TOWARDS PROPORTIONAL REPRESENTATION FOR THE U.S. HOUSE

Amending the Uniform Congressional District Act

Protect Democracy

UNITE AMERICA

Grant Tudor & Beau Tremitiere | March 2023

This publication is available at: https://protectdemocracy.org/UCDA

Suggested citation: Grant Tudor and Beau Tremitiere, *Towards Proportional Representation for the U.S. House: Amending the Uniform Congressional District Act*, Protect Democracy and Unite America (Mar. 2023).

Please direct inquiries to: press@protectdemocracy.org

"The principal difficulty lies, and the greatest care should be employed in constituting this Representative Assembly. It should be in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this Assembly to do strict justice at all times, it should be an equal representation, or in other words equal interest among the people should have equal interest in it. Great care should be taken to effect this . . . ."

JOHN ADAMS, THOUGHTS ON GOVERNMENT, APRIL 1776

EXECUTIVE SUMMARY

Each American lives in a congressional district in which every two years they may vote for a single official to alone represent their district in the U.S. House of Representatives. This reality is so familiar to most that it perhaps appears self-evident: how else would elections work? Globally, though, this is unusual among democracies; and it has not been the norm for much of American history.

While U.S. House elections use single-member districts, more common among democracies is some form of proportional multi-member districts.[i] The two models give rise to two distinct electoral systems: the former, a winner-take-all system in which a single candidate, with a plurality or majority of the vote, represents the entire district ("takes all"); and the latter, a system of proportional representation in which multiple winners secure legislative seats in rough proportion to the votes they receive.

This report examines a statute enacted by Congress in 1967 — the Uniform Congressional District Act (UCDA), which mandates the use of single-member districts for House elections — and options for reform.[ii] What is otherwise a textually simple and straightforward statute sits at the heart of an electoral system that is aggravating an alarming host of issues afflicting American democracy, including:

- A collapse in competition across most congressional districts, such that the vast majority of voters live in "safe" districts in which most outcomes are a foregone conclusion, and in which elected officials in such districts face few incentives to compromise across the aisle or attract new voters;

- The dilution of racial, ethnic and other minority voting power, such that most Black voters in congressional districts with racially polarized voting, for instance, are unable to elect a representative of their choosing;

- The exaggeration of the electoral dominance of one party over another, such that the Massachusetts congressional delegation, for example, is 100 percent Democratic, despite a third of its electorate voting Republican, and the Oklahoma delegation is 100 percent Republican, despite a third of its electorate voting Democratic; and

- The escalation of polarization, political extremism and political violence, such that the stakes in a "take all" electoral environment appear increasingly existential among partisans.

Scholars tend to rank winner-take-all systems as less desirable across a range of factors[1] and are especially concerned about their use in highly polarized societies with deep social cleavages, like the U.S.[2] While scholars have long observed their implications for competition,[3] minority voting power,[4] and biases in electoral outcomes,[5] among other issues, mounting research has also found that winner-take-all systems accelerate polarization[6] and are more prone to political violence.[7] As Larry Diamond concludes in a global study of democratization, "if any generalization

i Of the 50 countries characterized as "liberal democracies" by the V-Dem Institute, 12 use a winner-take-all electoral system for their lower chambers, while 38 use a proportional or mixed-member proportional electoral system. Daniel Pemstein et al., _The V-Dem Measurement Model: Latent Variable Analysis for Cross-National and Cross-Temporal Expert-Coded Data_, V-Dem (2022). According to another dataset that includes a larger number of countries classified as "democracies," 22 use a winner-take-all system while 75 use a proportional or mixed-member proportional system. Cory Struthers, Yuhui Li and Matthew Shugart, _National and District Level Party Systems Datasets_, Harvard Dataverse (2018).

ii This report will use the shorthand "UCDA" to refer to the single-member district mandate enacted in 1967 and in effect today. In fact, the bill originally termed "UCDA" (H.R. 2508 in the 90th Congress) was not adopted; instead, the single-member district requirement was added as an amendment to a private bill. The mandate is codified in 2 U.S.C. § 2c.

about institutional design is sustainable," it is that winner-take-all electoral systems "are ill-advised for countries with deep ethnic, regional, religious, or other emotional and polarizing divisions."[8]

Scholars have thus voiced support for replacing winner-take-all with a more proportional system of representation for U.S. elections. In a 2021 survey of more than 500 political scientists, three-quarters supported the "[r]epeal [of] the 1967 law that mandates single-member districts for the House so that states have the option to use [proportional] multi-member districts."[9] In 2022, a public letter signed by more than 200 U.S.-based scholars, including political scientists, historians and constitutional law experts, called on Congress to move beyond "arcane, single-member district[s]" in favor of "multi-member districts with proportional representation." Doing so, they argued, would bring the U.S. in step with its democratic peers.

As examined in this report, proportional representation addresses critical deficiencies of the winner-take-all model.

- Because proportional systems are less sensitive to the geographic sorting of partisans that create lopsided districts, they tend to produce more competitive elections. Proportional multi-member districts also natrually constrain the ability to gerrymander, likewise contributing to greater competition. Districts of five or more representatives are functionally immune from gerrymandering.

- Proportional representation can better ensure the ability of minority voters to secure representation of their choosing. Rather than being precluded from representation in districts where minority voters do not constitute an electoral majority, voters are better able to elect candidates of choice in proportion to their numbers. Proportional representation can also reduce the need for current legal remedies that aim to secure more proportional outcomes within the winner-take-all system.

- Proportional representation can better ensure the

ability of minority parties to secure legislative seats — for instance, allowing a party with one-third of the vote to secure one-third of the seats. In practice, for example, Republicans in predominantly blue states and Democrats in predominantly red states would be more likely to secure seats commensurate with their votes.

- By creating space for a greater number of viable political parties and more fluid political coalitions, proportional systems experience less severe polarization, better temper extremism and are at a lesser risk of political violence.

Despite current issues, the arc of the House's history has in fact bent towards greater proportionality — epitomized by the prohibition of bloc voting in favor of single-member districts. Although both are variants of winner-take-all, bloc voting represents a distinctly non-proportional system in which multiple winners per district are decided by a plurality or majority of votes rather than allocated in proportion to votes. In practice, bloc voting permits a single party to sweep a multi-seat election out of proportion to its vote share. After nearly two centuries during which bloc voting was used to suppress the electoral power of minority parties and minority voters in various jurisdictions, passage of the UCDA mandating the use of single-member districts for House elections marked a milestone towards a more proportional system.

However, while single-member districts were an improvement over bloc voting, both options represent winner-take-all systems that other democracies eschewed throughout the 19th and 20th centuries in favor of even *more* proportional systems of representation.[10] In recent decades, the most common major electoral system change among democracies has been a shift to proportional or mixed-member proportional representation from winner-take-all.[11]

What would similar progress towards a more proportional system for the U.S. House look like? And how might policymakers approach it in practice? This report covers three domains relevant to reforming the UCDA that, taken together, aim to produce a practically useful roadmap for reform.

