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Redistricting in California: Its Effects on Voter Turnout in Minority Populations and Misrepresentation

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CLAREMONT McKENNA COLLEGE

REDISTRICTING IN CALIFORNIA: ITS EFFECTS ON VOTER TURNOUT IN MINORITY
POPULATIONS AND MISREPRESENTATION

SUBMITTED TO

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AND

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I. Introduction

Legislators politicize reapportionment because their careers are at stake—naturally, they try to use any political means at their disposal to ensure that their plan is beneficial to them. Impartial citizens, on the other hand, are able to look at the redistricting process from an objective perspective and would want an outcome that would best benefit their community. They have nothing to gain from attempting to manipulate or corrupt district lines. While many believe that leaving reapportionment in the hands of legislators will foster corruption and manipulated lines, some scholars are convinced that leaving this kind of decision-making to a nonpartisan commission will not yield the most effective results.

The methods and techniques used in reapportionment vary widely and carry significant weight in a community depending in their use. Changing lines may be manipulated to create a safe district for an incumbent, securing his seat in future elections. This can be seen as either a positive or negative consequence to a community. Although elected as a representative of a community, an incumbent isn't necessarily seen as favorable to every voter in the district. If lines were drawn in order to secure his or her seat, it would mean another term with an unsuitable representative. On the other hand, if there is a representative who has been with their community for a long time and understands the needs of the constituents, being displaced due to redistricting, would be seen as unfavorable—keeping their district safe from any opposition would guarantee that the same representative will be able to continue looking out for his constituents. Other matters at stake include keeping communities of interest together—involving racial and ethnic communities. Displacing a population of minorities into separate districts

would place them in a disadvantaged position and would create an environment where their needs would not be met. Their votes, essentially, would be lost and diluted among the majority. It is important to consider the various ways in which redistricting can be harmful to a community—but also create an opportunity for them to prosper. Taking political factors out of reapportionment, such as race and groups of interest, could be devastating to the community—creating a divided government.

No matter the intent, all lines will favor one party over the other, and without careful consideration can easily harm individual communities and groups alike. All cities have political issues that they need addressed by the people whom they have elected to be represent by. A political issue is anything that causes disagreements between different groups, parties, and interests within a community. Governments have the authority to exercise their power and dispute over what issues are important, how things should be done and what is the best outcome for everyone's benefit. In order for this idea of "good government" to take effect, an execution of a good plan is essential. A good plan is one that meets the redistricting guidelines such as equal population, contiguousness, compactness, respect for city and county lines, keeping communities of interest together, as well as avoiding negative gerrymandering, creating competitive districts at the same time.

2. Changing Demographics

According to the 2010 U.S. Census, Southern California's inland counties grew at a much more rapid rate, surpassing the growth of other regions in the coast. Counties like Riverside grew a substantial 41% in the last decade, recording 2,189,641 residents; San Bernardino County saw a 19% increase, with a total of 2,035,210.¹ Los Angeles County only saw a 3.1% growth rate in the last decade, with a total population of 9,818,605; San Diego grew by 10% and Orange County by 5.8%. Not surprising, Latinos saw the largest increase in population over the last decade, making up 37.6% of the state's total population.² California, despite the population boom, isn't gaining or losing a congressional seat since its population rate increased at an equal level to the rest of the nation. Political experts believe that the increase in Latino numbers played a crucial role in California holding on to its 53rd delegation seat in the House of Representatives in 2000. Across the nation, twelve seats were gained and lost by states. Most of the states that gained congressional seats have a growing Latino population to credit—Arizona, Texas, Nevada and Florida are among those. Senior director Rosalind Gold at the National Association of Latino Elected and Appointed Officials believes that California “would have lost a seat if not for the Latino population growth.”³

The 2000 U.S. Census found that California became the first “majority-minority” state, with non-Hispanic whites representing a little less than half of the state's

¹ Grad, Shelby. "California's Latino Population Increases, Inland Areas Boom, U.S. Census Finds | L.A. NOW | Los Angeles Times." Los Angeles Times. March 8, 2011. Accessed March 25, 2011. <http://latimesblogs.latimes.com/lanow/2011/03/californias-latino-population-increases-inland-areas-boom-us-census-finds.html>.

² Ibid.

³ Sanchez, Leonel. "Latino Population Grew about 25% in California - Noticias - SanDiegoRed." SanDiegoRed.Com. December 22, 2010. Accessed March 25, 2011. <http://www.sandiegored.com/noticias/2409/Latino-population-grew-about-25-in-California/>.

population. Current estimates count whites at 42% of California's population—Latinos are expected to outnumber non-Hispanic whites in the state by 2016 and are expected to become an ethnic majority in 2042 if current trends continue.⁴ Latinos represent about 33% of California's adult population, but only about 18% of that population is likely to vote—in contrast, whites account for 46% of the state's adult population, with 66% likely to vote. A lot of Latinos in the state are not registered as U.S. citizens and are therefore not eligible to vote. Surveys conducted by the Public Policy Institute of California [PPIC] show that 34% of Latino adults are likely to vote, compared to 44% of Asians, 57% of blacks and 73% of whites.⁵

Around 65% of Latinos are registered as Democrats [up 6 points from 2006 recordings]; 18% are registered as Republicans and 14% as Independents. White voters on the other hand are 43% Republicans and 37% Democrats. Latinos are also likely to consider themselves as politically liberal [34%]; as middle-of-the-road [33%] or conservative [33%]—whites [43%] consider themselves conservative rather than liberal. Southern California is home to about 54% of the Latino adult population and 66% of the likely voters.⁶ A majority of Latino voters are younger than 45—they have the highest percentage of likely voters under the age of 35 [35%], while half of the white voters [48%] are 55 or older. Latino voters are least likely among the ethnic groups to be college graduates with 29%—whites and Asians with 58% and 67% respectively.

⁴ "Latino Likely Voters in California." Public Policy Institute of California. September 2010. http://www.ppic.org/content/pubs/jtf/JTF_LatinoVotersJTF.pdf.

⁵ Ibid.

⁶ Ibid.

As mandated by voters in 2008, Proposition 11 will remove the task of redistricting from the hands of the Legislature and into a Citizen's Commission composed of five Democrats, five Republicans and four Independent members. The Citizen's Redistricting Commission Chair, Peter Yao claims he is "not surprised that California is such a diverse state." The 2010 census findings, which are being released in a month-by-month basis, are going to be used in the process to redraw districts based on their population and racial makeup.⁷

The number of Latino's to gain seats is expected to increase this upcoming election cycle once the lines are redrawn, but it's not going to be easy. "Folks in power don't give up control that easily—there will be tensions between the ins and outs," claims former chief counsel to the Republican National Committee, E. Mark Braden.⁸ While it's not possible to look into the future and predetermine whether the newly created Citizen's Redistricting Commission will draw a plan that will benefit the parties who have to gain or lose—we have seen before that removing the task out of the hands from legislators has provided positive results. Regarding incumbent displacement—under the Commission's plan, there will most likely be more challenges in the upcoming elections whereas fewer have been seen when reapportionment was done by the Legislature. The methods by which district lines are drawn, and later reapportioned, carry a heavy significance in the representation of an area and determine the strength of the incumbents' position—his or her political survival or likely defeat. While redistricting was designed to equally distribute the population throughout the state and to further increase the representation of

⁷DiMartino, Mediha. "Minorities Stand to Gain in Redistricting - Redlands Daily Facts." Home - Redlands Daily Facts. February 10, 2011. Accessed March 25, 2011. http://www.redlandsdailyfacts.com/news/ci_17357068.

⁸ Ibid.

each individual constituent, the driving force behind most incumbent legislators has been to protect their seats by making it difficult for new candidates to run against them.

