Regulating Redistricting

It requires no special genius to recognize the political consequences of drawing a district down one street rather than another.

—Justice White, *Gaffney v. Cummings* 412 U.S. 735, 753 (1973).

by
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As 2010 nears, state governments are preparing for the decennial political ritual of equalizing legislative district population as revealed by the new census. If the past is a guide, legislatures will grind to a standstill as legislators wrestle with the politically charged task of redistricting. But where legislators, party leaders, staff, consultants, and lawyers spend considerable time, effort, and money on their obsession with district boundaries, political scientists come to mixed conclusions about redistricting's effect on electoral politics. About the only consensus reached is on the electoral effects of racial gerrymandering, where debate has shifted to its normative implications.

The conflict of interest of legislators drawing their own districts concerns good government groups, and they have taken action. The League of Women Voters and Common Cause successfully advocated redistricting reform in Washington, Idaho, and Arizona. Prominent politicians, such as California Governor Arnold Schwarzenegger and New York Governor Eliot Spitzer, have joined the reform movement and are pressing their state legislatures. Despite the dissonant voices echoing around the ivory tower, academics can contribute guidance to these reform efforts. This essay summarizes what political science and legal scholars know about redistricting institutions and criteria so that reform efforts, which sometimes seem to be predicated on intuition rather than consideration of how institutions and processes structure desired outcomes, may be better informed.

Redistricting Reform

Adam Cox (2004, 756) provides an insightful typology of redistricting reform: institution-selecting regulations, process-based regulations, and outcome-based regulations. Institution-selecting regulations fundamentally change who draw the lines; most favored by good government groups is to place redistricting in the hands of a redistricting commission that is divorced, as much as possible, from politics. Process-based regulations constrain a redistricting authority through the imposition of (hopefully) neutral criteria, such as requiring each district to have equal population in the wake of *Baker v. Carr*. Outcome-based regulations explicitly require a redistricting authority to achieve a political goal, such as drawing minority-majority districts as required by the Voting Rights Act, but can apply to other partisan or candidate goals, too. The three types are not mutually exclusive; indeed, they may be packaged together within a reform proposal.

Institution-Selecting Regulations

Under Article I § 4 of the U.S. Constitution, states are primarily responsible for determining their congressional and state legislative district boundaries, however, superseding federal criteria apply. In this two-layered process, state constitutions and statutes govern who draws district lines, when, and how, but if states do not satisfy federal or state criteria, courts may intervene.

Until recently, political scientists adopted weakly valid measures of gerrymandering, coding partisan or bipartisan gerrymanders based on which party controlled the state legislature and governor's office (e.g., Erikson 1972; Abramowitz 1983; Born 1985; Niemi and Winsky 1992). Since redistricting does not always follow the textbook legislative process, which itself is susceptible to party factionalism, a more valid classification of gerrymandering types examines the motivations behind a map (e.g., Ayres and Whiteman 1984; Basehart and Comer 1991; Cain and Campagna 1987; Campagna and Grofman 1990; Gelman and King 1994b). Understanding how redistricting institutions structure outcomes follows (McDonald 2004).

There are two basic types of redistricting institutions, those that follow the legislative process and those that use a commission at some stage. Twenty states empower commissions as the sole congressional or state legislative redistricting authority, a source of proposals to the legislature, or a backup if the legislative process fails. Circumstances outside the state's normal process might produce a different outcome than otherwise predicted, such as bipartisan maps adopted where one party controlled the process post-2000 in California and Ohio (see McDonald 2004; for post-1980 examples, see Ayres and Whiteman 1984, 310). Some states do not even use the same process for congressional and state legislative redistricting.

A redistricting commission may function differently from a legislature, but for a few exceptions these institutions are designed to concentrate power in party leaders, not to diminish it. There are two general types of redistricting commissions, partisan and bipartisan. On a partisan commission an unequal number of partisan appointees adopt a map by majority rule, leading to a partisan gerrymander. On a

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bipartisan commission an equal number of partisan appointees adopt a map or select a tiebreaking member by a supermajority rule. Both cases, either the selection of the map itself or the negotiations involved in selecting a tiebreaking member, lead to a bipartisan gerrymander. Commissioners are often either elected officials or handpicked lieutenants. Thus, these commissions tend to produce gerrymanders similar to those produced by the legislative process, if not more effective ones, because potentially meddlesome legislative backbenchers are not involved.