1. Historical background: how did we get here?

The UCDA codified in federal law the terms of a dispute that had already, for the most part, been settled: at the time, only two states (Hawaii and New Mexico) employed bloc voting for congressional elections and were temporarily permitted to continue doing so; the rest used single-member districts. This report traces the evolution of U.S. districting history that led to the statute's adoption as well as critical legal developments since.

The review recognizes the importance of the single-member district mandate, as well as the serious limitations and drawbacks of codifying single-member districts as the *only* alternative to bloc voting. Since the Founding era, and largely through the present, exclusively contemplating these variants of winner-take-all systems for the U.S. House has come at the expense of imagining alternatives that could better fulfill the promise of "one person, one vote," including more modern systems of proportional representation.

2. Benefits and risks: what should reform aim to achieve?

While the causes behind the weakening of American democracy are complex and manifold, key features of the U.S. electoral system are accelerating democratic decline.[12] Chief among the culprits are single-member districts. This report assesses how a more proportional system of representation would address key problems caused or aggravated by the current system.

First, proportional multi-member districts would produce more proportional electoral outcomes, ensuring that a party's share of legislative seats better reflects its share of votes. Second, proportional representation carries significant ramifications for racial representation, given that single-member districts tend to structurally suppress minority voting power, and given the growing limitations of traditional remedies including majority-minority districts and judicial intervention. Third, proportional multi-member districts would introduce meaningful new electoral competition, backpedaling the proliferation of "safe" districts. And fourth, they would likely help to mitigate escalating extremism and polarization.

The report also anticipates potential risks of moving towards a more proportional system and examines how responsive policy can mitigate them. These include the risks of party fragmentation associated with certain systems of proportional representation; the revival of bloc voting; and concerns about attenuated relationships between elected officials and constituents in a multi-member setting.

3. Policy principles: what direction should reform take?

Proportional multi-member districts for House elections implicate a host of policy design questions: How many members should comprise a multi-member district? What methods should be used to proportionally allocate winners? Should the total number of House seats increase or stay the same? Which constraints should be relaxed on state discretion in electoral system design decisions? And how would new law be enforced?

This report does not endorse legislation or recommend a particular model of proportional representation among the many varieties in use across the world's democracies today and among various U.S. localities. Instead, it concludes with a review of key policy choices, and based on an assessment of them, identifies five design principles to guide potential future lawmaking.

1. Amend or Replace: Simple repeal of the 1967 single-member district mandate risks permitting the adoption of bloc voting by states — precisely what the law rightfully sought to terminate. Reform efforts should be premised on amending or replacing the law.

2. Allow a Range of District Magnitudes: States should be permitted discretion in district magnitude decisions within a given range. The absence of an articulated range would likely ensure that most (if not all) states default to the status quo, while a mandate for a universal number of representatives per district would prove

impractical. A precise range would benefit from further discussion.

3. Allow a Choice of Proportional Representation Formula: How winners are decided in a multi-seat race depends upon the allocation method used. Reform should require formulas that proportionally allocate winners, in effect prohibiting plurality or majority allocation rules. Given that proportional representation formula options are numerous, policy should also provide states with a menu of standard methods from which to choose.

4. Encourage House Expansion: Unlike formula choices ("proportional") and district magnitude decisions ("multi-member districts"), changes to assembly size are not a prerequisite to implementing proportional multi-member districts. Because a larger House would amplify various benefits of reform — including greater proportionality in outcomes — expansion should be encouraged, though not required.

5. Include Enforcement Mechanisms: Given the checkered history of state compliance with federal election laws, such as explicit prohibitions of bloc voting, reform should provide states with the flexibility outlined above while introducing enforcement mechanisms to prevent backsliding to less proportional systems. At minimum, this should include authorizing the federal government to bring civil actions.

While these principles cover critical policy choices relevant to the design of a more proportional system of representation, they do not cover all choices. This report also briefly reviews additional considerations, such as the design of party lists typically featured in proportional systems and the interaction of party primaries with new electoral rules.

*   *   *

A winner-take-all system may have seemed to be working fine as long as American democracy seemed to be working fine. But a decline in competitive districts, escalating polarization and extremism, and compounding threats to fair representation — especially as courts dismantle traditional bulwarks like the Voting Rights Act — have renewed a focus on electoral system structures aggravating these trends. While certain changes to U.S. elections require constitutional amendments, the UCDA may be changed through a simple statute. Amending the UCDA offers policymakers a path to meaningful structural change with tools at their ready disposal.

TABLE OF CONTENTS

INTRODUCTION

In the 2022 midterm elections, Republicans secured control of the House of Representatives with a razor-thin majority of seats — with a margin of under 1 percent — despite enjoying a more comfortable national vote margin of almost 3 percent.[13] In the 2012 midterms, Republicans enjoyed the advantage: despite winning more votes, the Democratic Party failed to capture the House. And in the wake of the 2018 "blue wave," Democrats also failed to secure majorities in several state legislatures and congressional delegations despite winning commanding majorities of votes.

For much of the 20th century, tables were turned. In the ten elections between 1972 and 1992, the Democratic Party won control of the House with an average "seat bonus" of 7.5 percent.[14] For decades, the Democratic Party could confidently expect to win a greater share of seats in the House than its share of overall votes.

Asymmetries between *votes* and *seats* are common in American legislative elections — observable in the U.S. House as a whole, but also within its various state delegations. California's House delegation for the 118th Congress is over three-quarters Democratic, despite Democrats having won only 64 percent of the vote. In Arkansas, which is roughly one-third Democratic, not a single Democrat represents the state in Congress.

Lopsided translations of votes-to-seats advantage some parties over others — and also some racial groups over others. In Mississippi, Black voters constitute nearly 40 percent of the electorate, while only one of its four House seats is represented by a Black official. In Alabama, Louisiana and South Carolina, Black voters constitute at least 25 percent of the electorate while Black representatives hold 15 percent of the seats. As one Alabama congresswoman exclaimed,

"If we're a quarter of the population, we should be a quarter of the seats." And yet, in Alabama, "Black voters. . . effectively wield power in just one of its seven districts."[15]

Representation in the U.S. House, across state delegations and on behalf of various constituencies, is consistently *non-proportional*: electoral outcomes are not — and sometimes far from — "an exact portrait of the people at large."[16]

While some voters enjoy disproportionate representation at the expense of others, many votes simply count for very little — or functionally nothing. Today, the vast majority of Americans live in "safe" districts where partisan outcomes are mostly a foregone conclusion.[17] Competitive districts, in which either party has a reasonable chance of success, have nearly disappeared. Less than 8 percent of districts were considered competitive for the November 2022 midterm elections,[18] down from roughly 40 percent in the 1990s;[19] and only 6 percent in fact flipped from one party to the other.[20] As a result, outcomes in "safe" districts are effectively decided in primary elections when a small subset of the electorate participates. In 2020, just 10 percent of voting age Americans effectively elected 83 percent of the U.S. House.[21]

Elections in which some groups of voters are structurally advantaged and others starkly disadvantaged, and in which many votes have no effect on outcomes altogether, are certainly bad news for a representative democracy. But the causes of these trends are not a mystery. Each of these phenomena — electoral biases that favor one party over another; the dilution of voting power along racial lines; a decline in electoral competition — share a common throughline, in that each, in large part, can be explained by the use of single-member districts.

