to emphasize what works in the real world and what the problems and obstacles to change were. He talked especially about the obstacles to getting rid of partisan bias in a polarized strong party state and one where many like-minded people tend to live in geographic enclaves.

He also discussed the problems of dealing with majority-minority districts and complying with the Voting Rights Act in a state which has a very irregular shape and large ethnic communities. Ellis also covered the various prospects for changing to a new commission form which would require a constitutional amendment which is difficult to pass in Illinois.

A lively give and take and question and answer period led by Yepsen followed.

Ellis closed with observations regarding his experiences in leading the impeachment of former Governor Rod Blagojevich. He observed that Blagojevich was elected Governor twice by very substantial popular margins. Blagojevich was re-elected to a second term despite much evidence of ethical and legal problems looming. Ellis made a strong appeal for a more educated, better informed and more rational electorate. Citizen education and better political participation are keys.

Yepsen summarized and wrapped up the symposium; thanked all our panelists and the audience for their participation and adjourned the meeting.



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David Yepsen

Janice Thompson

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(TRANSCRIPT)

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**Who Holds the Crayons? How Other States Draw
Legislative District Lines Symposium**

April 30, 2013

**David Yepsen, Janice Thompson, Charles Leonard,
Morgan Cullen**

Mr. David Yepsen: Well, good morning. I'm David Yepsen. I'm the director of the Paul Simon Public Policy Institute at Southern Illinois, and welcome to our symposium on who holds the crayons. It's a look at Illinois redistricting and how other states do it.

We are pleased to have the support and co-sponsorship of the Joyce Foundation and the McCormick Foundation. And George Cheung of the Joyce Foundation and John Sirek from the McCormick Foundation, I want to thank you both for your support. [We're fortunate] to have the support of two prestigious philanthropies here in Illinois.

Before we begin, I want to ask Janice Thompson to come forward from the Midwest Democracy Network. It's another Joyce sponsored program, and they're doing some interesting work that I know will be of interest to all of you in the reform movement here in Illinois. Janice?

Ms. Janice Thompson: Thank you. Just a thanks for the little bit of time here. I'm Janice Thompson. I'm with the Midwest Democracy Network. I started there last summer. It's been going since about 2007. It's a collection of civic engagement, good government groups in Illinois, Indiana, Minnesota, Michigan, Ohio and Wisconsin. And there's several of the Illinois partners here. I see PR folks, I see Illinois League of Women Voters and others.

And as a network, it's interested in a wide range of democracy reforms, but obviously in the last round of redistricting [*unintelligible*] on that topic with organizations in each of those six states kind of banding together under a Draw the Lines Midwest title. And folks in each state formed coalitions, urged transparency improvements in the official process in several states, hosted their own contests, did citizens commissions, and really had an impact on the line-drawing process.

But nevertheless, the official procedures were still, in large part, very partisan and secretive. You're going to hear from a speaker in Minnesota. Minnesota looks a little different because there it kicks to the courts and the final lines ended up looking a little different. But we are, in conjunction with today, releasing this report—urge

you to pick it up—and it really documents just how broken the system in these six states was in 2011.

And it's an interesting set of six states in terms of political control, Illinois obviously being Democratic control, several of the other states Republican, so it really documents that regardless of which party is in power, it is, like I say, fairly partisan, a very partisan, secretive process. Then it includes some post 2012 election analysis contrasting the partisan split of votes cast with seats obtained, both in the legislatures and in Congress, and it includes a number of big picture reforms.

Each state has to sort out exactly the reform package that makes sense for its situation. But one of the reforms is definitely a shift to an independent redistricting process, so I certainly am looking forward to, at this meeting, hearing from folks in other states with that procedure and really kind of drilling down into more details. So please pick up the report and I'm happy to answer any questions during the course of the day. Thanks. *[Applause.]*

Mr. Yepsen: Thank you, Janice, and thanks for the work that you're doing. A few housekeeping announcements. First of all, I want to thank the staff of the Simon Institute for their hard work in putting together this symposium. Anyone who's organized a symposium knows that there's a lot of detail work that has to go on. Matt Baughman, Carol Greenlee, Emily Burke, Dave Lynch and Lindsay Knaus, I want to thank you for your help in putting this together. *[Applause.]*

I also want you to know that we're live streaming this event, and so if any of you have fellow policy wonks out there who might want to tune us in, they can watch this through our website, PaulSimonInstitute.org. Also Terry Martin from the Illinois Channel is with us today recording these proceedings, and some segments of this symposium will be airing on the Illinois Channel.

We'll make a transcript of this event. I don't know how soon we'll be able to get that done, but it will be on our website. We'll see that you get a copy. And there's also a lot of material over there. Please check on your way out because we've been adding to that stack of information all morning.

We decided to host this symposium in Springfield, the state capital, while the legislature was in session, specifically to make it accessible to the political community in this state. And hopefully the drama up the street won't be so riveting that a few of them can't break away and drop in and catch some of our symposium. And we understand people may have to come and go throughout the day, so that's fine.

The drawing of legislative and congressional districts is a political issue that sits at the center of many other issues in Illinois politics. Under the current system, the legislature devises its own district lines, a process that ensures incumbents protect themselves and that the majority party marginalizes the minority party. By creating safe districts for most members, members have little incentive to cross party lines

and every incentive to simply pander to their base vote so they don't lose in a primary.

When politicians choose their constituents instead of the other way around, people also become cynical. Today voters in Illinois have less respect for state government than they do for the federal government. Now, think about that. But our polling shows that. And that's really not saying much about Illinois. And as a result, many citizens do not participate and they tune out of public affairs. Other states have found other ways—computer generated districts, independent commissions.

The purpose of this symposium is to look at some of those states and answer about four questions: how did they come about their systems? Secondly, how did those systems work in the 2012 election? Three, see whether what they did there could be a template for Illinois, and finally, what were the landmines in their plans, what could we learn from those other states?

If big, irregularly shaped states with large minority populations can do citizens commissions for redistricting and have it pass muster with the courts, I think Illinois could, too. In Illinois, reform groups operating under the Change Illinois banner are about to embark on an effort to put a similar commission idea on the ballot in this state, provided they can find enough signatures, not get themselves knocked off the ballot, which is an art form in Illinois politics, and provided they can get the courts to go along with it.

Another, perhaps better way to address the problem is for the legislature itself to debate the issue. Now, they are a little busy over there—pensions, the budget. But hoping that they can walk and chew gum at the same time, it might be worth them debating issues of redistricting as well. After all, this is not going to be in effect, would not go into effect until the redistricting of 2021, after the 2020 census and in preparation for the 2022 elections.

So why are we doing this now? We're almost a decade from it, and that's precisely the idea. By doing it now instead of waiting until redistricting is upon us, we can get this issue away from some of the personalities involved. The debate can focus on the policy and not on individual legislators, and who gets a safe district, and who gets drawn out. Also, the issue right now is still relatively fresh in the minds of many in the political community and many opinion leaders, so it's simply a good time to have the debate in this state about redistricting and how we're going to do it several years from now.

We at the Simon Institute don't endorse specific bills, but we do look at policy issues. And nothing was dearer to the heart of our founder, Senator Paul Simon, than reform policies and promoting ethical behavior in Illinois government. So to be about that work, we have assembled some of the nation's leading experts on redistricting issues.

Many of these people have traveled halfway across the country to try to lend a hand and share their expertise with us here in Illinois. We're grateful to them for being so generous with their time and taking out a couple days of their life to be here with us. We structured these meetings into small panels to give them plenty of time to share their views and plenty of time for you to ask them questions. We are going to get into the weeds here today.

Before we get to all that, I'd like to ask Dr. Charlie Leonard, who's a political scientist here at the Institute, and who supervises our statewide and Southern Illinois regional polling, to come forward and give us an overview of how citizens view redistricting and reform efforts. Charlie? *[Applause.]*

Dr. Charlie Leonard: Thank you. Welcome, everyone. We're delighted you've joined us here today. I want to give a quick summary of what our polling has found over time regarding two specific redistricting reforms that we've been asking about for some time. I'll open with a nickel tour of the status quo and then we'll dive into two survey questions that we've been asking since 2009 and 2010.

The courts and state laws say that districts must be compact and contiguous. In other words, you could walk from one part of the district to any other part without leaving it. Contiguous is a precise term. You can tell when a district is contiguous or not. Apparently, looking at Illinois districts, you can't tell what compact means. Some of them look like a bug on a windshield.

And good redistricting preserves communities of interest. It apportions legislative districts that have things in common with each other. And a stretched out, funny-looking, spidery, gerrymandered district probably doesn't preserve communities of interest and apportion legislators to groups that have things in common with each other. About half of the states' laws and constitutions, in their redistricting provisions, mention communities of interest. Our state does not.

And as David said, and as other panelists will probably address, we assert that safe partisan districts cause incumbents to worry about primary election challenges and primary voters are more partisan and more extreme in their partisanship, as a group, than are general election voters.

In our current system in Illinois, if the legislature can't agree on a map, redistricting goes to an eight member commission with members appointed by the legislative leaders of both parties. And as usually happens, there's a partisan tie, four and four. This last happened in 2001. If there's a partisan tie, each party draws its own map and then the winning party is the name drawn out of Lincoln's hat.

And that encourages the parties to draw the most partisan map possible because there's no reason to compromise. Either my name will get drawn from the hat or it won't, and if it didn't get drawn, it didn't hurt me to draw the most partisan map, and if I do get picked, yay.

So the first reform that we've been asking about in our surveys for five years now is for the Supreme Court to add a neutral person, a ninth neutral person to the redistricting commission in the case of a partisan tie. And that would encourage the sides to draw a more moderate map that could draw the vote of that ninth member. We've been asking about this since 2009. Let me throw some results up here for us to look at. I can't resist the Phil Donohue thing. My students don't know who Phil Donohue is so I have to say I'm doing the Oprah thing, and that's just incongruous for them.

We can see, going back to 2009—that's the dots on the far left—the bright blue line is percent strongly favoring this reform to add a neutral person and the green line is the percentage simply favoring it. And we can see some movement over time. Seventy, eighty percent in 2009 and 2010 favored it, but in 2011, the lines converge so that the percentage of people strongly favoring has gone up a lot.

Something happened between 2010 and 2011 for the intensity of favoring this reform to have gone up and to have stayed about the same. Let's not over interpret those little bounces in 2011, 2012, and 2013, because that's probably just statistical margin for error or fluctuation. So sometime in 2011, the intensity of support for this reform has gone up. We ask about a lot of different political reforms in our poll. We weren't so prescient in 2009 to know that we'd be doing this here today.

Another thing we've done with these numbers is for the past three years to break out the percentage favoring these reforms by Chicago, Chicago suburbs and downstate. If you're not from Illinois, downstate means not Chicago and the suburbs. So downstate can mean Galena to Cairo.

I want to caution you not to over interpret any fluctuation in these favorabilities over time because the subsamples are small and margins for error will be high. But what I want to point out here is that large majorities in Chicago, in the Chicago suburbs and in downstate favor this neutral person reform, and the support has been high and remained high for the past three years.

We've done the same by the party of our respondents. And again, for the last three years, support is high and remains high among Democrats and Republicans. And Democrats, at least for the time being, would probably be disadvantaged by these reforms. In another few cycles, it might be the Republicans. But even among Democrats, essentially three, four [*unintelligible*] [favor] this reform.

The second one, and what we'll probably hear a lot more about today, is the independent remap panel that draws a map for the legislature and the governor to approve. We've been testing this one since 2010. And you can see a similar thing happening between 2010 and 2011. That blue line, the percent strongly favoring that reform, has gone up, and we're at 70-ish percent total favor. But again, intensity has gone up between those two years and stayed high.

And similarly, for this second reform, the independent remap panel, across geography, favorability starts high and remains high. Again, we don't want to make assertions about whether that bouncing up and down is significant. Particularly, that 2013 poll only had 600 respondents, so we're confident in that 600 number, but in subgroups out of that 600, the margin for error will be high. And again, by party, larger majorities favor the independent remap panel. Support starts high and stays high.

So in a nutshell, as long as we've been testing these, for five or four years, large majorities have favored these reforms. We assert that the intensity of support grew between 2010 and 2011, and is sustained, and that the support for reform remains strong among regional and partisan subgroups. So perhaps the time is ripe. That's what I brought, folks. Thank you. [Applause.] I'd be happy to take a question. I have a couple minutes. Yes, sir?

Male Voice: Just one regarding the data from [unintelligible] and the neutral member.

Mr. Leonard: Yes.

Male Voice: What happened to the independents between 2012 and 2013?

Mr. Leonard: Somebody has my cheat sheet there and wants to know what happened to the independent support for the remap panel between 2012 and 2013. There's probably not 100 independents in that sample, so it's probably statistical noise.

Male Voice: It seemed like such a dramatic number.

Mr. Leonard: Yeah, but there's 600 in the total sample. There's not 100 independents in that sample. So if five or seven of them are cranky that day, it can skew that number. Yes? And then you.

Male Voice: Have you ever polled on multi-member district cumulative voting systems?

Mr. Leonard: We have not polled on multi-member cumulative voting systems. That's a hard thing to poll on because the question is complicated, and trying to explain that to somebody that [just stepped away] from "Wheel of Fortune" on the phone and trying to explain how that works is difficult. We might try it someday if it ever becomes viable. But it hasn't come up, so we haven't polled on it. Yes, sir?

Male Voice: So I just wanted to ask—and you may have mentioned this, forgive me—is this registered voters or likely voters, and do you think it makes a difference?

Mr. Leonard: We survey registered voters in all of our polls. As a policy institute, we are less interested in election outcomes, though we do sometimes throw horse race questions in there just because we're nerds and it's fun. And figuring out who the likely voters are is a really imprecise science. Ask Gallup from this last polling.

So we have tried a likely voter model a time or two in the past. It probably would make a difference, but it's a lot of work and it's pretty speculative. That's a good question. Anyone else before you let me off the hook? Thank you for your time. [Applause.]

Mr. Yepsen: Thank you, Charlie. Our first keynote speaker is Morgan Cullen, from the National Conference of State Legislatures in Denver. He is the NCSL's leading expert on redistricting questions. He was also of enormous help to me in putting together this symposium and identifying the best people we could get to come here, and calling them up and encouraging them to be here, and so I want to thank him particularly for his generosity in suggesting these experts and for helping us develop this program. I also want to thank him for spending his time making this trek out here. Morgan? [Applause.]

Mr. Morgan Cullen: So when David called me several months ago and he told me he was trying to put this whole conference together and he said, "Oh, I really appreciate your help," I said, "Are you kidding me? I thought I was going to have to wait eight years before I get to do something like this again." So this is a rare treat, and I really appreciate you inviting me here, and it's good to see a lot of familiar faces.

If I can make a quick plug for the organization that I work for, it's the National Conference of State Legislatures. We're a 50 state organization that all 50 states pay dues into. We provide a variety of different services. One, we do a lot of policy analysis. We do a lot of professional development. Do a lot of training on behalf of state legislatures at the federal level. So do a variety of different things and cover a variety of different issue areas, not just elections and redistricting. I'd encourage anybody to jump on our website if you need to get any information or if you need any additional information on redistricting after the conference is over, I can give you a card or whatever, and I'd be happy to assist you as well.

One of the publications that we put together—as you all know, redistricting is governed by a voluminous body of state and federal law. This is just one publication that we put together every ten years, *Redistricting Law 2010*. My colleague Peter Watson, who is the former Secretary of the Minnesota State Senate, was actually the editor in chief, and he's been involved in NCSL for a really long time.

Redistricting. I try to start with something funny, and I like this cartoon a lot because I think there's a lot of truth to it. There's two people at a museum. One's looking at abstract art. The other one's looking at a political redistricting map. And the caption under it is, "It makes you wonder what's going through their minds, doesn't it?" I think there is a lot of truth to it.

When you look at a redistricting map and you see all the bizarre looking shapes and contorted boundaries, on the face of it, it doesn't make a lot of sense at all. But when you get down to it, and you start to learn the rules of the game, you start to realize that there is a method to the madness and there is a reason that the districts are drawn the way that they are.

And so I guess that's really the purpose of this presentation today, is to kind of give you a general overview of the process, what all states have to do when they go to redraw their maps every ten years, and then also look at some of the specific differences between the states. All states are constitutionally mandated to redistricting every ten years, but not all states have to go about it in the same manner, so we're going to look at some of those differences as well. And then this is a conference about redistricting reform, so we're going to also look at some of the reform measures that other states have taken in recent years and learn more about those as well.

So again, we're going to do an overview of the redistricting process, what is redistricting—we'll start with the basics—why do we redistrict, when do we redistrict, who is in charge of drawing the lines, where do we redistrict, how do we redistrict, and so what, who cares?

So does anybody know the difference? Here's two terms that are commonly confused with one another, and it's not just—you know, everybody can be confused. In my home state of Colorado, the state legislative redistricting commission is actually not the redistricting commission, it's actually the reapportionment commission. It's misnamed. But anyway, does anybody know the difference between redistricting and reapportionment?

Male Voice: Apportionment is the allocation of the number of seats, for example, out of the 435 congressional seats based on population shifts, and redistricting is then drawing the lines for that number of seats within your state.

Mr. Cullen: So that's correct. Redistricting is the actual process of redrawing the lines to meet those equal population requirements. Reapportionment is the reallocation of congressional states, the 435 seats in Congress, so that each state has the proper allocation based on population changes that have occurred over a ten-year period as determined by the U.S. Census. And I have prizes for people. If you get a right answer, you get a prize. *[Laughter.]*

Male Voice: Thank you.

Mr. Cullen: It's like 9:00 in the morning, and I'm giving out candy bars, but yeah, that's the best I could do. So why do we redistrict? Does anybody know the answer to that? We redistrict because we're constitutionally mandated to redistrict. For over 150 years, state legislatures had complete authority over the redistricting process, with very little oversight from the courts or the federal government.

And then, in 1962, in a Supreme Court case, *Baker v. Carr*, the Supreme Court ruled that they did have jurisdiction to question challenges for redistricting maps. And then that, coupled with a couple of other cases, *Gary v. Sanders*, *Reynolds v. Sims*, which established that one person, one vote principle, ushered in what is commonly referred to today as the modern redistricting era.

So what does that mean? It means that every ten years state legislatures have to go about redistricting, or states have to go about redistricting, and they have to meet those equal population requirements. And the courts have ruled that for Congress, that means as little deviation as possible, basically zero deviation. And then state legislatures, you can have up to 10% deviation, but that's for good reason.

So when do we redistrict? Just to kind of give an overview of the last 2010 redistricting cycle, the census was taken in 2010. Once all that information was put together, it was delivered to the President in December, and then after that, in late December, information was given to the states about reapportionment, whether or not they were going to be gaining or losing a congressional seat. And then after that, the census started rolling out the PL94-171 files, basically all the information that the states need in order to begin the redistricting process. And then the final deadline for that was April 1st.

So they started to roll this information out to states on an as-needed basis. So obviously states don't all go about redistricting the same way. Well, they also don't go about elections in the same manner as well. So four states had 2011 legislative elections, not 2012 elections, so they got their information first. Does anybody know what states those are? I'll just give a candy bar to [myself]. Louisiana, Mississippi, New Jersey and Virginia all have off year state legislative elections, so they got that information first. Louisiana was the first to receive the information.

And then some states, like Maine and Montana, actually have state constitutional provisions that say they will not redraw the lines for the election immediately following the census count, they'll wait another two years, and so they're actually in the process of still drawing their lines right now. Montana is finished. Maine hasn't finished yet for state legislative lines.

And then two states don't have legislative elections until 2014, and the reason for that is that both the House and the Senate serve four-year terms and they're not staggered terms at all, so both chambers are up for reelection. Does anybody know what states those are? It's Maryland and Alabama. So they'll be running in their new state legislative districts for the first time in 2014 as well.

So a progress report. Maine is just going through the process of redrawing their lines, and then Kentucky actually passed a plan, but the state Supreme Court actually struck their plan down, and so the legislature then had to go back and redraw their maps. Basically, the court said that they didn't meet equal population requirements, and then they unnecessarily divided political subdivisions, so the House has just recently passed another plan. It hasn't been approved by the Senate yet, so they still don't have a state legislative plan. And then there's still lawsuits pending in 13 different states. So it's 2013 now and the redistricting process still isn't over.

So where do we draw the lines? Reapportionment. What we saw as far as reapportionment is concerned, we saw two things happen. We saw migration of people from the Northeast and the Midwest to the South and Southwest, and then we

also just saw a massive explosion in minority growth, basically Latino growth. Latino growth accounted for 50% of the entire growth that occurred over the last ten years in the United States. Do you know what state gained the most congressional seats in the last round of reapportionment?

Female Voice: Texas. [*Laughter.*]

Mr. Cullen: Texas gained four congressional seats. Does anybody know who came in second place? Florida gained two. Does anybody know—we'll do census trivia because it's like... Does anybody know what two states lost more than one congressional seat?

Male Voice: Pennsylvania.

Mr. Cullen: You're right about New York.

Female Voice: Ohio.

Mr. Cullen: And Ohio. Who said that? Yeah. All right, you guys aren't allowed to play anymore. [*Laughs.*] Does anybody know what state had the largest rate of growth in the last ten years? It's Nevada. They grew by 35%. Very large. And then the state with the largest numeric increase? That one should be easy.

Male Voice: [Texas.]

Mr. Cullen: Yeah. How much did their population increase in the last ten years? Four and a half million people, so it was huge. The only two states that don't really fit into the equation are Louisiana, and they didn't lose population. They actually had a net gain, but didn't grow as rapidly as possible just due to the aftermath of Hurricane Katrina. And then Washington state, which is kind of an enigma to me—I'm not quite sure why they grew as fast as they did compared to other states in the region.

Does anybody know what state was the only state to lose population in the last ten years? It's Michigan, and they lost one half of one percent. I heard it back there, but I'm not giving you any more candy bars. Michigan was the only state to actually lose population. One state became, for the first time, a majority minority state. For the first time. California is a majority minority state, but they were a majority minority state before. Texas, yeah. So Texas joined Hawaii, California, New Mexico and Washington, D.C. as majority minority states.

So who draws the lines? In 37 states the ultimate responsibility for redistricting resides with the legislature, and then in 13 others they have a primary commission where a board of commissioners will actually redraw the lines. And then there's also commissions for congressional redistricting as well in seven states. Then we also have advisory commissions that make formal recommendations to the legislature. We have backup commissions that kick in, like there's one, actually, here in Illinois that kicks in if the legislature fails to enact a plan. We have the Iowa model, which is completely unique to any state, and we'll talk more about that in a bit.

And then we have the courts. The courts play a major roll in the redistricting process. So far there's been 197 lawsuits in 40 different states. I've heard it said in one of our previous conferences that every ten years redistricting lawsuits, they're like death and taxes: they're one of the certainties in life. And then some states actually have a mandatory review process, and that's the case in Kansas, Colorado in Florida. So before a plan can pass, the Supreme Court will review the plans to make sure that it's a legal plan.

This is just a slide showing the different commissions. The states in yellow are the primary commissions, the states in green are the backup commissions, and then the states in yellow are the advisory commissions. Let's get another slide for you guys just to kind of get into some more detail, since we're going to be talking about specifically Florida, New Jersey, Arizona and California today. I thought we'd kind of just go through and look at how some of these different commissions are structured.

So one state that has a completely unique commission is New Jersey. And the reason that they are unique is that the two major political parties, the chair of each political party actually selects the members to serve on the commission. So the Democratic Party chair will select five members, the Republican Party chair selects five members, and then there's also the Chief Justice of the Supreme Court will select the 11th member to serve on the commission. And then it's just a simple majority vote to enact a plan, but no other state has a selection process quite like that, so that's completely unique to New Jersey.