3. Historical Context

3.1 *Voting Rights Act of 1965*

Originally drafted in order to give Southern blacks access to voting, the 1965 Act has been shaped into a tool to expand opportunities for minority representation at all levels of government. When signed by President Lyndon B. Johnson, the VRA was concerned with poll taxes and discriminatory literacy tests that prevented African Americans from voting. Section 2 of the Act restates the 15th amendment, “prohibiting any state or political subdivision from adopting voting practices that ‘deny or abridge the right of any citizen of the United States to vote on account of race or color.’”⁹ In 1970, 1975 and 1982, Congress renewed and expanded the provisions of the Voting Rights Act. In 1975, the special protections of the act were expanded to include Latinos, Native Americans, Asians and Alaskan Natives. In 1982, Congress amended Section 2 of the law to require that members of a protected group must “have equal opportunity ‘to participate in the political process and to *elect representatives of their choice.*’”¹⁰ The law was no longer meant to only apply strictly to discriminatory practice, but also as a way to alter the voting mechanism in order to increase minority representation. The intent was to assure that “protected” racial and ethnic minorities had their voices heard and votes counted. In Section 5 of the 1965 Voting Rights Act, there is a mandate that orders any jurisdiction with historic patterns of racial discrimination to let the government know if there are going to be any changes to their laws that might impact the ability of minorities in the political process. Termed “retrogression”—this proposed change is not allowed to

⁹ "(US) Voting Rights Act of 1965 - Text." Black Box Voting. Accessed April 25, 2011. <http://www.bbforums.org/cgi-bin/forums/board-auth.cgi?file=/2197/9518.html>.

¹⁰ Ibid.

take minorities a step backwards from their right of electoral authorization. If, for example, a district had an at-large voting system and was forced to change to a district-based system, the attempt to move back to an at-large system would harm the minority population—thus, not passing preclearance.¹¹

In the state of California, reapportionment after the 1990 Census added seven new congressional districts to the state. The plan, which was developed by a court-appointed panel of three master judges—after Governor Wilson failed to reach a compromise with the Legislature—placed California first in the nation in the number of majority-minority districts [13].¹² Along with the six congressional districts that contained Latino majorities, California's redistricting created three districts where Latinos and African Americans made up a majority of the population. In four of those districts, Latinos, blacks, and Asians made up a majority. There isn't a district in which African Americans or Asians alone create a majority of the population.

When the 2000 Census numbers were released, it became clear that California has become a majority-minority state. Because of this, scholars and observers were interested in the political, social and economic consequences of the state's shifting demographic profile. Since 1960, California's population has doubled and it is predicted that the population will reach 60 million by 2050. At one point the California population was 80 percent non-Hispanic whites; a generation from now, it will be 50 percent Latino.¹³ Since

¹¹ Epstein, David. "Estimating the Effect of Redistricting on Minority Substantive Representation." *Oxford Journals | Economics & Law | Jnl. of Law, Economics, and Organization*. June 11, 2007. Accessed March 25, 2011. <http://jleo.oxfordjournals.org/content/23/2/499.full>.

¹² Ibid.

¹³ Gay, Claudine. "The Effect of Minority Districts and Minority Representation on Political Participation in California." *Public Policy Institute of California*. 2001. Accessed March 25, 2011. http://scholar.harvard.edu/cgay/files/Gay_PPIC_2001.pdf.

1998, Claudine Gay and the Public Policy Institute of California [PPIC] conducted research and assessed how different ethnic groups react towards public policy by race and ethnicity, as well as an investigation on the voting behavior in homogenous and ethnically diverse neighborhoods.¹⁴ Gay's primary question is whether voter turnout is increased in majority-minority districts.

Her findings suggested that turnout among minority voters in the 1994 elections was highest wherever they felt they were able to play a meaningful role in political life. After adjusting for outside variables, she found that registered voter turnout among Latinos was 33 percentage points higher in majority-Latino districts than in majority-Anglo districts. African American voting-age turnout was highest in districts where blacks and Latinos were equally matched and together formed the majority of the voting-age population. Finally, she also found that Anglo turnout was not affected in districts where they were a minority.¹⁵ Minorities accounted for about 85 percent of the nation's population growth in the last decade—the largest ever recorded. Because Latinos have represented more than half of the growth share of voters in California, they should end up with more influence in the state's district elections.

“The growth of the Hispanic community is one of the stories that will be written from the 2010 census,” Census Director Robert Groves said.¹⁶ The 1965 Voting Rights Act ensures that the interests of minority voting blocs are not altered. While the law does not ensure that minorities are elected to office, it ensures that votes of minorities are not weakened in a way that will keep them from electing their preferred candidate. In past

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

redistricting cycles it hasn't been uncommon to see incumbents fall under pressure and manipulate districts either for personal or partisan benefits. In 1975 California state senator H. L. Richardson was quoted: "Fairness, impartiality, registration balance, justice, community interest, equal representation, equality, all of these considerations become so many words in a dictionary, they have little or no relationship to where the lines are drawn. The prime consideration is how to [mess with the] foe and fur line your friend's future."¹⁷ The threat that comes with determining the outcome of any political election through gerrymandering is the fact that it diminishes the worth and impact of any one voter, disregarding the "one man, one vote" decision handed down through *Baker v. Carr* in 1962.

3.2 *Baker v. Carr* [1962]

In the 1962 landmark decision of *Baker v. Carr*, the Supreme Court decided that reapportionment concerns in fact carried justiciable limits upon legal issues that the court could exercise authority over. This allowed the courts to intervene, when found necessary, over redistricting questions regarding the constitutionality of equal representation among voters. The plaintiff, Tennessee resident, Charles Baker, complained that although Tennessee's State Constitution required that the legislative districts be redrawn after every census (every 10 years), they had in fact not been redistricted since the 1901 census. In the six decades in which redistricting had not taken place in Baker's district, the population had shifted such that his district had roughly ten times as many residents than the surrounding rural districts in the area. In practical terms,

¹⁷ Grofman, Bernard. *Representation and Redistricting Issues*. Lexington, MA: LexingtonBooks, D.C. Heath, 1982. pp.8

the votes in the rural districts had more weight than those votes in the urban area. Baker argued that under the Fourteenth Amendment he was not receiving his “equal protection of the laws.” While the state of Tennessee attempted to argue that reapportionment was a political issue and not a judicial issue, the courts felt that they held the responsibility to assure that each voter be equally represented, as depicted under the Fourteenth Amendment.

Once it was declared that redistricting fell in the courts’ jurisdiction, the court implemented a new test for evaluating what was considered justiciable and what was left under political doctrine. More importantly, though, the court established the “one person, one vote” standard which held that each individual’s vote had to be weighted equally to another man’s vote. Brennan explained in his reasoning that if a state allowed one person’s vote to count for more than another’s due to their residency in another district, then they violated the citizens’ equal protection of the law. In their dissenting opinion, Frankfurter argued for a “restrained judiciary,” claiming “the Framers carefully and with deliberate wisdom refused to enthrone the judiciary... In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people’s representatives.”¹⁸ In other words, Frankfurter believed that such decision should not have been made through the courts. Soon after *Baker v. Carr*, 30 of the 50 states filed lawsuits calling for redistricting of their State legislatures. Because of the courts ability to now intervene in redistricting matters, more cases were presented to them, including *Reynolds v. Sims* in 1964, in which the Court further clarified its position, establishing a precedent of “one man, one vote.”

¹⁸ Dissenting, *Baker v. Carr*, 369 U.S. 186 (1962).