While this report will review certain well-documented consequences of single-member districts, its chief purpose is to spotlight the statutory barrier to considering an alternative electoral system and to assess risks and benefits of reform. The UCDA, a federal statute enacted in 1967, mandates the use of single-member districts for House elections. Thus, any reform efforts that would propose alternatives must contend with it. This report offers a roadmap to both better understand the law and options for changing it.

The report is divided into three parts. Part I provides an historical overview of winner-take-all elections for the U.S. House — including the use of both single-member districts and bloc voting — and relevant legal developments, situating the UCDA in its historical context. Part II examines the benefits of pursuing a more proportional system for House elections as well as possible risks. Part III considers different reform options, including differing approaches to amending the UCDA. What flows from that analysis is a recommended approach defined by key policy principles for UCDA reform that would permit the House to work towards a more representative democracy.

A NOTE ON "PROPORTIONALITY"

Proportionality is often conceived in terms of *party* proportionality, or the degree to which a party's share of legislative seats reflects its share of votes. In 2012, the Republican Party won a commanding majority of House seats (234–201) despite the Democratic Party winning over 1.3 million more votes nationwide.[22] Neither party's share of seats was commensurate with its share of votes.

Party proportionality can also be examined at other levels. For example, the Republican Party regularly sweeps Nebraska's three-member House delegation, securing 100 percent of the seats with roughly 60 percent of the vote; while the 40 percent of the statewide vote for Democrats translates into no seats. Similarly, although roughly a third of the Maryland electorate votes Republican, Republicans hold only one of the state's eight House seats. For Republicans, a one-third vote share translates into a 12.5 percent seat share. Proportionality can be further examined at the district level where in a winner-take-all system, with only a single winner per district, distinctly non-proportional outcomes are typically a given.

In contrast to winner-take-all systems, proportional systems aim to ensure greater proportionality in outcomes among political parties. Under proportional rules, Democrats in Nebraska, for instance, would be more likely to secure one of the state's three House seats; and Republicans in Maryland would be more likely to secure two or three of its House seats. Generally, minority parties — in this case, Democrats in predominantly red states and Republicans in predominantly blue states — are better able to secure seats in proportion to their votes.

Proportionality can also be conceived in terms of *groups*. Often in the U.S., group proportionality is understood in terms of descriptive representation: the degree to which a particular community delineated by shared characteristics (like race) secures seats in proportion to votes. For example, to what degree does the share of Black representatives in a legislative body mirror the percentage of the Black voting population? Redistricting jurisprudence is more nuanced, turning on whether different racial groups vote cohesively and whether certain groups have the opportunity to elect candidates of their choosing, regardless of whether voters of a racial group in fact elect candidates from that racial group. However, in popular conception, the perceived proportionality of our winner-take-all system is grounded in descriptive representation[23] — whether minorities are represented insofar as their elected officials share certain of those voters' characteristics.[24]

Descriptive representation stands in contrast to interest representation,[iii] or group identification based on shared interests rather than shared attributes. Danielle Allen and Rohini Somanathan contrast "given groups" with "emergent groups." Given groups are pre-determined based on demographic characteristics, while emergent groups "form though alliances around particular interest positions." The latter are "contingent matters, emergent from a variety of social practices."[25]

These contrasting concepts implicate the kind of proportionality an electoral system prioritizes, or rather, is capable of prioritizing: should groups formed around shared physical attributes be able to secure representation in proportion to their numbers? What about groups formed around shared interests? As Mary Inman observes: "Although the organization along shared interests may often coincide with physical characteristics, such as race, because racial minorities share many of the same concerns, this does not have to be the case."[26]

---

iii The term was originally coined by Lani Guinier, who specified that "'interest' refers to self-identified interests, meaning those high salience needs, wants and interests articulated by any politically cohesive group of voters. Interests, however, are not necessarily descriptive of an essentialist concept of group identity but are fluid and dynamic articulations of group preferences." Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, Michigan Law Review vol. 89, no. 5 (1991) at 1136.

Since the 1960s, the U.S. winner-take-all system has relied on "race-conscious districting, which predetermines voting options based on a concept of group representation."[27] Because winner-take-all systems do not naturally optimize for representation in proportion to numbers, ours has required remedial interventions to correct (to some degree) its otherwise non-proportional results. For example, the Voting Rights Act's provision that minority voters have an equal opportunity to elect the candidates of their choosing requires that single-member districts be drawn in a way that is conscious of the demographics of voters and the potential impact that the district lines will have on descriptive representation. In practice, mapmakers have often created a clear majority, or sometimes a supermajority, of a minority voter-group in one district while spreading that group's remaining members throughout the adjoining districts.[iv] Such remedies may be regarded as a "top-down approach to democracy. Who will and will not have the power to elect is decided in advance, including which racial minority voters will have the power to elect and which will not."[28]

By contrast, proportional representation "allow[s] voters to establish their own communities of interest in each election. . . [and] to win representation based on their proportion of the votes actually cast," explains Lani Guinier.[29] This tends to result in more descriptively representative outcomes (*e.g.*, Black voters are better able to elect Black representatives), but also improved interest representation. Danielle Allen similarly observes that proportional representation "permits a world where we are not starting with a pre-existing description of the electorate that we then expect to see mirrored in the results of an election. Instead, we are letting the electoral processes themselves show us what the patterns of affiliation are in the electorate."[30]

Party proportionality and proportionality based on groups, including interest-based groupings, are of course interrelated. In practice, systems of proportional representation generate greater party proportionality, which allows interest-based groupings to emerge depending upon the cleavages captured by the party. Those cleavages may be racial, though they may also be socioeconomic, geographic, religious, cultural and so forth.

---

iv The U.S. Supreme Court has over time changed the standards dictating how and to what extent race can be expressly considered in drawing such districts; and other non-descriptive factors, such as the degree to which racial groups vote cohesively, are relevant. But Lani Guiner's broader point holds in practice: existing interventions used to improve racial representation within the single-member district system have often reflected a static conception of group interests and group representation.