Then we also have some states with backup commissions, and they're structured in a variety of different ways. You have states like Connecticut and Illinois where legislative leadership will pick the members to serve on the commission. Then you have states like Texas and Mississippi, where statewide elected officials, like the state treasurer or the attorney general, serve on the commission. And then you have Oklahoma, and Oklahoma is kind of a hybrid of both. The lieutenant governor serves on the commission, and then also legislative leadership will select members to serve on the commission, and then the governor will also select some members to serve on the commission as well.

And then we have advisory commissions, and these just basically make formal recommendations to the legislature, and they vary in the level of their responsibility. For example, in Maine they actually draw maps and propose maps to the legislature. And then in states like Iowa, they actually basically just go out and set up public forums so that the citizens can get involved, and they receive public comment and then actually give that information to nonpartisan staff who then draw the lines. So it varies on the level of their responsibility.

Then we have independent commissions, and we actually have two commissioners here today that served on both the California Commission and then also on the Arizona Commission. And these are unique in that they're made up entirely of registered voters within the state, and the legislature actually has a very limited role in the selection process.

So, for example, in Arizona, it's the Commission on Appellate Court of Appointees that actually creates a 25 pool of applicants, so that it has to be ten Democrats, ten Republicans, and then five from either party, and then legislative leadership can actually select the members, and so the majority party and the minority party will each select two members, for a total of four, and then those four commissioners will get together and select the fifth member. But that fifth member can't be of any political persuasion of any other member that's currently on the commission, so that's typically that independent commission member will be that fifth member.

We'll talk more about California in a bit. And then we've got politician and politician appointed commissions, so we have politician commissions, which is what you have in Ohio. And basically it's the governor, the auditor, the secretary of state and the presiding officers of both chambers make up that five member commission.

And then you've also got politician appointed commissions, which is what's typical of something you'd see in Washington, where the majority and minority leaders from both chambers will each select a member for a total of four, and then those four commission members will get together and select a fifth nonvoting member that serves basically just as the commission's chair. And then you have states where there's total legislative control. And what I mean by this is they're not subject to a governor's veto.

There's one other state that I forgot to mention that's pretty unique, too, in that it's the exact opposite, and that's Maryland. In Maryland, usually a redistricting plan goes through the legislative process the same way any bill does. You draw up the plans, they have to enact them in both chambers, and then the governor will sign them into law. In Maryland, it's the exact opposite. The governor has his own advisory commission. He [makes] the plan, he enacts it, and then it actually goes to the legislature, and they can't overturn it without a super majority vote, so the executive branch actually has control of redistricting, not the legislature in Maryland.

So there you go. We'll talk a little bit more about California. And I just wanted to bring this one up because it's very new. In 2008 and then in 2010, California voters approved Proposition 11 and Proposition 20, which transferred redistricting authority from the legislature to a 14 member commission that's made up entirely of registered voters within the state.

And the primary authority for the selection process begins with the state auditor's office, and so they have a pool of 60 members of qualified applicants that they assemble, and then legislative leadership has an opportunity to reduce the pool, but it's not by very much. I think they can only discard about two or three members. And then, when that original pool is reduced, then the state auditor's office will select eight members to serve on the commission, but it's through a random lottery, so their hands are tied as well.

And then after that, those eight commissioners will pick the remaining six, so there's a total of 14. But they have to be five Republicans, there has to be five Democrats,

and then four from neither party. And then to enact a redistricting plan, you have to have a super majority. But it's not just a super majority. You need to have a super majority, but you need to have at least three votes that are Democrat, at least three votes that are Republican, and then at least three votes from neither party.

Then we have the Iowa model, which is [unique] as well in that the legislature isn't responsible for redistricting. It's not a commission that draws the lines. It's actually nonpartisan staff. And they are prohibited from looking at any incumbent addresses or political data at all when they go to redraw their maps.

And they have three opportunities to draw maps. The first opportunity they'll present it to the legislature, and the legislature has to either accept it or strike it down. They can't amend the maps in any way. If they do strike it down, then it goes back to nonpartisan staff and they'll redraw the plans again. And then it's the exact same process. They can't amend the plans in any way. It's just a simple up or down vote.

And then if they strike it down again, then they go back to a third time. The third time they are allowed to amend the plans. And then if still the proposed plans don't pass, then it actually goes to the state Supreme Court, and they'll draw the lines. But a very interesting process.

You see a much higher rate of incumbent turnover in Iowa than you do in any other state. For the 150 members that serve in the legislature, I think 42 of them were paired together this redistricting cycle. And then for congressional seats, I think two Democrats and two Republicans were paired together as well, so much higher rate of incumbent turnover.

And then you have the legislature, and I like this slide a lot. I'll let you guys kind of draw your own conclusions. But basically, this is kind of the legislative control of U.S. congressional seats following the 2010 election. And what you see is the Republican Party just has a huge advantage over the redistricting process for congressional seats compared to Democrats.

The comment that I would make is that elections matter. And elections matter a lot when redistricting immediately follows. And in the 2010 elections, Republicans cleaned house. They won over 675 seats, picked up 19 chambers, and actually had unilateral control over 25 chambers nationwide.

I'm not going to get into specifics about the outcome of the 2012 elections, but it was actually the exact opposite. Actually, Democrats won a clear majority of the popular vote for congressional seats nationwide, yet Republicans still maintain a 33 seat majority in the U.S. House of Representatives.

And all the seats are getting a lot safer as well. I was reading an article on FairVotes.org that said there's only really 21 [state] congressional seats out of the 435 total seats in the U.S. Congress that are really up for grabs, and that's a 5% margin of error, so the seats are getting safer.

So how do we redistrict? We've already talked about population equality. Now we'll talk a bit about complying with the Voting Rights Act. We'll talk a bit about traditional redistricting principles and technology and software.

So the Voting Rights Act. Basically, Section 2 of the Voting Rights Act says that if minorities are in sufficient numbers and living in a specific or concentrated geographical location, you cannot dilute the minority vote, you need to create a majority minority district.

And so these are the central questions asked. Do minorities represent most of the voters in a concentrated area? Do voters tend to vote for different candidates, minorities? And then is the minority population otherwise protected, given the totality of the circumstances? If that's the case, then you have to draw a majority minority district.

So let's take a look and see what this actually looks like. Are you guys familiar with this district at all, affectionately known as the earmuff district? That's Lake Michigan there to the east. Does anybody know what district this is, for a chocolate bar? What's that?

Female Voice: The fourth.

Mr. Cullen: That's correct. This district was drawn basically as a majority minority district. It's represented by Luis Gutierrez. I think it's Cook County. Basically the only way that the district maintains contiguity is Highway 294 to the west. And it was written up in *Economist* magazine as one of the most strangely drawn districts in the country. But there really was a reason behind it.

And what you see is to the north you have a large concentrated population of Puerto Rican Americans, to the south you have a large concentration of Mexican Americans, and then in the middle you have a large concentration of African Americans. And so the idea behind it was let's connect these two districts, create a majority minority Hispanic district, and then leave the 7th Congressional District in the middle as an African American majority minority district, and that's what they did. So these two districts were created, actually, after the 2000 round of redistricting, but I think they're still the same, pretty much intact today after the 2010 round of redistricting.

And then you also have Section 5 states. And basically Section 5 of the Voting Rights Act is reserved for states that have shown a history of voter discrimination in their election laws. And what you have is some states are completely covered under Section 5 and some states there's just certain jurisdictions.

But the requirement there is that they've got to file for pre-clearance with the Department of Justice prior to having their plans approved. And so what that means is once their plans are enacted, they have to submit them either to the Department of Justice or D.C. district court, and then it can take up to 120 days before they get final approval of their plans, so they're on a much stricter timetable as well. There's one state up here that shouldn't be. Does anybody know which state that is?

Female Voice: Hawaii.

Male Voice: Why is New Hampshire?

Mr. Cullen: The answer is correct. They actually used to be a covered jurisdiction.

There was a series of municipalities [that were] in New Hampshire. But they actually just filed and were given bailouts, so they're no longer a covered jurisdiction.

Male Voice: Give the candy bar to the young man who [*inaudible*].

Mr. Cullen: Central questions for Section 5. Is the new map intended to dilute minority votes? And then does the map leave minority voters worse off? And that's called retrogression. If that's the case, you could have a potential Section 5 violation and your plans may not pass. So those are the two state requirements. You have to comply with the Voting Rights Act, you have to meet equal population requirements.

After that, as we heard from the previous speaker, there's a series of state laws as well. And those are known as traditional redistricting principles. These are the four main traditional redistricting principles. The first one is contiguity. And that basically just means that all parts of a district need to be connected to each other. Or just to put it another way, you need to be able to move from one district to another without having to enter into a neighboring district. So it's pretty straightforward.

It can get a little bit more complicated, I guess, when water is involved in the process. But typically, if there's a bridge that connects two land masses together, you consider that contiguous. Or if islands are paired with the closest neighboring district on the mainland, that would also be considered contiguous as well. Forty-eight states require contiguity for legislative districts and 23 states require it for congressional districts.

Political boundaries, or preserving political subdivisions basically means that counties, wards, cities, parishes have to be kept whole or nested within a district for the district to be a legal plan. Forty-six states require that for state legislative districts and 20 states require that for congressional districts.

Then you have compactness. And compactness basically has to do with the appearance of a district. It says that districts have to maintain a conventional appearance for them to be legal. And if there's any kind of contorted, bizarre-looking shapes that come out of a district, that usually raises a red flag of a possible political or racial gerrymander, so it's really just the appearance of a district. Thirty-eight states for state legislative districts and 19 states for congressional districts.

And then finally you have communities of interest. And it's a very loosely defined, very broad term that simply means that there's shared priorities and values or interests of a given community in a geographic location. And that can mean a variety of different things. They can be economic communities of interest or social, racial, demographic. It really can be a variety of different things.

And then finally, there's states that actually have requirements for fair districts or competitive districts. The ones in green require that districts not be drawn to unduly favor a political party or incumbent. And then Washington and Arizona actually require them to be drawn [in a] competitive nature. And then to that end, Iowa and Montana actually bar the use of incumbent addresses when drawing congressional districts.

Florida was the most recent state. In 2010 Florida voters passed Amendment 5 and 6, which put this fairness standard into their state's constitution. And I wanted to know if it worked. And I don't know. I couldn't draw any conclusions on this, but I did look at the party composition after 2010 and then I looked at the party composition after the 2012 elections. And remember, Florida has a mandatory review process, so their state Supreme Court has to review redistricting plans. And they actually struck down the state senate plan.

But what I found was interesting is that of the 40 senators, 28 were Republican, 12 were Democrats in 2011, and then for the House of Representatives it was 120—81 were Republicans, 39 were Democrats. Both chambers actually had a super majority. After the 2012 elections they no longer had a super majority, so Republicans maintained a majority in the state legislature.

There's a lot of things, obviously, that we talked about today that are binding lawmakers' and commission members' hands in the redistricting process, so it's not all about gerrymandering. And then there were some significant changes in 2010—the reallocation of prisoners to their place of record in New York and Maryland. I didn't really talk too much about that. But the California redistricting process, public access and participation.

Just real briefly, with the advent of the Internet over a ten-year period, GIS technology and online mapping software has really added a level of transparency to the process. I don't know if it was intended or unintended in many states, but a lot of states actually actively encouraged it. And then there's a lot of reform groups that are getting into it as well. There's the Public Mapping Project. Nate Persily out of Columbia Law School, they put together, I think it's called, DrawCongress.org where their law students went in and tried to draw bipartisan districts.

So it's actually engaging the public in a way that's never been even...the public never really had an opportunity to do it before, and now they do. It's not just kind of a process where back room deals are made. The public can actually submit plans and score their plans against plans that have already been enacted. So I think the level of technology has kind of opened up and created a level of transparency that wasn't there.

A couple of states, Texas and Florida, create their own redistricting software and make it available on their website so the general public can get involved. And so when they go to the public forums in their state, they can actually submit plans to

legislators about what they want to see enacted. I guess that's it unless there are any questions. *[Applause.]*

Male Voice: Does the Supreme Court mandate that you can only redistrict once every ten years? *[Inaudible]* in Texas did something weird in 2004.

Mr. Cullen: You have to redistrict—I'm going to try to answer this question and then I'm going to ask Peter to kind of jump in here, too, because I think he may be able to answer it better than I can. You have to redistrict every ten years following the decennial census. If you decide to redistrict more than that, you're completely open to do so. And I think what was it, in 2002, when all the Texas lawmakers went to Oklahoma to avoid a quorum, that was completely legal. It was a Tom DeLay orchestrated event that I think was completely legal. Peter, do you have any comments on that?

Peter: On the federal constitutional requirements, the Supreme Court said in *Reynolds v. Sims* back in '63 that the equal protection clause required a redistricting to be done about every ten years, not exactly every ten years, but to do it with a frequency of every ten years was sufficient. You didn't need to do it more often than that, and if you went a little bit longer, as some of these states, maybe Maryland or a state that didn't have an election in ten years, but maybe 12 years since the previous redistricting, that extra year or two, that's probably okay. The courts have said that's okay.

But whether you can do it more often than that depends on the particular state constitution, and they differ. In Minnesota the constitution says the legislature shall have power at its first session after each enumeration of the inhabitants of the state under the authority of the federal government to draw district lines, so in Minnesota, the legislature can't be doing it more than once a decade.

Colorado's constitution is similar to that. A little bit different language. But the Colorado legislature attempted to draw a second plan and the courts said no-no, once a decade is all that can be done in Colorado, even though the first plan was done by the Colorado court, because the legislature, or the commission or whatever deadlocked, the congressional plan deadlocked. So I don't know if anybody has done a survey of the states to see which ones can and which ones cannot do it more than once a decade, but it all depends on the state constitution.

Mr. Cullen: So there's no federal law prohibiting it, but if there's a state requirement that has a specific amount, then that would be prohibited.

Male Voice: You mentioned that states can deviate as they're drawing their districts by 10% for good reason. I'm assuming that's the state courts who determine what a good reason is. So let me know if that's accurate or if there's variations. And is there some consistency in what's considered a good reason between states?

Mr. Cullen: The higher the deviation number—and if you go on our website, I've actually collected the deviations for all 50 states, and I don't think there's one that

even comes close to 10%, so that being said first. I guess the other comment I would make is some states, like Colorado, actually prohibit. The requirement in Colorado is that it has to be within a 5% deviation. So some states require much stricter population equality than others.

And then the third response I would make is that there's a lot of factors that go into redistricting. We talked about the federal requirements. Then there's also all those traditional redistricting principles as well. So when you're going to redraw your plans, the good reason that they would have would be they're not trying to divide political subdivisions. That would be one reason. Or they're trying to maintain communities of interest. That would be another one. Or they're trying to actively create fair districts. That would be a third one.

And then ultimately, it's up to the court to decide. And the larger your deviation number, the more open you are to inviting a lawsuit, so you need to have a very good reason and you need to be prepared to make that argument in court, because there's a very good chance that you are going to get sued.

Male Voice: Can you be sued in federal district court as well as state court?

Mr. Cullen: Peter, can you be sued in...?

Peter: Absolutely. And it does happen in states. Was it 22 states, ten years ago, had suits in both state and federal court. And I think there were nine states that had suits in both state and federal court on the same plan, at the same time. So yes, it can be either state or federal.

Mr. Cullen: I'm not an attorney, so I just do the best I can, and when I can, I talk to a lawyer. Yeah.

Male Voice: I'm wondering about this Rube Goldberg process they developed in California this go-around. I know they got a map and the result was a lot more turnover and partisan change than they ever saw, certainly for the previous decade. Does the process work smoothly? It's such a crazy idea.

Mr. Cullen: I'll comment on real quickly and then if Maria wants to talk about it—she actually served on the commission and knows a lot more about it than I do. I know that—I don't want to say the wrong thing. I know that the commission did pass the plan with the required super majority, and then I know that the Republican Party was upset with the state senate map in California because they thought that it was unfair. And they actually went to court. The court validated the commission's plan and then they went forward with a ballot initiative.

And then I believe on second look, I think the Republicans said, you know what, I don't think the state senate map is actually as bad as we thought it was. And so I think the proposition that was on the ballot this past election cycle wasn't funded at all, and I think it died. It didn't really have much of a chance of passing at all and there was no active involvement as far as overturning that map. So I think there's

general consensus that it did work out and it worked pretty well, given this is the first time that they've done it. That being said, Maria, if you want to comment at all and correct me if I'm wrong...

Maria: I'll do it during the [*inaudible*], but that's accurate.

Mr. Cullen: Okay. And I'm kind of giving the 20,000 foot approach here and we're going to get much more into the specifics later on today with some of the experts in those specific states. Any other questions?

Mr. Yepsen: All right, thanks, Morgan. [*Applause.*]

[*End of recording.*]

**WHO HOLDS THE CRAYONS?
HOW OTHER STATES DRAW LEGISLATIVE DISTRICT
LINES SYMPOSIUM**

California and Arizona

Maria Blanco

Colleen Mathis

(TRANSCRIPT)

April 2013

Transcript Prepared from:

Who Holds the Crayons? How Other States Draw Legislative District Lines

April 30, 2013 – Inn at 835, Springfield, IL

Sponsored by the Paul Simon Public Policy Institute, the Joyce Foundation, and
the McCormick Foundation.

**Southern Illinois University
Paul Simon Public Policy Institute**

**Who Holds the Crayons? How Other States Draw
Legislative District Lines Symposium**

April 30, 2013

Maria Blanco, Colleen Mathis – California and Arizona

Mr. David Yepsen: I'll let John do the introductions. John? [*Applause.*]

Mr. John Jackson: Thank you. As you've already heard, there's really some interesting and some interesting new stuff going on out there in a number of the states, and fortunately we have two of the most interesting and newer plans in the states of California and Arizona, and we're fortunate to have two of the key players from those states and the last redistricting rounds.

I'd like to ask them each to have an opening presentation. We will then have a Q&A time that's reserved for questions, so we will go back over there after each of the presentations. Our first speaker is Maria Blanco, who is Vice President of Civic Engagement at the California Community Foundation. She promotes collaboration and advocacy across the nonprofit and public sectors, and she addresses community problems in that job.

Before joining the CCF, Blanco was Executive Director of the UC Berkeley Law School Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity. She was a member of the California Citizens Redistricting Commission and helped draw the new legislative boundaries and congressional districts in California in this round. She earned Bachelor's and J.D. degrees from the University of California at Berkeley, so it's my privilege to welcome first Maria Blanco. [*Applause.*]

Ms. Maria Blanco: I don't have fancy slides. I'm not a PowerPoint user. Thank you so much for being here. It was long and a little complicated to get to Springfield from L.A., but—and this is serious—I always try to attend anything that deals with redistricting. After my work on the California Redistricting Commission, I almost feel an obligation to go to speak at places where people are considering independent commissions because—and I'll talk about this—despite beginnings, fits and starts and some not perfect outcomes in California, I basically believe that we did draw impartial representative maps.

People thought we were going to fail from the very beginning, and we didn't. So I feel, to the extent that our experience can help others, always willing to talk about it. And I have something like 20 minutes, and I could probably use 20 days, because

we served for about eight months, and a lot of it was practically full-time, so there are many war stories, many stories about the subsequent elections, etc. And I'll try and answer questions for the esoteric stuff.

But I was asked to sort of follow a format that I think is good about the background to the initiative, how it worked, pitfalls, Voting Rights Act, and so I'll just go through that and then leave it open for questions. And I'm so excited that Colleen is here. We decided we have to go into a room and do therapy with each other because it really got, for both of us, pretty difficult at some points in our service on our respective commissions.

So background. California had tried independent commissions, tried to get them on the ballot and then tried to pass them I think three times before the initiative passed in 2008. The one that passed in 2008 was very different than the earlier ones. The '07 one would have had three judges draw the lines, and there was widespread discomfort with that idea from all quarters—who were these judges, how could they be representative—all the different sort of interest groups felt that that was not going to work, that it was too limited in size, the experience of them all being judges wasn't going to be representative of the state.

And I think when the '08 initiative came about and had created this larger commission with some real guidelines about regional diversity, ethnic diversity, etc., that people felt more comfortable that this commission could actually be a representative commission, and it finally passed. And then in 2010, there was Prop 20, which actually added to the commission's work the drawing of congressional districts. The first one was just legislative and then the congressional ones were added.

I think one of the important things to realize is that the public had been dissatisfied, but the year 2000 redistricting was so openly and defiantly a gerrymander that on all sides of the equation, Republicans, Democrats, the public at large, they overreached so much, the legislature, in that redistricting round, that I think that really gave the ability for the initiative to pass.

Between 2002 and 2010, only once in 265 races did a district flip parties, so that's what we were facing with the outcome of the 2000 redistricting—once out of 265 races. And it wasn't due to geography or that you had parts of the state that were obviously red and parts of the state that were blue, it was literally because the districts were hand drawn to protect incumbents.

One of the things that happened in 2000 that also added to widespread discontent was that it was common knowledge that the two parties had met, made a deal, made a pact, and that even though, for example, Democrats would have gained congressional seats after 2000, that they forewent those seats and decided instead on straight up incumbency protection. So it was really an overreach, I think, on their part that led to this.

One of the big questions was how are you going to find 14 impartial people? One of the things that I think made this work in California is that the regulations that were put in place to interpret the constitutional amendment were very—and this is where good advocates do a good job. They didn't just pass the initiative and then say, okay, it's done, they spent a lot of time thinking about the regs—how to define impartiality, how to define diversity. It was very, very, very spelled out; so that there was not a lot of room for the selection—and I'll talk about who did the selection—for the selection review panel to...there was not a lot of gray there. They had very specific things they had to ask during both the paper process and the interview process, so I think that helped a lot.

The selection was left up to the state auditor. It's in the constitution that the state auditor's office does the initial selection. At first it seemed strange, the state auditor, but I think there was a feeling that it was sort of the least politicized of the agencies in Sacramento. And they were selected. There were three, and they were one Republican, one Decline to State, one Democrat, and they were also randomly selected, so that was important.

We had over 30,000 applicants to become commissioner, and we got down to 14. The review panel narrowed it from the 30,000 to 60. All the interviews were live streamed and people could attend them, so from the very beginning the key to this whole process in California—and it's in the constitutional amendment—the key factor for everything was transparency. So all the meetings had to be public. We had a very long, which was difficult, long notice period, longer than the state requires, so that people could come and review materials when they came to the hearings.

When it got down to 60—and this is one of the parts, I think, of the selection that I personally find very problematic—it went to the majority and minority leader, two leaders in the assembly and the senate, four legislators to—it gave them the power to strike for it privately and for no reason. So in the whole process, that was the only black box, were the legislative strikes. Nobody had any idea why or who. And there were 36 people left after the legislative strikes.

And then there was a random process where the first eight commissioners were selected, and as was described earlier, those eight selected the remaining six. And we used to joke that there were the randoms and then there were the chosens, so I was one of the chosens. I was very disappointed in the random, and then I thought, well, this is kind of better. You get to say that your fellow commissioners picked you.

Other background. This was the first time that California did not gain any congressional districts, and that really influenced the redistricting. And the population had clearly moved east, particularly in Southern California, away from the coast and inland. And L.A. County actually had one fewer congressional district, so L.A. was very hard to redistrict. But the lack of a new seat and the loss of population, even without independent and new redistricting, would have made things difficult in terms of redistricting in California.

One thing that helped, I thought, reduce tension and conflict among the commissioners was that we had rank ordered criteria which are outlined in the constitutional amendment. First, obviously, the equal population constitutional requirement. Then, number two, Voting Rights Act; number three, contiguity; four, geographic integrity—don't split counties and cities if you can, as long as you...but not disregarding the first two criteria.

Along with the geographic integrity was community of interest. Community of interest was actually number four, and not higher. Five, compactness. And none of the different measures that have been used in different cases around compactness. No definition. And then last was nesting. In other words, the attempt to put two assembly districts in one senate to nest. There's 80 assembly seats and 40 senate, and nesting would have been to put two assemblies in one senate district.