Despite the fact that reapportionment today has several problems, the way that legislative power was distributed throughout Tennessee before *Baker v. Carr* heavily malapportioned the voter population. It was the decision in *Baker*, which made a drastic transformation in the battle over redistricting. Shifts in the population meant that certain districts in the state were bound to emerge as controlling powers in the legislature. Due to the large influx of immigrant and industrial workers, Congress saw an increase in power to the Northeast and Midwest and refused to reapportion after the 1920 census. Rural district blocs realized that if they reapportioned they would hand over the power to the urban voters, thus removing incumbent politicians from their seats.¹⁹

When Baker's complaint went to the Supreme Court, Tennessee had refused to reapportion its districts in over 60 years, despite its Constitutional mandate to proportionally distribute populations across districts. Because of that there were large disparities in districts, affecting the voting strength of individual voters. At a certain point, districts with 40 percent of the state's voters were able to elect sixty-three of the ninety-nine members of the house, and districts with 37 percent of the voters could elect twenty of the third-three members of the senate.²⁰ This pattern was consistent across the country through much of the twentieth century—as the urban life in America increased so did the malapportionment of representation.

¹⁹ Ansolabehere, Stephen, and Samuel Issacharoff. "Baker v. Carr In Context." Accessed March 25, 2011. <http://dspace.mit.edu/bitstream/handle/1721.1/18097/Baker-edit.pdf?sequence=1>.

²⁰ Ibid.

3.3 *Colegrove v. Green* [1946]

The monumental case that made *Baker v. Carr* an influential icon in the battle for redistricting was *Colegrove v. Green* [1946]. In a 4-3 plurality, Justice Frankfurter held that the courts had no jurisdiction to interfere with issues regarding the apportionment of the state legislature. According to Article I, Section IV of the US Constitution, the legislature of each state is the only body allowed the authority to establish the time, location and way of holding elections, and only Congress can determine whether they had fulfilled equal representation among the citizens. *Colegrove* coined the term “malapportionment” when the state of Illinois failed to redistrict its Congressional districts since 1901, despite a large migration that left gaps between various districts. There were rural counties that held 1,000 voters and urban counties at 100,000 with equal voting power. While it was clear that the refusal of rural legislators to reapportion their districts was unfair, Justice Frankfurter believed that the Court had no jurisdiction in solving the problem. He believed that “for the Court to intervene would be to enter a sphere of power reserved to the legislative branch, that to do so would ‘cut very deep into the very being of Congress.’”²¹ Frankfurter was also concerned about the Courts’ ability to address reapportionment wrongs, something they held themselves detached towards. “At best,” Frankfurter declared, “we could only declare the existing elector system invalid. The result would be to leave Illinois undistracted and to bring into operation, if the Illinois legislature chose not to act, the choice of members for the House of Representatives on a statewide ticket. The last stage may be worse than the first.”²²

²¹ Ibid.

²² *Colegrove*, 328 U.S. at 552

Finally, in the most quoted line in the decision, Frankfurter declared: “Courts ought not to enter this political thicket.”²³

After the Court’s decision in *Colegrove*, malapportionment remained part of the political world, in which, without any threat from the judiciary, the legislature had very little incentive to reapportion their districts. With the continuous growth in population following World War II, malapportionment in the state legislature only got worse. It was because of this that there was pressure to change the process of redistricting in the legislature. Many organizations and interest groups in large urban areas looked to change the state legislative apportionment process through the ballots and legal action. Although there were a few notable court cases brought forth by the states, they largely decided to stay out of the legislative process. Even if the courts had heard these challenges, judicial mandate to reapportion would not have initially resulted as a solution.

3.4 After Colegrove

Obstacles stood in the way of the equal population requirement under the rules of reapportionment. To begin with, most states at the time needed constitutional revisions in order to be able to reapportion their populations adequately. A number of states had provisions that made it difficult to do this. Common requirements found in these constitutions—the New England and Connecticut Constitutions, written in 1818—guaranteed all towns at least one state representative and none more than two. Second, state legislatures often failed to reapportion according to population, despite the fact that it was their constitutional obligation. The state of Washington in 1956 managed to approve,

²³ *Colegrove*, 328 U.S. at 556

through the initiative, a new district map that would have created districts with equal populations. Promptly after it passed, the state legislature amended the initiative to keep the boundaries of the previous districts the same as before the initiative was enacted.

²⁴Finally, the electorate in many of these states actually supported malapportionment in their area. With the *Colegrove* and *Baker* decisions, there were a number of states that voted measures that attempted to force the legislature to accept existing requirements. In the state of California, in particular, reapportionment was a controversial topic presented to voters several times between 1946 and 1962. Initiatives to make representation based on populations within districts a requirement failed in both houses. Ironically, it was the initiative process—created to give constituents a stronger voice—that led to the most inequality in representation. In 1926, the California voters approved a federal plan which replaced the population-based requirement in representation in gave each county at most one seat in the Senate.²⁵

As the 1920's came around, rural legislators feared that they were gong to lose their representative power and so, joined other rural groups that supported initiative [Proposition 28]—known as the “Federal Plan,” due to the provisional resemblance to those of the federal constitution with respect to representation in the United States Congress.²⁶ This “Federal” Plan reapportioned the lower house on the basis of population and the upper house was apportioned on the basis of territory. The 1879

²⁴ Passantino, George, and Adrian T. Moore. "Redistricting in California: Competitive Elections and the Effects of Proposition 11." Reason Foundation. October 2008.
<http://reason.org/files/79d00eb443669b026c8c37c483f0bdb0.pdf>.

²⁵ Ibid.

²⁶ Brown, Louis. "Ballot Measures on Reapportionment." Pacific McGeorge School of Law. 2008. Accessed March 25, 2011.
http://www.mcgeorge.edu/Research_Centers_and_Institutes/Capital_Center_for_Public_Law_and_Policy_Home/Publications/California_Initiative_Review/California_Initiative_Review_Reports/Ballot_Measures_on_Reapportionment.htm.

California Constitution, under Section 6 of Article 4 provided for the division of the state into senatorial and assembly districts in a way that allocated 40 senatorial districts and 80 assembly districts equally through the state. Proposition 28, enacted in 1926, was a constitutional revision, which replaced Section 6, Article 4. The constitutional amendment applied solely to the State Senate, which left the Assembly to function as the representative body of the Legislature based on population. Main proponents of the amendment, such as the Farmers Union, and the Agricultural Legislative Committee claimed: "The growth of city population in California and particularly the unprecedented development of the two great urban regions of the state will have the effect, if representation is reapportioned according to present law, of consolidating political power in the inhabitants of 3 per cent of the area of the state to the prejudice of the representative rights of the balance of the population who inhabit 97 percent of the area of the state."²⁷ Opponents to the amendment believed that the measure would "preserve rural California and the great agricultural producing areas which compromise it, to the control of one house of the state legislature, namely: the Senate."²⁸ The plan wouldn't allow any county to have more than one senatorial district, and placed all of the less populated counties grouped together so that one senatorial district could include up to three counties.²⁹ Many proposals attempted to reestablish population as the basis for Senate reapportionment, but all failed.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Passantino, George, and Adrian T. Moore. "Redistricting in California: Competitive Elections and the Effects of Proposition 11." Reason Foundation. October 2008. <http://reason.org/files/79d00eb443669b026c8c37c483f0bdb0.pdf>.