GLOSSARY OF KEY TERMS

electoral system	The sets of rules that govern how the preferences of voters are translated into electoral outcomes. At minimum, these rules include district magnitude, electoral formula, ballot structure and assembly size.
district magnitude	The number of seats per district. For instance, a district magnitude of five indicates a district represented by five representatives.
electoral formula	The rules used to convert votes into a determination of winners and allocation of seats.
ballot structure	How voters can express their preferences when casting their votes. For instance, voters may be able to indicate a single preference or rank their preferences.
single-member districts	Districts represented by a single representative, *i.e.*, with a district magnitude of one.
bloc voting	Any multi-seat race in which a voter is allowed to cast as many votes as there are seats to fill and the M candidates with the most vote totals (where M is the district magnitude) are the winners.
proportional multi-member districts	Districts represented by two or more representatives, and in which seats are allocated in rough proportion to votes. Proportional representation requires the use of proportional multi-member districts.
winner-take-all	An electoral system in which seats are allocated to winners on a plurality or majority basis, such that a single party captures every seat available within a district. Winner-take-all systems can use either single-member districts or multi-member districts.
proportional representation	An electoral system that allows seats in a multi-member district to be allocated in proportion to parties' vote shares.
mixed-member proportional representation	An electoral system in which some members are elected via winner-take-all in single-member districts and others from multi-member districts using a proportional formula, and in which the overall allocation is roughly proportional to parties' votes.

I.

HISTORICAL BACKGROUND

Since the Founding era, U.S. House elections have been dominated by two variants of a winner-take-all electoral system: *single-member plurality*[v] and *bloc (*or *at-large*) *voting*.[vi] After nearly two centuries, the UCDA created a federal mandate to use the former's distinguishing feature: single-member districts.

While single-member districts can generate distinctly non-proportional electoral outcomes — particularly in contrast to more modern systems of proportional representation — this was not necessarily intended by their adoption across the U.S. In fact, single-member districts long represented a *more* proportional option to the bloc voting alternative.

Tracing the historical developments of both models helps to explain the legislative logic behind the UCDA as well as the decades of legal developments that followed. It also helps to highlight the profound impact of the path-dependent nature of America's electoral system. The dominance of these models — both *winner-take-all systems* — reflected less an expansive debate over the country's manner of electing officials and more the consequence of inheriting systems at a time when few others existed or were seriously contemplated. As Robert Dahl summarized, the U.S. winner-take-all electoral system

> was not the doing of the Framers, at least directly, for it was shaped less by them than by British tradition. The Framers simply left the whole matter to the states and Congress, both of which supported the only system they knew, one that had pretty much prevailed

in Britain, in the colonies, and in the newly independent states . . . . [Winner-take-all] was the only game in town in 1787 and for some generations thereafter.[31]

Since the UCDA became law, attempts to remedy serious issues, such as the systematic disenfranchisement of Black voters in congressional single-member districts, were constrained by the legal codification of the single-winner system itself, directing lawmakers and the courts towards remedies like drawing districts where minority groups have "the ability to elect their preferred candidates."[32] In practice, this has often meant creating majority-minority districts. While alternative models — including proportional systems proliferating across other democracies — may have better fulfilled the promise of one person, one vote, what began as British tradition[vii] would later bind America's options by law.

As a prerequisite to policy analysis, the below historical review places current policy discussions regarding alternatives to the single-member district rule — in particular, more proportional alternatives — on a long continuum of advances and setbacks for fairer representation.

Founding Era: State Discretion Over Congressional Districts

In the 1780s, the rules governing legislative elections varied widely across the original thirteen states. The more populous states of Massachusetts, New York, North Carolina, South Carolina and Virginia used

---

v Winners in single-member districts can be decided by plurality or majority rules. Plurality has traditionally been, and continues to be, more common in U.S. elections. However, whether plurality or majority, single-seat races are by definition winner-take-all. For simplicity, this report will predominantly make reference to single-member districts without regard for the allocation rule (*e.g.*, without specifying single-member *plurality*).

vi To keep text simple, this report will use the general term "bloc voting" to reference any multi-seat race in which a voter is allowed to cast as many votes as there are seats to fill, and candidates with the most (or a majority) of votes win. Bloc voting may be used in at-large elections, with multiple winners in a statewide election — sometimes termed *plurality* (or *majority) at-large*; or with multiple winners in several multi-member districts. Bloc voting is also sometimes used synonymously with the term Multiple Non-Transferable Vote (MNTV). Typically under bloc voting, the more popular party is able to elect its full slate of candidates out of proportion to the votes received, thereby depriving the second most popular party of any representation.

vii Malcolm Baalman argues against the common observation that the election of representatives "by a plurality of votes in a single-member constituency – was of ancient lineage in Britain." Instead: "What had been the rule, for several centuries, was generally the sending to Parliament, possibly (but not necessarily) after holding an election, of two members, not one, for each county and borough constituency. Also present, but less common, were constituencies electing three or four members." Elections used "the voting method we today call the block vote, or the plurality rule in multi-member divisions." *First-past-the-post: a rogue's practice?*, On Elections (Jul. 31, 2018). *See also* Vernon Bogdanor, "Introduction" in *Democracy and elections: Electoral system and their political consequences*, Cambridge University Press (Vernon Bogdanor and David Butler, eds., 1983) at 2-4. It may therefore be more accurate to reference plurality at-large as opposed to single-member plurality as a British inheritance. Generally, because both are winner-take-all systems, it would be appropriate to claim that the U.S. inherited this class of electoral systems from Great Britain. Amel Ahmed charts the movement from multi-seat districts in which winners were decided by a plurality or majority (as with plurality at-large) to single-member plurality in Great Britain. *Reading History Forward: The Origins of Electoral Systems in European Democracies*, Comparative Political Studies vol. 43, no. 8–9 (May 18, 2010) at 1059–1088.

districts to elect members of the state legislature. The less populous states of Connecticut, Delaware, New Hampshire, New Jersey and Rhode Island eschewed districts altogether and selected their state legislators through statewide elections on a "general ticket," which allowed all voters in a state to vote for each seat up for election. Georgia and Maryland employed a hybrid approach, using districts but allowing voters to cast a ballot in every race across the state.[33]

The Constitution does not specify whether congressional elections should use single- or multi-member districts, instead generally authorizing states to regulate the "Time, Place, and Manner" of congressional elections in the first instance and empowering Congress to "make or alter such regulations."[34] The historical record suggests that a number of Framers preferred single-member districts over bloc voting.[35] That these were the only two principal options considered — two variants of winner-take-all — is a reflection of the unique historical moment: in creating the first constitutional democracy, the Framers had few models from which to borrow.[viii]