Which the first draft map did, just to see, and the results were very...I mean, we had a lot of Voting Rights Act problems. But we wanted to kind of see what would happen with nesting because there was such a clamor for that, that it was the logical way to do that, and it really was difficult in terms of particularly the Voting Rights Act. And there were also some compactness issues with that.

The question was did it work—did the redistricting work, and what were the controversies. Kind of a tough question, instead of an obvious answer. I would say it worked. And it worked first in a very simple way. Everybody thought that we would not get a map because you had to have the super majority that was described earlier. Had to have three Republicans, three Democrats and three Decline to State. People thought that the state was so polarized that we would never be able to agree and then it would have to go to a special master, to the court to appoint a special master.

So it succeeded even by the fact that we did get the super majority vote. I would say that that happened for two reasons. One, I think the impartiality requirement was really taken seriously by the review panel, and they really weeded out people that would have been biased. They did a very good job.

The other thing is we spent a tremendous amount of time together, and we intentionally socialized a lot. We went to dinners together. We were on the road. We held 32 hearings. We were in 24 counties. We had 2,000 people submit maps. I can't remember how many people testified over the eight month period. But we went on the road together twice, one time for a 12 day stretch, and we would have dinner and talk, and breakfast and talk, and we weren't allowed to, obviously, talk about the commission's work, but we ended up knowing each other fairly well, and I think that helped.

Did it work in terms of competitiveness? Well, that's the measure everybody was looking for, did it increase competitiveness. That's what everybody looked for afterwards. One of the interesting things is that we did not have a mandate for competitiveness. In fact, we were precluded and forbidden from looking at voter

registration data, so we had no idea, when we were looking at districts, what the voter range was there, whether this was going to be a heavily Democrat district, or Republican, or whether it was going to be swing. We literally were not allowed to look at that data.

So despite the fact that we didn't, still, reports that have been done by the Public Policy Institute of California, for example, show that in the 2012 elections there were 12 competitive assembly seats compared to nine in 2010, not a big shift; six senate seats compared to zero in 2010, so you get a little bit of a sense of why there was a lawsuit around the senate seats when you hear that statistic. And we have ten competitive house seats compared to four in 2010. So there is competitiveness. There are limits on our competitiveness because people still live in red and blue parts of the state.

The other thing was that did it work? Well, incumbents had to run really hard because a lot of incumbents were running in districts, as a result of the redistricting, where 45% of their new constituencies were in another legislator's district or congressional seat, so they had to really run hard with basically half of a new constituency after years and years of serving in the same district.

Controversies. Oh, boy. [*Laughs.*] I'm going to list them and then we can talk about them. The Latino civil rights groups thought there should have been more new Latino majority districts under the Voting Rights Act. And this is in spite of the fact that the maps created four new Latino assembly districts and two new congressional Latino majority districts. But because there was such a huge population that moved east of Latinos, people wanted more representation in those new areas.

But what they didn't realize was that this commission had a really strict view of compactness. Probably too strict a view of compactness. Literally, people would say, "It looks bad. It just looks too weird." And they would vote it down.

So these districts that a lot of groups had been used to passing muster before, when MALDEF drew their maps that created Latino seats that kind of picked up people and kind of went over here that were not super bad, but this commission was no, compact. So that was very hard to explain. Yet in the end, this was the first time since 1980 that MALDEF did not file a lawsuit against a map in California. So ultimately, I think they looked at the districts and knew that there was no chance of succeeding.

Another controversy, challenge was L.A. was extremely difficult, and we had, in particular, African American advocacy groups that wanted to keep three congressional districts exactly the way they were. And they were three districts that had African American congressional members representing them. And it was just not going to happen. One, the Latino population had grown 20 some percent, Asian 30 something, and African American two percent, and L.A. had lost a congressional district. So that was very controversial.

And we could have drawn, actually, a compact African American district and reduced it to probably one congressional member, but we heard a lot of testimony about the fact that people were able to win in crossover districts, that African American candidates actually did okay in L.A. enough that we didn't do a single majority African American district.

Controversies. The Republican Party filed three challenges, three lawsuits. There was a federal challenge to the congressional districts, and two in the state Supreme Court. It was very interesting because basically the initiative got on the ballot by the insistence of Governor Schwarzenegger and was bankrolled by a very wealthy Republican in our state, Charles Munger. At one point it was really seen as protection from a Democratic majority in the legislature. And then what people didn't realize is that Republicans had really dropped in registration and that their districts were different in terms of population, and that there was no way they could maintain their districts.

During the redistricting, the main controversies—and I know Colleen went through the same thing—the hardest thing for anybody who's going to do this, this was very, very heated, was the selection of the line drawers, what firm we would hire to draw the lines and our selection of Voting Rights—the act calls for a Voting Rights Act attorney that has experience in voting rights work. And that meant that we were either looking at voting rights attorneys that had been basically plaintiff side civil rights attorneys or attorneys who specialized in defending against Voting Rights Act challenges.

To find somebody that didn't fall in either of those was really, really difficult. We ended up going with a law firm that had a member in the law firm that I knew from past work had done pro bono voting work, and I figured that was as close as we could get to somebody that would be perceived as neutral.

The line drawer was a mess. We ended up with...I thought this team was great, but they were completely seen as Democrats by people, even though the whole team was Decline to State. But their affiliation with Bruce Cain, who's a well-known political scientist who has drawn maps in California for the Democrats, their affiliation with him was just very complicated, and I would say that's where we almost disintegrated, was on the selection of a line drawer. And that hung over our heads throughout the entire process, the notion that we had somebody biased.

Everybody thought that they were drawing the lines, and even though you could see, when you saw the—because every hearing and every session was live streamed and open to the public—you could see that we were sitting there going, "Okay, move it over here," and we gave instructions on the record. We had a stenographer taking instructions on the record. Still there was this belief that somehow at night they went and manipulated. No, really. Because we would say do two or three simulations for us and bring them back to us tomorrow, and there was just a belief that they were in there doing mischief.

Compliance with the Voting Rights Act. California has five counties that are Section 5 counties, so not the whole state. Despite the criticism that I mentioned earlier, it never led to litigation. And we had, on the commission, two attorneys, myself and Angelo Ancheta, who teaches at Santa Clara Law School, that had actually done voting rights litigation in the past and who knew a lot about Section 2. And I think to some extent that helped. But we also had our civil rights attorney.

What we did is had them look at the state before we even drew anything. They hired an expert to do racially polarized voting analysis for the whole state. And then they identified, the lawyer identified where they thought were all the potential majority minority districts in the state. And so we started with that, and already with some ideas that the lawyer said, "These are probably some must dos." And that helped a lot. Because then, when we dealt—everything, then, came after that—compactness and community of interest, but that helped a lot.

And it was very hard for some commissioners. They had a gut reaction against taking race into account in drawing districts. They just felt like why are we doing this. But when you had lawyers saying, well, this is the law, then it kind of helped them. We did a lot of education. They did trainings for us, the lawyer, so that all the commissioners felt comfortable with the notion.

Pitfalls to avoid. We started late, and we were on the road so much that we did not do a second—we did a first draft and a final draft that we left a long comment period for, but we never did a second draft. And people really wanted a second draft before the final, and we just...we were planning to do it and then we realized if we did that that we would have no time at the end to really have a final draft that would have a long comment period. So I think there's a lot to think about in terms of how you do the timing.

I think the legislative strikes in a black box, I would really avoid that. It was the one part that felt like what happened here? The other thing is that it was very hard to serve on this commission, and we're worried that we're not going to get future commissioners because it was a lot of time.

We had two commissioners with small children. One was a mom of four kids under seven. And our reimbursement did not include childcare. And we really tried to get childcare for the two women that were on the commission with small kids and we weren't able to get it out of the legislature. And that might seem like a small thing, but I think it's a really big thing in terms of what representation you're going to have on the commission. And because it was so intense, people with full-time jobs really took a hit, or people that ran their own businesses really took a hit.

And the long notice requirements, like 14 days before—we had to publish everything 14 days ahead of time—made it extremely difficult to make changes either in scheduling of hearings or of materials that we had to post 14 days ahead of time. So even though it was great for the public, it's something to just keep an eye out for,

how you tie your hands with the very, very long notice requirements. There's much more I could say, but I'll leave it at that. Thank you. [Applause.]

Mr. Jackson: Okay. Our next speaker is Colleen Mathis from Arizona. As a registered Independent from Pima County, Colleen was unanimously chosen to be chair of the Independent Redistricting Commission by the four appointed commissioners. She earned her Master's degree in environmental management from Yale and her undergraduate degree in the Department of Economics at the University of Illinois Champaign-Urbana, so Colleen is coming back home to Illinois and we're delighted to have her today. [Applause.]

Ms. Colleen Mathis: Thank you, Dr. Jackson. I'm delighted to be here. I am a native of Peoria. I have family members here, which I'm really proud of, both on my husband's side and my side. We're both native Peorians.

And I thank all of you for being here today. I applaud Illinois' interest in redistricting and my goal today is to not say anything that will dissuade you from this noble cause, because it truly is worth doing. I'm a huge enthusiast, despite everything that went down in Arizona, which I'll get into a little bit.

I also want to give a shout out to the Paul Simon Public Policy Institute and all the staff here. I got to meet a lot of them last night, and it's a fabulous organization, and I'm really proud to be associated with this symposium today. And also Brad McMillan, whom I know from Peoria, and is probably the reason I'm here today. I used to serve on the Young Republicans with Brad in Peoria and could have used him when I was going through some rough times in Arizona to vouch for me, so I may take you back with me so that Arizonans truly know that I really was a Young Republican at one point.

Just to give you a brief overview, I do have slides and I probably have way too many, so I'm going to go through things as fast as I can and still try to be coherent, but talk about the creation, the process, the results and some of those lessons learned. Some of you may know Cokie and Steve Roberts have a syndicated column that I think appears in the *Peoria Journal Star*, maybe some papers downstate as well, but they did a story on the Arizona Independent Redistricting Commission, and I loved that line "in a spasm of good sense."

Arizona's redistricting process is governed by the state constitution, as amended by voters in 2000, with the passage of Prop 106. And it stipulates that the Arizona Independent Redistricting Commission redraw Arizona's congressional and legislative districts to reflect the results of the most recent census. This proposition passed with 56% of the vote, so this commission that I served on was the second round for independent redistricting in Arizona.

If it helps all of you to give you some of the sense of the origins of this, I did talk to some folks—I wasn't in Arizona when this was being considered back in 1999 and 2000, but two nonpartisan organizations with whom you're very familiar, I'm sure,

League of Women Voters and Common Cause, were interested in doing some redistricting and talked about this nationally, and so the state chapters of those two organizations were involved. And there was a native Arizonan with money in the bank, as he referred to it, who wanted to give back to the state and felt like there's benefit to having a healthy exchange of ideas and better governance results from it, and so they kind of started to think about independent redistricting.

And they ran a poll and tried to determine what people really want. And that was one of the things that they suggested Illinois do. And it sounds like you've already done some polling, based on Charlie's information this morning. But this motto "let the people draw the lines" really resonated. The voters liked it and got behind it, and they went out and collected signatures. Over 200,000 were collected for this initiative to get it on the ballot.

And I thought this language would be interesting to you, too. This was how it was billed to the public, "relating to ending the practice of gerrymandering and improving voter and candidate participation," which I think is really key in elections, "by creating an independent commission of balanced appointments to oversee the mapping of fair and competitive districts." And as I said, it passed with 56% of the vote.

So to give everybody some context, although many of you have probably been to Arizona—it's full of people from Illinois, so some of you have been there, I'm sure. And we've got only 6.4 million people, a lot less than Illinois, and three and a half million of those are concentrated in the Phoenix area, so it's a highly dense population there, and then the rest of the state is pretty rural, except for Tucson and Flagstaff, but it pales in comparison to Maricopa County.

We've got 21 Native American reservations, both located in rural and urban areas. It's an interesting, diverse state, and with the growing Hispanic Latino population, which is now comprising 30% of the population in Arizona. And I thought this was an interesting statistic, too, from that decade. F

From 2000 to 2010, Arizona added almost a million new registered voters, and because of that, we got an additional congressional seat. I think we took the one that Illinois lost. And of those people, though, 19% were Republicans, 18% registered as Democrats, and 63% chose to be Independent, so the Independent is on the rise in Arizona, and maybe that's elsewhere, too. But currently the registration stands around 35.4% for Republicans and 30.4% for Democrats and 34.2 for Independents. And again, that's rising and the two major parties have been falling.

So what are the requirements of the state constitution according to Prop 106? So our Arizona state constitution was amended and includes this language. "We must comply with the U.S. Constitution and Voting Rights Act and equal population." Those two criteria are federally mandated. The rest are state criteria. And these are not in rank order. I wish they were. Frankly, I wish there was a rank to give you some guidance as a commissioner.

The last commission struggled with this a lot because they had to figure out what do we do first. Because a lot of these criteria compete with each other, and so it's difficult to figure out where the balance is. And it went all the way to the Supreme Court and they interpreted the language to say it means what it says. It isn't in rank order and you need to consider all of them equally. So it's a struggle, and we go round and round in our meetings talking about all these criteria, considering all of them as we adjusted the maps.

The Voting Rights Act looms large in Arizona. We are, as Matthew pointed out, one of nine covered whole state jurisdictions of Section 5, meaning we have to comply with Section 5. And it's a really important part, and it's actually the thing we focused on first to ensure we were in compliance with that. It means that we have to demonstrate that the new districts don't discriminate against minority voters in purpose or effect, and the plans cannot be retrogressive. These voting rights districts have to be as strong as the previous plan that was drawn before.

Getting into just setting up the commission—and this is all outlined in our Arizona constitution through Prop 106—they're appointed following a screening process. And as Matthew mentioned, the Commission on Appellate Court Appointments kind of runs that vetting process. They organize, they get the slate ready and go through all the applications. These are all volunteers. No one is paid. There are some requirements in terms of being a commissioner in terms of not having served as a lobbyist or in public office and some other things for at least three years before as well as three years after.

So this was the group that was chosen this time. You'll note there's two Republicans and two Democrats and then an Independent. The two Democrats and two Republicans are selected by majority and minority leadership in the house and senate, so they still have a strong interest in what this commission is doing, and that's one of the areas that people have talked about, is maybe in the future the caucus should select it as opposed to leadership itself, or there's other concepts of how this commission might be different, such as enlarging the size, and I'll talk a little bit more about that in a bit.

I should also mention a disclaimer. One, I'm not an attorney, but we did have two attorneys on our commission, neither of whom were voting rights experts. But I think being an attorney is a really helpful thing to have on this commission. Sometimes I felt like I needed an attorney to understand the legal counsel I was getting, so it was... *[Laughter.]* When you're not an attorney, it's a little bit of a disadvantage, I think. And I also should say I don't represent the opinions of the commission as a body or any of the individual commissioners. These are my opinions alone that I'm talking about today.

After we got instated and were starting out, we had to select legal counsel as well as the mapping consultant. And as Maria said, that ended up being contentious for us on both counts. The legal counsel, the other commissioners wanted to have both Republican and Democrat legal counsel. I wanted to just have one counsel because

the counsel is supposed to represent all five of us, whether they're from the R side or the D side. But the last commission had done it this way.

They had chosen to have Republican and Democrat counsel, so I was sort of outvoted, outnumbered, and they wanted R and D counsel. But I'm still on the commission as well, and I have a vote and I have an opinion, and to me Independents value bipartisanship, and so what I was looking for in all my selections is not only the people that I thought could best do the job but that exhibited bipartisanship.

You're working really closely with these people, as Maria noted, and you need to have people that can represent all of you equally. But nonetheless, there was a lot of contention over the selection of legal counsel. I think Republicans felt I should have sided with them on their choice for legal counsel and Democrats side with them.

We ended up using the state procurement agency for our procurement process. And this is an important thing. Even though the commission is vested with independent procurement authority, which is really important if you end up doing this, go ahead and exercise that as opposed to trying to work through, at least in our case, the state procurement agency. They were fabulous, but the problem is what their procurement does kind of ran counter to what this commission is all about. It's all about transparency, the commission, and trying to show your decision-making and everything in public.

When you use the state procurement agency, at least in Arizona, state law is you have to meet privately, in executive session, in order to craft the request for proposal that's going to go out to the legal counsel and to the mapping consultant, so all of that is done privately, so no one knows why you made the decisions you made for the RFP.

For instance, the selection is all done privately, behind closed doors. And that's in order to comply with state law for the procurement agency. So it didn't work well for our particular situation and we got a lot of criticism for not being more transparent. And yet we couldn't be because we had followed the state procurement agency. So that's just something that you need to consider and have for your commission, should you end up having one.

The process. First round hearings. Get a drink, Marco Rubio willing. *[Laughter.]* Before drawing a single line, the commission went out on a listening tour. And we went all over the state, similar to California, and got input just on geography, communities of interest, minority voting rights, what's important to people, and tell us who you think your community of interest is and why, and just give us some input.

We went all over the state in two different rounds of hearings, once before we drew any lines and then once after we published the draft map we went out again. And it's a big state, so there are a lot of miles to travel around. We also were very

cognizant of trying to—it's all about getting the public to engage, and so we also live streamed all of our meetings.

We only had a 48 hour notice, which is actually more than what's required in open meeting law statutes in Arizona, but nothing like California's. And the public could submit maps to us, and they did, both at meetings they'd present to us. They'd also submit them electronically. And it was just a very interactive approach that I think is really important.

Just a little bit about the process. I'll probably do this visually as opposed to there. Let me talk briefly about the previous congressional map. So this was the last commission's congressional district map, when we only had eight. And I just put it up there because it's pretty interesting. Anybody have an idea what that curious blob is in the middle of the green?

Somebody said Hopi, and I don't know if Matthew has any more chocolate, but I would love to, like, give them some chocolate. It is the Hopi reservation, but they are surrounded by the Navajo. And in the last redistricting commission—Indian reservations are a community of interest—they said we don't want to be with the Navajo in the same district.

So we have that contiguous requirement, too, and that squiggly line is a wash, essentially, that the commission figured out a way to honor this community of interest. And so it's not a pretty map, but fortunately we were able to incorporate the Hopi in our map, because they wanted [not] to be with the Navajo.

The constitution tells us we need to create a grid map initially, which are just equal population districts, without considering any of those other criteria that we have to consider. And the commission did that and approved a grid map and then, from there, we adjusted the map according to all the other criteria. We brought all those into play, came up with a draft map. This was our draft map that we took on the road for about 30 days to different parts of the state, let people comment. And that's the second round of hearings that I referred to earlier.

And I pause here just to say Arizona Independent Redistricting Commission. Does anyone have a thought on what independent means? Because it's a common misconception, frankly, that's out there, I think, that we came across. It's we're independent from the legislature, so we're actually a completely separate body with the equivalency of legislators.

And I think a lot of people think it means we should be nonpartisan or apolitical and that we were supposed to remove politics from the process. And really, it's impossible to remove politics from this process. It's inherently a political thing we're doing, and we have four members of the commission appointed by majority and minority leadership, so politics is very much involved. But we are independent from the legislature, so should be protected, to the extent possible, from them being involved.

But I ended up finding out about them through something that occurred right when we were in the middle of that second round of hearings. We had published the draft map and our governor and some congressional delegation folks weren't very happy with the draft that we had published, and so decided, essentially, that they were going to test the language that's in Proposition 106, and that is this, that "after having been served written notice and provided with an opportunity for response, a member of the IRC may be removed by the governor with concurrence of two-thirds of the senate for three things: substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office."

So we had, at the time, a super majority in the senate, and it was a party line vote, and the governor wrote me a letter—actually, she wrote all five of the commissioners letters and said what she felt we had done wrong, and then we had a chance to respond. We each individually wrote letters back, and then they called a special session, and the next day I was removed from the commission. And as I said, the 21 Republicans voted to remove me.

So the stage went dark for a couple weeks, and no one was really sure what this was going to do. We weren't sure if the Arizona Supreme Court would step in. We asked them to get involved, and fortunately they did. And the day of the hearing was November 17th, so I was removed on November 1st and then reinstated within hours of the hearing. And fortunately, it was a unanimous decision by the Supreme Court. And that Supreme Court has partisan folks on it, too. Some were appointed by Governor Brewer, so I was very happy that I was reinstated and grateful to the court for hearing the case.

That's a picture of Paul Charlton. He's a former U.S. Attorney for Arizona and one of my counsel. I have numerous lawyers now, it seems like. [*Laughter.*] He's one of many who are helping me through this, and I'm very grateful. And it's really important. That's one of the lessons learned, too, is to have a really healthy, [*courageous*] third branch of government in your state.

So that bump in the road was passed and we got back together and started meeting to finish what we had started, and continued adjusting the draft maps based on all the public comment we got in that second round, and then had to submit our maps to the Department of Justice for approval. And as Matthew mentioned, that can be 120 days, so we really were behind the eight ball. We felt like the whole time that we had to hurry because we knew we had to build in three months of DOJ consideration.

And fortunately we had a historic outcome for the state of Arizona which I'm super proud of. It's the first time in Arizona's history, since having to comply with Section 5, that we were able to pre-clear both maps on the first try through the Department of Justice. And that is our new congressional final map.

I think it's interesting to talk about the competitiveness part of this. Essentially what we came up with were four Republican safe districts, which is 44% of the map, if you

take four divided by nine, and there's 35.4% registration of Republicans. We have two voting rights districts that are mandated and we have to have those, and they're in there, and that's 22% of the map versus representing 30.4% Democrats, and then we drew three competitive districts.

So I think it's a very balanced map, and it was a fabulous outcome for the state, and that the 6.4 million Arizonans in our state won. It would be great to have nine competitive districts, frankly, but that's not reality. We have all these other criteria we have to consider.

And when you have to comply with the Voting Rights Act, there's a certain number of folks that you've got to get into those that take away them from other districts. So if the Voting Rights Act goes away, which, we don't know the outcome of *Shelby County v. Holder* yet, but if for some reason that is overturned, it frees up the state to draw the lines much differently.

So let me jump ahead to give you a sense of how these lines worked in the last election. Democrats ended up sweeping all three of those competitive seats, but one race took almost two weeks to call. That's the former Gabrielle Giffords district. And there was only a 2,400 vote difference between those two. The Cook Report has said that Districts 1 and 2 in Arizona are two of the most likely to flip across the nation in this next go around in an off election year, so they're very competitive seats.

And what's great about that is constituents win in competitive districts, because you have two really strong candidates going at it and fighting for your vote, and I think that is when the constituent wins. And it wasn't that long ago that we had five Democrats and three Republicans representing the Arizona delegation, so this wasn't a huge anomaly to have this happen this time, as recently as '08. In the legislative side, 17 Republicans won in the senate and 13 Democrats, so they don't have the super majority anymore, but more balance is there. And I think, again, that only bodes well for the constituents, when folks have to cross the aisle and work together.

Litigation happens, as we know. It's part of the redistricting thing. I mentioned *Shelby County v. Holder*. We also have three pending Arizona lawsuits right now. One is challenging our congressional districts map. The other is challenging the legislative map. And finally, we have one where the legislature is challenging the body, [saying] it's unconstitutional for commissions like ours to draw district lines, that it's the sole purview of the legislature to do that. And they're basing that on the elections clause of the U.S. Constitution, so you have to stay tuned and see what happens.

I'll just put these up there briefly. I've mentioned some of them already. To the extent you can shield a commission from outside partisan forces, you need to, and you need to do it in the legislation, in the actual language. And there's more that probably could be done.