Ironically, good government groups advocate commissions as the best method for redistricting reform. These groups successfully adopted commissions by way of ballot initiatives in Washington in 1983, Idaho in 1994, and Arizona in 2000.[1] The archetype is Arizona's Independent Redistricting Commission (AIRC), which is distinguished from other states' highly political commissions in that it is designed to promote independence of commissioners, adhere to a defined set of criteria, be transparent, and provide mechanisms for public input.[2] The AIRC blends Cox's three reform types. It is an institutional departure from the legislative process and it operates under process-based criteria, one of which is outcome-oriented: drawing competitive districts. One size does not fit all, as reformers propose similar institutional structures that best fit their state's politics.

Reform groups do not advocate for Iowa's process, which is often lauded for the electoral competition it produces. Iowa's institution is similar to non-partisan election commissions used in other nations (Handley 2005), in that non-partisan legislative staff sends maps drawn under a well-defined set of criteria to the state legislature for approval. But there are reasons to doubt the model's portability to states where legislative staff is politicized. Furthermore, the state's competitive elections are a function of Iowa's overall competitive landscape, and Iowa does not have the complicating factor of drawing minority-majority districts. Finally, an escape clause permits Iowa's legislature to take control, as it did post-1980 (Ayres and Whiteman 1984).

Reformers' goal of commissioner independence is endeavored through qualifications (McDonald 2006, 237–8). The 1960 Alaska constitution innovated this approach by requiring that "none . . . may be public employees or officials."[3] Hawaii and Missouri commissioners are forbidden from running for office in the districts they draw.[4] These two approaches were subsequently combined in Idaho and Alaska reforms.[5] Prospective AIRC members must abide by these combined qualifications and are further vetted by the state's Commission on Appellate Court Appointments.[6]

Spatial modeling predicts pivotal commissioners' preferences play an important role in expected outcomes. Commissions with an equal number of partisan appointees using majority rule may break deadlocks by the appointment of a tie-breaking member, either selected by a commission majority vote or an outside authority. While the former tiebreaker choice may produce a bipartisan gerrymander, the latter may lead elsewhere. In 2000, the New Jersey Supreme Court appointed Princeton political science professor Larry Bartels as the tie-breaking member of the state's legislative commission. Bartels had partisan members bid for his vote by stating he would support the map scoring best on his proposed criteria. In a less direct way, the AIRC seeks a similar outcome by forbidding the tie-breaking member from being registered with a major political party.

Regardless of how districts are drawn, courts may have a final say. Redistricting is often conducted under severe time constraints, as maps must be adopted prior to candidate primary election filing deadlines. A constitutionally defective map may remain in place when there is not enough time to litigate constitutional violations. Court review can be expedited by formally requiring courts to review maps before enactment or by providing state supreme courts with original jurisdiction on redistricting matters.

Process-based Regulations

Process-based regulations seek to remove discretion from a redistricting authority through adherence to criteria. Arizona's commission must comply with a comprehensive criteria list that ironically worked against reformer's goals in that state (McDonald 2006). Where Arizona's constitutional language permits some commission discretion, Ohio's Issue 4, rejected by voters in 2005, would have gone further by requiring a proposed commission to automatically adopt the submitted map that scored best on constitutionally codified criteria. Some have even called for programming a computer to draw districts, though the technology has yet to advance where true multiple-criteria optimization is possible (Altman, Mac Donald, and McDonald 2005). The danger in adopting seemingly neutral criteria is that they may have subtle "second-order" biases (Parker 1990) that intentionally or unintentionally affect a political outcome.