The House of Representatives was conceived with the *principle* of proportional representation in mind,[36] but the myriad ways polities now design their electoral systems to produce meaningfully proportional *outcomes* had yet to emerge, in theory or practice. More than a century would pass before various other countries pioneered proportional electoral systems in lieu of winner-take-all.[ix] While many aspects of the U.S. constitutional design were deliberately conceived products of reasoned debate, an ideal electoral system was not one of them. Rather, lawmakers simply took for granted, with slight modifications, limited options inherited from Great Britain.[37] As Jack Rakove argues, the Framers in fact acknowledged as much: they recognized that "designing many aspects of

the election of representatives would be an ongoing project," leaving the matter open to both the states and future Congresses and, in doing so, deliberately creating "room for experimentation."[38]

> **While many aspects of the U.S. constitutional design were deliberately conceived products of reasoned debate, an ideal electoral system was not one of them. Rather, lawmakers simply took for granted, with slight modifications, limited options inherited from Great Britain.**

After the Constitution's ratification, the more populous states adopted single-member districts for congressional elections, just as they had previously done with their state legislative elections. The less populous states elected their congressional delegations at large (through the bloc vote). Larger states "tended to have wide attitudinal variations within their boundaries due to the differences between city and rural interests, so many were compelled to hold district elections. This way, their Representatives could be familiar with the broader range of issues contained within the state."[39] Smaller states, by contrast, "lacked the expansive territory as well as the plethora of interests characteristic of the larger states. As a result, they opted for at-large elections since their Congressmen could know and adequately represent the entire state."[40]

The two different systems gave rise to two very different dynamics, with direct implications for the number of seats either major party might secure. States with single-member districts typically elected mixed congressional delegations reflecting the different regional preferences throughout the state: for instance, a more rural district might select a candidate of one

---

viii   Many electoral innovations around the world in the years since, including most forms of proportional representation, require political parties in order to select candidates and allocate seats. Given that political parties did not yet exist in the United States in the 1780s, and that many Framers seemingly hoped that voters would instead choose their representatives based on individual character and fitness, it is unsurprising that such alternatives were not contemplated at the time. *See* Richard Hofstadter, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States*, University of California Press (1969).

ix   Party-list proportional representation — now the dominant model of proportional representation among the world's democracies — was also proposed in the U.S. as early as 1844, just as similar proposals were (independently) being developed in Europe. *An Early Essay on Proportional Representation*, THE ANNALS of the American Academy of Political and Social Science vol. 7, no. 2 (1896) at 61–80.

party, and a more urban district a candidate from another. A single winner per district still meant that many voters failed to secure any representation; as discussed in more detail below, single-member districts certainly did not fulfill the principle of proportionality. They increased the likelihood of *some* degree of representation for minority views in the state's delegation to the House, even if minority views *within each district* lacked representation.
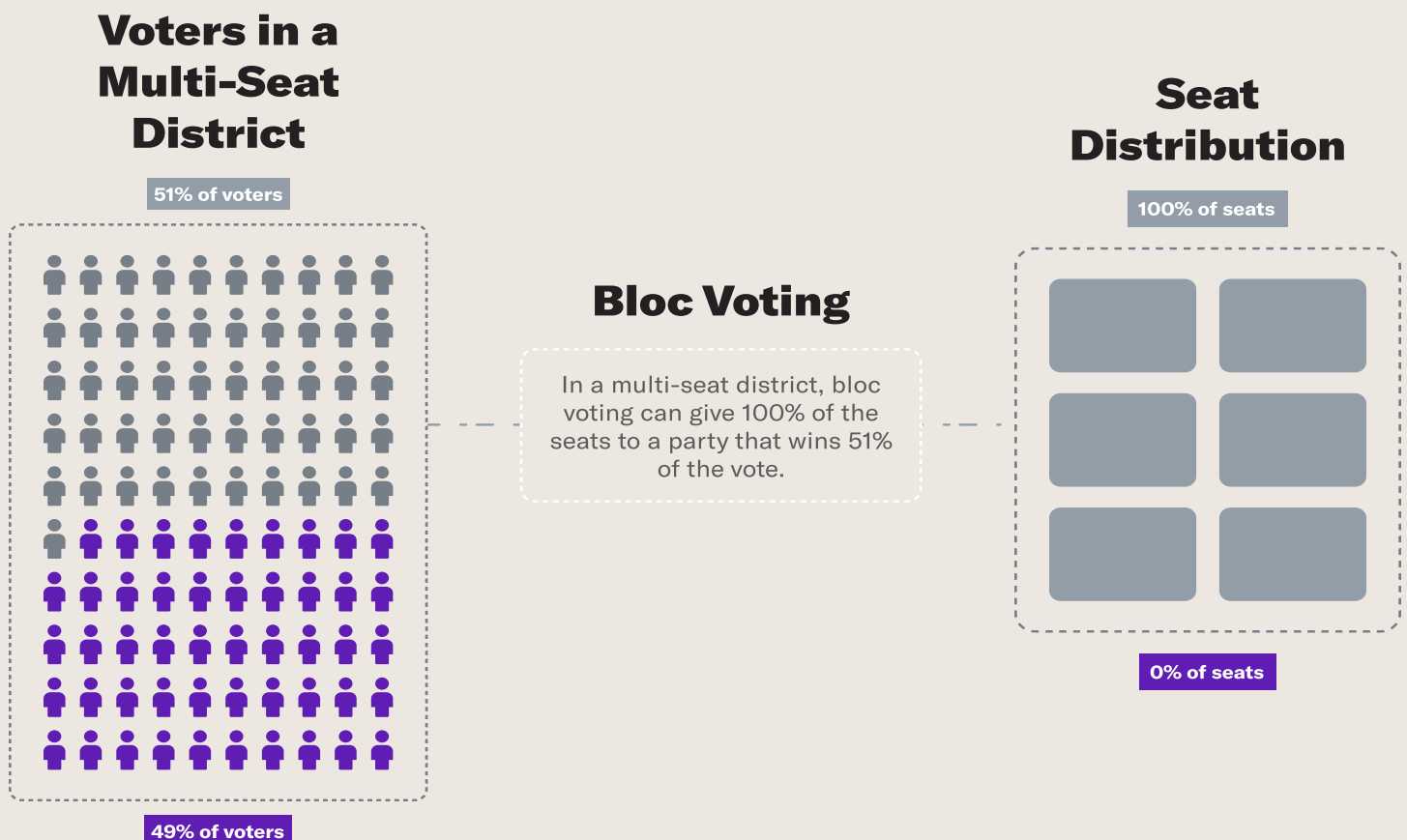
On the other hand, states with bloc voting consistently delivered their entire delegation to the party with a statewide majority, thereby depriving the minority

party of *any* congressional representation. In the ensuing decades, state and federal officials in single-member district states recognized the relatively unrepresentative outcomes of bloc voting and sought to abolish it through a U.S. constitutional amendment. These efforts made considerable progress, but all fell short of the high bar set by Article V of the Constitution.[41]

FIGURE 1

BLOC VOTING IN PRACTICE

Bloc voting is a distinctly non-proportional electoral system in which multiple winners per district are decided by a plurality or majority of votes rather than allocated in proportion to votes. In practice, bloc voting permits a single party to sweep a multi-seat election out of proportion to its vote share.