I think they did a fabulous job coming up with Proposition 106, but through two rounds of redistricting now, we've learned more and there's things that we could do to beef up the strength of the commission. Important ones are deal with legislative privilege and immunity, the independent procurement, having funding. We have to go to the legislature every so often to get more funding, and that's been a battle of late to get the funding, so to the extent that can be addressed in the legislation, it should be.

If you're familiar with Biosphere 2, it's kind of a glass-paned vivarium north of Tucson. It's a scientific research place, but I did have the thought that what if redistricting commissions were put into that biosphere. *[Laughter.]* And it would be the ultimate in transparency and accountability because the commissioners would enter, and be in there, and they could do their thing, and everybody could watch them. And maybe we could even rent this out to other states. *[Laughter.]*

And there are many other adjustments to the...you know this line from Harry Truman, "If you want a friend in Washington, get a dog," but I've modified that slightly. And I do have a dog, and thankfully he's still with me and was a huge crutch during this. And I want to say that you have a friend in Arizona, because I just couldn't be a bigger proponent of independent redistricting. It's the way all the states should do it. And so to the extent we can be a resource to all of you, please don't hesitate to ever contact me. Thank you. *[Applause.]*

Mr. Jackson: Thanks to both of you for these two very interesting cases. We have about five minutes for the audience to ask questions. This is complicated stuff, obviously, but we'd like to get in a bit of audience participation here. Who's got a question? Over here.

Male: I have a question for Colleen. Who wrote the description of the constitutional amendment? It seemed really well framed.

Ms. Mathis: It's a great question. I think initially both Common Cause and League of Women Voters had some language that they had in mind, but I think some other folks in the state ended up getting involved, three other people. And I think it was a Republican, a Democrat and an Independent who helped work through some more of that language, so it was a [blend] of the organization's language as well as some folks from in the state.

Male: So really from the [opposing] as opposed to the Secretary of State?

Ms. Mathis: Correct.

Mr. Jackson: We're trying to record this, so repeat the question.

Ms. Mathis: The question was who drew up the legislation, the actual language in the proposition, and my understanding is that Common Cause and League of Women Voters had some language that they had brought to the table, but then also there were some folks from in the state, a Republican, a Democrat and an Independent, I

believe, who helped tailor it more for what they felt, based on that polling that was done, and what did the people really want to include in that proposition language, so it was kind of a hybrid.

Ms. Blanco: And the same was true in California. That's who did it, and then other good governance and even some of the civil rights organizations added very descriptive language.

Male: I'm struck by Ms. Blanco's description of her colleagues as Democrat, Republican, or Decline to State, and Ms. Mathis was an independent member of the commission. I wonder if you could talk about how you define people who were neither D nor R, and what role those people played, both in the mapping and in the public perception of the process.

Ms. Blanco: So Decline to State...Independent is actually a party in California, and so that's why Decline to State is the label for people who have not chosen to affiliate with either party. So it's not an Independent, because that's actually a party designation.

One thing I wanted to comment about. Our numbers look very similar in terms of the growing number of Decline to State in California. Right now Democrats are at around either high 50s, low 60s, and then there's a big drop. Actually, if we had... I'm curious, because it says the two largest parties have five and then the Decline to State.

Well, actually, in California, Decline to State registration is now higher than Republican. And so I've always been curious about what's going to... In a sense, they are underrepresented, because they have four, and the Republicans have five on the commission. And I don't know if anybody is going to address that between now and the next round, because actually, in some ways, it's overrepresentation and underrepresentation of those two groups.

Mr. Jackson: Yes, right here.

Male: This is a question for both panelists. So Arizona has a competitiveness requirement, and California has a provision that bars districts from being drawn with partisan [intent], but neither state has any provision that bars plans from being drawn with a partisan impact or a partisan effect. So I was curious whether the panelists would think it would be a useful tweak to their respective state laws to have some measure that, at the end of the process, there is some check with election data to make sure that neither major party is being disadvantaged or asymmetrically treated by the plans you come up with. So a couple of states have similar provisions, and I'm curious whether the panelists would be interested in adopting similar provisions in their states.

Ms. Blanco: I don't think that will happen in California. And actually, I think one of the things that kept the commission cohesive, in spite of strong personalities, strong partisan views, is that there never was the possibility of getting into the political

realm. It kept everybody just looking at the criteria. And I think if, at the end, there was going to be a check on how did we do that it would alter the entire work of the commission. I mean, you can't do it at the end, and then what? What do you do if it's not? Then do you go back and redo? And then you're considering the stuff that you're not allowed to consider.

And I think the voters really want the politics out of this process. They have a vision and I think a lot of the commissioners did that communities of interest, Voting Rights Act and that ideally, if you're drawing the districts by trying to keep communities of interest together, and to some extent compactness, that you will end up with something more competitive than a district that's drawn by legislators. And in fact it did turn out to be the case for us that if we followed political boundaries a little bit, like we really tried hard not to split cities and smaller political designations...

And I think in the course of doing that and doing a community of interest, you end up with something that really reflects where people live. And they do kind of segregate regionally and geographically by politics, so you get that anyway, in some ways, by respecting geography and communities of interest. So I don't think California is going to ever go that way, and I would recommend against it, because if we had had that injected in our process, I think the commission would have been very split.

Mr. Jackson: Let me take one more question for a wrap-up. Yes, right here.

Female: I had a question for both or either of you, and that really is about unintended consequences. You both spoke to the fact that these [are] competitive districts. I think it was Maria who talked about incumbents having to run very hard, which I think most of us would agree is a good thing. But did you see any corresponding increase in outsider, independent expenditure? What did this do to the money and campaign dynamic?

Ms. Mathis: That's a great question. I don't know in Arizona. I can't comment on the independent expenditures and what ended up happening in that regard. There were very competitive races, and I know money was poured into certain areas, but I can't give you any actual numbers.

Another metric that I think is important to look at, too, in terms of did this have an impact is just voter participation. And boy, the more voters you get engaged, I think that's a good thing, and get people participating and active in their democracy. And I don't know. I actually want to get the figures from Arizona in terms of how have we done in terms of voter participation through the years, because I think that will be a really good thing to monitor.

Mr. Jackson: Our speakers will be around for a bit longer today, so if you want to grab them in private and ask a question, that would be fine, too. I want to thank them and appreciate their participation. *[Applause.]*

[End of recording.]



**WHO HOLDS THE CRAYONS?
HOW OTHER STATES DRAW LEGISLATIVE DISTRICT
LINES SYMPOSIUM**

Illinois and Iowa

Craig Curtis

Don Racheter

Brad McMillan

(TRANSCRIPT)

April 2013

Transcript Prepared from:

Who Holds the Crayons? How Other States Draw Legislative District Lines

April 30, 2013 – Inn at 835, Springfield, IL

Sponsored by the Paul Simon Public Policy Institute, the Joyce Foundation, and
the McCormick Foundation.

Southern Illinois University

Paul Simon Public Policy Institute

**Who Holds the Crayons? How Other States Draw
Legislative District Lines Symposium**

April 30, 2013

Craig Curtis, Don Racheter, Brad McMillan – Illinois and Iowa

Mr. David Yepsen: We're going to talking about Illinois and Iowa in Panel No. 2. Dr. Linda Baker is a visiting professor at the Paul Simon Institute. I think many of you know Linda, so we'll get going right away, Linda.

Ms. Linda Baker: Good morning. While our panel is getting seated, I think we've had a good backdrop this morning. And we know that political scientists and practitioners often emphasize the profound effect that redistricting actually has on political careers, for those of us that are here in Springfield, the political process as well as the policy process. Moreover, it has been said that redistricting plays a large part in establishing the framework of American politics and politics in our society. The location of district lines decide which voters vote for which representatives and changing the lines will change the relevant voters and also changes the identity, the allegiances, the political priorities and the various district representatives as a whole.

Historically, Illinois has had its share contentious battles, and we're going to talk a little bit about that today. And there has been much discussion and many attempts to change what has been termed as an archaic and intensely political system in Illinois. Is different better? And we've heard some of the differences this morning. And some would argue that change is deeply needed. But in a state like Illinois that is uniquely racially diverse, are there lessons that we can learn from others that are relevant to our process here to move away from this system of gerrymandering and partisanship?

We have with us today a distinguished panel that's been looking at this topic, and I am going to actually introduce each of them, and then they will speak in the order in which I introduce them. Our first speaker is Dr. Craig Curtis from Bradley University. Dr. Curtis is a graduate of the Washington University Political Science Department. He also has a J.D. degree from Washington State University. He hails from Mississippi, and we talked a little bit about his background. He's going to talk a little bit about that this morning, by way of California, and so that's Dr. Curtis.

Following Dr. Curtis will be Don Racheter. And Don is an individual who comes from the state of Iowa. And we've talked a lot about Iowa and we've read about Iowa. Don graduated with honors from the University of Michigan. He has a law degree.

Don has achieved distinction as a political scientist. He's a mock trial coach, and he and our first speaker, Craig Curtis, have worked together on numerous occasions.

And then our third speaker will be Brad McMillan. Brad is a former chief of staff for the current Secretary of Transportation, Ray LaHood. Brad is currently at Bradley University. But one of the things that he's distinctly known for is the work that he's done here in Illinois. Governor Quinn actually appointed him to the governor's task force to look at reform and redistricting, and he is a lawyer from Southern Illinois University's School of Law. So we're going to turn it over to our first speaker Craig, and then we'll go from there. *[Applause.]*

Mr. Craig Curtis: Thank you. If it's okay, I'll speak from here. Is my microphone working? Excellent. My notes say who we are and how we came together on this paper. Well, good morning and welcome. I'm glad to see so many of you here today. At most of the academic conferences that I attend, the paper presentations involve a handful of professors and loyal graduate students talking to each other, and there's no audience to speak of. I'm pleased that so many of you are here today and hope that you'll think about what we have to say and will engage us in a discussion at the end of our presentation. It is our intent to leave significant time for question and answer afterwards.

Thanks to the Paul Simon Public Policy Institute and our sponsors for putting on this event. Thanks also to our moderator, Dr. Baker. We'll proceed in order of contribution to the paper, which most of you have in your hands. If you don't, there are copies back there on the table.

I get to start, but I will speak briefly on the topic of *[unintelligible]* [04:49] and the nature of how we perceive democratic theory as it relates to redistricting. Dr. Racheter will follow with a very well researched and detailed history of how Iowa overcame the problem of partisan control over redistricting, and Brad McMillan will then detail the efforts to reform the system in Illinois prior to the completion of the last round of redistricting, and his plan for the future to increase the level of democratic accountability in the redistricting process in our state.

Well, Don and I have known each other, as our kind introducer said, for many years now through our work with the American Mock Trial Association. But in addition to that, in 2006 I asked Don to come to Bradley University's campus to talk about redistricting in Iowa as part of our department's visiting lecture series.

Together we made an argument in the Peoria *Journal-Star* for something to be done about the system that we had in place in Illinois, which can involve, as you know, a coin flip to determine the outcome of who controls the legislature, before it was too late. It's hard to get people fired up about redistricting in the middle of a decade, even though that is the best time to work on reform, although I will defer to Mr. Yepsen, who argued we should be working on it now, and perhaps he's right.

Brad and I have been colleagues for six years now at Bradley, and I have watched him work diligently with fire and passion as a member of the Illinois Reform Commission and later on the Fair Map amendment. And as I watched the efforts to change our system thwarted, I became even more interested in this problem, and I also began to see the issue as one of democratic theory.

My role in this paper is editor and political theorist, I guess. My personal history is relevant. As Dr. Baker said, I grew up in central Mississippi in the midst of the civil rights movement. In January of 1970 I watched the protesters outside my classroom window protesting integration of the public schools.

We got integration, but the power structure created a parallel private school system and de facto segregation continued. Later, as an undergraduate student at Millsaps College in Jackson, Mississippi, I learned how the then existing power structure in Mississippi delayed real redistricting reform in that state for two redistricting cycles after the Supreme Court had mandated redistricting for all states and after the Voting Rights Act of 1965 passed.

As I watch the battles over reform in Illinois in the last cycle of redistricting, I began to see the parallels between the use of redistricting as a way to conserve the white power structure in the South and the efforts to block redistricting reform in Illinois, and I came to believe the redistricting in Illinois is more about conserving political power than serving the interests of the citizens. That's simply wrong and in violation of democratic theory.

While political theorists might disagree about the precise definitions of democracy, for purposes of this presentation, we start with three propositions. One, it is a fundamental tenet of democratic theory that all citizens have the opportunity to participate in a meaningful way in government. Two, this participation should have the potential to actually affect the policy output of government. Three, this participation should also be distributed in a roughly equal fashion. No one person or group should have significantly greater access to the system than any other.

Voting is fundamental to our system of democracy because it is preservative of all the rights. For the right to vote to mean anything, there must be a realistic possibility for the incumbent candidate to lose the election. Despite this concept, efforts to use redistricting for partisan advantage are very common. The academic literature is full of descriptions of redistricting as being the most partisan activity in American politics.

When it is done in a blatantly partisan fashion, lawsuits result. The courts may not like it, but lack any real standard for determining just how partisan is too partisan. As such, no legal remedy [lies]. The system continues unchanged. Incumbents protect themselves from any real possibility of losing elections and the parties work to gain advantage for themselves in each redistricting cycle. In some states the Republicans gain advantage and in others Democrats gain.

In Illinois the Democrats are currently in control of redistricting. Democratic accountability is lost when the politicians pick their voters, as opposed to the voters picking their representatives, as it should be. In contrast to Illinois, Iowa has a system that avoids redistricting being used so blatantly for partisan advantage in contravention to democratic theory, and that leads us to my collage, Dr. Don Racheter's, portion of the presentation.

Dr. Don Racheter: Thank you, Craig. I'm going to move away from this flashing light which is giving me a headache over here. And apparently it can't be turned off independent of anything else around here, so I'm just going to get out of the way of it and talk to you very briefly, and be glad to take questions.

In the majority of the U.S. House districts in the last electoral cycle, we saw that the prospect of an incumbent losing was very, very small unless you happened to live in Iowa, where all four of our districts were competitive. And in all the cycles since we went to the nonpartisan plan after the 1980 census in '80, '90, 2000 and 2010, we have had a lack of gerrymandering and we have had a great deal of competitiveness, both at the congressional level and at the state legislative level.

Now, one might argue that these incumbents in these other states are being reelected because they're such fine folk doing such a great job of representing their constituents—they're very effective, they're very popular, and that's why they get reelected, not because they got gerrymandered districts to make it easy for them. Well, even if that was the case, which we all know it's not, there should be a realistic chance that the incumbents can lose. "Throw the rascals out," as it's often referred to in the mass media.

They have to come back to the "we the people" to get their mandate. That's where consent lies. That's where legitimacy lies. That's how the process was envisioned by the founding fathers, who, in the early days of our republic, we had tremendous turnover in seats, up to 50% every time was new. It was a chore to go off to Washington and live in that malarial swamp, and people didn't want to do it. You took your turn doing your duty and then somebody else had to do it.

With the advent of air conditioning and the increase in the salaries, it became more comfortable to go to D.C. and stay there forever, and they changed the rules to make it much more easy for the incumbents to get themselves reelected because the districting is done by their partisan allies in the state legislature, many of whom aspire to become congressmen at some point, and so they understand the importance of drawing safe districts.

Now, the party leadership might actually appreciate having a district map that cracked the concentrations of Republicans and Democrats so as to allow their party to win narrowly all the seats. But of course the people drawing the districts are themselves incumbent legislators who want safe seats for themselves, and so they want to pack as many of their partisans into their districts as they can. And as a convenient byproduct, they offload the other party's people into their safe districts,

and so it's a bipartisan gerrymander that suits incumbents, but doesn't suit you and I as citizens who are the recipients of this process.

With gerrymandered results, elections resemble those of the old Soviet Union, where everybody got to vote, but there really wasn't any choice on the ballot. So the crux of the problem lies with this continued control of the reapportionment process by partisan allies of the incumbents in the state legislatures. And we need to be thinking about how to get beyond that, as we've seen with Arizona, with California, and with, I would say, Iowa, which I think most people think is kind of the gold standard of how to do it right.

Would it be possible for Illinois to follow Iowa's lead? Anything's possible. [Laughter.] In Iowa the Republicans had been gerrymandering for over 100 years, when they somehow got religion and did it right. They gave up that power after the 1980 census. And in my paper, I go into a series of reasons why I think that happened.

And I was very, very fortunate that I was [young] enough to still be alive, along with many of the people who were the key players. And through whatever luck there is out there, I knew many of these people and was able to interview them. And in fact, the woman who, as a state legislator, had been the subcommittee chair that drew up the plan that was implemented after the 1980 census to start this ball rolling is a personal friend of mine, and she had a file yea big, and she sent it to me. So I had personal handwritten notes, I had little hand typed memos from the staff to her, and back and forth, had newspaper clippings, had all kinds of great stuff.

And as I say, a lot of the people are still alive. Most of them are now lobbyists, former legislators, living the good life. But I was able to go down and interview a lot of them and really get the inside scoop on how this came to be. And they just were ticked off that the courts had stepped into their turf and took it away from them because the League and Cause, and all the usual characters had sued them because they were continuing to gerrymandering as they'd been doing for over 100 years, and they didn't like it.

The Democrats didn't like it, the Republicans didn't like it, and 40 years later they were still hot under the collar. When I went and interviewed these people, they would tell me about all these terrible things that the courts had done to them back in the 1980s, 40 years ago, and they're still upset. And so they thought that the legislature could do a better job.

And the Republicans had a core group of what were called Ray Republicans. Governor Ray was a moderate, middle-of-the-road kind of guy. He used to have lunch on every Tuesday with the leadership of both parties, so you didn't want to be running out to the Des Moines *Register* and saying nasty things about the other guys, having it published, and then have to sit across the table from them the next Tuesday at lunch, so it moderated people.

And Nancy Shimanek Boyd, who was the chair of this subcommittee, had gotten elected. She was a very fine young woman who wanted to do the right thing. And the chair of the state government committee that appointed her as the chairman of this subcommittee was also a young up and coming lawyer, Republican legislator who went on to other things, didn't make a career out of it. And they got in there, they did the right thing, they left, moved on, and we've been the beneficiaries of their legacy ever since.

Now, this reapportionment and redistricting is not a very sexy cause. But good government depends upon it at a very fundamental level. So long as incumbents feel entitled to their positions and have the means to virtually guarantee their increase in longevity, cronyism and bad government will continue.

Now, state pride and civic virtues would demand that Illinois citizens take a personal role in reform and do it now, and that we keep up the drumbeat for change until it happens. Demanding something in 2020 will be too late. Demanding change now [but] letting it slide, letting the issue die means that the incumbents will win yet again. They count on the apathy of the average citizen to perpetuate their control.
[Applause.]

Mr. Brad McMillan: Well, I want to applaud David Yepsen and the Paul Simon Public Policy Institute for putting together a great program today. And personally, I have been encouraged and motivated by Colleen and Maria today, and the hard-fought battles that you were successful with in Arizona and California.

I direct the Institute for Principled Leadership and Public Service at Bradley University, and we launched, in 2007—and the first guest lecturer that we had as a part of our program was Bob Michael. Bob is a Bradley alum, 38-year career in Congress with great distinction, 14 years as minority leader in the House of Representatives.

And I asked Bob during that interview, I said, “Bob, what has gotten things off track in Washington, D.C.?” And first he said the influence of money into the campaign cycle. But secondly, and this came as somewhat of a surprise to me, he went on a long tangent about redistricting and how the way these crazy districts are drawn now, what ends up is you end up having members of Congress that are extreme, on one side or the other, and there's no longer the members of Congress that are willing to work across party lines for the good of the country. And when you think about the gridlock that we've seen in Washington, D.C., it made a lot of sense.

Well, then fast forward to January, 2009, and I was asked to serve on the Illinois Reform Commission. And there were 15 of us that were part of the commission. It was very bipartisan, very independent. It was chaired by Pat Collins, who was the federal prosecutor that got the conviction on George Ryan. We had Lieutenant Governor Sheila Simon. She wasn't lieutenant governor at the time. She was a law professor. We had David Hoffman, the inspector general from the city of Chicago who went on to run as a Democrat for the U.S. Senate. You had a former

Republican chief of staff and myself. You had Duane Noland, a former Republican state senator down in the Decatur area. But it truly was a very bipartisan, and, I would say, independent group.

[We were asked to], within 100 days, come back to the Illinois General Assembly and the governor with what do we do to clean up Illinois politics in government. And of course this was right after the ouster of Blagojevich. And so we held hearings across the state. We heard from experts from across the country. And we came up with six key recommendations for sweeping reform in Illinois. And one of those six recommendations was to change the redistricting process to an independent commission form.

Now, in Illinois there's only two ways you can change the redistricting process. One is either through a legislative, constitutional amendment where you try to work with the General Assembly, and then the second way is through a citizen petition-driven constitutional amendment.

So the Illinois Reform Commission proposal, what we recommended was forming a temporary redistricting advisory committee that was made up of five members, I think pretty similar to what Arizona has, where the legislative leaders were each able to appoint one member of the commission and then those four members chose the fifth member. And then they would use a consulting firm for helping draw the lines.

And importantly, what we wanted was complete transparency—we've heard a lot about transparency—where every meeting had to be noticed, every meeting had to be in public. We wanted to be able to take away, as one of the criteria, the commission being able to look at the voting history of the voters in drawing the lines. And so that's the big picture of what the IRC recommended.

And interestingly, at the beginning, a lot of the commission members on IRC weren't really sold on the idea that redistricting should be at the top of the reform agenda in Illinois, but by the end of the hearings, and by listening to testimony—and Pat Collins, who wrote a book on battling the culture of corruption in Illinois, admits in the book that all of a sudden he realized that it should be priority No. 1 in Illinois, is redistricting reform.

Now, we, being, I think, a little naïve, decided that we were going to try to work with the legislature on a legislative constitutional amendment, so we took our recommendations and put it into [the form] of a constitutional amendment. And there were hearings held. We were promised by the governor—I was promised face-to-face—that there would be a special legislative session called in the fall on redistricting which never materialized. And at the end of the day, there was no legislative, constitutional amendment redistricting reform.

So we had a choice to make. And fortunately, through the great leadership of the Illinois League of Women Voters, they decided that this was too important to let it go and they put together a coalition. What they did was they took the framework of the

IRC recommendations, but then went out and got broader input from reform groups, and the commission went from five to nine members, and then there was some other tweaking that went on. But that became the Illinois Fair Map amendment, constitutional amendment that was launched in December, 2009.

We only had five months to get the 282,000 signatures to get it on the ballot, and we worked diligently, and we tried to broaden the coalition. And the Illinois State Chamber of Commerce was involved, Illinois Farm Bureau, all kinds of reform groups around the state. But at the end of the day we fell short of the signatures that we needed to get it on the ballot for the next general election.

So that's kind of the historical background of the previous redistricting reform efforts. Since then, a great group of reform-minded people have continued to be passionate about the importance of this. I think we've gone through 20 iterations of a new citizen-led constitutional amendment, and we're getting very close. And I have the honor of serving in CHANGE Illinois, which is an umbrella group that many of the reform groups are a part of. We have a new CEO-director, Ryan Blitstein, who is here. Ryan, wave and say hello. We are very close to re-launching the citizen petition-driven constitutional amendment.

And a couple of essentials, in my view. And again, we're tweaking the language and we're getting very close. But bottom line, it has to be 100% transparent. And I appreciate the examples of Arizona and California. I mean, this process in Illinois—and we all know it has been done behind closed doors by the legislative leaders, looking at your voting history, drawing these lines to draw safe districts for political purposes, and it has to be 100% transparent.

Secondly, and one of the things that really frustrated me was both the Illinois Reform Commission and the Fair Map coalition were very concerned about protection of minority voting rights, and we got our language verbatim from the Brennan Center for Justice and Justin Levitt. And we absolutely believe in maximizing the number of minority districts under the Voting Rights Act. But we were attacked by legislators, kind of as a distraction method, that we were not interested in protecting minority voting rights. Nothing could have been further from the truth. So the amendment has to protect minority voting rights.