3.5 *Reynolds v. Simms* [1964]

Since the 1962 decision of *Baker v. Carr*, the most important redistricting requirement has been “one man, one vote” and the Court has raised questions regarding the allowable range of population deviation among districts. In *Wesberry v. Sanders* in 1964, the Court held that the Constitution required that “as nearly as practicable, one man’s vote in a Congressional election be worth as much as another’s.”³⁰ *Wesberry* was a case involving congressional districts in the state of Georgia in which districts had to meet the approximate equality in population. Overrepresentation in House districts ended in the mid 1960s, largely due to this case. The court held that the population disparities in Georgia’s congressional districts were large enough that they violated the Constitution. In a related case, *Reynolds v. Sims* [1964], is known to be the famous Supreme Court case that expanded the doctrine of fair apportionment. *Sims* drew the nation’s entire political map, eliminating the increasing hold legislators had on urban society. The Court ruled that Alabama’s methods of electing members to both houses of the legislature had to be equal on the bases of population distribution. The 8 – 1 decision was based on the principle of “one person, one vote.” In the majority decision, written by Chief Justice Earl Warren, he stated, “Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.”³¹

In the city of Los Angeles, California, the senate district included more than six million people, while another scarcer district in the same state only had 14,000 in population—yet both had one delegate. It became obvious that the established legislatures were not going to pass any reform measures that would take away their

³⁰ *Wesberry v. Sanders*, 394 U.S. 526 (1962)

³¹ *Reynolds v. Sims*, 377 U.S. 533 (1964)

power and so the urban population, heavily underrepresented and denied equal protection of the laws, looked to the courts. State legislators who had been under the control of minority rural populations were now being elected by a more accurate majority of people, fairly distributed through the urban populations. Due to this major reconstruction of the legislature, there was a drastic change in funding for schools, roads, and social services—in a long time; people in urban and suburban areas were exercising their vote on an equal base as the rest of the state.

Wesberry was able to construct the fundamental idea that the representative government in this country is structured through equality and does not take race, sex, or place of residence into regard. The Courts' problem, then, is to determine whether there are constitutional problems that would explain any shifts on the standard of equality among voters in apportionment battles in the legislatures. A way to determine if State's legislative methods of apportionment violate the rights proposed under the Equal Protection Clause is whether the rights challenged are inherently personal. Chief Justice Warren stated that, "Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To sanction minority control of state legislative bodies would appear to deny majority rights in a way that far surpasses any possible denial or minority rights that might otherwise be thought to result."³² Furthermore, Warren made clear that in respect to the allocation of representation, all citizens, voters in the state, are equal and deserve their vote regardless of where they live. Anything that might otherwise suggest a differentiation between the equality in votes amongst citizens

³² Ibid.

cannot be justified by any discrimination, in regards to the weight of their votes. For the Court, the acknowledgement of fair and effective representation for all voters was the basic aim for legislative apportionment; therefore, they concluded that the Equal Protection Clause guaranteed” the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment” just as individual discrimination based off of race or economic status.

Not to be confused, there was a significant difference between the Supreme Courts’ decisions on malapportionment—the issue in the 1960s—and political gerrymandering. In the 1985 redistricting case of *Davis v. Bandemer*, the Court held that any claims dealing with political gerrymandering were justiciable under the Constitution. If an injured party was able to provide proof that they were harmed or injured through a discriminatory purpose, then they Supreme Court is able to intervene and correct the issue. In this case, Indiana Democrats claimed the reapportionment plan of 1982 was gerrymandered and intentionally disadvantaged Democrats. The three-judge district court sided with them and found the reapportionment plan unconstitutional. The Supreme Court, however, reversed the lower court’s decision, stating that although the claim, in theory, was justiciable—this specific claim did not reach the threshold required.³³ According to them, “intentional political gerrymandering constitutes unconstitutional discrimination when the electoral system effectively and continuously degrades a group's influence on the political process.” The Courts have never struck down a redistricting

³³ *Davis v. Bandemer*, 478 U.S. 109 (1985).

plan on the grounds of it diluting voting strength of the voters from a party that was disadvantaged.³⁴

³⁴ Professor Miller

4. A New Era In California

When the legislature failed to adopt a reapportionment plan accepted by then Governor Reagan in 1970, the Courts had to step in and for the first time take over the redistricting process.³⁵ After a series of gubernatorial vetoes and previous failures to override the veto, a Reapportionment Commission was established in order to be in charge of the process—it was later ruled, though, that the commission did not have jurisdiction over the process. In order to speed up the process, the California Supreme Court appointed three Special Masters to draw a blueprint and submit for approval, but no legislative plan was adopted and so, the Court decided on their own plan in 1973.

In the 1981 reapportionment plan, the public erupted in controversy over the settlement lines. Congressman Phillip Burton—Democrat from San Francisco—was one of the states’ most powerful politicians of the era and decided to put himself in control of drawing the new boundaries for California’s congressional districts. Despite heavy resentment from the Republican side, all three plans were passed by the legislature and were signed into law by Democratic Governor Edmund G. Brown Jr.³⁶ Republican protesters believed that the lines were drawn in order to give Democrats an advantage. Burton, in a satirical tone, did not deny the fact that gerrymandering was alive and well in the State of California and continued by indicating that his “zigzagging lines were [their] contribution to modern art.”³⁷ In response, the California Republican Party responded by supporting a series of referendums that looked to congressional districts—all three

³⁵ Passantino, George, and Adrian T. Moore. "Redistricting in California: Competitive Elections and the Effects of Proposition 11." Reason Foundation. October 2008. <http://reason.org/files/79d00eb443669b026c8c37c483f0bdb0.pdf>.

³⁶ Lowell, Frederick K., and Teresa A. Craigie. "California's Reapportionment Struggle: A Classic Clash Between Law and Politics." Hein Online. 1985. Accessed March 25, 2011. http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jlp2.

measures propose to reject the legislatures redrawn lines were successful with 60 percent voting “no.”³⁷ Despite the decision to reject the maps, the already existing maps were used in the November 1982 election through a court decision.

Like years before, the reapportionment plan of 1991, when Governor Pete Wilson was in office, was vetoed and despite attempts to override the veto from Congress, they failed and adjourned for the year. Just like in 1973 when the Courts took over reapportionment, they too stepped in and appointed a panel of three Special Masters to manage the map-drawing task. In response to this appointment, the legislature submitted three proposals to the Special Masters for consideration, contending the fact that they reflected various compromise efforts. Despite these efforts the Special Masters rejected the plans citing a violation of the constitutional requirement for “geographic integrity” of cities, counties and geographic regions.³⁸ The California Supreme Court adopted the Special Masters’ plans in January of 1992. While the Masters did not focus on competitiveness or “political fairness,” various assessments of the lines suggest that the results produced competitive districts. In 2000, another redistricting measure was put on the ballot, Proposition 24. The measure would have given the Courts reapportionment authority in California. Proposition 24, though, was not a single subject prop. Along with giving the courts control over reapportionment, there was a revision that gave “compensation [to] state legislators and other state officers.” The California Supreme

³⁷ Passantino, George, and Adrian T. Moore. "Redistricting in California: Competitive Elections and the Effects of Proposition 11." Reason Foundation. October 2008.
<http://reason.org/files/79d00eb443669b026c8c37c483f0bdb0.pdf>.

³⁸ Ibid.