Voters in a Multi-Seat District

51% of voters

49% of voters

Bloc Voting

In a multi-seat district, bloc voting can give 100% of the seats to a party that wins 51% of the vote.

Seat Distribution

100% of seats

0% of seats

1842 Apportionment Act: Congress (In Theory) Bans Bloc Voting

By 1842, approximately a quarter of states with multiple Representatives were using the bloc vote for congressional elections. After Alabama's Democratic-controlled state legislature switched to bloc voting, Democrats promptly won all 5 congressional seats.[42] Concerned about similar changes taking hold elsewhere, Whigs in Congress added an amendment prohibiting bloc voting in congressional elections to the pending decennial apportionment bill:[x]

> [I]n every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory equal in number to the number of Representatives to which said State may be entitled, no one district electing more than one Representative.[43]

The amendment produced a rancorous debate in Congress, as this was the first time Congress sought to exercise its authority to regulate the "Manner" in which states administered congressional elections under the Constitution's Elections Clause.[44] After intense debate over federalism and anti-commandeering principles, whether "Manner" included the use of districts, and the permissible ends to which Congress could exercise its Elections Clause power, Congress passed, by narrow margins in both the House and Senate, the apportionment bill with the single-member district requirement.[45]

Nevertheless, four states ignored the federal ban and retained bloc voting in the subsequent congressional election in which Democrats won a majority of seats in the House. Advancing the losing constitutional arguments from the 1842 debate, the new House majority voted to seat the disputed representatives-elect from those four states.[46]

At its heart, the debate over the winner-take-all models was about the respective proportionality of their outcomes: whether a state's congressional delegation roughly reflected the population's partisan make-up, with both majority and minority party representatives securing a seat at the table, or whether a party could effectively sweep *every* seat despite a substantial share of the electorate favoring another party. Of the two models, single-member districts clearly facilitated more proportional outcomes than bloc voting.

Single-member districts — as with bloc voting, still a winner-take-all system — were by no means optimal for ensuring votes proportionally translated into seats. While the U.S. has continued to use a winner-take-all electoral system, other democracies adopted proportional multi-member districts over the course of the 19th and 20th centuries to produce more representative outcomes.[47]

At its heart, the debate over the two winner-take-all models was about the respective proportionality of their outcomes: whether a state's congressional delegation roughly reflected the population's partisan make-up, with both majority and minority party representatives securing a seat at the table, or whether a party could effectively sweep every seat despite a substantial share of the electorate favoring another party.

---

x   Article I, Section 2 of the U.S. Constitution requires that House seats be reapportioned among the states after each decennial census. Initially, Congress managed this process directly, using updated census figures each decade to pass an apportionment bill that specified how many seats each state would have until the subsequent reapportionment ten years later. As the U.S. population grew, Congress repeatedly expanded the total number of Representatives in the House with each apportionment to maintain a modest ratio between constituents and representatives. Under this process, the House grew from 105 members in 1792 to 240 following the 1830 census. Caroline Kane, Gianni Mascioli, Michael McGarry and Meira Nagel, *Why the House of Representatives Must Be Expanded and How Today's Congress Can Make It Happen*, Fordham University School of Law Democracy and the Constitution Clinic (Jan. 2020) at 6.

Late 19th & Early 20th Centuries: A Growing Single-Member District Consensus

Despite the intensity of these initial debates, the question of whether Congress could prohibit bloc voting for congressional elections quickly fell out of controversy.

The 1850 apportionment bill made no reference to districts and did not purport to limit the number of permitted Representatives in any district.[48] The 1862 apportionment bill resuscitated the 1842 Act's single-member requirement, yet there was little debate in Congress over its inclusion.[49] Congress retained that requirement in apportionment bills passed over the next few decades with little fanfare, including in the final decennial reapportionment bill in 1911.[50] Following the precedent set in the 1840s, some states occasionally ignored single-member requirements and elected Representatives through the bloc vote.[51]

By means of decennial apportionment bills and periodic legislation affording newly admitted states new seats in Congress, the House had grown to 435 members by 1920.[52] After decades of simmering dissent over the propriety of continuously expanding the House, a preference to limit further expansion increasingly predominated among its members.[53] With a surge of immigration in the 1910s,[xi] 60 additional seats would have been needed to sustain the prior balance, and some members argued that such an expansion would make the chamber unwieldy, and, as a practical matter, cramped.[54] Members may also have perceived a significant new addition of seats as "diluting their own power."[55] The controversy produced a legislative stalemate in the Senate, with Congress failing to pass any decennial apportionment legislation after the 1920 census — the only time in U.S. history that Congress abdicated this constitutional obligation.[56]

Congress revisited the issue of apportionment and the size of the House throughout the 1920s, with public pressure mounting on the eve of the next decennial census.[57] After extensive debate and negotiations, Congress in 1929 passed a law that set a permanent administrative method for apportioning House seats after each census and that capped the House at 435 members.[58] This law was silent as to whether states were required to use single-member districts.

In 1932, the Supreme Court ruled that restrictions set forth in earlier apportionment bills were void upon completion of the subsequent apportionment.[59] This meant that the 1911 single-member district requirement was no longer binding law, and bloc voting for congressional elections was permitted until Congress decreed otherwise given that the 1929 law included no such prohibition. In 1941, Congress amended the 1929 statute to adjust the permanent apportionment methodology and to authorize the judicial imposition of bloc voting in certain circumstances, namely, if a state lost a congressional seat after decennial apportionment and failed to complete redistricting by the next election.[60]

Over the next few decades, at least nine different states with more than one Representative used bloc voting for congressional elections at one time or another, but the practice largely fell out of favor by the early 1960s. By that time, only New Mexico and Hawaii were still using the bloc vote (and with only two House seats each).[61]

Meanwhile, many states were abusing the single-member district system to diminish minority (racial and party) political power. In both congressional and state legislative maps, large urban populations were often crammed into a small number of districts, while sparsely populated rural areas received disproportionately large numbers of seats. As a result, the population in each urban district was often substantially larger than in rural districts, artificially amplifying the power of rural voters and diminishing the power of urban voters. Nonetheless, in 1946, a plurality of the Supreme Court decided that the districting process was "peculiarly political"