And the other thing that I really do feel passionate about, and Maria, I really appreciate your comment on this, you just can't inject voting history into this process, because that's where you come up with screwy lines. Because what they're doing is they're looking at people's voting histories and they're drawing a box and drawing down streets and going this way. And the minute that you inject that into this process, it becomes overly politicized.

My final comment, and then we'll open it up for Q&A, but anybody who knows me knows that I'm passionate about this and I'm a person of action, so I have sign-up sheets. Anybody who cares about the future of the state of Illinois and turning it

back into a better direction, all we want is your name, your email and your phone number. And when this gets launched, you will be contacted.

And we need to build an army, because the only way that we're going to turn this around is through people power over political power. That's the only way it's going to change in Illinois. So with that said, I'll end there and we'll be glad to take any of your questions. *[Applause.]*

Ms. Baker: Are there questions from the audience?

Male: This is a question for Brad. Can you compare and contrast the independent commission model versus the previous Illinois model with multimember districts cumulative voting?

Mr. McMillan: You know, to be honest with you, I'm not that familiar with the old cumulative voting method. I know there is some thought that that might be a better way to go. I worry about that being too complicated for voters to be able to understand. We've got to keep this simple so that we can effect change. And I know that's probably not the [answer] you want to hear, but I'm very comfortable with the new model that all of the reform groups have been working on over the last year that we're about ready to go forward with.

Mr. Racheter: One of the issues of multimember districts, as a political scientist, I find that very fascinating and would be very much in favor of that. But let me share with you the fact that along the way in Iowa, one of the ruses that the Republicans who were trying to retain their power to gerrymander did was they went to court because one of the temporary maps in the transition from one plan to the next had multimember districts, and they said that was unconstitutional, and the Supreme Court upheld that.

So if you would go to multimember districts here in Illinois, I'm sure somebody would challenge it very quickly, and your Illinois Supreme Court might very well use that as an excuse to strike down the plan. I think you'd be better off to go with some kind of a nonpartisan line [drawing] effort to try to make districts that are single member districts, but which are more competitive than the gerrymandered ones that you've been suffering under.

Ms. Baker: Before we take our next question, there have been several legislators in the room, but Representative [Fortner] is still here with us. Why don't we take a question? I know you have sessions, so why don't we take a question from you, or if there's a comment that you'd like to make?

Rep. Mike Fortner: This is a question for Don. I think one of the things that's fascinating about the Iowa process is that it's achieved a lot of the successes that you described without the independent commission forum. And I just wondered if you could make some comments about how you thought it achieved its successes without having to go to the fully independent body that we heard from Arizona and California and that Brad's been working on as well.

Mr. Racheter: I welcome the question. I think that having listened to the presentations here today, some of the virtues of the nonpartisan legislative service bureau districting process include not having pre-fights about who's going to be the counsel, not having pre-fights about who's going to be the line drawers, not having fights about who's going to be on the commission, not having problems of moms with kids not having adequate support and childcare, not having small business owners being disadvantaged by having to take eight months out of their lives to be on this commission and so on.

These are public servants. They're hired in a nonpartisan fashion. And ultimately they are held to account by the fact that their lines and their districts are going to be presented to the legislature for an up or down vote, and so if they stray very far, they're going to get struck down and they're going to probably get fired as the time goes along.

But initially there was a guy named [Burks] who was there who was well regarded and had the right skill set. He hired a friend of mine. I'm in the Reserves. There was a guy that was my boss in the Reserves who was a civil engineer at the University of Iowa. They were the only ones that had a computer powerful enough to do the crunching early on the '70s and '80s, and they drew these districts, and they used these various techniques to try to come up with ones that met the Supreme Court criteria from the United States Supreme Court—equal population, compact and contiguous, communities of interest, etc., and they did a good job.

The four times that the plan has been used, they've only gone past that first vote one time, and that was when they threw two sitting, very popular incumbent congressmen in by taking a large population center that historically had been in southeast Iowa and throwing it in with northeast Iowa. And so they threw that out, but the second plan was adopted.

They've never gone to the third plan where they have to amend it, and never gone beyond to let the Supreme Court get their hands anywhere near it yet again. So I am very much in favor of using this kind of a model rather than this independent commission because of all these problems that everybody's having.

Mr. McMillan: Well, and I want to comment because—and no disrespect—but the only way that model works is if the Illinois General Assembly is going to be responsible enough to pass that kind of reform, and there isn't anything in my experience in the last two to three years that would give me any confidence of that. And so I think the only way we get reform in Illinois is by a citizen-led petition drive.

The other thing is while I think there's a lot to like about the Iowa model, we do have a very diverse state demographically. And even with our reform, you're going to see some oddly shaped districts up in the Chicago area, probably East St. Louis area so that we can protect minority voting rights under the Voting Rights Act. But arguably, through the rest of Illinois, you would end up seeing districts that made a lot more sense from a geographic area and from a compactness and contiguity perspective. I

just firmly believe that the citizens are going to have to drive this if it's going to happen in Illinois.

Mr. Curtis: If I can just say one thing. What strikes me that is common between the independent commissions and the Iowa model and the CHANGE Illinois model is the exclusion of certain types of data from consideration. If you don't know what the voting precinct or what that precinct voted for in the last presidential election, and you don't know where the incumbents live—by know, of course, I mean in terms of taking it into consideration when you draw the lines—I think it's just harder to gerrymander technically.

Male: Just a quick follow-up. Colleen, I thought that Arizona did have the voting information. Not the incumbent information, but the overall voting information so they could design the competitiveness.

Ms. Mathis: We did. That was part of our process, since competitiveness was one of the criteria that we had to consider. So in order to try to have a district that was straight up 50-50, so to speak, between the major parties, [*unintelligible*] [38:54] look at those factors.

Ms. Baker: There's a question here.

Chris: I'd like to ask Brad what's the legal argument and legal strategy that you're taking, assuming you get the petition drive, a sufficient number of signatures, the argument you'll make that the initiative itself passes muster with the state constitution to get on the ballot.

Mr. McMillan: We've had very good legal counsel, Chris, look at this. I mean, in Illinois, under the constitution, you have to change the structure and process in order to overcome the constitutional challenges. And I think we're in pretty good shape, especially with the tweaking that we've done to the amendment. But we need to at least get it to the next step, where we find out. We do anticipate that there will be litigation. We need to get it to that step.

Ms. Baker: David.

David: Brad, does this new proposal you're working on, would that affect redistricting of congressional districts?

Mr. McMillan: It would not. We don't have, under the Illinois constitution we don't have the ability to include that in the amendment. I know that causes heartburn for many, including myself, but I guess our hope—and maybe this is a naïve hope—is if all of a sudden the Illinois General Assembly has to have this fully transparent independent commission process, and they're the ones that have the final approval on the congressional maps in Illinois, that there will be some pressure that will come to bear to move in that direction with the congressional maps. But we can't include it from a legal point in our constitutional amendment.

David: I just want to make one observation. As many of you know, I come out of Iowa. I've watched that process. I think one of the things Illinois needs to ask itself is whether you want to jeopardize your congressional incumbents. In Iowa this system resulted in many competitive legislative districts and contributed to the loss of a very respected Republican incumbent, Jim Leach, and a very respected Democratic incumbent, Neal Smith, and I see the same thing starting to develop in California and Arizona, where you redraw the lines, and not protecting incumbents.

Where does that leave your state vis-à-vis the seniority system? I mean, are states supposed to jeopardize their congressional power by putting their incumbents at risk at a time when the U.S. House of Representatives still has a lot of rewards based on seniority? It would be nice if the whole country could do it that way, but until they do, why would Illinois want to jeopardize its incumbents in Congress?

Mr. Curtis: Well, I'm not 100% sure that it would. And I'm not 100% sure that it's necessarily a bad thing for incumbents who have been safe for a while to actually have to run a hard race. A couple of little observations here. I remember Congressman LaHood saying very famously that he wanted an opponent—and oftentimes the Democrats didn't offer one against him—because he thought the race was good for democracy.

And secondly—and this has to do with my own personal bias, it's not speaking for the panel—but I grew up in a state that protected its incumbents like crazy through white domination of the Democratic Party primary process in Mississippi, and it left us with not only people who stayed in office for long times, like Jamie Whitten, for example, who was in for 54 years, but it also left people in positions of power in the House of Representatives who had the singlehanded ability to block legislation that may not have been in the best interests of the nation as a whole.

And I'm thinking about how long it took to ban DDT after everyone knew how bad that was. And that had to do with the so-called Permanent Under Secretary for Agricultural Appropriations, and that was Jamie Whitten. So I'm not 100% sure that it's all bad that the incumbents have to be challenged.

Mr. McMillan: You know, David—and you make a good point, I'll grant you that—but you look at the congressional maps after the 2000 census and the most recent 2010 census, and they're some of the most gerrymandered districts in the country. And to me it's an affront to democracy. And so you have to prioritize what's most important, and I think having a fair, more democratic system should take precedence over concerns about seniority.

Mr. Racheter: In a very respectful way, I will challenge the premise of your question, David. I don't think that either Neal Smith or Jim Leach won because of redistricting issues.

David: Lost.

Mr. Racheter: Lost. Leach refused to accept PAC contributions and he refused to accept contributions from individuals over a certain amount—I think it was \$1,000 or \$2,000—and so he just got outspent and out hustled. And as the first recipient of the Congressman Neal Smith Award, I would say that Neal got complacent in his position and he finally got a challenger who had enough money to really go out and beat him. I don't think those were districting issues.

Ms. Baker: Are there other questions from the audience? I have a quick question, and the question is we have several advocacy groups represented in the room today, like AARP is in the room. I've seen some of their representatives today. The League of Women Voters, Common Cause. What will be different this time in terms of marshaling that grassroots effort in Illinois, when you look at the fact that it's often said that the clearest footprints are those that you look at when you're going backwards? And so what do you think will be different this time in terms of getting that grassroots and advocacy support that you need for the initiative?

Mr. McMillan: Well, how many groups are tied to CHANGE right now, Ryan?

Ryan: Almost 50.

Mr. McMillan: There's 50 groups that are tied to CHANGE Illinois, including all the ones that you just listed, but it's a broader coalition. And so what we hope to do is build from the motivation from last time. We have the names of the people that passed petitions the last time. Again, we only had five months to really go at this last time, and this time we'll have a year, so we're going to build the coalition stronger, I believe. And I think we're not only going to be better organized, we're going to be better funded.

Ms. Baker: Okay. Brad McMillan, Bradley University, thank you very much. Craig Curtis, Bradley University, thank you. And Don Racheter, from the Public Interest Institute from Iowa, thank you very much. [*Applause.*]

[*End of recording.*]



**WHO HOLDS THE CRAYONS?
HOW OTHER STATES DRAW LEGISLATIVE DISTRICT
LINES SYMPOSIUM**

**Peter Wattson
(TRANSCRIPT)**

April 2013

Transcript Prepared from:

Who Holds the Crayons? How Other States Draw Legislative District Lines

April 30, 2013 – Inn at 835, Springfield, IL

Sponsored by the Paul Simon Public Policy Institute, the Joyce Foundation, and
the McCormick Foundation.

**Southern Illinois University
Paul Simon Public Policy Institute**

**Who Holds the Crayons? How Other States Draw
Legislative District Lines Symposium**

April 30, 2013

Peter Wattson

Mr. David Yepsen: Our second keynote speaker is Peter Wattson, the former Secretary of the Minnesota Senate. He spent 40 years as legal counsel to the state senate. He's in his fifth decade of redistricting. He served on NCSL's Reapportionment Task Force in 1989 and again in 1999, its Committee on Redistricting in 2009. His bio says he and his wife are spending their winters babysitting grandchildren in Washington, so we appreciate him giving up some grandchildren time to be with us today. Peter? [*Applause.*]

Mr. Peter Wattson: Thank you, David, and thank you for giving me another occasion to come back to Springfield. This is actually my fourth visit to Springfield, and it will always have a tender spot in my heart because of the first couple of times that I came here, which were more than 40 years ago. I hauled my sailboat, my Class C scow down here to race on Lake Springfield in the national championship more than 30 years ago, and in 1984 I won, so I've had good things to think about Springfield for many, many years.

I'm going to talk to you about building better maps for Illinois. You heard this morning from speakers who were telling about experiences in California, Arizona, Illinois, and Iowa, what they have been doing, and you're going to be hearing this afternoon from Florida and New Jersey about how they have been addressing the problem of drawing better maps in their states.

What I want to do in this time in between those two sets of sessions is to explain a little bit about the problems that these efforts are trying to solve, and the federal and state law that may either help or hinder people in those efforts. I'm going to start with the facts of life in redistricting, and explain a little bit about how redistricting plans are drawn, the limits that people have decided in other states to put on the redistricting process in order to reduce the impact of gerrymandering.

I'm going to talk about the Voting Rights Act and the 14th Amendment, things that Morgan mentioned this morning. I'll go into a little bit more depth on those, how they help to protect the rights of racial and language minorities, but they also put limits on the way people can draw maps. And finally, I'll discuss the efforts of the courts and the state of Florida to impose some limits on partisan gerrymandering. I have allowed maybe ten, 15 minutes for questions at the end, and I encourage them.

It's a fact of life in redistricting that the lines are always going to be drawn by whoever happens to be the majority in power, and the majority will always be tempted to use their power to give their party an unfair advantage in elections. We wish it were not so, but it is. The term gerrymandering is often used to describe any technique by which a political party attempts to give itself an advantage, but I want to use that gerrymandering in just the narrow sense, to refer only to the practice of drawing districts with odd shapes that look like monsters.

Used in that narrow sense, there are basically just two techniques, and you heard them described in various ways this morning. Packing and cracking. Packing is concentrating as many members of the targeted minority into as few districts as possible. You make them a super majority in those districts, 70, 80, 90%, which is fine, they're guaranteed to win those seats, but the votes in excess of a simple majority are wasted because they're not available to help elect representatives in adjacent districts.

Cracking is usually the second thing that the majority in power uses. After they've packed the minority as much as they can, then they crack them to prevent them from becoming a majority in any other districts. They divide the minority population so that it's less than a majority in the adjacent districts.

If the members of the minority party were evenly distributed throughout a state, there would be no need to gerrymander, and this is fundamental. Understand that if the minority even, let's say they had 49% of the vote in the state, if they were evenly distributed, they would lose every single seat. The reason why a minority is able to win some seats is because minority voters, whether they be a partisan minority or a racial or language minority, tend to cluster. They live with other people who are like themselves. And for that reason they form a majority in single member districts.

It's the process of drawing district lines to first pack and then crack the minority that gives rise to those odd shaped districts that we call gerrymanders. To counter this tendency on the part of the majority in power, constitutions and courts and citizens have developed various limits on their power, and you heard about some of them this morning. You'll hear about more this afternoon. I'm going to try to give you sort of a national review of the kinds of limits that are imposed.

I've divided them into three categories: limits on the people who draw the plans; limits on the process that may be followed, including limits on the data that may be used and requirements that the plans be reviewed by others; and then principles, limits on the districts that result.

Who draws the plans? Well, depending on the state, there may be a prohibition on the plans being drawn by legislators. That's what these commission states are all about. There may be a prohibition on any appointees by a legislator. There may be a prohibition on having any public officials. That's essentially the California system. And there may be a requirement that no politicians serve on the commission.

Usually there is some requirement that the minority party be represented in some way. And quite often, where the commission is evenly divided, there is a procedure to select a neutral tiebreaker. It might be as in Arizona, where the four evenly divided members have to agree on a fifth person to serve as their chair, or as we'll hear this afternoon from New Jersey, there will be a provision for the Supreme Court to appoint a neutral tiebreaker.

In Illinois, responsibility for drawing congressional plans rests with the legislature. That's sort of the default throughout the United States. But the 1972 amendment to the Illinois constitution that you've heard about a little bit this morning said that primary responsibility will reside in the legislature only until June 30th, a year ending in one. If they fail to do that, then there's this evenly divided commission appointed, and if they fail by August 10th, then the Supreme Court has to appoint a tiebreaker.

You've heard that the system didn't actually work all that well. Maybe it worked well the first time it was tried in 1981, but in '91 and 2001 they had a problem because even though the Supreme Court had nominated two people, which were required to be of different parties, the people selected turned out to just throw their support with one party or the other, so you ended up with a highly partisan plan. And those participating in the process knew that it was really in their interest to flip a coin and take a chance, propose a highly partisan plan and hope that your plan is the one that was chosen.

But as I read the language of the constitution, there's no requirement that the court appoint people of different parties who are highly partisan. There's no requirement that the Supreme Court not do what the court in New Jersey has chosen to do, which is search for people who may have a political affiliation, but who are committed to drawing an impartial plan, trying to bring consensus. I understand in Illinois that this Supreme Court is not one from which nonpartisanship can be expected. But if there were a way to persuade the Illinois Supreme Court to look for a neutral tiebreaker, then maybe you might have better results from that commission.

Limits on data that may be used. You heard about it this morning. No party registration, etc., requirements for review by others. You heard about public hearings, a preliminary plan and judicial review. You've heard about traditional districting principles, and Morgan had a very good slide that showed which principles applied to congressional districts, which ones applied to legislative districts. This lumps the two together and says if either legislative or congressional district is subject to this principle, then I'll count them as one state. You see the ones that are popular.

Let me throw in a plug for two of the less popular ones, preserving the cores of prior districts and avoiding contests between incumbents. Those are ones that the Supreme Court has mentioned as being legitimate traditional districting principles, and I just personally think there is a value in some continuity in legislative and congressional districts from one decade to the next, and not be moving a lot of

voters from one district to another if it's not necessary. I think there's a value in continuity and there's a value in keeping the experience of incumbents, not intentionally putting them together if they don't have to be put together.

The Illinois constitution, I didn't find anything about congressional districts. There's a sentence or two in there about legislative districts—compact, contiguous and equal population. You notice the things that are not there. No requirement to preserve political subdivisions, no requirement to preserve communities of interest, no requirements for preserving the cores of prior districts or avoiding contests between incumbents. There are a number of things that could be added to that Illinois constitution to give decent principles that would do a good job of limiting the authority of the plan drafters, whether they happen to be the legislature or the backup commission that's appointed.

I'm going to talk about racial and language minorities and the Voting Rights Act and equal protection clause. The first thing I want to talk about is the Voting Rights Act of 1965. Morgan mentioned this this morning. Prohibiting a state from enacting or enforcing any law or regulation that will have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group. And the law defines those language minority groups to be only people of Spanish heritage, that is, Hispanics or Latinos, American Indians, Alaska natives, or Asian Americans. There is no protection, for example, for people who speak Russian under the Voting Rights Act.

Section 2 looks at discriminatory effect, not intent, so purity of intent doesn't save you. That's why Arizona has to look at the impact of its plan on minorities, California has to look at the impact of its plan on minorities, because even if you meant well, if you do bad things to those minority voters, then your plan is going to be struck down.

Iowa and Nebraska, say, are in a different situation where they don't have the concentrations of minority voters to meet the requirements of the Voting Rights Act, and they don't have the history of official discrimination against those minorities in their states. It's not something that they have to worry about in the way that Illinois does.

To repeat what Morgan pointed out, the first precondition laid down by *Thornburg v. Gingles* in 1986 is that the minority population be sufficiently large and geographically compact to constitute a majority in a single member district—that's a majority of the voting age population—and that the minority be politically cohesive. That is, that they tend to vote for the same candidate. And third, that block voting by the white majority usually, in the absence of special circumstances, defeats the minority preferred candidate.

If you meet those first three preconditions, then the court will go on to evaluate the totality of the circumstances, which amount to is there a history of official discrimination against that particular minority group in this jurisdiction? If so, the

mapmakers have an obligation to draw districts that the minority has a fair chance to win. That's what Arizona did, that's what California did.

But when you're setting about to do that, what kind of a majority do you need to provide for that minority population? Well, the courts have said we're looking at an effective voting majority which gives the minority voters a realistic opportunity to elect a representative of their choice—realistic opportunity. Is that more than a simple majority? Maybe. Could it be less than a simple majority? Could be.

In the early years of the Voting Rights Act, in the 1970s and '80s, the Justice Department and the federal courts developed a rule of thumb that said in order to have an effective voting majority, the minority population must make up 65% of the total population. How do they get to 65%? They started with 50 and then they added 5% because the minority population tended to have a younger population, more children, more people not eligible to vote than the white population, and at that time minorities tended to get registered to vote at a lower rate than that of whites, and the third five percent because minorities tended to turn out to vote at a lower rate than that of whites, and that's 65%.

That rule of thumb has been used by courts in cases up until this last round of redistricting, but the reasons behind it have pretty much evaporated. It's no longer justified by those assumptions. The Census Bureau now gives us a population count of people who are eligible to vote, 18 years of age and over. They didn't do that back in the '60s. They do now. And experience has shown that minorities in many areas, not all, have been registering at a rate comparable to whites, and in some areas they have been turning out to vote at a rate comparable to whites, or getting very close.

So what you really need to do in assessing the kind of majority you need is take a look at actual experience, take a look at election results over the past decade or so and see what's been necessary. Because if you do put more than the number necessary to elect a representative choice, you may be engaged in packing. You put 65% in a district where they really only need, say, 53-55%, then you may be wasting those votes in excess of 53-55% by not making them available in the neighboring district.

How can you get by with less than a simple majority? One of the speakers this morning mentioned a crossover district. A crossover district is where whites will vote in some numbers in favor of the minority's preferred candidate. And the usual circumstance where that happens is in a district where, for example, blacks make up a majority of the Democratic electorate in that district so that a black candidate can be elected in the Democratic primary, but then in the general election the white Democrats will be willing to vote for a black Democrat rather than vote for a white Republican. That's crossover voting.

Coalition districts are ones where more than one minority group may tend to vote for the same candidate. And this is not usually true, but there are some areas where

African American voters and Hispanic voters will vote for the same candidate. If that's true, if each one has, say, 26% of the vote in that district, then if they tend to vote together, they may be able to effectively elect the candidate of their choice, so they don't need to have a majority of either one of those minorities in order to be able to elect a representative of their choice.

The courts will look at ten years of voting history, the most recent ten years, races both in that same kind of district, the legislative district, or in other kinds of districts such as local races or maybe statewide races. But what's most important is that they examine races in which there are candidates of a minority race or language group, biracial contests, because the fact that African Americans will vote for a white candidate when there are only white candidates on the ballot does not mean that they will tend to vote for a white candidate if there is an African American candidate on the ballot, so it's the biracial contests that are the most probative.

Section 5 has been mentioned earlier. It doesn't apply to Illinois, but the experience of Florida suggests why Illinoisans interested in redistricting reform should think about the Voting Rights Act, because what they did in Florida was incorporate the standards of Section 5 into their state constitutional amendment. I'll talk more about that a little bit later. So that they included no retrogression requirement for Florida legislative and congressional plans. So what is this all about? Not retrogressing.

The test is whether the minority group has the ability to elect a candidate of their choice. Again we take a look at what's an effective voting majority. You determine what that is and take a look at the districts, and are there districts where they have an effective voting majority. And in comparing the districts of this decade to the districts of the last decade, you don't compare the last decade's results based on the last decade's census, you take those, let's call them, the 2001 districts and you apply the 2010 population. Under that configuration, with the 2010 population, how many districts does the minority have the ability to elect. And if you reduce the number, say it's five down to four, then you may have retrogression problem.

When you are engaged in complying with Section 2 of the Voting Rights Act, to draw those effective majority-minority districts, you have to be aware of the limits of the 14th Amendment's equal protection clause. It's perfectly okay, say the courts, to draw districts where you intentionally are going to permit the members of a racial or language minority to effectively elect a representative. That's okay. But what you can't do is draw a racial gerrymander. What on earth is that?