State redistricting criteria are constrained by superseding federal criteria. In the wake of *Baker v. Carr*, districts must be of relatively equal population. Practically, this means that redistricting must occur following the census at the start of each decade.[7] The Supreme Court sets different standards for congressional and state legislative districts, generally permitting a 1% population deviation between the largest and smallest congressional district and a 10% deviation among state legislative districts.[8] Federal law requires single-member congressional districts,[9] and state law is controlling for state legislative districts. States must respect the Voting Rights Act, which I discuss below as an outcome-based regulation.

Cox (2004, 756) argues, "There is general pessimism about the ability of process-based regulations . . . to thwart partisan gerrymandering efforts." The pessimism arises from application of the equal population standard in the 1960s, which was predicted to significantly constrain gerrymandering (e.g., Cox and Katz 2002; Musgrove 1977; White and Thomas 1964). The ubiquitous scholarly redistricting research since indicates this goal was not realized. As Gelman and King (1994b, 553) note, "population equality guarantees almost no form of fairness beyond numerical equality of population." Perhaps practice makes perfect, as redistricting authorities learned to effectively gerrymander when repeatedly required to draw districts (Niemi and Winsky 1992, 566).

Cain, Mac Donald, and McDonald (2005, 16) herald the current period of redistricting litigation as the "non-federal criteria period." While some states have long-standing criteria, successful pressure for reform and state adjustments to evolving federal race standards prompted states to adopt more, sometimes complex, criteria. Litigants have thus increasingly found state courts a fruitful venue to challenge a map.

There are a number of criteria that vary among the states. Some states codify equal population standards that are more constraining than the 10% deviation permitted for state legislative districts. Although a recent Supreme Court decision permits mid-decade congressional redistricting under federal law, state law may forbid this activity and state courts have invalidated maps drawn mid-decade (Levitt and McDonald 2007).[10] The relatively non-controversial contiguity criterion is found in state law, though there are examples of districts of questionable contiguity that stretch across water or are connected at a point (Altman 1998). States may require districts to follow existing political boundaries, such as counties, cities, townships, precincts, and wards, which can have odd-shapes or even be non-contiguous. For example, Wisconsin's 61st Assembly District violates contiguity because it contains a non-contiguous ward,

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but not under state law, which simply defines all wards as contiguous.[11]

On compactness, academics have muddied the waters, not provided clarity. There are a surprisingly large number of proposed district compactness measures (Niemi et al. 1990), some of which are dependent on a district's orientation (Altman 1998). Iowa codifies a "perimeter to area" compactness standard,[12] while other states are silent. Without a concrete standard, in the *Shaw v. Reno* cases the U.S. Supreme Court struck down racially motivated districts on their "bizarre" shape, although shape is not a limiting factor in achieving other political goals (McDonald 1998).[13] However, state courts have on occasion overturned districts that violated state compactness standards.[14] Conventional wisdom holds that compactness standards favor Republicans (e.g., Cox 2004), though some argue otherwise (Polsby and Popper 1993), and one of the few articles on the topic finds compactness standards reduce minority representation (Barabas and Jerit 2004).

A recent redistricting criteria innovation is respecting "communities of interest." In response to the *Shaw* line of court cases that rejected maps based on predominant racial intent, states conceived communities of interest as a euphemism for racial communities, one that would not necessarily trigger court intervention since odd shapes could be justified on a non-racial basis (Cain, Mac Donald, and McDonald 2005). The difficulty with communities of interest is that there is no objective definition. Logically, it must apply to all communities, not just racial communities, opening the nebulous standard as a rationale for achieving any political goal.

The difficulty in defining communities of interest reveals a larger problem with process-based regulation and why there is much pessimism that process-based regulation is in itself insufficient to reform redistricting. In all but the most egregious violations of criteria, courts are deferential to the political process, particularly as it plays out in state legislatures. For example, a Michigan court declared that the redistricting criteria adopted in a previous legislative session were non-binding on the legislature that drew the maps.[15] As a result, criteria often only receive lip service. Further, there is a paucity of research that investigates the political effects of state criteria, so there is little guidance political science can provide to inform the reform debate. A complicating factor is that process-based political effects are heavily contingent on the political geography of a state: geographically-objective criteria may uniquely interact with the distribution of partisans and racial minorities. For this reason, perhaps the most promising avenue for studying effects is drawing maps by simulation under alternative criteria and observing the results.[16]

Process-based regulation may be most successful when implemented with institution-selecting regulation, i.e., a redistricting commission that operates under strict criteria. Recent court decisions suggest that state courts will hold commissions to a higher standard than they do legislatures. For example, court cases in Alaska and Idaho required these states' redistricting commissions to address constitutional defects.[17] The challenge, then, is to formulate concrete guidelines that a commission can follow and for which a court can hold a commission accountable.