---

xi Further complicating the politics at the time were two other seismic shifts in the American electorate: the start of the Great Migration in the 1910s, resulting in the eventual relocation of approximately six million Black Americans from the South to states in the North, Midwest, and West; and the ratification of the 19th Amendment in 1920, which finally permitted tens of millions of female voters to cast a ballot.

and therefore not suitable for judicial evaluation and intervention.[xii]

Early 1960s: Judicial Scrutiny Over District Plans

In the early 1960s, the Supreme Court reversed course and held that the constitutionality of a districting scheme was subject to judicial review.[62] In a quick succession of cases, the Court articulated and applied the "one person, one vote" rule, which required states to draw legislative districts containing approximately equal population to ensure that "one man's vote in a[n] . . . election is to be worth as much as another's."[xiii]

These decisions broke new ground by permitting federal courts to provide a meaningful check on a common abuse in the drawing of district maps, namely, giving disproportionate voting power to rural (and predominantly white) voters by packing large numbers of urban voters into a small handful of districts. These rulings also permitted federal courts to impose judicially-drawn maps and other tailored remedies. While such remedies were supposed to comport with state policy when possible, courts were permitted to set aside state policy when the U.S. Constitution compelled a different outcome.[63]

At the time, countless single-member district local, state and congressional maps throughout the country were in violation of the "one person, one vote" principle. While the rural-urban distortion may have been particularly pronounced in the Jim Crow South, the problem was nationwide.

1967: The Single-Member District Mandate

Members of Congress grew increasingly concerned

that a federal court would not just invalidate their state's congressional single-member district plan, but would impose bloc voting — in particular, statewide at-large elections — as a provisional remedy until the state legislature could draft a compliant single-member district plan. Such a remedy would address malapportionment across single-member districts with the blunt approach of simply eliminating districts altogether, and would almost necessarily hand a single party control over a state's House delegation out of proportion to the votes the party received.

This was not merely a theoretical concern by 1967: "At the time . . . at least six District Courts . . . had suggested that if the state legislature was unable to redistrict to correct malapportioned congressional districts, they would order the State's entire congressional delegation to be elected at large."[64] Indiana was under a court order to use an at-large system in the 1968 congressional election unless it could adopt a lawful single-member district plan in time.[65]

The House and Senate struggled to come to agreement on a redistricting bill that would have largely banned bloc voting while preventing courts from forcing states to redistrict until after the next census. When the conference report for the redistricting bill was considered on the Senate floor, Senator Howard Baker (R-TN) urged his colleagues to reject it and offered an alternative as an amendment to an unrelated immigration bill that happened to be up for consideration.[66] The alternative required that all states with more than one Representative use single-member districts in all future congressional elections.[xiv] The amended bill passed in the House and Senate, and was signed into law by President Lyndon Johnson on December 14, 1967. The single-member district

---

xii *Colegrove v. Green*, 328 U.S. 549 (1946). The Appendix at the conclusion of the *Colegrove* opinion lists the biggest disparity between congressional districts within each state as of 1946. In Illinois, the largest district had more than *eight* times the population of the smallest. In Ohio, the largest was four times bigger than the smallest, and many other states had districts two or three times larger than others.

xiii *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964); *see*, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963). In *Wesberry*, the Court explained that "[t]his rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history." 376 U.S. at 18. In dissent, Justice Harlan observed that states were therefore required to either (i) attempt the difficult task of creating single-member districts of roughly equal size or (ii) elect all Representatives at-large. *Id.* at 20 (Harlan, J., dissenting). While the broad principles are similar, the Supreme Court has recognized some differences in the "one person, one vote" doctrine when applied to congressional elections vis-a-vis state and local elections.

xiv The amendment offered a temporary exception for Hawaii and New Mexico for the upcoming election for the 91st Congress.

provision, now referred to as the UCDA, was codified in 2 U.S.C. § 2c.[xv]

Supporters of Baker's amendment cited the prevention of judicially imposed bloc voting as their driving motivation.[67] Scholars have observed other motivations behind the bill, including simply that Democrats — who at the time controlled both houses of Congress as well as the presidency — perceived that they would stand to gain from a single-member district mandate.[68]

Another motivation may have been related to the Voting Rights Act (VRA) of 1965, which had passed less than two years prior. Some states had previously used the bloc vote to suppress minority representation, and there had been a renewed proliferation of state and local bloc voting schemes in the South over the prior few years.[69] In the wake of the VRA, Southern states were threatening the use of bloc voting to nullify the voting strength of Black residents.[70] Some members of Congress may have supported the UCDA (or similar redistricting legislation) to protect Black voting rights.[71]

---

xv   While the UCDA only regulates congressional elections, the ensuing decades also saw a steady decline in the use of bloc voting for state legislatures. In 1955, only 9 states elected all their representatives through single-member districts. By 1984, three-fourths of all lower-chambers and eleven in twelve upper-chambers were selected from single-member districts. Richard G. Niemi, Jeffrey S. Hill and Bernard Grofman, *The Impact of Multimember Districts on Party Representation in U.S. State Legislatures*, Legislative Studies Quarterly vol. 10, no. 4 (Nov. 1985) at 441–455.

SUPPRESSING MINORITY REPRESENTATION THROUGH THE BLOC VOTE

Bloc voting typically produces distinctly non-proportional results. In practice, one party or voter-group usually wins in a landslide, electing its full slate of candidates out of proportion to votes received.

As with proportional representation, bloc voting uses multi-seat districts; but unlike proportional representation, it allocates winners by a plurality or majority rule rather than proportionally. As Rein Taagepera explains: "The multi-seat district, usually conducive to proportional representation, is thus converted into a tool of absolute control by the majority. The larger the district magnitude, the worse off the minority parties or groups are likely to be."[72] For instance, in a ten-seat district, 51 percent of voters are functionally able to elect all ten seats, rather than the five that would correspond to their vote share. The system has been employed in various jurisdictions across the U.S. to suppress racial and ethnic minority representation.

There is little evidence that bloc voting initially developed and spread in the U.S. for the purpose of diluting minority voting power. Neither citizenship nor the right to vote were granted to Black people during the 18th and much of the 19th centuries when bloc voting was common across the states; and whites after the Civil War used various other means, from voter registration barriers to terrorism, in order to prevent Black enfranchisement. During the Progressive Era, however, the spread of bloc voting in both the South and the North could be tied more closely to an intent to suppress minority representation.