Court never allowed the voters a chance to see Proposition 24 on the ballot—having failed the single-subject rule requirement of the California Constitution.³⁹

Once Proposition 24 [2000] was no longer an option, the reapportionment plan drawn by the 2001 Legislature received approval by Governor Gray Davis on September 26, 2001. Not since the Special Masters' maps drawn in 1992 have there been election held on legislatively drawn maps. In the 2004 election, there wasn't a single incumbent in the Assembly, Senate, or California Congress that was beaten. Not a single seat in the legislature changed parties.⁴⁰ The lack of competitiveness in the prior election cycle put into question the legislatures' potential to serve the interest of their constituents and sparked Proposition 77 into debate. Proposition 77, which called for the removal of redistricting powers from the Legislature and into the hands of a panel of three retired justices, deemed the "Special Masters,"—was placed on the ballot in 2005.⁴¹ Under the initiative plan, a panel selection would start with the state Judicial Council randomly choosing twenty-four retired judges from a pool. The state Legislature majority and minority leaders would then narrow the pool down to eight. The final three panel members, which would be composed of at least one conservative and one liberal, would be randomly selected from the eight that remained. Once the panels of three "Masters" were created they would be required to draw maps that would be put into vote on the 2006 primary. If the voters rejected the proposed maps, a new panel would be created in order to draw new maps. If the voters were so inclined to pass the maps, then the maps

³⁹ Grant, Jeffrey, and Luke Vanderwagen. "Proposition 11: Redistrict. Initiative Constitutional Amendment and Statute." California Initiative Review. Accessed March 25, 2011. http://www.mcgeorge.edu/Documents/centers/government/Prop_11_2008.pdf.

⁴⁰ Ibid.

⁴¹ Ibid.

would go into effect and another panel would not be called upon until the 2010 Census. Proposition 77, however, was not passed and failed by a margin of 60-40.⁴²

The initiative, which was introduced by Ted Costa of the People's Advocate, was endorsed by nearly every major newspaper and editorial board in California, but was opposed by the voters on Election Day.⁴³ In the same year of elections, the governor initiated a "year of reform" that would reform teacher tenure rules, limiting state spending and required public employee unions to get consent from members before spending dues on campaigns. Redistricting was thus ensnared in a larger political war, urging voters to oppose all initiatives sponsored by, then, Governor Schwarzenegger—such as Proposition 77. Once Prop 77 failed, Assembly Speaker Fabian Nunez and Senate Pro Tem Do Perata pledged to work towards a new redistricting reform in the Legislature.⁴⁴

⁴² Ibid.

⁴³ "California Voters FIRST Act – Fair Independent Redistricting Standards Today." Cal-Tax: Established 1926. November 2008. Accessed March 25, 2011.
<http://www.caltax.org/RedistrictingInitiativeAnalysis.pdf>.

⁴⁴ Ibid.

5. Proposition 11: the Citizens Redistricting Commission

Soon after, in 2008, Proposition 11 was brought forth to the voters. This proposition, which was a Constitutional amendment and statute, sought to “change authority for establishing Assembly, Senate, and Board of Equalization district boundaries from elected representatives to a 14-member commission.”⁴⁵ It would require for auditors to select 60 registered voters from an applicant pool; legislative leaders would reduce the pool, then the auditors would pick eight commission members by lottery, and those commissioners would pick six additional members. District lines approved would need votes from three Democratic commissioners, three Republican commissioners and three from the Independent commissioners.

Groups that backed Nunez and Don Perata also threw support at the initiative—publicly stating that they did not believe that the Legislature would enact any meaningful redistricting reforms. On May 6, 2008, the day the sponsors of the initiative turned in signatures, Speaker Nunez held his final press conference as Speaker and used the affair to announce his plans to introduce a redistricting measure. On November 4, after the ballot counts, Proposition 11 came out winning with a slim margin—50.9% - 49.1%. The maps that emerge after this year’s redistricting process will decide whether the minority populations have a fair opportunity to elect candidates of their choice. As representatives of the second largest population in the state, it’s important for the Latino vote, in particular, to be heard and to close the disparities between the minority population and the insufficient minority representation in the Legislature.

⁴⁵ "Proposition 11: Redistricting Initiative." Attorney General. June 2010. Accessed March 25, 2011. <http://www.voterguide.sos.ca.gov/past/2008/general/title-sum/pdf/prop11-title-summary.pdf>.

Research conducted generally supported the idea that minority representation and majority-minority districts are correlated with greater involvement in politics by Latinos and African Americans. Turnout among Latinos was especially high in districts with Latino representatives and majorities. In districts with these characteristics, registered Latino voter turnout was 36 percentage points higher than Latino turnout in majority-Anglo districts. Consequently, two majority-Latino districts represented by white representatives, Latino registered voter turnout was around 27 points higher than Latino turnout in majority-Anglo districts.⁴⁶ African American voting-age turnout was high in districts where they and Latinos were equally matched and together formed a majority. While these findings were indicative for 2001 redistricting, there is a pattern to be seen in this years' cycle. If majority-minority districts promoted political participation from Latinos and African Americans, creating majority-minority districts would make up for such problems like low socioeconomic levels, low income and education levels and a lack of voter participation.⁴⁷

⁴⁶ "Voter Turnout in Majority-Minority Districts." Public Policy Institute of California. June 2001. Accessed March 25, 2011. http://scholar.harvard.edu/cgay/files/Gay_PPIC_RB_2001.pdf.

⁴⁷ Ibid.

This evidence suggests that there are advantages in creating more Hispanic-black and multi-ethnic districts in the next redistricting plan. With the creation of these districts multi racial communities would be able to exercise political leverage—increasing participation among the citizens. Additionally, with an increase in participation with the African American and Latino communities, there will be no decrease in participation throughout the Anglo-white community.

6. Schools of Thought

Many argue that essentially it is difficult, if not, impossible, to take the politics out of the process. The point of redistricting is to cleanse the process from the legislative pollution surrounding it and giving it, to what people would like to consider, “impartial” observers. In order to help the commission with their process they have been given strict guidelines and a criteria to follow. Compactness, competitiveness, equal population, respect for city and county lines, and preserving communities of interest were some of the requirements they had to follow—most importantly, they would be denied any type of political information that might influence their plan. While never ending, reapportionment reforms accept that political interests need to be taken into consideration and cannot be excluded from the process. With the creating of a bipartisan commission, there is a chance for parties to fight over political consequences from reapportion, but makes it difficult for one party to impose influence unfamiliar to the opposing party. By doing that, the commission is removing the responsibility of reapportionment from the hands of those who have to gain and lose, and rather, putting it in the hands of individuals who don't have anything to lose, despite knowledge pertaining to politics.

On the surface it seems like reapportionment would be a simple thing. Because all of the seats in the legislature must have an equal population, the task of reapportionment is to draw lines so that each comes down to an ideal number. Ideally, the population would be equal to the number of people in a state divided by each seat in the legislature. These objective calculations should not, in theory, create controversy—they're either equal or they're not. Redistricting, though, can also be increasingly complicated. A large amount of time goes into planning, drawing and analyzing districts. Legislators will at times sit through various meetings and argue proposals attempt to bargain for better seats. And even so, after a bill is passed, the reapportionment struggle does not cease. Parties from both sides of the aisle will bring lawsuits against the legislature to nullify the plan. Eventually both sides grow tired and the public naturally starts to question whether or not the process of redistricting is even necessary.

Different methods have been proposed in order to ease the process of redistricting. The first one, Tabula Rasa, is intended to suggest a clean slate: getting rid of the old district lines and starting from scratch.⁴⁸ Assuming that there is a state with 15 people who must be reapportioned into five districts of three people each. With prior lines disregarded, which may have contained population disparities ranging from one to five, the new districts would need three people in it and be contiguous and compact—ruling out districts with disconnected parts and elongated shapes. With this method, a large number of districts would be drawn based on the population alone. While the compactness and contiguity requirements restrict the choices, for the most parts there will be many possibilities. Even assuming that the population requirement of equality,

⁴⁸ Cain, Bruce E. *The Reapportionment Puzzle*. Berkeley: University of California Press, 1984. pp. 10

contiguity and compactness, there is the chance that the final district might not be compact. Changing the population in the first district might create a ripple effect, affecting the later districts. Furthermore, the range of choices is further limited with the introduction of more requirements such as respect for city and county lines or taking into account communities of interest. The more requirements introduced into the calculations, the fewer choices there will be.