Outcome-based Regulations

Where process-based regulations seek to limit gerrymandering by removing a redistricting authority's discretion, outcome-based regulations require a political outcome, be it safeguards against dilution of minority votes or overturning of an overtly political map. The federal courts have energetically enforced regulation of racial gerrymandering, but have been less enthusiastic to formulate, much less enforce, other political regulation. As such, legal scholars are pessimistic federal courts will enforce outcome-based regulations other than race (e.g., Issacharoff and Karlan 2004).

The 2006 reauthorization of the Voting Rights Act signals another 25 years of race-based regulation of redistricting, barring a successful challenge to the Act's constitutionality.[18] Here, the courts and Justice Department provide meaningful output-based regulation of redistricting. There is wide consensus in the profession that when racially polarized voting is present, grouping minority communities within or dividing them among districts affects the ability of minorities to elect, in legal parlance, their "candidates of choice" (Brace, Grofman, Handley, and Niemi 1988). The debate is over the effective percentage of minorities to place into districts to maximize their substantive representation (e.g., Cameron, Epstein, and O'Halloran 1996; Lublin 1999) and the policy implications of drawing such districts (Thernstrom 1987; Swain 1995).

The courts are often just another venue for political warfare, even concerning race-related litigation. Since 1970, only 10 of 35 court-approved congressional maps approved prior to the election following the census release did not favor a party or incumbents (McDonald 2006, 230). While political scientists have proposed partisan gerrymandering standards based on minimizing partisan bias, or more generally on maximizing partisan symmetry (Grofman and King 2007), outcome-based regulation of partisan gerrymandering by the U.S. Supreme Court is unlikely to emerge soon. The recent *LULAC v. Perry* decision reveals that Justice Anthony M. Kennedy, the swing vote on partisan gerrymandering claims, believes partisan gerrymandering is justiciable, but has yet to find a standard to his liking.

Perhaps meaningful intervention can come from state courts, where outcome-based regulation is found in some state laws. Idaho, Iowa, and Washington use similar wording to Hawaii's constitution, which requires that, "No district shall be so drawn as to unduly favor a person or faction."[19] Arizona, Washington, and Wisconsin (state legislative only), require competitive districts (McDonald 2006).[20] Arizona and Iowa operationalize this mandate through process-based regulations forbidding their redistricting authority access to election data and knowledge of where incumbents live.[21] While enforcement of outcome-based regulation by state courts is possible, ongoing litigation in Arizona over the commission's competition criterion suggests that such enforcement, if indeed warranted, may be elusive.[22]

Conclusion

Scholars and activists hold little hope for meaningful outcome-based redistricting regulation from the courts, which have proven reluctant to enter the political thicket on issues other than race. In the few states where outcome-based regulation is codified into state constitutions, state courts may play an important role in adjudicating violations. However, the exemplary case in Arizona is still under litigation, even as the 2010 census nears.

Reform, if it is to come, must happen through legislative or initiative action, and will likely continue to be addressed state-by-state. The favored reform among good government groups melds institutional reforms with process- and outcome-based regulations in the form of a redistricting commission that operates under a strict set of criteria. Academics can make their most robust recommendations on process. A significant body of literature on political actor motivations and institutional structures indicates that careful selection of commissioners can induce political outcomes that are at least somewhat removed from the political process, if that is one's goal.[23] Academics unfortunately provide little guidance on which process-based

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regulations will work best, but this is not without reason as redistricting criteria can uniquely interact with a state's political geography.