Well, the first requirement is that you not draw a district with bizarre shapes—and we saw some bizarre shapes this morning. Here's one of them. Familiar old North Carolina Congressional District 12. This is bizarre, I think anyone would agree.

And what Justice O'Connor said in *Shaw v. Reno* in 1993 was that in reapportionment—she really meant to say redistricting, thank you, Morgan—“reapportionment is one area in which appearances do matter” because a district that separates people on the basis of race, putting blacks into one district and whites

into another district, “bears an uncomfortable resemblance to political apartheid.” This is not something we want to encourage in our society. So let’s draw districts that are reasonably compact, says Justice O’Connor, speaking for a majority of the court.

The question, obviously, is what’s reasonable about compactness? You know it’s kind of subjective. Well, to give you a look at what the courts have found to be reasonably compact, I have a series here of before and after slides, districts drawn by a legislature in ’92 and then in the course of the years, finally approved by the federal courts in 1996.

This is a district in the Dallas area. Bizarre, right? Reasonably compact. This is Houston, bizarre; reasonably compact. There’s another district that is interlocked with that District 18, District 29. It’s interlocked. Bizarre; reasonably compact. Louisiana’s Fourth, pretty bizarre. The Zorro district. Reasonably compact. Florida, bizarre; reasonably compact. It’s got some funny-looking things down there at the southern end, and the northern end, and the eastern side, but it’s reasonably compact, so it’s okay.

And this is what the state of North Carolina finally ended up with after drawing several different maps during the decade of the ’90s. Finally, by 2000, they got it right with a map that they’d actually drawn in ’97. So that’s reasonably compact, and it was justified by the state saying that those lines look the way they do not because we were following block by block racial statistics, we were looking at precinct by precinct election results and we were drawing a district that a Democrat incumbent could win in.

Okay, so you draw districts that are reasonably compact, whatever that means, but you still must not let race be your dominant motive. The 11th District in Georgia was thrown out. Looks reasonably compact, just like those other districts, the “after” districts that you saw. But nevertheless it was thrown out because correspondence between the state of Georgia and the Justice Department showed that the reason the district took that particular shape was because of the Justice Department’s insistence that Georgia draw one more black majority district.

They had some traditional districting principles that they followed here and they followed there, but they didn’t follow them in creating this district. They subordinated them to a desire to create a black majority district. And this is the one that the federal court had to draw then the legislature failed to come up with something that was reasonably compact.

North Carolina justified that third or fourth iteration of the 12th District by saying we drew it for partisan purposes, and the state of Texas tried to use that same argument to justify those three bizarre districts that we saw in Dallas and Houston, but the Supreme Court wouldn’t buy it. Justice O’Connor looked at those boundaries of the bizarre district and said you’re not basing your district on political results, not on a partisan concern, because we can look at those lines and see that they are jiggling

and jaggging based on block boundaries and the racial composition of each block. You were using race as a proxy for political affiliation, making the totally unfounded assumption that blacks tend to vote for Democrats, and you can't do that, so we're going to throw those districts out.

Review of the traditional districting principles as endorsed by the U.S. Supreme Court. If you don't follow your traditional districting principles when you're drawing that majority minority district, then all is not lost for the mapmakers, they just have to survive strict scrutiny by the courts. And strict scrutiny is a two-part test. One that there be an identified, compelling governmental interest that you're trying to serve in drawing that district, and second, that your plan be narrowly tailored to serving that interest. And so far the Supreme Court has recognized three possible bases for doing that. First, remedying past discrimination; second, complying with the Voting Rights Act Section 5; and third, complying with the Voting Rights Act Section 2.

Even though there's that possibility, the only district I'm aware of that has survived strict scrutiny so far is our friend the 4th District in Illinois, as drawn in 1992. And as Morgan explained, the reason why that was okay was because on the one hand there was a compact Hispanic population living in that area. You saw where it was on the map.

And the reason why they didn't draw a compact district around it was because of the African American population in between. To have drawn a compact Hispanic district might have eliminated that African American district. To make things even more complicated, there were two more African American districts around there. I presume that one was north and one was south of that area. So this is what they had to do in order to come up with four majority minority districts in that area. And the lower court said that's okay.

I'll talk a little bit about partisan gerrymandering and what the courts have been able to do about that. It was not until 1986 that the courts first said that a claim of partisan gerrymandering was justiciable, that is, that it could be heard by the federal courts. They were willing to wade into the political thicket that they'd been staying out of before then. And they set forth a two-part test that the plaintiffs would have to meet. First that there was intentional discrimination against an identifiable group. But they said that's pretty easy because legislators drawing a map to defeat the other political party? We think they knew what they were doing when they drew the map and that whatever they did was intentional.

The harder part is the discriminatory effect. And this is a difficulty that I have with the Florida standard that we'll hear more about in a minute, which is that every plan is going to have the effect of giving one party a majority and a different party a minority. How can you draw a plan where there's no majority? So you have to go beyond just a plan that is drawn to put a party in the minority. It's how do you go about doing it, and what kind of a minority is it.

Well, the court in '86 said it's an electoral system will consistently degrade a group of voters' influence on the political process as a whole. And that's not just confined to losing a particular election, especially just one. A series of elections, and maybe it's more than that. Well, between 1986 and 2004 there were many, many cases brought by plaintiffs alleging partisan gerrymandering, and they all failed because nobody could meet that test.

Plaintiffs got together in an attack on the Pennsylvania congressional plan of 2001 as a partisan gerrymander, and they really gave it their best shot to come up with a standard that the court could use to say this much is too much in the way of an adverse partisan impact on the minority. But the court was willing, again, to say we're not going to abandon *Bandemer*.

There were four judges, the conservative ones, who would have just overruled *Bandemer* and said let's stay out of this, these cases are not justiciable. We haven't come up with a standard, we never will, let's get out of it. But Justice Kennedy sided with the four liberals, who said yes, there is a standard, and here is a standard, and we should apply this standard. Unfortunately, the four liberal justices had three different opinions on what that standard might be, and Justice Kennedy didn't agree with any of them. So lacking five votes, the plaintiffs lost.

But I wanted to point out what the three different judges thought would be a good standard. And notice what they have in common. They all talk about traditional districting principles and violations of traditional districting principles. Justice Stevens said let's take a look at whether partisan purposes predominated over traditional districting principles, just like we do in those racial gerrymandering cases.

Justice Souter wanted to go a little farther and say let's look at whether they paid no heed at all to traditional districting principles, not so much in the overall map, because there might be many districts that follow traditional districting principles, but in those districts where they apparently had targeted the minority party, is that where they violated traditional districting principles? Did the minority party lose because of violations of traditional principles?

Justice Breyer didn't agree with either of the first two. He said, okay, we'll look at whether traditional districting principles were followed and then we're going to ask whether a party with a minority of the votes statewide was able to win a majority of the seats, and whether this plan might be thrown out depended on how egregious was the difference between the minority's share of the vote statewide and the majority of seats that they were able to elect.

If it happened in one election that a very small minority in the legislature was able to draw districts that...or a group that got a very small minority of the votes statewide was able to still win a majority of the seats, that was terrible, and that plan could be thrown out based on one election experience. But if the minority was pretty close to a majority statewide, and yet they still happened to eke out a majority of all the votes, well, maybe we'd have to look at that in two, three, four elections in a row to

see this adverse impact with a minority of the votes statewide electing a majority of the seats.

Like I said, nobody agreed on any one standard, so we went forward a couple more years, and when the Texas legislature took advantage of their having control of both houses of the legislature as well as the governorship, took the opportunity to redraw those congressional districts midway through the decade, the plaintiff said, hey, the only reason why you redrew that plan—which had been drawn by a federal court back in '01—was because you wanted to gain a partisan advantage. So where your only motive is to gain partisan advantage, then that will be thrown out as a partisan gerrymander.

Well, the majority of the court, in a decision written by Justice Kennedy, said we're not persuaded that this was the only motive. They did some good things in other parts of the state that were unrelated to securing a partisan majority for the Republicans. And besides, we're not sure that even if they did have that as their only motive that that would be a bad thing and we would throw it out. So the plaintiffs lost.

What happened down in Florida—you'll hear more about that in a minute—but what the voters decided to do was amend their constitution and add to the constitution not a new commission, but just some principles. They had principles before. One was that a district be composed of contiguous territory. Another required equal population.

But they added the requirement that the districts not be drawn to favor or disfavor a political party or incumbent, that they not discriminate against racial or language minorities—and the court has interpreted that now as being essentially the same as Sections 2 and 5 of the Voting Rights Act—they added a requirement that the districts be formed of compact territory and that they use existing political and geographic boundaries, some of the same kinds of things that we're talking about here for doing in Illinois.

And how did that work out? Well, there's been a test of that now, the plan drawn by the legislature in 2012. And these standards, by the way, apply to both legislative and congressional districts, but in Florida it's only the legislative plan that has to be submitted to the Supreme Court for review. So when it was reviewing the plans in 2012, the Supreme Court took a look at the Senate plan and threw it out. And I assume we'll hear more about that in a moment.

But the key thing I wanted to point out here is that I see the Florida court following the same kind of path as laid down by those three justices in *Vieth*. That is, they are looking for violations of traditional districting principles, and if they see them in particular districts, then their antenna go up and say is this done to favor a political party or to favor an incumbent. And in eight of those Senate districts, they found that the violations of traditional principles, or the ones in the Florida constitution,

were because of an intent to favor an incumbent, and in four of those districts they were also drawn to favor a political party.

So I think the Florida court and the constitution, I think they're on the right track. And for people who are interested in curbing partisan gerrymandering, getting some traditional principles into your state principles is a good thing to do. Thank you for your attention. I'd be happy to answer any questions. [Applause.] Colleen? I think you should wait for the mike.

Female: Is there a source for traditional redistricting principles? I'm curious where that comes from.

Mr. Wattson: Important to point out. What the court did in 1993 in *Shaw v. Reno* was discover traditional districting principles that have been there all along, not in the U.S. Constitution, not in any federal law, but in the constitutions and laws of the various states. It's things that states had decided they wanted to do. And the Supreme Court sort of incorporated them, imported them into federal law by saying, well, everybody does it.

Of course the problem with that source of traditional districting principles is that they're not the same in every state. You can't say that Illinois has a traditional principles that districts recognize political subdivisions, because they don't. So where does that get you? Greg?

Greg: Put on your creative hat for a minute. What sort of fact pattern would be egregious enough to get five votes to establish a standard for review of how partisan is too partisan? What sort of egregious facts do you think would enable Justice Kennedy to [convince] four others to vote with him on a single standard and get a majority opinion?

Mr. Wattson: Boy, I don't know. Because they had some pretty egregious facts in Pennsylvania. The Pennsylvania congressional districts had been struck down once because they violated equal protection, because one district was 19 people larger than the ideal, so they struck that down and do it again. But in other specs they were highly contorted. And Pennsylvania, I think, is one of those states that doesn't require you to preserve political subdivisions or the cores of prior districts or very much at all. So they didn't have a state traditional districting principles framework to work within.

Now, maybe, if you had a state with lots of those principles we have been talking about, and they were all violated in drawing a district that was done for partisan gain, maybe the court would say something like one of those three justices proposed: okay, we've got the violation and we see that it was done for partisan gain, that's easy to prove, and that somehow we see that this is permitting a party with a minority of the votes statewide to elect a majority of the seats, and this is wrong. But you're not going to get that with the current five. I think you've got to have a new appointment or two.

Male: Peter, I want you to look into the crystal ball instead of taking off your hat. The Supreme Court is looking into the Voting Rights Act. What, if any, effect do you see that having on Illinois? Are there any practical ramifications their rulings in this case might have, or is that just too hypothetical for you?

Mr. Wattson: What the Justice Department has said, and what they're planning for is that we think that they're probably going to strike down Section 5, so we have to be prepared to enforce the Voting Rights Act without the benefit of Section 5. Section 5 has the advantage of being so quick and easy that an adverse plan doesn't get put into effect until after either the Justice Department or the district court for the District of Columbia said it's okay, so there's not a lot of administrative burden on the Justice Department to go out and find things and prove them. The shoe is on the other foot.

But what they're trying to gear up to do, they have said, and they've had workshops on this, is can we just take our Section 2 people and jurisprudence and be looking for the most egregious examples of violations and sue more quickly? Put that in with the sequester and a general reduction in the number of government employees, and what ability do they have?

They'll be looking at Illinois. They'll be looking carefully. But they won't have the people to do too much. Maybe Illinois will be lucky and be one of the states most looked at, but I would think probably not. I think it increases the value of doing the Florida thing and putting the Section 5 standards into your state law, if that were possible.

Mr. Yepsen: Any other questions? Thank you.

Mr. Wattson: Thank you. [*Applause.*]

[*End of recording.*]



**WHO HOLDS THE CRAYONS?
HOW OTHER STATES DRAW LEGISLATIVE DISTRICT
LINES SYMPOSIUM**

Florida and New Jersey

Seth McKee

Nicholas Stephanopolous

(TRANSCRIPT)

April 2013

Transcript Prepared from:

Who Holds the Crayons? How Other States Draw Legislative District Lines

April 30, 2013 – Inn at 835, Springfield, IL

Sponsored by the Paul Simon Public Policy Institute, the Joyce Foundation, and
the McCormick Foundation.

**Southern Illinois University
Paul Simon Public Policy Institute**

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Legislative District Lines Symposium**

April 30, 2013

Seth McKee, Nicholas Stephanopolous – Florida and New Jersey

Mr. Chris Mooney: Okay, thanks a lot, David. While our speakers are making their way to the podium here, let me just introduce them, and I'll introduce them both and then they will talk sequentially.

First up will be Professor Seth McKee, who is a political scientist who teaches at the University of South Florida, soon will be teaching at Texas Tech University. He got his PhD from that other university in Texas, the one down in Austin. And he is a scholar of American politics who writes on Southern politics, parties, elections and redistricting. He's written quite a bit for a young scholar. He's got over three dozen articles at this point, which is probably why he's able to leave South Florida for Texas Tech, so he'll be up and talk about what's going on in Florida, and is unencumbered by having to go back there and face the music.

After Dr. McKee, Professor Nicholas Stephanopolous, who teaches law at the University of Chicago. He teaches election law, constitutional law, administrative law, and focuses considerably on election law, I think, from what I understand. Prior to coming to Chicago, he was an associate in law at the Columbia Law School, and he also worked Jenner & Block in their Washington office, where he focused on appellate advocacy.

He's a 2006 graduate of Yale Law School, and while at Yale he was editor-in-chief of *Yale Journal of International Law*, so this is a pleasure—and he will talk about New Jersey, and I don't see anywhere on his vita where New Jersey comes in, but I guess just because New Jersey is an interesting case because they allow a political scientist to make all the decisions, and I think that's a good thing. [*Laughter.*] So first up is Seth McKee to talk about Florida. [*Applause.*]

Mr. Seth McKee: All right. I've got quite a few slides here, so I guess I'll just get busy. I don't really know how to end that subtitle. The more things change, the more they stay the same? Not exactly. And the reason why, I'm sure, is because—we've talked a little bit about this—Amendments 5 and 6 were passed in 2010. And if you can see that number, approximately 63% of the electorate voted in favor of each of them, and you have to have 60% to get one of these amendments passed and put in the Florida constitution.

So that happened in 2010, which, of course, is strange, because that was a Tea Party year, the height of the Tea Party movement, and so you see that with these amendments that voters basically put a set of restrictions on line drawers, and we'll talk about them. They're basically identical. The only difference is Amendment 5 applies to state legislative districts and Amendment 6 applies to congressional redistricting.

So this is the language, in a nutshell, that the Florida voters saw, and the most curious part of this, I think, is the beginning, where it says "plans may not be drawn to favor or disfavor an incumbent or political party." That certainly has not been complied with, let's just put it that way. But if you look past that, in the next line you really do see that you get this VRA language, Section 2 language, essentially applying to the entire state, because in Florida there's only five counties that are under Section 5 of the Voting Rights Act, but if you look at that language, it really looks like they're saying that the VRA is now covered when we draw districts.

And then you see contiguous things like compact. Florida's a funny-looking state. I don't know how that works. I'm not as interested in those things. Probably voters aren't, either, but when they look at a map, I think any map a voter or common person sees scares them. And maybe that's my academic bias. I think when you have equal population, districts look funny.

Okay, so before I got to Florida, the year before I got there in 2005, you had this push towards trying to reform redistricting. And this was kind of funny, I think, because they got pretty far in the process of getting an initiative passed, but the only problem was it's got to be 75 words or less. And so when it went before the courts, they didn't get it because they had too many words.

So what they wanted to do was initially put in a commission, and they wanted this commission to take control of redistricting. And that didn't happen. And the reform effort didn't die, but the locus of the reform movement switched to moving in favor of restricting line drawers, so not an independent body, still the state legislature is in control of redistricting, and now they would be limited. That's the idea with this effort to pass 5 and 6.

So you look at this, and it's really an interesting story because Republican leaders, who have been the majority party in the Florida legislature for a long time now, well over a decade, they were vehemently opposed, as they should be, because they had the keys to the kingdom, and they made it clear that this was a Democrat scheme, that this opposition was really about sour grapes losers here.

And the real proponent of this reform was called Fair Districts Florida, and it's true that if you look at the groups who lined up in favor of this reform, they were primarily Democratic groups, and a lot of money outside of the state from Democratic folks came in and backed this measure. But it was really successfully framed as a valence issue. And this is Political Science 101. A valence issue means that none of us are in favor of terrorism, okay? That's the way to think of it. None of us are

opposed to education, right? None of us are opposed to drawing fair districts, right? So this was really pushed as a valence issue, and it was successful being pushed that way: gerrymandering is bad, let's stop this.

And it's very curious, because all the print media from Jacksonville, which is a lot more conservative than some other media outlets, like the one where I'm from, the *Tampa Bay Times*, they favored it, too. All the print media was on board for essentially pushing for this change. And so you had a lot of support, and it really became framed and overwhelmed Republican opposition, and so you get roughly 680,000 signatures, and that way you had enough signatures to put Amendments 5 and 6 on the ballot in 2010, and so it got on there, despite Republican opposition.

So the last part of this slide here is kind of interesting because a recent piece that will be in a book I'm editing by two guys in Florida, there's overwhelming support for Amendments 5 and 6. I mean, there's no real sort of partisan break or anything. There's no Democratic cut on this, Republican cut. There's overwhelming support. It cuts all across the electorate.

Okay, so let's think about what was in there and what we see more empirically. Pretty soon you all are going to have your eyes glaze over. I'm going to try to run through some numbers, so be prepared. So to the naked eye, it's difficult to determine if districts look any prettier with passage of 5 and 6. Remember, compactness, contiguity, those sorts of things, political boundaries are part of the prescription here.

But it seems to me—and I didn't catch the last talk—but it seems to me that I think we have agreement here that it looks like 5 and 6 can be thought of as now being VRA Section 5 covered, given the language of those amendments. Again, there's only five counties that were before under Section 5. And clearly districts are still drawn to favor an incumbent or political party. Neutrality has not been established, and I'll show you that.

So here we go. So this is just looking at minority representation, so U.S. House, State Senate, State House. There's been some growth, so if you look after 2010, before the redistricting and then after the redistricting you see some changes here. Forty-six total Hispanics, black elected representatives across the three offices, now 50. More gains in the State House, where you can carve up more than you can at other levels. Anyone know who this black Republican was who didn't survive? Allen West. I'll show you one of the reasons he didn't survive.

So it looks like minority representation was indeed on firm footing, but maybe they could have had more. That's an open question, and I'll sort of leave that at the end of the talk here. But if we just look at 2000-2002, the previous cycle before Amendments 5 and 6 were passed, and then we look at the latest round, you're going to see a distinct pattern. I'm not looking at open seats, but just incumbents here. Before you've got one Democratic incumbent defeated, clearly targeted by redistricting, and then you see in 2012 two Republican incumbents defeated.

Okay, so State Senate, one Democratic incumbent defeated before. Then after we see one Republican incumbent defeated. Redistricting played heavily in the latter case as well. State House, two Democratic incumbents defeated, and then after Amendments 5 and 6, four Republican incumbents defeated. And so maybe Republicans were onto something here.

So here's one of the things I would say about redistricting that's really critical. And I spent probably way too much time in my own research looking at these numbers. But we often look at the percent of the partisan vote, Democratic, Republican when we look at redistricting plans. I think more important than that is how many of the constituents do you retain. And so I call them redrawn if the incumbent loses them. So if they're the same, then you didn't lose them. If they're redrawn, those people you didn't represent until after redistricting. And so I literally spent the entire weekend computing these data for 2002 with GIS analysis.

But if you look at 2002 and then you look at 2012, we can look at these numbers. That VAP is Voting Age Population. So what percentage, on average, did incumbents have of new or redrawn voting age population through redistricting? And so these numbers are pretty telling. It's pretty interesting. Again, if you look at the different years, roughly about the same in terms of new voters in your district, but Republicans kind of went a little haywire here. They didn't really help themselves much.

If we look at the State Senate, again we see an increase across the board, so maybe Amendments 5 and 6 are doing something, where they're trying to make incumbency less important, because more incumbents, regardless of party, they're inheriting a new batch of voters, a higher percentage of redrawn voting age population.

The State House is quite striking here. And you can see how, in the State House before and after, that Republicans really screwed Democrats pretty good before. And I want to say that Republicans were in control of redistricting in both cycles. And look what they did with Democrats before Amendments 5 and 6. They really loaded them up compared to Republicans having new constituents. And then look post 5 and 6, or post 5, applying to the state legislature, and you see that it's pretty equal in terms of getting a higher percentage of redrawn constituents.

Okay, so this is the catalogue of people who were defeated in terms of incumbents in both redistricting cycles. And again, it is kind of interesting that they're all Republicans after passage. Before they're Democrats. Karen Thurman was clearly targeted through redistricting. I'm not so sure about these. I'm more of a congressional person than a state legislative person. But here's Allen West, who of course was a bomb thrower in Congress, but Republicans didn't think much of him, right? Seventy-seven percent of his voting age population was new to him, so he ran with basically a new district. And he spent mainly raising \$19 million, and he still lost.

So Ellyn Bogdanoff I'll just mention briefly because she was a dueling incumbent. Under the senate plan there were two incumbents placed in the same district, and they fought it out, and her opponent was Maria Sachs, a Democrat who beat her, who was an incumbent, and Ellyn Bogdanoff's district, you can see there, 51% new, and Maria Sachs' district was 60% new, the same district, so they both really got carved up. What killed off Bogdanoff was the percentage of the redrawn population that neither represented. If you look at the vote, she just got crushed by that part of the district.

So pretty telling in terms of these numbers. They're all pretty high, typically higher than the average, so you know that probably contributed. Obviously, in reality, you need to run a regression and you need to control for other factors, but we're not going to do that today.

So concluding thoughts. Amendments 5 and 6, they seem to have increased competition, because as I've showed you, the average percentage of the population that was inherited by incumbents clearly went up, especially in state legislative races, State Senate and State House. And because of that, it redounded to the benefit of Democrats more than Republicans, because Republicans had the majority, so it did work in that regard.

Legislators have moved in the direction of compliance, but clearly we're not anywhere close to say across the board half of your district, on average, is redrawn. If you want to talk about not favoring or disfavoring, that could be an easy benchmark to set, right, is you've got 50% people you didn't have, right? So you're not favored or unfavored. You got half.

And the real back story to this is really about demography catching up with the Republicans. There were roughly about 71% Anglos, to use Texas language, in Florida about ten years ago or so. They're down to about 58% now. The Hispanic population is about 22% now. A pretty big increase. And the black percentage is around 15%.