A problem with Tabula Rasa is that erasing existing lines and starting from scratch would radically change the electoral system. A number of incumbents could possibly lose their seats if the new lines that are proposed group their homes in the same district or redistricting might cause a disconnect with their voters whom they've developed ties with for years. It would also ignore the fact that the voters in their old districts have elected their incumbents and if a commission removed a large number of them from their seats, it would in fact be depriving those voters from their elected representatives.⁴⁹ This is inconsistent with the inclination of reformers to see the quality of people entering the political field improve. This creates a problem since it goes against essential democratic theories that argue, "A government whose legitimacy depends on duly elected representatives should permit their unnecessary and arbitrary removal."⁵⁰ If there are exceptional members in public office at this time, arbitrary removal every ten years does not seem like the most effective way to run a government or a way to convince good people to run for office. Going through such radical changes interferes with the organizational ties that have been established over the years within a community between members and their constituents. Working with a community on various

⁴⁹ Ibid.

⁵⁰ Ibid.

campaigns and other issues creates an informal structure within local parties that would be weakened, if not disbanded, if districts were greatly altered.

An important decision that needs to be taken into account regards the collapse and creation of seats in order to make way for new ones—or in some cases getting rid of one due to population disparities. Collapsing seats and establishing new ones is meant to lessen displacement—collapsing an old seat solves the problem of many representatives in an area being under populated, and creating a seat solves the problem of many being over populated. Take into perspective a county that has the population capacity for three seats, but with four incumbents. The incumbents have no reason to retire at the next election, run for higher office or reason to believe that they are going to be unseated. Which seat should be collapsed? A possible solution is to collapse the seat with the largest population deficit—that is, collapsing the Assembly member’s seat the fewest constituents. Collapsing a seat with a high population would be unfair since the member represents a large amount of people and might even hold an excess amount of the ideal population. A problem with this solution and something that critics of the census argue, is that the process of counting at times can be unreliable, causing skewed results—usually creating undercounts with minorities and the poor. Those who are afraid of possibly being discovered by authorities, non-English speaking citizens, those living in backrooms will have a more inaccurate count than middle class, English-speaking citizens. Finally, this rule does not function as a goal of representation. Representatives that have the largest district, or surplus, do not necessarily mean that they are the best legislator, least corrupt, most principled or that their constituents favor them.

7. Effects on California

7.1 *Gerrymander*

Reapportionment in California is a largely debated issue simply because the process of redistricting has a large impact on communities and depending on the way that lines are drawn can greatly alter the Legislature. It goes without saying that with such an effect on government, there are times where a certain party or group attempt to tinker and manipulate the lines in order to get more favorable results. In the process of drawing districts, instead of taking into consideration compactness and contiguity, there will be times where geographic boundaries are manipulated to create partisan, safe and neutral districts. The resulting district is known as a gerrymander, holding a negative connotation—although the word gerrymandering may also be used to refer to the process. While gerrymandering is considered to be political corruption, there are people on the other side of the aisle that believe that it can also be used in a positive light. More notably, racial gerrymandering takes into consideration the population of a minority group and aims towards grouping them together. The resulting district is then considered to be a minority-majority district—giving the minority population a chance to elect a representative that they believe is better suited for their issues.

The oldest form is partisan gerrymander. This technique can be used in order to manipulate the legislature and give control of the house to one party, over the other. The purpose for partisan gerrymandering is to obtain a larger percentage of seats in the legislature than would otherwise occur if planned along community lines. Citizens who vote in favor of the party out of power can be packed into a small number of districts—

giving them a disadvantage.⁵¹ If there was a state in which a racial majority votes solidly against the racial minority, the minority population can be spread across other districts in order to ensure that they are not able to elect a candidate that they support. This kind of gerrymandering, though, is no longer true in most parts of the state. On the other hand, districts can be manipulated in a way which groups disadvantaged races together, ensuring that they are also given a chance to be adequately represented. The most common type, which is seen in California, is gerrymandering whose purpose is to protect incumbent seats. In this process, districts are planned to hold a strong majority of one party over the other—making them “safe” for certain candidates or a particular party. Historically, incumbents have been difficult to defeat in primaries and general elections. This type of gerrymandering creates a legislature more partisan and uncooperative. If there is an open competitive seat, each party is most likely to nominate a candidate who is moderate and appeals to independent voters. On the other hand, when a district is “locked” in for a party (that is, the district is largely made up of citizens in support of one party) they can choose their most partisan candidate, without the fear of losing.⁵²

Gerrymandering has largely been associated with districts that contain fingers, jagged edges and complicated shapes in order to manipulate results, whereas compact forms, such as circles and squares, have been associated with “good” government.⁵³ Plans that are kept compact are assumed to be in the interest of the public and those that are non-compact are assumed to be so because of the self-interest of the ruling party or

⁵¹ Scheidegger, Kent. "Defining the Gerrymander." Criminal Justice Legal Foundation. Accessed March 25, 2011. <http://www.cjlf.org/publctns/GerrymanderPaper2.pdf>.

⁵² Ibid.

⁵³ Cain, Bruce E. *The Reapportionment Puzzle*. Berkeley: University of California Press, 1984. pp. 32

district incumbent. Many argue that compactness has become an irrelevant requirement and that it shouldn't be included as part of the guidelines. Some believe that compactness would guarantee that representatives meet with their constituents with relative ease and those constituents, just as well, could easily visit their representatives. That, though, has become a thing of the past. A great deal of contact between constituents and their representatives now occurs over the phone or by mail—they do not have to necessarily visit district offices in order to have their requests heard. Historically, compactness was essential to lessen transportation and communication costs—less applicable now.⁵⁴

When comparing a map of California's counties with a map of its legislative districts, it is easy to see that the districts have more irregular shapes and edges than the counties. This is to be expected since districts, required by law, need to have equal populations while counties vary greatly in population. Yet, if the 2001 reapportionment approved by the legislature is compared to that of the 1992 reapportionment mandated by the California Supreme Court, the misshapen districts in the Legislature's plan is quite obvious.⁵⁵ The most common argument for compactness relies not on its direct value, but indirect value to a community. It is contended that compactness assists in realizing other governmental goals. Compactness maintains communities of interest together, while scattered districts often connect differing communities of interest—making issues within local communities hard to differentiate or to address. While compact districts might save cities and counties from being split, it also ensures political fairness, simply because it

⁵⁴ Ibid.

⁵⁵ Scheidegger, Kent. "Defining the Gerrymander." Criminal Justice Legal Foundation. Accessed March 25, 2011. <http://www.cjlf.org/publctns/GerrymanderPaper2.pdf>.

becomes more difficult to contort the lines for political advantage while at the same time, protecting minorities from racial gerrymandering.⁵⁶

The 1992 court plan was put into effect when the Legislature and the Governor at the time could not come into an agreement on drawn lines and deadlocked. The Court's plan was superior and took all the guidelines into consideration. The 1992 plan can be seen as an example of what can be developed when partisanship and the self-interest of incumbents are not in the motives, juxtaposed to when they are.