Process-based regulations are often mentioned in terms of producing outcomes, such as reducing manipulation of maps by parties or incumbents. Perhaps rather than rolling the dice and hoping for an outcome, process-based regulations should be dispensed in favor of outcome-based regulations. However, the public is perhaps most receptive to easily understood criteria regulating district shapes, even though the most visually offensive districts tend to be Voting Rights districts which state law cannot override. This underscores what reformers in Arizona who sought greater electoral competition through redistricting found when they implemented a laundry list of criteria: it is difficult, if not impossible, to simultaneously maximize several criteria. The choices and rank-ordering of criteria therefore matters. Furthermore, election outcomes are affected by rules and conditions in addition to redistricting (McDonald and Samples 2006, 14), thus reformers should understand that redistricting reform—indeed any electoral reform—cannot be everything to everyone.

Notes

1. Alaska's commission was established in 1960 and amended in 1998 by a ballot referendum forwarded to voters by the Republican legislature. I do not consider the 1998 referendum a reform effort since a motivation was to reduce the influence of the Democratic governor, who appointed all commissioners.

2. Common Cause. "California Common Cause Redistricting Guidelines." Available at: www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=366007; The League of Women Voters. "Redistricting Reform." Available at: www.lwv.org/AM/Template.cfm?Section=Redistricting; and The Reform Institute "Principles for Redistricting Reform." Issue Briefs, August 1, 2005. Available at: www.reforminstitute.org/DetailPublications.aspx?pid=56&cid=2&tid=5&sid=5. All web sites accessed January 27, 2006.

3. Alaska Constitution Article VI § 6.

4. Hawaii Constitution Article IV § 2; Missouri Constitution Article III § 7.

5. Alaska Constitution Article VI § 8 and Idaho Code 72-1502.

6. Arizona Constitution Article IV, Part 2, Section 1(3).

7. *Reynolds v. Sims* 377 U.S. 533 (1964) (finding redistricting that did not follow a regular timetable constitutionally suspect).

8. *Karcher v. Daggett* 462 U.S. 725 (1983); but see also *Cox v. Larios* 124 S. Ct. 1503 (2004) (striking down Georgia state legislative districts that purposefully underpopulated Democratic districts within a 10% deviation). In practice, states may need to justify any deviation, particularly for congressional redistricting, which is why redistricting authorities often strive for absolute equality, see *Vieth v. Pennsylvania* 195 F. Supp. 2d 672 (MD Pa. 2002) (striking down a Pennsylvania congressional map with a 19-person population deviation).

9. 2 U.S.C. § 2c.

10. *League of United Latin American Citizens (LULAC) v. Perry* 126 S. Ct. 2594 (2006) (upholding a mid-decade Texas congressional redistricting, but overturning parts of the plan on Voting Rights concerns).

11. Wisconsin Code 5.15(1)(b).

12. Code of Iowa, Title II § 42.4.

13. *Shaw v. Reno* 509 U.S. 630 (1993).

14. E.g., *Schrange v. Illinois Board of Elections* 88 Ill. 2d 87, 95 (1981) (overturning a state legislative district on compactness concerns).

15. *O'Lear v. Miller*, No. 01-72584-DT (E.D. Mich. May 24, 2002).

16. For an analysis of California Proposition 77, see Cain, Mac Donald, and Hui (2006) and Johnson, Lampe, Levitt, and Lee (2005).

17. *In re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska 2002) and *Smith v. Idaho Commission on Redistricting*, 38 P.3d 121 (Idaho 2001).

18. A suit challenging the constitutionality of the renewed Voting Rights Act is currently being litigated in district court, *Northwest Austin Municipal Utility District Number One* v *Gonzales* (1:06-cv-1384).

19. Hawaii Constitution Article IV § 6; Idaho Code 72-1506; Iowa Code Title II § 42.4; and Revised Code of Washington § 44.05.090.

20. Code of Washington § 44.05.090; Arizona Constitution Article IV, Part 2 § 1; and Wisconsin Code 4.001(3). The author used modeling techniques (Gelman and King 1994a) to identify competitive districts as a consultant to the AIRC.