So with that in mind, you pass 5 and 6 in 2010 and it's a great year for Republicans, they pick up a bunch of seats. But what do Republicans do in the off year? They pass House Bill 1355 and they put in place a whole bunch of voting restrictions. And maybe that was sort of in response to Amendments 5 and 6 being passed. They cut early voting from two weeks to eight days. They eliminated early voting on the Sunday before the election, which was a big day for African Americans to get out and vote early after church, so they did lots of things. Registration drives. They cut back from about two weeks to turn in your sheet of registered voters to 48 hours.

And the League of Women Voters, they wouldn't even participate because they couldn't get it in on time, and that was overturned. So there was a lot in that that might have been a response to Amendments 5 and 6 passing. But the state became a little more competitive because of it, and Democrats were the beneficiaries. Thank you. *[Applause.]*

Mr. Nicholas Stephanopolous: Hello, everybody. It's a pleasure to be here. It's been a really great educational event so far, and I want to thank the Paul Simon Public Policy Institute for organizing this great symposium and for inviting me to participate in it. Okay, so we've just heard about the experience of one state that's well known for its good government practices, Florida, and now I'm going to talk about the record of another bastion of good government policies, which of course is New Jersey.

So I'll talk a bit about how redistricting commissions in general have performed all across the country, and then I'll zero in on New Jersey's record in particular. And just to give away the ending, commissions around the country have performed relatively poorly in terms of achieving partisan fairness, but they've performed well in terms of achieving competitiveness. And then New Jersey's commission has the opposite record. It's done very well in terms of partisan fairness, but it's done poorly in terms of competitiveness.

So earlier panels have laid out the different kinds of redistricting commissions that are out there. We have partisan commissions in some states. Those are commissions that are made up mostly or entirely of members of one political party. Those members are often officials who hold statewide office who receive their positions on the commission because of those elected positions that they hold. And no one really thinks that these are a great idea for reform, but they do at least have the benefit of redistricting more efficiently than a whole legislature might.

Then we have bipartisan commissions, which are the most common model for commissions in America. They typically have a balanced partisan composition. Usually each party gets to appoint half the members of the commission. Then those members get together and select a tiebreaker who can then vote with one side or the other to enact a plan.

And then finally we have nonpartisan commissions, which are supposed to be more insulated from the political process. California Citizen Commission, which we heard about earlier, is one way to try to achieve this political insulation. The technocratic Iowa model that we also heard about is another effort to achieve this kind of independence. Interestingly, pretty much every foreign country that has to redistrict uses some kind of nonpartisan model relatively along the lines of the Iowa approach. So foreign commissions typically have expert government bureaucrats on them—statisticians, demographers, etc., or they have retired judges on them, or they have professors with some expertise in the field. And as an academic, that's a staffing choice that I definitely support. [*Laughter.*]

Okay, so New Jersey. New Jersey actually uses separate bipartisan commissions for state legislative and for congressional redistricting. First its Apportionment Commission is responsible for state legislative redistricting. This body was created in 1966, so right at the peak of the reapportionment revolution of the 1960s. What happened was that the Supreme Court's one person, one vote cases in the '60s threw redistricting into turmoil in New Jersey and in many other states. A

constitutional convention was called in New Jersey, and at that convention the people decided to adopt this apportionment commission.

So the commission has 11 members. Ten of them are selected by the chairman of the two largest parties in New Jersey. Those ten members then get the first shot to try to agree on district plans. If they can't agree—and they usually can't—then the chief justice of the New Jersey Supreme Court selects the 11th member, and that 11th member serves as the tiebreaker and as the chairperson of the commission.

Then the redistricting commission is responsible for congressional redistricting. It was created in 1995, so three decades after the apportionment commission, although before it was adopted in '95, an ad hoc commission that the legislature created had handled the 1990 cycle of redistricting.

The reason why New Jersey adopted this commission in the '90s was basically litigation fatigue. In the 1980s there had been endless controversy over New Jersey's congressional map. It eventually had gone all the way up to the U.S. Supreme Court, which had struck it down. So there was some feeling of we're sick of this endless battle in court, let's just appoint a commission and hopefully spare ourselves some of this litigation cost.

The structure of the redistricting commission. Twelve of its members are appointed either by state legislative leaders or by the chairmen of the two big parties in the state. These 12 members then get a first shot at picking their chairperson. If they fail, as they also normally do fail, then the New Jersey Supreme Court picks the 13th member who again is the tiebreaker and the chairperson.

So this model actually is not very distinctive. This is pretty much the same kind of bipartisan commission that you see in quite a few other states all around the country. What makes New Jersey somewhat distinctive is who the chairmen of these commissions have happened to be over the years. And universally they have been either political science professors or law professors, all drawn from Princeton or from Rutgers.

And also these chairmen have universally taken a very active role once they've been appointed to the commission, so they haven't been content just to act as tiebreakers. Instead they've made very clear what their own preferences are and what they're going to consider in deciding which plan to vote for. And in particular, the criterion that Bartels and Rosenthal and Stokes have all emphasized is partisan fairness, so making sure that both major parties in New Jersey are treated fairly or symmetrically by the district plans that are adopted.

So when people talk about the New Jersey model of redistricting, they don't really have in mind just a bipartisan commission, because there are lots of those. What they really have in mind is this active, highly skilled chairperson who sort of pushes the commission towards good government goals like partisan fairness.

Okay, so that's how U.S. commissions in general and New Jersey's commissions in particular tend to be structured. But the point of reform in this area is not just to entrust line drawing to a commission, it's to entrust line drawing to a commission and then to actually get better district plans as a consequence. So what I'm going to do for the rest of my talk is also, like Seth, show you some data, and it's data about the performance of redistricting commissions. I'm going to show you five metrics, two of which relate to partisan fairness and three of which relate to competitiveness. And this is data, by the way, from the 1990 and 2000 cycles at the state level and from 1990 up until the present at the congressional level.

So very quickly. Partisan bias is the divergence in the share of seats that each party would win for the same share of the statewide vote. So, for example, if the Democrats win 52% of the seats with 50% of the vote, and Republicans get 48%, then a plan would have a pro Democratic partisan bias of 2%. The efficiency differential is the gap between the party's respective wasted votes in a state where a vote is wasted if it's cast for a losing candidate or for a winning candidate in excess of what the candidate needed to win.

Then the average margin of victory is just the average difference in vote shares between winning and losing candidates in a state. The share of competitive districts is the proportion of all the races that are decided by less than 20 points in a state. And electoral responsiveness is the rate at which a party gains or loses seats, given a certain change in the party's statewide vote share. So if Democrats would win 10% more seats if they got 5% more of the vote in a state, then a plan would have a responsiveness of 2.0.

Okay, so let's start with the record of commissions with respect to partisan fairness. And as you can see, the record is pretty weak. At the congressional level, both partisan bias and the efficiency differential are slightly higher, i.e., slightly worse in commission states than they are in states where the legislatures draw the lines. At the state level, partisan bias and the efficiency differential are lower in commission states, which is good, but the gaps aren't really that big. Maybe the gap is more substantial in the case of the efficiency differential. So overall, commissions don't seem to be having much of an impact in a positive direction on partisan fairness.

Okay, next. On the other hand, commissions are associated with pretty big improvements in competitiveness at both the congressional and the state legislative levels, and in terms of all three of the metrics of competitiveness that I mentioned. So commission drawn plans have lower average margins of victory, they have higher proportions of competitive districts, and they have higher levels of electoral responsiveness than legislatively drawn plans.

It's hard to know why commissions seem to improve competitiveness but not to improve partisan fairness. It might be that competitiveness is just easier to predict than partisan fairness, or it might be that you really get an immediately competitive benefit once you don't have incumbents themselves doing the line drawing and entrenching themselves in office.

So of course these slides have not controlled for any of all the other factors that might also be affecting partisan fairness or competitiveness. So Seth spared you regressions. I won't. So to take—I won't show the results, I'll show little checkmarks where all the numbers would actually be. So I ran a bunch of regressions where I controlled for all sorts of other variables that might also be having an effect on partisan fairness and competitiveness.

These are things like other redistricting criteria that states used—compactness, respect for communities of interest, respect for political subdivisions, etc., whether a state is covered by the Voting Rights Act or not, whether government in a state is unified or divided, the year of the election, the democratic share of the statewide vote, the socioeconomic diversity of the state, etc.

So in these models, the use of a commission was linked to a statistically significant improvement in the efficiency differential at the state level and to significant improvements in all of the different measures of competitiveness at the congressional level. And this basically confirms that those more simple bar charts that I showed you a minute ago are pretty much accurate, even though they don't include controls for any of these other factors.

So in these regressions I also looked at whether the use of courts to draw district lines has any impact. Courts, of course, often end up drawing district lines when the political process in a state breaks down or when the plans that political actors come up with are invalidated in litigation. And as you can see, in several of the models where commissions didn't have any impact, the use of courts to draw the district lines did have an impact, and in particular, at the state legislative level, the use of courts seems to have a positive impact on both partisan fairness and competitiveness.

And so it's a bit unclear why sometimes a commission works better and sometimes a court works better and sometimes neither one seems to have much of an impact. But what is encouraging is that in none of these models did the use of a commission or a court ever have a negative impact on any of the measures that I was studying, so that's quite heartening.

Okay, so this analysis suggests that the overall record of U.S. commissions is moderately positive, but certainly not overwhelmingly positive. Because I happen to have the data on Australia, I thought I would show you how Australian elections compare to American elections in terms of partisan fairness and competitiveness. So all Australian elections are carried out in districts that are drawn by independent, really technocratic commissions. They're permanent bodies. They're staffed with all sorts of demographers, statisticians, other experts.

And as you can see, those Australian commissions really do an excellent job in terms of both partisan fairness and competitiveness. The levels of partisan bias and the efficiency differential and the average margin of victory are all a lot lower in Australia than they are in America, and the share of competitive districts and the

level of responsiveness are both a lot higher in Australia than in America. So the point here, I think, is that the mixed record of U.S. commissions is not inevitable. It doesn't follow inevitably from the commission form. Commissions, in fact, can do a really outstanding job in terms of these metrics if they're structured properly, which the Australian ones are, and American commissions typically are not.

So believe it or not, this segue into good government Australian reform actually ties nicely back to New Jersey, of all places. So I mentioned earlier that the professors who have chaired the New Jersey commissions have really prioritized partisan fairness. And sure enough, the plans that the New Jersey commissions have come up with have done really well on both metrics of partisan fairness.

You can see, in terms of both partisan bias and the efficiency differential, both at the congressional and the state level, the New Jersey commissions do better than other American commissions, and the gap, in particular, for partisan bias in the U.S. House is really striking. Other commissions in the U.S. average a partisan bias of 11%, whereas New Jersey's commissions average only 4%.

Also interestingly this pretty impressive result in terms of partisan fairness has not stopped political parties in New Jersey from complaining about the results if redistricting. In the 2000 cycle the Republicans thought that the state legislative plans, that the chairman of the commission, who is Larry Bartels, they thought that the plans that he voted for were too pro Democratic in the Republicans' opinion, and so after the plans were enacted, the Republican controlled state legislature decided to cut state funding to all private universities in New Jersey with endowments over \$1 billion.

The only university that meets this criteria is Bartels' university, Princeton. The legislature also cut funding to the state Supreme Court because the legislature was annoyed that the court had chosen Bartels to be the tiebreaker in the first place. So it seems like not everyone likes these sorts of results.

So these are really positive results in terms of partisan fairness. Unfortunately, New Jersey's commissions have not done as well in terms of competitiveness, so at the congressional level, by pretty much every metric here, New Jersey's commissions have done worse than other American commissions. And the gaps are actually pretty striking, in a negative direction, when you look at the share of competitive districts and electoral responsiveness.

At the state level the record is more mixed. There's been improvement in terms of the average margin of victory in New Jersey, but there have been small declines compared to other commission states in the share of competitive districts and the level of responsiveness. We can't necessarily blame the commission for these unimpressive results. It might just be that the underlying political geography of New Jersey doesn't lend itself to highly competitive districts. But these results might also be the product of the commission's chairmen really focusing on partisan fairness, but

not paying as much attention to competitiveness. That's been a pattern now for decades in New Jersey.

Okay, so let me just leave you with a few concluding thoughts. First, I think New Jersey's experience does show that a properly structured commission can make a real difference when it comes to partisan fairness. So American commissions, in general, don't tend to improve partisan fairness, but New Jersey's commissions, which have these chairmen aggressively pushing for partisan fairness, they do make a difference.

Second, and sort of the flip side, is that if a commission doesn't pay much attention to competitiveness, then it's pretty unlikely that a high level of competition is going to suddenly appear on its own. So New Jersey's chairmen, for decades, have been neglecting competitiveness, and the result has been that New Jersey's elections over the years have been particularly uncompetitive.

And then finally, I definitely don't prefer bipartisan commissions. I think nonpartisan commissions are a better bet. But bipartisan commissions are the most popular model in America, and I think if they're going to be used, it makes sense to use with them, or to include with them, highly skilled and highly engaged chairpersons like Bartels and Rosenthal and Stokes.

So that's the real secret to why New Jersey has performed relatively well over the years. It's the abilities and the high level of activity of the chairmen that they've been lucky enough to get on their commissions. So I think the lesson for other states is if you're trying to figure out who should chair your commission, pick a political scientist and a lot of your problems will be solved. So thank you very much. *[Applause.]*

Mr. Mooney: Okay, well, thanks very much Professors Stephanopolous and McKee. Now we've got several minutes. We can open the floor for questions and further praise of political scientists. *[Laughter.]* Yes?

[Ms. Blanco]: I have a question as well as a general comment.

Male: Let's get a microphone so we can hear.

[Ms. Blanco]: It's a question of comment. Several people now, throughout the day, have, in talking about the Voting Rights Act, said that its inclusion means that even if not covered before, they are now covered because the language of the Voting Rights Act is in the constitutional amendment. I don't see it like that. I think the Voting Rights Act has two parts to it, Section 2 and Section 5, and we've conflated it several times here today.

All states have to comply with Section 2. If somebody said, well, if Supreme Court strikes down Section 5, then it'll all be over. No, we'll still have Section 2, and the criteria say you have to follow the Voting Rights Act. It will still exist because it refers to Section 2, which means you have to look at are there possible majority minority districts. So you mentioned that, the idea that Section 2 being in there

created coverage in the whole state, [whereas] it wouldn't exist before. Can somebody...? I don't understand it that way, so I was just curious how you... I think you made the point, and I'm curious—

Mr. McKee: Or I made the point, right? Wow, that's pretty loud. *[Laughter.]* I think I made the point. But I'm not a lawyer. I was in law school for two and a half months. Hated the hell out of it. But I would say that it seems to me that maybe the way the language in those amendments works is that there's court review in Florida, and so it seems to me that at least in substance that they would review these maps in a way that almost appears like Section 5 pre-clearance, so that's the way I look at it. I don't know if that would mean the necessary substance of what you need to do to comply is really in the amendment, because I don't think that's the case. But that's the way I look at it.

Ms. Blanco: I think it does make a difference, because Section 5 is about retrogression, is what you're looking at, and that's not all you look at under Section 2. You're just trying to see did they draw this district where there was a concentrated group and there was racially polarized [moving], and therefore there had to be a... Whereas a retrogression analysis is actually quite steep. I mean, you would never be able to draw a district that went down.

Mr. McKee: Yeah, and I think that's probably the case, is that if you would see retrogression, that I would assume that that's when you'd see cases come before the state, and then we'd see how it works, if it really looks like Section 5 pre-clearance or not.

Male: My understanding is that Florida tried to read in a retrogression requirement into their state constitutional language, so clearly Section 2 and Section 5 are distinct. I think Florida wanted a failsafe. If Section 5 is struck down at the federal level, by reading in an equivalent or by including an equivalent to it in their state constitutional language, they can have the retrogression requirement live on in Florida even if it stops existing at the federal level.

[Mr. Wattson]: I have made that same comment about the Florida language bringing the standard of Section 5 statewide in Florida. And I said that because that's what the Florida Supreme Court said in interpreting the language about minorities in the Florida constitution. It said that it read the intent of the people, [not only] that language, to extend the Section 5 standard beyond those five counties to include the whole state. So maybe a different Supreme Court would interpret similar language differently, but that's what the Florida Supreme Court said.

Ms. Blanco: Because it has retrogression.

Mr. Wattson: Yeah.

Male: Could you define partisan fairness?

Mr. Stephanopolous: Yes. I used two different metrics for partisan fairness. They're both commonly used metrics by political scientists. Partisan bias is probably the more commonly used metric. It basically says that you're allowed to have disproportionality of seats to votes, but what you need to have to ensure no partisan bias is symmetric treatment of the two parties. And what that means is that for any given vote share, if either party gets that vote share, they should get the same seat share.

So if Democrats got 55% of the vote and 65% of the seats, if the tables were turned and Republicans got 55% of the vote, they also should get 65% of the seats. So any deviation from that symmetry, that's the definition of the level of partisan bias. And so I calculated that metric for all states across all elections over the last several decades, and that was the basic data that I used to come up with the results that I showed you.

Mr. Mooney: And these are inherently unrelated to one another? They seem like there might be some theoretical linkage there.

Mr. Stephanopolous: They're quite related. They're modestly correlated, the partisan bias and the other metric that I used, the efficiency differential. They're related. The efficiency differential is a more recently produced metric, so not as much is known about how it performs. It's supposed to be a more sensitive metric than partisan bias. I think it's also more volatile, but it tends to move in tandem, in general, with partisan bias.

Mr. Mooney: But what about with competition? That's what I was suggesting, those two.

Mr. Stephanopolous: Oh. Those, I think, are conceptually and empirically separate things. They might even be in some tension because sometimes the way that you assure a high level of partisan fairness is by not having too many competitive districts, and vice versa. So they're not necessarily at odds with each other, but there's at least a possibility of tension, and they're certainly not proxies for the same thing. Certainly partisan fairness and competitiveness are different ideas and they can certainly point in different directions in different states.

Mr. Mooney: Good. Yes, sir?

Male: I want to continue the comment on that last point. My experience with the Ohio district of competition in 2011 where both partisan fairness and competitiveness were measured as separate things and it was very clear that they are not correlated. And if you're not careful, they're in fact anti-correlated. In trying to make things more fair, it's really easy to make it fair if I'm not worried about competitiveness, and vice versa, so just slice it up in different ways. But that's not to say that they are uncorrelated enough that with concentrated effort you can clearly achieve good results with both. So someone trying to draw the map with those metrics can, in

fact, get something that's highly competitive and meets the standards of partisan fairness, but it is not trivial.

Mr. Stephanopolous: And actually, one good example of that is the results of the recent California redistricting. They produced substantial improvements in terms of both competitiveness and partisan fairness. So when you're starting from an awful status quo, you can sometimes get simultaneous improvements along both dimensions. But there clearly could come a time where they start pointing in different directions.

Mr. Yepsen: Chris, we're really getting into the weeds here, which I warned everybody was going to happen. And I want to kind of back off to the side a little bit here. I'd like to ask all three of you, really, because Chris, you're certainly expert in this, too. What recommendations do you have for the reform groups that are represented here about what ought to be put—from what you've learned, from what you know, what ought to go into the plans that they are trying to devise here in Illinois? Nicholas, I think you're probably involved in some of this, but I'd like to hear from all three of you.

Mr. Stephanopolous: Sure. So I've had a little bit of involvement with the Illinois effort, which I think is a really commendable project and is sort of doing a lot of the things that I think should be included in any reform effort. I think the ideal is to... I think you need institutional reform. I think that only adopting stricter criteria for line drawing is unlikely to get you the benefits in terms of partisan fairness or competitiveness that reformers largely want.

And when it comes to the specific terms, I think that the more insulated the commission can be from ordinary politics, the better. The more expertise the commission can have, the better. So I look at the foreign models, and I think those are actually better templates than what we've seen in the U.S. Iowa comes closest in the U.S., where it's a semi-permanent body—or a permanent body with a lot of built up knowledge and expertise. That helps a lot when it comes to line drawing. In terms of criteria, I think reformers have it about right in the usual sets of criteria that we hear.

I would put in a plug for—I do think it's important to, at some point in the process, have some analysis of the potential electoral consequences of a district plan. It's very clear that in a lot of states, if you just follow compactness, contiguity, communities of interest, you might accidentally end up with an awful gerrymander against one party or the other, or you might end up with very uncompetitive districts. You might get lucky and not have those problems, but there's no guarantee. So I think it's important both to have an insulated body and also to have some check built in to make sure you haven't accidentally put together either a partisan or a bipartisan gerrymander.

Mr. Mooney: Seth, what do you think?

Mr. McKee: I was hoping you'd go next.

Mr. Mooney: I'll just [yes] to whatever you say.

Mr. McKee: I'm pretty agnostic about redistricting in general. I don't have a...I'm just not terribly normative about the issue. I enjoy a good redistricting fight. *[Laughter.]* I enjoy analyzing it, seeing who lost, who won. To be honest, though, I think what do voters want? I think we've talked a lot about elites and how elites want to reform the system, but what do voters want? I think that's the question that really matters. And when you put it in terms of what voters want, I think it changes the dynamic because voters don't want a new incumbent every two years or four years.

And so I think in that sense, I think competitiveness, to some extent, is overrated. I don't think that you want extreme gerrymanders for one party or the other, but let's face it, some parts of states are clearly Republican and Democratic, and why would you carve the hell out of that part of the state to make it competitive? That's probably not what voters want. So I could go in many different directions in terms of redistricting reform, but I think we need to ask what are voters about when they think about representation, and I think that matters maybe more than some grand scheme that elites want to impress upon them.

Mr. Mooney: Yeah, a good point. One thing I would just like to say, to take a different angle on this, I guess. Again, as a political scientist, I try to be sort of non-normative about these things, too, but I do think that in Illinois, if one wants to see reform, it may be, as is usually the case in politics, to approach it practically from an incremental perspective.

And yes, I agree with Nicholas that maybe getting a big structure, lots of nonpartisan institutions—if you ever look at how the California group selects their members, it's amazing. But I just, given the situation in Illinois, I don't see anything like that happening any time soon, unless you can convince the Supreme Court to let an initiative slip through that tiny little eye in the needle in the state constitution.

Now, given that, I do think that it is possible to make some progress on redistricting principles, and that is less threatening to the body politic and people in power, and it is, again, sort of a valence issue, right? If you've got the right campaign going, who's against contiguous districts or fair districts, in concept, right? Not when it's my district, but in concept, five years away from the next redistricting. And there has been some research that's shown, and I think we've heard a little bit of it talked about today, that yes, criteria are not a panacea, and they can be ignored or tweaked or fiddled, but they do have an impact, and that might be the place to start and move forward from there.

Mr. Yepsen: Chris, I think you've got one last question over here.

Mr. Mooney: Yes, sir?

Male: With respect to that question about what the voters want, it seems to me one side of this is who's getting elected and then the other side is about ranking. And the voters, I don't think, care who gets elected. They don't have polarization and all the bipartisan fights going on. They want [effective] government. Is there any suggestion that when you drill down the competitiveness that that measure, whether or not it results in more effective government or bipartisan efforts to solve problems at the level of governance? So you could [pass] the election level to actually the governing level and whether or not all this results, when you get to a competitive process, in better governing.

Mr. Mooney: Well, one of the arguments against the redistricting as it's done now with the high tech GIS, we can do this so perfectly, is that it leads to exactly what we have, say, in the U.S. Congress, where we've got this incredible polarization, where you've got congressional districts, as has been mentioned, where you've got no competition between the parties, all the competition is within the parties, and therefore the members of Congress are afraid to do anything. They all run to the extremes instead of running to the middle, like economists suggest they might. So they run to the extremes. They're worried about a primary fight, they're not worried about general election fights. So indirectly this sort of reform could do what you're talking about.