7.2 Checks and Balances

Since 1982, different groups and proponents of redistricting have attempted to implement a series of checks and balances in order to fight gerrymandering and have fairer outcomes to reapportionment. Since then, voters have rejected five redistricting initiatives; four of them having to deal with taking the task of redistricting out of the hands of the legislature and placing it with a redistricting commission. In 1981, the legislature—then controlled by Democrats—passed reapportionment statutes that were immediately met with Republican opposition. They viewed these statutes as a gerrymander intended to further strengthen the Democratic control of the legislature. While referenda supported by the Republicans didn't go through, Proposition 14 was placed on the ballot the following year in an attempt to undo the 1981 reapportionment

⁵⁶ Cain, Bruce E. *The Reapportionment Puzzle*. Berkeley: University of California Press, 1984. pp. 32

statutes.⁵⁷ Proposition 14 called for a 10 member commission composed of legislators and citizens with 4 members appointed by Assembly and Senate party caucuses, 2 members appointed by the two major parties' chairpersons, and 4 members appointed by senior state appellate judge. It failed with 45.5% of the vote. Later in the year another redistricting reform, dubbed the "Sebastiani Plan" would have placed redistricting maps before the voters, but was denied on the ballot by the California Supreme Court, ruling that the Plan attempted to redistrict more than once in a decennial period. Proposition 39, placed on the ballot in 1984, was similar to Prop 14 except it would have composed a commission with 8 retired appellate judges responsible for drawing lines based on competitiveness, contiguity, compactness and equal population. The presidents of the University of California system would have selected the names.⁵⁸ It failed with 44.8% of the vote.⁵⁹

In 1990, Propositions 118 and 119 were placed on the ballot but were not passed. Proposition 118 was not concerned with removing the task of redistricting from the legislature, but attempted to restrict the legislature to detailed criteria—requiring both the Senate and Assembly to adopt proposed plans by a two-thirds vote, and subjecting redistricting statutes to voter approval. It failed with 33% of the vote. Proposition 119, put on the ballot the same year looked to create a redistricting commission selected by a panel of three retired appellate judges from a group nominated by non-partisan and non-

⁵⁷ Grant, Jeffrey, and Luke Vanderwagen. "Proposition 11: Redistrict. Initiative Constitutional Amendment and Statute." California Initiative Review. Accessed March 25, 2011. http://www.mcgeorge.edu/Documents/centers/government/Prop_11_2008.pdf.

⁵⁸ Passantino, George, and Adrian T. Moore. "Redistricting in California: Competitive Elections and the Effects of Proposition 11." Reason Foundation. October 2008. <http://reason.org/files/79d00eb443669b026c8c37c483f0bdb0.pdf>.

⁵⁹ Grant, Jeffrey, and Luke Vanderwagen. "Proposition 11: Redistrict. Initiative Constitutional Amendment and Statute." California Initiative Review. Accessed March 25, 2011. http://www.mcgeorge.edu/Documents/centers/government/Prop_11_2008.pdf.

profit state organizations. The commission would have consisted of five Democrats, five Republicans and two independents. They would not have drawn the maps, but would have chosen from plans submitted based on several required conditions.⁶⁰

7.3 Voter Turnout in Majority-Minority Districts

Since the passage of the Voting Rights Act, the number of Latino and African-American representatives has increased. Because of the provisions that created majority minority districts—in which minority groups make up a majority of the voting population, California has the most diverse congressional delegation. Latino and African American House members have become strong political figures in an institution that was once predominantly ran by whites.⁶¹ Scholars have made the claim that this diversity in the state has not been converted into substantial benefits for minority constituents. Still, redistricting proponents believe that, regardless of election outcomes, majority-minority districts are valuable because they encourage more Latinos and African Americans to take part in the political process. With more diverse contestants in the general election, it is thought to bring out previously unengaged Californians out to the voting booths. This affirmation has been met with resistance from those oppose to redistricting, claiming that there is no link between majority-minority districts and increased outcomes—but they have yet to provide any evidence to suggest otherwise.

⁶⁰ Ibid.

⁶¹ "Voter Turnout in Majority-Minority Districts." Public Policy Institute of California. June 2001. Accessed March 25, 2011. http://scholar.harvard.edu/cgay/files/Gay_PPIC_RB_2001.pdf.

8. Proposition 11 Criteria

With the passage of Proposition 11 certain requirements and guidelines were provided regarding drawing district lines. Although these guidelines are generally straightforward it is difficult to incorporate all of them when setting down lines. Guidelines can at times conflict with one another and certain requirements might have to be compromised at the discretion of the Citizens Redistricting Commission. Although many tend to believe that the redistricting process is colorblind—that is in fact, not the case. By the guidelines of the Voting Rights Act, a redistricting plan must be mindful of race and ethnicities. The lack of awareness can often create disadvantages for minority voters. If race was not taken into account, then the desired plan could dilute the minority population—even without intent.

8.1 Respect for City and County Lines

In 1978 voters passed Proposition 6, which called for the preservation of city and county boundaries to the extent of compromising along with other redistricting criteria. The main argument for keeping cities and counties together relates to the ability of being able to preserve the base of power that is held within a city or county line. Cities that are split aren't able to lobby as easily for issues and interests pertaining to their area as those that are maintained whole. "Since cities and counties will have particular concerns that may be antithetical to or at least competitive with those of other cities and counties, a divided governmental unit will be less well represented than a unified one."⁶² Generally speaking, there are proponents from both sides arguing whether or not this will hurt or

⁶² Cain, Bruce E. *The Reapportionment Puzzle*. Berkeley: University of California Press, 1984. pp. 10

benefit cities. By being split, this might potentially lower the level of legislative responsiveness from their representative—or benefit the city by having additional channels of representation. What it essentially comes down to is the level of compatibleness that the city has with other governmental units that it shares districts with. Although there is a risk that the city or county might not have their representatives' undivided attention, there are also many advantages to having more than one representative.⁶³

First, if the city or county's issues and concerns are multifarious, it might be very hard for one representative to adhere themselves to any one topic, making it difficult for them to represent all sectors well. If the make-up of a city includes both white and non-white, rich and poor citizens, the division would make it impossible for the legislator to serve reasonably. They may feel that they have to avoid certain topics in order to please one side over the other—avoid taking definitive position, or may even choose one side over the other—ignoring one completely. We need to consider whether or not the city, in fact, needs a coalition to handle their various problems. It may be that one representative can adequately take the interest of a particular city into strict consideration and apply themselves to those concerns. On the other hand, if one representative is not sufficiently effective or attentive enough to their concerns, they have the insurance, which provides an alternate representative. Consequently, having multiple representatives adds another vote for the legislator, which would be very favorable for the city.

⁶³ Ibid.

8.2 *Communities of Interest*

Communities of Interest are local areas that are linked based on certain issues that affect them—whether regarding a local aqueduct or an agricultural issue. Although the term is at times distinguished from geographical regions, they can be combined, since geographical regions—such as valleys or farmlands—are in a sense, a kind of community interest. Other areas that hold common interests include urban areas, rural or agricultural, and areas in which people share the same living standards, have similar job opportunities and use the same transportation. The advantage of having districts be homogenous is that their representatives don't have the opportunity to play off one districts' concerns over another ones—or avoid taking a precise stance on an issue. Many believe that representatives practice “descriptive representation”—which, according to this idea, “elected officials should defend the unique interests of their own districts and not try to take a broader or more statesmanlike position.”⁶⁴ Opponents of these criteria believe that a system of homogenous districts will encourage representatives to keep a narrow perspective on issues and not broaden their position.