21. Iowa Code Title II § 42.4. These criteria conflict with satisfying the Voting Rights Act, which demands knowledge of incumbent homes and analysis of election data.

22. *Minority Coalition for Fair Redistricting, et al. v. Arizona Independent Redistricting Commission* CV2002-004380 (2003).

23. Lowenstein and Steinberg (1985) for an argument against regulation of legislative redistricting.

References

Abramowitz, Alan I. 1983. "Partisan Redistricting and the 1982 Congressional Elections." *The Journal of Politics* 45 (August): 767–70.

Altman, Micah. 1998. "Traditional Districting Principles, Judicial Myths vs. Reality." *Social Science History* 22 (2): 159–200.

Altman, Micah, Karin Mac Donald, and Michael P. McDonald. 2005. "From Crayons to Computers: The Evolution of Computer Use in Redistricting." *Social Science Computing Review* 23 (2): 334–46.

Ayres, Q. Whitfield, and David Whiteman. 1984. "Congressional Reapportionment in the 1980s: Types and Determinants of Policy Outcomes." *Political Science Quarterly* 99 (2): 303–14.

Baker v. Carr. 1962. 369 U.S. 186.

Barabas, Jason, and Jennifer Jerit. 2004. "Redistricting Principles and Racial Representation." *State Politics and Policy Quarterly* 4 (4): 415–35.

Basehart, Harry, and John Comer. 1991. "Partisan and Incumbent Effects in State Legislative Redistricting." *Legislative Studies Quarterly* 16 (February): 65–79.

Born, Richard. 1985. "Partisan Intentions and Election Day Realities in the Congressional Redistricting Process." *The American Political Science Review* 79 (June): 305–19.

Brace, Kimball, Bernard Grofman, Lisa Handley, and Richard Niemi. 1988. "Minority Voting Equality: The 65 Percent Rule in Theory and Practice." *Law and Policy* 10 (1): 43–62.

Cain, Bruce E., and Janet C. Campagna. 1987. "Predicting Partisan Redistricting Disputes." *Legislative Studies Quarterly* 12 (2): 265–74.

Cain, Bruce, Karin Mac Donald, and Iris Hui. 2006. "Competition and Redistricting in California: Lesson for Reform." Berkeley, CA: Institute for Governmental Studies.

Cain, Bruce E., Karin Mac Donald, and Michael P. McDonald. 2005. "From Equality to Fairness: The Path of Political Reform Since *Baker v. Carr*." In *Party Lines: Competition, Partisanship and Congressional Redistricting*, eds. Bruce Cain and Thomas Mann. Washington, D.C.: Brookings Institution Press.

Cameron, Charles, David Epstein, and Sharyn O'Halloran. 1996. "Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?" *American Political Science Review* 90 (4): 794–812.

Campagna, Janet, and Bernard Grofman. 1990. "Party Control and Partisan Bias in 1980s Congressional Redistricting." *Journal of Politics* 52 (4): 1242–57.

Cox v. Larios. 2004. 124 S. Ct. 1503.

Cox, Adam B. 2006. "Designing Redistricting Institutions." *Election Law Journal* 5 (4): 412–24.

———. 2004. "Partisan Fairness and Redistricting Politics." *New York University Law Review* 70 (3): 751–802.

Cox, Gary W., and Jonathan N. Katz. 2002. *Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution*. Cambridge: Cambridge University Press.