Mr. McKee: And I would just say one thing about that—and Chris, you probably know this as well—that the evidence that redistricting is really one of the culprits for polarization is thin, at best. It's very thin. And one of the reasons why is because what's happened in American politics over the last three decades. I mean, we're just a lot more partisan as an electorate than we were in the '70s and '80s, so that's just going to play out. Yes, voters tend to be in the center ideologically speaking, but I'm not sure that redistricting is going to get you much in terms of tamping down polarization.

Mr. Stephanopolous: On that point, I think there's a lot of things that the reform of redistricting can accomplish, but I don't think greater centrism or greater moderation in government is one of them, because as I've said, the best empirical studies suggest that gerrymandering is not a major driver of polarization in contemporary American politics. So if you're troubled by polarization, a place to start might be to reform the primary process. I think party primaries are one of the large drivers of polarization. IF you can make it so more moderate nominees are likely to result from the primaries, then you're talking about actually lessening the current level of polarization. But I agree with Seth that there's a lot of deep historical causes for polarization, and it doesn't seem like gerrymandering is one of them.

Mr. Mooney: Okay, well, thanks very much. Please join me in thanking our speakers.
[Applause.]

[End of recording.]



WHO HOLDS THE CRAYONS?

HOW OTHER STATES DRAW LEGISLATIVE DISTRICT LINES SYMPOSIUM

David Ellis

David Yepsen

(TRANSCRIPT)

April 2013

Transcript Prepared from:

Who Holds the Crayons? How Other States Draw Legislative District Lines

April 30, 2013 – Inn at 835, Springfield, IL

Sponsored by the Paul Simon Public Policy Institute, the Joyce Foundation, and
the McCormick Foundation.

**Southern Illinois University
Paul Simon Public Policy Institute**

**Who Holds the Crayons? How Other States Draw
Legislative District Lines Symposium**

April 30, 2013

David Ellis, David Yepsen

Mr. David Yepsen: I felt like we needed to make sure we heard all sides and got some different perspectives, and so I called my friend Steve Brown, who's a good Saluki and who is also the spokesman for Speaker Madigan and I said, Steve, with all due respect to Fox News, I've got to be fair and balanced here a little bit. And he suggested that I invite David Ellis.

David is most famous here in Illinois as the lawyer who prosecuted Rod Blagojevich before the legislature during his impeachment proceedings. David is also a novelist and a very talented and well respected lawyer here in this state. So what I'm going to do is David and I are going to go sit down over there, I'm going to ask him to make some comments about redistricting in general, and then I'll have a few questions for him and we'll throw it open to your questions or comments, and then we'll adjourn in 20 minutes or so, all right? David, welcome. [*Applause.*]

Mr. David Ellis: Thank you all for having me here. It was interesting, when I first talked to David and he said we're having a meeting about reforms, and we need somebody to defend the status quo, and I said, "Oh, is that me? Am I defending the status quo?" I didn't know I was defending the status quo. But we actually settled on a title that I think says "Careful What You Wish For."

To me, I would just say think about what you're doing. I know that there are some citizen commissions out there, and I am not in a position to say whether they've worked or not because I haven't studied the empirical results. I assume you've heard a lot of that tonight. But I would say that theoretically there could be some problems. When I think of a citizen commission, the first word that comes to my mind is accountability, or perhaps lack thereof, political accountability.

For those of you who know redistricting law, which is probably most of you, you've probably read a lot of Supreme Court cases going back to the '60s about redistricting, and they all say the same thing. They all say federal courts should be very loath to intrude into the area of redistricting. We can come in to eradicate racial discrimination, we can come in to vindicate the federal Voting Rights Act, but as a general matter, we stay out.

And why do they stay out? They stay out because federal judges are not politically accountable to anybody for the decisions they make, and they say the people who

are politically accountable should be the ones who are making these inherently political judgments. So if you have a commission that has no political accountability, I would just be concerned about exactly how they're going to make decisions. There are all kinds of policy decisions that have to be made.

And I know that in some of these instances, when you create a commission you make lists. I believe that Arizona's has a list of things, either in the constitution or the state law that enables the commission, that says the order in which they have to consider things. And that's nice, that's fine. But at the end of the day, these things are still going to compete with each other sometimes.

And it's one thing to talk about, oh, we can hire a lawyer to tell us how to follow the Voting Rights Act. Yeah, you probably can. But there are going to be all kinds of things dealing with minority voting rights, one person, one vote where there's going to be judgments call you have to make, keeping communities of interest intact. And if you leave that to a group that has no political accountability, I just wonder, as a theoretical matter, whether that's the right thing to do.

So I guess if I were to summarize the things that I would be cautious about, number one would be are we sure we're getting what we're asking for? Are we sure we're getting a partisan-free consideration of a map, and then second of all, are we sure that we want unaccountable people to be making these rather sensitive policy judgments? In a nutshell, those would be the two things I would be concerned about if I were thinking about how to do something like this.

Mr. Yepsen: How could any of these reforms that have been proposed be any worse than the system we have now?

Mr. Ellis: Well—

Mr. Yepsen: In the case of the majority party, the party that controls the legislature and the governorship, they go off into a closed room, there's not a lot of media people, not a lot of transparency, and they draw a plan, which is sort of the title of our meeting today, who controls the crayons. How are any of these proposals worse than that?

Mr. Ellis: It depends on what you mean by worse.

Mr. Yepsen: Well, there is no transparency in the status quo is there, David?

Mr. Ellis: Well, is it the process or the result you care the most about?

Mr. Yepsen: We're talking process here.

Mr. Ellis: Well, but I mean, you could have a process where God sends down five saints from heaven who have no political anything, they don't care about anything to do with politics. No, I mean, really. They blindfold themselves. They don't get political data, they don't know political data, they don't care about political data.

They just draw a map in the closest thing to a grid-like map that they can, but they end up with a partisan gerrymander. Is that better than people who are politically motivated but who might, in doing so, actually draw a better map?

It's really what does better mean, how do you define it. Do you define it, first and foremost, as free of partisan bias? I mean, look, I'm not here to tell you guys what to want. If that's what you want more than anything, something that is completely untainted by partisan bias, there is probably a way you can do it. But are you sure that that's all that you care about?

Let me give you an example. Let's say that you have an area of the state, let's just say Illinois, let's say you've got a congregation of minority voters of the same race, African Americans, okay? And let's say you have less than...the number of African Americans in this geographic area are not enough to make a majority of a district.

Now, if they were a majority of the district, we all know that the Voting Rights Act would say you have to draw them their own district. You have to keep them together in a district, give them a chance to elect a candidate of their choice. But what if it's less than 50%? What if it's 40%? What do you do? Well, we know from *Bartlett v. Strickland* that the Voting Rights Act absolutely does not mandate the drawing of all of those African Americans in one district. It doesn't. That doesn't mean you can't do it, it just means that you don't have to.

So you're an independent map drawer. You can do whatever you want with that group of people. You could keep them together or you could split them. Now let's say that you know the partisan behavior of this group, and they're largely Democratic. In Illinois there's a very high correlation that way, so let's just pretend that they're Democratic.

Now let's pretend that next to them is a pocket of people who are very Republican. So now you have a choice. You can say, well, I'd like to keep these African Americans together regardless of their party because I want to give them political strength. That's a good thing, right? I think most people would say yeah, that's a good thing. Or I could split them in half, along with the Republicans right next to them, and draw a north-south district where I have ensured perfect competitiveness of two districts.

Which one of those results is better? My answer is it depends on what you define as better. I just don't think it's that cut and dry that the only thing we should be concerned about is a lack of partisan bias. It's well intentioned, but is that the result? Because all that really matters, at the end of the day, is the map that you draw, not why you drew it or how you drew it. I mean, look, how you drew it is important, obviously, but what really matters, the impact on people's voting rights and all those things, is what the map is when it comes out.

Mr. Yepsen: But David, wouldn't, whether you have the current system or a new system, don't both have to comply with the Voting Rights Act?

Mr. Ellis: They do. And so when you're talking about having to comply with the equal protection clause or the Voting Rights Act, that's what I would put down in the category of the easy part. The example I gave you was one where the Voting Rights Act does not say what you have to do, so you have an open choice to make either one.

Mr. Yepsen: Yeah, but you can't pack minority groups so they're concentrated in one place, and you can't crack them so you dilute their power. I mean, wouldn't that standard apply to either the current way we do redistricting or to a new reformed system?

Mr. Ellis: I don't want to get too bogged down in the legalities, but what I just described to you would not be packing or cracking. It would not be a majority of a minority in one district. Then if you split them, then you're violating the Voting Rights Act. If it's less than 50%, so in Illinois, if it were like, say, 40,000 people, so that's about 40% of a district, you could do basically, under the Voting Rights Act, whatever you want with that population. You can split it into four, you can keep it all together, you can do any variation of those things.

Mr. Yepsen: Wouldn't a citizens commission at least be more transparent in dealing with the situation? You set up a hypothetical. There's one way of doing in which people get together in an office building in Chicago and the Democratic majority draws the lines, or there's a citizens commission in which people get together in an open meeting and have a discussion about this. And the reason I ask that transparency question, David, is in the state there is a real tension between minority groups, African Americans and Hispanics, over some of these issues of how we build these districts.

Mr. Ellis: Yeah, no question about it.

Mr. Yepsen: Latinos feel like they're being left out, and many black legislators are saying we have to protect our communities of interest. So dealing with those questions is a given no matter whose system you use. Wouldn't a more transparent one be better, more socially desirable?

Mr. Ellis: Maybe. Or would the better system be the one where the people who drew the map are politically accountable for their decisions?

Mr. Yepsen: At the ballot box.

Mr. Ellis: Yeah.

Mr. Yepsen: Is there real, true political accountability in a system where you have districts that are drawn to protect incumbents?

Mr. Ellis: Well, I don't know that that's the system. That's not the system that I described. I'm just making the distinction between people who, when they draw their districts, they have to answer to whoever it is they have to answer to, either the

voters or the people who are representing the voters, putting pressure on, don't draw my district this way or that way. These aren't people who are operating in a vacuum.

There's something to be said about operating in a vacuum. I mean, Article 3 federal judges love operating in a vacuum, and I'm sure they think they do everything just fine. But again, what they always say is politically accountable people should be drawing the districts.

So if you've got these decisions that are not mandated by federal law, not mandated by the Voting Rights Act, you can pick. Is it more important to you to have a district that protects minority voting rights or two partisanly competitive, 50-50 districts? Who's going to make that decision? Why should it be somebody...at least why necessarily should it be somebody who has no political accountability?

Mr. Yepsen: Okay, what about an Iowa type system, when you don't have a commission, you have a computer that draws a map, it goes to the legislature, they vote it up or down. If they vote it down, a computer spits out another map. They vote that up or down. If it goes down, they have a third map that they vote on that but they could amend. What's wrong with that? Isn't that accountability by the people who are elected?

Mr. Ellis: I don't know how a computer could draw a map in compliance with the Voting Rights Act. That is not a pure demographically driven consideration. Determining whether you have to comply with the Voting Rights Act is not just punching numbers into a computer. I mean, Iowa may not have the Voting Rights Act apply to it. I don't know if they have enough minorities.

Mr. Yepsen: Yeah, that's too lily white. One other question I had. As you know, the reform groups are ginning up this effort to try to put an initiative on the ballot here in Illinois.

Mr. Ellis: I didn't know that.

Mr. Yepsen: There is a narrow window in the state constitution, as you know, that says you can have initiative only in cases involving, I think it is, the policy and procedure of the legislature. In your mind, is it your legal opinion that such an effort to create a citizens commission, would that pass muster with the courts in Illinois, or do you think that that goes beyond the scope of that and would be ruled off the ballot?

Mr. Ellis: A constitutional amendment to change how we redistrict?

Mr. Yepsen: Yes.

Mr. Ellis: And it would amend Article—

Mr. Yepsen: I'm not asking whether it's a good idea or not. I'm just asking for your assessment of whether the reform groups are going to be able to—I assume they can get the signatures on their petitions. That's a big assumption. But let's assume

that they can and that they're not knocked off the ballot, as is often done in this state. And so it's before the court. Is this permissible by the Illinois constitution or is it not?

Mr. Ellis: You know what? Unfortunately, I'd have to see the language, because I think what the Supreme Court does is they employ this two-pronged test I think you referenced, form and substance, or process and substance, and I just don't even know what this looks like. I don't mean to duck the question. I just couldn't answer it without seeing it, sorry.

Mr. Yepsen: Sure, okay. Well, let's open this up to other questions from those of you in the audience. George?

George: I feel like a broken record, but I'm curious as to your thoughts of the previous system of multimember districts cumulative voting, and compare and contrast that to our current system.

Mr. Ellis: I don't know very much about multimember districts. I know that our current governor is the one who spearheaded the eradication of multimember districts. I wonder if he thinks that was a good idea or not. I have heard people say that the eradication of that has concentrated power in the leaders. But that's really...I don't even remember when that was. Was that in the '70s that we did that?

Mr. Yepsen: '80s.

Mr. Ellis: In the '80s, okay, early '80s. So I wasn't paying attention to our system of government in 1982, so I'm afraid I can't really tell you what it was really like. But that's the criticism you hear, is that it concentrated power, that Republicans and Democrats worked together under the multimember districts more often because they had more in common regionally. Whether that's a desirable thing or not is really not for me to say, I guess.

Mr. Yepsen: Other questions? Yeah, Nicholas.

Nicholas: You mentioned the importance of accountability for the people that are drawing the district lines. The classic reformer argument, of course, is that there isn't real accountability because politicians who do line drawing tend to entrench themselves in office. They're not ever held accountable for their decisions in the polls. In fact, they draw the lines so they can't be held accountable. So I was curious, first, what you make of that argument, but also, more broadly, do you oppose any efforts to put any kind of policymaking outside the hands of the legislature?

What do you think of the Federal Reserve? The arguments for the Fed are the same as the arguments for independent line drawing commissions. This is an area where we don't trust incumbent politicians. Let's take interest rates or monetary policy outside the hands of the legislators. It's the same sort of argument that reformers make for independent redistricting commissions. So I'm curious what you

make of the broader argument for withdrawing any policy issue from the control of the legislature.

Mr. Ellis: Well, I don't know how you can bifurcate the process. I don't know that you can give part of the policymaking to one body and part to the other. I can't even conceive of that. I understand what you're saying about the Federal Reserve. At the Illinois state level, I don't think that our courts would allow the legislature to give that much policymaking authority to the executive branch, which is the best analogy I can do. The courts here are a little stricter. The separation of powers is a little tighter in Illinois than it is in the federal constitution, as I've read the case law.

But am I opposed to there being any—I mean, I'm not really opposed to anything, first of all. If someone has a proposal, I guess I would look at the proposal. I don't know what the proposal is here in Illinois, so I don't really know that I say I oppose it. But I do think it would be a mistake to try to bifurcate it. I think you've got to give it to one body and have them to it. I don't know how you could split that.

Mr. Yepsen: Other questions or comments?

Mr. Ellis: I have either bored them to death or disgusted them.

Male: The last question that you were asked regarding the constitutionality, and whether it could pass muster with the constitution, I read your answer as being yes, it could, if the language were precise or if the language were written in such a way that the courts could buy it.

Mr. Ellis: You mean what David asked me?

Male: Yes, and you said you couldn't answer it because you couldn't see the language. Does that mean there is some language that could pass muster?

Mr. Ellis: You know, I wish I had boned up on my constitutional law and constitutional amendments. There's a very specific body of law, and there's not that many cases. There's only three or four. And if my memory serves me, they talk about that when you're amending the legislative article, it has to be both substantive and process driven. I think that's what it said.

And the judicial scrutiny of those is very strict, if I remember. It's very tough to get something on the ballot, as the Supreme Court has interpreted that. So it would be...if I remember all that correctly, and I think I do, then it would be very tough to get something on the ballot that would pass judicial muster. But until I saw it, I couldn't possibly, say, give it a thumbs up or a thumbs down.

Mr. Yepsen: Well, somebody correct me if I'm wrong, but didn't the court say that the cutback amendment that we just were talking about was permissible? If you're looking for guidance...

Mr. Ellis: They must have, or we wouldn't have cut back.

Mr. Yepsen: Right. So that would have been the late '70s or early '80s. Other questions? Peter?

Peter: If you're open to more general comments and just observations, I have a couple. One relates to competitiveness and relates to compactness. On the competitiveness, I wanted to put in a good word for elites, contrary to what Seth was saying. I think it's true that voters want to live in a district where their representative thinks just like they do, and so the ideal district for the individual voter would be one that was 100% for his party, totally packed.

But the people who don't want those totally representative, but would rather have some competitive districts tend to be the legislative leaders, because the leaders can't get anywhere reasoning with elected officials who have a lock on their seat, people with the same seat. And the leaders are usually trying to do something that's good for the state and good for the state as viewed...that will do well for their political party as a whole, although it may not be what these people from safe seats want.

So I think competitiveness is a good thing and it is the elites who are in favor of...in the legislature who are in favor of competitiveness as well as the ordinary members are in favor of just representation.

Mr. Ellis: You think that people with safe seats are harder to deal with?

Peter: Yes. That's what I've heard from legislative leaders.

Mr. Ellis: Because people with safe seats usually feel much more politically independent. They usually feel much more able to stick their neck out on tough votes. The people in the very competitive districts, when it's a very tight Republican-Democrat district, I think you will find, if you review voting records, that they are far and away the most cautious of voters. On controversial issues, they're least likely to stick their necks out, would be my experience.

Peter: So we would get better public policy if there were more safe seats?

Mr. Ellis: No, I didn't say that. I was just responding to your statement. Although I do think that this idea of people being...it's not exactly what you were talking about. You made me think of something, though. The idea of people being very close to their incumbent, is it really such a bad thing to take that into account?

If you don't worry so much about partisanship, but you just look at the fact that you've got a rep or senator who's been there for a long time and is very good and has an extremely good relationship with their constituents, is that an impermissible thing to consider, that there might be a—I mean, what if you were an independent redistricting commission and you get a petition signed by 30,000 people that say, "Please keep Rep. Jones as our rep because we love her, she's very good to us." So you ignore that and say, "No, I want a competitive district, so I'm going to cut those people out?" Is it really such a terrible idea to consider the incumbent-

constituent relationships? I'm not sure that it's always a bad idea. Maybe sometimes it is.

Mr. Yepsen: Other—

Mr. Ellis: I don't think you were saying that, sir, but I'm just making the comment.

Mr. Yepsen: Other questions or comments? Yes, over here, David.

Female: This may sound really simplistic, but it seems to me that if we were to agree that it's a political process, that redistricting is a political process and that there should be political accountability, which, I think, is what you're saying, and if transparency is very, very important, like the commission system does, why wouldn't we just try to increase the transparency of the political process instead of being in a back room in some whatever? Why wouldn't we keep that part of the process but have it be much more open?

And my guess is if it were much more open and was handled the way that the commission process is handled or was handled—I can't remember if it was in California or Arizona—my guess is that things might be done a little differently if people were watching.

Mr. Ellis: I don't think that's simplistic. I think that's probably true. I don't hear a lot of people arguing against transparency. I don't argue against transparency.

Female: Then why don't we do it, then?

Mr. Ellis: Well, I don't know. We probably had about 25 legislative hearings when we drew the 2011 map in Illinois. I think we had 25 in the House and somewhere between 20 and 25. I think the Senate had more than we did. If you mean actually while people are up there with the map and their computers and trying to do it and have everyone looking over their shoulder, you know, I mean... I'm not sure that would be particularly workable, but, you know, okay.

Mr. Yepsen: Well, but a public hearing over something that's a done deal is really not meaningful public input.

Mr. Ellis: Okay. I mean...

Mr. Yepsen: I mean, yeah, it's exactly what she's saying. Go ahead, keep the current system of drawing district lines, but somehow open it up so people can see how this process goes.

Mr. Ellis: Yeah, sure. Sure.

Mr. Yepsen: Brad?

Brad: David, a couple points that I want to make. Again, through the good work of the Simon Institute, they took a broad polling which shows that average, ordinary citizens, by 70%, would like to have a different redistricting process, so it's not the elites that are interested in this, it's your average, ordinary citizen. And you made my point that I was going to, as they were bringing the mike over, is the transparency needs to be after the maps are drawn so that there can be adequate time for meaningful public input on the maps, and that didn't occur after the last redistricting process.

Mr. Yepsen: Don?

Don: I'd like to start with an observation that we shouldn't let the perfect be the enemy of the good in this process. Just because we can't get a perfect plan doesn't mean we shouldn't move from what we've got, which I think most of us think is somewhat flawed, to something that might be potentially better. And on that score I'd like to reiterate what you were asking earlier.

Granted that the Iowa plan doesn't have to deal with the Voting Rights Act, but the technocrats in the Legislative Service Bureau are smart people, they're competent people, and I'm sure if we had minority concentrations in Iowa, they could figure out how to carve out those districts, and then you could use the same principles we use for the rest of the districts that don't have those problems, and Illinois could do the same thing.

Mr. Yepsen: I want to ask David one last question, and then we've got to wrap it up. It's been a long day. David, you're a student of politics in this state, you've worked in the process. It's clear Illinois has some problems. Wouldn't you at least agree with that? I mean, there's low public trust. You've got legislators, some who are under indictment. You've had—you know, the whole thing with two governors. I mean, it's a long list.

Mr. Ellis: Sure, yeah.

Mr. Yepsen: The state has problems, if we can agree on that. I'd like your prescription. You're a good lawyer, a successful lawyer, a great writer.

Mr. Ellis: Oh, my gosh.

Mr. Yepsen: What do you say to these reform groups who have lit upon this idea of redistricting reform as a way to fix a lot of other problems in this state? If that's not the way to go, what are your thoughts for how we improve the quality and performance of government in Illinois?

Mr. Ellis: Well, I mean, I've been asked—

Mr. Yepsen: Is there some other tree these folks ought to be barking up?

Mr. Ellis: No, I... To me, usually when I get asked this question, it's about our governors. Especially after Blagojevich, and I was associated with that, and everyone said two governors in a row, how do you fix that? My response to that is probably not very interesting or exciting to a reform crowd, but it is the voters need to be better informed.

I think that we had a very bad gubernatorial race that led to Rod Blagojevich's first election. He raised a lot of money. He hit his Republican opponent before...like the day after she won the primary, he was running negative ads. I think we had an extremely uninformed electorate, because I was not surprised about Rod Blagojevich. I didn't vote for him because I was afraid he'd just, you know, just judging from everything I had come to learn about him, he didn't seem like the greatest of guys. But too many people either vote for someone because of their political party or because they sound good on TV, and people don't dig down enough.

And it's just getting, to me it's getting worse. I watch cable shows because I'm kind of a news junkie, probably like a lot of people in this room, news and political junkie, and you listen to these people on TV, and it's just all sound bites, and they're just saying these few rote things all the time. It's so hard to get meaningful public policy discussion, either on television, a little bit more on radio, and everybody is getting polarized in the media just like they're getting polarized in the elections.

It's very frustrating to me because I think the real way to do this is for citizens to talk to each other, whether it's on the radio or public forums or whatever, and get better informed about these people who are running for office.

Mr. Yepsen: David, I want to thank you for coming here. You said you felt like you were walking into a den of lions.

Mr. Ellis: I did.

Mr. Yepsen: I hope it wasn't that bad.

Mr. Ellis: No, not at all.

Mr. Yepsen: But we do appreciate your carving out time and coming down here to do this, and thank you very much. [*Applause.*]

Mr. Ellis: Thank you.

Mr. Yepsen: I could talk all afternoon about this issue, and some of you probably could, too, but it's about 3:00 in the afternoon and I promised you all we'd adjourn about this time. I again want to thank David for being here. I want to thank our speakers again for coming from California, Florida, Arizona, from long distances to be here with us and share their thoughts about redistricting. Thank you all very much. I think we're adjourned. [*Applause.*]

[End of recording.]