With such a vague definition, it is hard to put into perspective what exactly influences communities into different categories. Yet, there are examples in which these communities have been taken into consideration and lines manipulated in ways, which have made it more representative of their constituents. In the current map lay out, Brian Bilbray's [R] Congressional District number 50 is a good example. Bilbray's 50th District encompasses the fairly wealthy coastal region of Southern California from the village of Carlsbad to just below Solana Beach—where property values are high—and continue to

⁶⁴ Ibid.

central La Jolla. In this area, the wealthy have their beachside houses and have the chance to enjoy their ocean views. Bilbray's district though quickly skips the coastal area of La Jolla, mostly due to the fact that it is home to the large student population that is found in the university of California at San Diego. It continues east from La Jolla through the conservative area of Clairmont Mesa, and up through Torrey Highlands and Carmel Valley— both wealthy areas.⁶⁵

District 50 was clearly designed to include the high-earners and upper class, business people in the area. There's no doubt that the wealthy in La Jolla would have more in common with those in Clairmont Mesa and Torrey Highlands than the college students populating the UCSD area in the La Jolla coast line. If one looks at the map, it's clear that Bilbray's district should stretch towards the western coast. In this instance, gerrymandering is not necessarily a bad thing, if you look at the interest of the community.⁶⁶

8.3 Minority Representation in the 1990's

Majority-minority districts under the support of the Voter Rights Act has granted substantial gains for African American and Latinos elected to the U.S. House of Representatives in California. The next figure demonstrates that the growth in the number of minority legislators has increased in the number of districts with African American or Latino majorities. The redistricting in the 1990's also made the House much more diverse. The newly elected members of 1992 included 16 African Americans and eight

⁶⁵ "Daily Kos: California Redistricting - What Is A "Community Of Interest" Anyway?" State of the Nation. March 9, 2011. Accessed March 25, 2011. <http://www.dailykos.com/story/2011/03/09/954297/-California-RedistrictingWhat-Is-A-Community-Of-Interest-Anyway>.

⁶⁶ Ibid.

Latinos—most of whom were elected from newly created majority-minority districts.⁶⁷

There was such an increase that a journalist stated that the new diversity would present “a big step in the unfolding of a more democratic and perhaps more tolerant era in elective representation.”⁶⁸

8.4 District Competitiveness

Critics of redistricting argue that reapportionment plans has rid the state of competitive districts and created safe districts that make it close to impossible to unseat any incumbent. In the past redistricting cycles, district competitiveness has been associated with both major political parties. Many believe that an accurate way in which competitiveness can be measured is by viewing the registration ratio between the parties. If one’s party is less than five percentage points higher or lower than the other party, the district is considered competitive. The problem with that, however, is that the calculation is skewed by the large proportion of registered voters that do not come out to the polls. In an issue by Abramowitz, Alexander and Gunning [2006] titled, “Don’t Blame Redistricting for Uncompetitive Elections,” in the *Political Science and Politics* journal, they argue that redistricting is not responsible for the decrease in the number of competitive districts, claiming, “Non-partisan redistricting institutions are not correlated with the number of competitive districts.”⁶⁹ They would define a “competitive district” as one that has a near balance of partisanship with the competing parties. Abramowitz and

⁶⁷ "Voter Turnout in Majority-Minority Districts." Public Policy Institute of California. June 2001. Accessed March 25, 2011. http://scholar.harvard.edu/cgay/files/Gay_PPIC_RB_2001.pdf.

⁶⁸ New York Times, November 2, 1992.

⁶⁹ McDonald, Michael P. "Drawing the Line on District Competition." George Mason University. January 2006. Accessed March 25, 2011. <http://plaza.ufl.edu/scboyle/Redistricting.pdf>.

his colleagues found that House districts were becoming less competitive, but not because of redistricting.

Between 1992 and 2000, the number of safe districts increased from 156 to 201 while the number of competitive districts decreased from 157 to 123.⁷⁰ They hypothesize that Americans are living in communities whose residents share their values and often vote for candidates who reflect those values. Researchers have found that a range of geographically linked factors such as migration, immigration, education, income and religion all contribute to the geographic split in party loyalties among states. Evidence has suggested that there is a growing polarization at the elite level that has made it easier for voters to choose a party based off their ideological preferences. What many people might describe as “polarization” is more accurately described as “sorting.”

They describe the state of California and how it was once a swing state in national politics. In 1960, 1968 and 1976 there were three close national elections. Republican presidential candidates carried California by one or two percentage points.⁷¹ This is no longer the case in California—in 2000 and 2004, Democratic presidential candidates carried California by margins of 11 and 10 points respectively. The competitiveness of California’s counties decreased from 1976 and 2004.

⁷⁰ Abramowitz, Alan, Brad Alexander, and Matthew Gunning. "Don't Blame Redistricting for Uncompetitive Elections." Emory University. June 2005. Accessed March 25, 2011. http://lwvofvt.org/files/Abramowitz_redistricting_article.pdf.

⁷¹ Ibid.

9. Predictions and Concluding Remarks

Some believe that an attempt to predict how the redistricting commission is going to draw the lines is a “fool’s errand.” The state has seen how lines can be manipulated by the Legislature and it has seen how they can be mapped out by a group of Special Masters. That’s not the case this time around. With the newly appointed 14-member commission—the drawing and approval of the state’s 53 districts’ lie solely in their hands. The commission is composed of amateurs whom have had no past political stints and who hold no regard for incumbents—this means that they can do just about anything. “When you go from a system that allows incumbents to draw districts that favor themselves to one that disallows considering incumbents at all, you’re bound to have some incumbents paired together and some open districts,” said Tom Bonier of the National Committee for an Effective Congress—who advise Democrats on the redistricting process.⁷² GOP consultant Dave Gilliard believes that “there’s a good chance that the vast majority of the congressional districts in California are not going to resemble what we have right now.” Observers presume that there will be a large upheaval, but with so many districts, there’s no real way of knowing what the commission will do.

Despite these uncertainties, scholars have a number of speculations in mind. First, it is believed that there will be an increase in competitive districts—more so than the last redistricting attempt. In the last round of redistricting, out of the 53 districts, only one district changed hands between Republicans and Democrats—once. It was seen as the most effective incumbent-protection gerrymandering in history. While competitiveness

⁷² Blake, Aaron. "Politico's Predictions About Congress." Redistricting CA. April 14, 2011. Accessed April 25, 2011. <http://www.redistrictingca.org/news-and-community/2011/04/4-12-11-politicos-predictions-abt-congress/>.

isn't mandated, it is believed that the commission will attempt it—either way, it is close to impossible for districts to be drawn any less competitive than they are now. Second, it is speculated that a number of incumbents are likely going to have their homes drawn into the same district—leading some incumbents to run against each other. To avoid the situation, though, incumbents might run in districts where they don't live—some observers go as far as claiming that as many as one-quarter of the state's delegation might run into this problem.

The shift in numbers of Democrats and Republicans in the delegation is most likely not going to be substantial. California at the moment has 34 Democrats and 19 Republicans—accurately reflecting the state. Even with a drastically altered map, urban districts will most likely remain Democratic and rural areas remaining largely Republican. That doesn't suggest that there won't be any changes, though. Republican Reps. Dan Lungren, Mary Bono Mack, Buck McKeon and Ken Calvert represent districts that have shifted towards a Democratic population and who went for Obama in 2008. Democratic Reps. Jerry McNerney, Dennis Cardoza and Jim Costa all won close races in Fresno and might find it difficult to get re-elected.⁷³ In the end, as it has been seen before, the map might not be drawn by the commission. If the 14-member panel cannot agree on a map or doesn't abide by the guidelines—the process could go to the courts and end up in the hands of a court-appointed drawer. Regardless of what happens, the task of redistricting will not be in the hands of the Legislature and some are just waking up to the grim idea that they might end up displaced. With redistricting occurring this year, Latinos in the state of California have the chance of becoming the majority and many districts—

⁷³ Ibid.

granting them the power to elect candidates they feel will represent them accurately.

While difficult to predict the outcome of the new redistricting plan, one thing is for certain—California's political atmosphere is going to be turned upside down and there will be a shift in demographic power.

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