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Erikson, Robert S. 1972. "Malapportionment, Gerrymandering, and Party Fortunes in Congressional Elections." *The American Political Science Review* 66 (December) 1234–45.
Gaffney v. Cummings. 1973. 412 U.S. 735, 753.
Gelman, Andrew, and Gary King. 1994a. "A Unified Method of Evaluating Electoral Systems and Redistricting Plans." *American Journal of Political Science* 38 (2): 514–54.
———. 1994b. "Enhancing Democracy through Legislative Redistricting." *American Political Science Review* 88 (3): 541–59.
Grofman, Bernard, and Gary King. 2007. "The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after LULAC v. Perry." *Election Law Journal* 6 (1): 2–35.
Handley, Lisa. 2005. "Comparative Redistricting Practices." Presented at the 2005 annual meeting of the American Political Science Association, Washington, D.C.
Issacharoff, Samuel, and Pamela Karlan. 2004. "Where to Draw the Line? Judicial Review of Political Gerrymanders." *Pennsylvania Law Review* 153 (1): 541–78.
Johnson, Douglas, Elise Lampe, Justin Levitt, and Andrew Lee. 2005. "Restoring the Competitive Edge." Claremont McKenna College, Claremont, CA: Rose Institute of State and Local Government.
Karcher v. Daggett. 1983. 462 U.S. 725.
League of United Latin American Citizens (LULAC) v. Perry. 2006. 126 S. Ct. 2594.
Levitt, Justin, and Michael P. McDonald. 2007. "Taking the 'Re' Out of Redistricting: State Constitutional Provisions on Redistricting Timing." *Georgetown Law Review* 95 (4), forthcoming.
Lowenstein, Daniel, and Jonathan Steinberg. 1985. "The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?" *UCLA Law Review* 33 (1): 1–75.
Lublin, David. 1999. "Racial Redistricting and African-American Representation: A Critique of 'Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?'" *American Political Science Review* 93 (1): 183–6.
McDonald, Laughlin. 1998. "Redistricting at the Millennium." *Southern Changes* 20 (3): 8–10.
McDonald, Michael P. 2004. "Comparative United States Redistricting Institutions." *State Politics and Policy Quarterly* 4 (4): 371–95.
———. 2006. "Redistricting and Competitive Districts." In *The Marketplace of Democracy: Competition in American Elections*, eds. Michael P. McDonald and John Samples. Washington, D.C.: Brookings Institution Press.
McDonald, Michael P., and John Samples. 2006. "The Marketplace of Democracy: Normative and Empirical Issues." In *The Marketplace of Democracy: Competition in American Elections*, eds. Michael P. McDonald and John Samples. Washington, D.C.: Brookings Institution Press.
Musgrove, Philip. 1977. *The General Theory of Gerrymandering*. Beverly Hills, CA: Sage Publications.
Niemi, Richard G., Bernard Grofman, Carl Carlucci, and Thomas Hofeller. 1990. "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering" *Journal of Politics* 52 (4): 1155–81.
Niemi, Richard G., and Laura R. Winsky. 1992. "The Persistence of Partisan Redistricting Effects in Congressional Elections in the 1970s and 1980s." *Journal of Politics* 54 (2): 565–72.
Minority Coalition for Fair Redistricting, et al. v. Arizona Independent Redistricting Commission. 2003. CV2002-004380.
Northwest Austin Municipal Utility District Number One v. Gonzales (1:06-cv-1384).
O'Lear v. Miller. 2002. No. 01-72584-DT (E.D. Mich. May 24.)
Parker, Frank R. 1990. *Black Votes Count*. Chapel Hill: University of North Carolina Press.
Polsby, Daniel D., and Robert D. Popper. 1993. "Ugly: An Inquiry into the Problem of Racial Gerrymandering under the Voting Rights Act." *Michigan Law Review* 92 (3): 652–82.
Reynolds v. Sims. 1964. 377 U.S. 533.
Schrange v. Illinois Board of Elections. 1981. 88 Ill. 2d 87, 95.
Shaw v. Reno. 1993. 509 U.S. 630.
Smith v. Idaho Commission on Redistricting. 2001. 38 P.3d 121 (Idaho).
Swain, Carol M. 1995. *Black Faces, Black Interests: The Representation of African Americans in Congress*. Cambridge, MA: Harvard University Press.
Vieth v. Pennsylvania. 2002. 195 F. Supp. 2d 672 (MD Pa.).
Thernstrom, Abigail. 1987. *Whose Votes Count? Affirmative Action and Minority Voting Rights*. Cambridge, MA: Harvard University Press.
White, John P., and Norman C. Thomas. 1964. "Urban and Rural Representation and State Legislative Apportionment." *Western Political Quarterly* 17 (4): 724–41.

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