In the early 20th century, municipal reformers sought to handicap political parties and "machine politics" through nonpartisan elections in at-large districts. Replacing "ward politics" with at-large schemes was "intended to promote a citywide approach to municipal problems among councilmen."[73] Reformers

argued that replacing single-member districts (or the "ward system") with at-large elections (bloc voting) "would attract a 'better class' of council members. . . [who] would have to appeal to more than a particular neighborhood or ethnic group, and therefore were more likely to be people of education and accomplishment."[74] Reformers were also "de facto aiming at reducing the influence of immigrants and (the very few) black voters."[75] The effects were pronounced. A 1979 study found that "blacks living in cities with at-large elections have half the chance of electing a member [of choice] as blacks in cities using wards."[76] A 1986 study found that "at-large electoral systems dilute minority votes throughout the entire nation, not just in southern cities," and that "voting dilution is even more acute in other parts of the country."[77] The switch from bloc voting to single-member districts for many state assemblies in the 1970s and 1980s corresponded with significant gains in Black representation, illustrating the penalties bloc voting had imposed on electoral minorities.[78]

In the immediate wake of the VRA, white majorities in the South "reacted strategically to this federal legislation by changing the electoral rules" — in particular, by imposing bloc voting — "in order to minimize minority representation."[79] The intention was to sweep seats.[80] In January 1966, for example, the all-white Mississippi state legislature passed over a dozen bills concerning election laws, most of them focused on implementing bloc voting.[81] As the 24th Amendment and the VRA stripped white majorities of various disenfranchisement tools, such as poll taxes and literacy tests, they turned instead to changing electoral rules. Richard Engstrom and Michael McDonald observed in 1986 that since the passage of the VRA, "the previous preoccupation with denial of the vote has shifted to a more contemporary concern, dilution of the vote" — namely, electoral schemes that generate "a white citywide majority. . . as one of the major techniques for reducing the potential impact of the black vote."[82]

Despite this troubling history, bloc voting remains the prevailing electoral system for local elections across the U.S. 64 percent of American city council elections

used the system as of 2012, along with nine state legislative chambers.[83] It also is the system used by most states today (termed the "General Ticket System") for allocating electors to the Electoral College.[84]

1970s & 80s: Redistricting Jurisprudence & Vote Dilution

Once the UCDA was in effect, litigation over congressional apportionment was necessarily limited to the appropriate use of single-member districts. However, the use of bloc voting for state and local elections produced considerable litigation and led to the ongoing development of the Supreme Court's redistricting jurisprudence.[85]

In a series of cases, the Supreme Court concluded that at-large "multimember districts are not per se unconstitutional."[86] Even when elections failed to deliver a "racial group" with "legislative seats in proportion to its voting potential," the system would be upheld unless that group could prove that its "members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice."[87]

In 1980, the Supreme Court held that proof of a "racially discriminatory motivation" was needed to challenge a district map under Section 2 of the VRA.[88] This decision radically changed the landscape of voting rights litigation, insulating countless facially neutral laws with discriminatory effects from legal challenge. Congress recognized and sought to fix this problem while renewing several expiring VRA provisions in 1982; the proposed fixes to Section 2 were a focus of extensive hearings and debate on VRA reauthorization.The principle objective was to reject the Court's interpretation of the VRA and clarify that Section 2 only required proof of discriminatory effects, irrespective of discriminatory intent.[89]

Opponents of reform argued that an "effects" test would create liability based on non-proportional outcomes alone. Indeed, as proportional models in many democracies were making clear, plenty of alternative electoral systems weighted votes more equally than the winner-take-all systems dominant in the U.S.; some advocates in the U.S. were even expressing hope for the judicial imposition of proportional representation.[90] Ultimately, compromise language expressly disclaiming any right to proportional racial outcomes was added.[91] The final bill passed by overwhelming margins in both chambers with strong bipartisan support.[92]

Several years later, the Supreme Court applied the effects test and held that several North Carolina state legislative bloc voting systems violated Section 2 because they "caused black voters. . . to have less opportunity than white voters to elect representatives of their choice."[93] *Gingles v. Thornberg* provided a new framework for evaluating when a districting plan impermissibly allocated minority voters across districts to dilute their vote share.[94] In practice, it incentivized states to create one or a small handful of "majority-minority" districts, that is, single-member districts where the minority racial group constituted a majority and could elect its preferred candidate.[xvi]

This new rule did not ensure that Black voters' ballots would matter equally. In most single-member districts, Black voters would continue to constitute a minority, unable to elect a candidate of their choosing. Even today, a majority of Black voters in states with racially polarized voting are electoral minorities in their districts.[95] Constituting a certain share of an electorate within a state would not translate into an equivalent share of seats. To illustrate, consider a single-member district where 40 percent of the electorate is Black. Assuming they vote cohesively,[96] Black voters secure zero representation, while a 60 percent white majority secures 100 percent. If this minority-majority distribution remains consistent across all of a state's districts, the minority is in practice barred from any representation statewide.

Creating "majority-minority" districts worked to provide *some* representation while still perpetuating pervasive underrepresentation. States such as South

---

xvi *Thornburg v. Gingles*, 478 U.S. 30, 80 (1986) at 50 (holding that a Section 2 violation required a "minority group. . . to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."). *Gingles* did not expressly require a majority-minority district in order to comply with the VRA; the analysis also considered various factors such as the level of racial polarization, crossover voting, turnout differentials, etc. As a result, an "influence district" — where the racial group constituted a substantial portion of the constituency but less than a majority — has at times been sufficient in some circumstances. *See* Christian R. Grose, _Black-Majority Districts or Black Influence Districts? Evaluating the Representation of African Americans in the Wake of Georgia v. Ashcroft_ (Mar. 9, 2007). However, the key takeaway is that *Gingles* created a clear incentive to concentrate Black and Latino voters in a smaller number of districts.

Carolina in 1990 drew a single majority-minority district out of seven. In effect, one of its seven House seats — 14 percent — would be a candidate chosen by Black voters. Yet, since that district's creation, South Carolina's Black population has remained at greater than 25 percent. *Gingles* may have established a mechanism for blunting the system's worst potential effects, but as a winner-take-all model, single-member districts would continue to produce non-proportional results along racial lines.

1990s & Early 2000s: Emerging Conflicts & Constitutional Limits

Following the new guidance set forth in *Gingles*, various states drew congressional majority-minority districts during the 1990 redistricting cycle. (The number of influence districts[xvii] also increased.) *Gingles* was celebrated for rapid gains in Black representation: there were twice as many Black Representatives elected to the House in 1994 (41) as compared to 1986 (20).[97]

In many states, the consolidation of Black voters into one or two majority-minority districts also allowed for many neighboring districts to become overwhelmingly white and Republican.[98] Republican leadership, including then-Minority Leader Newt Gingrich and the Bush Department of Justice, embraced majority-minority districts as a political windfall.[99] Consider Gingrich's home-state of Georgia. Before redistricting, Democrats controlled 9 out of 10 seats, though there was only one Black member of the delegation, Rep. John Lewis. After the 1994 election, Georgia had two additional Black members (Rep. Sanford Bishop and Rep. Cynthia McKinney), but white Republicans occupied 7 of the state's 11 congressional seats. While political realignment and an historic midterm environment allowed Republicans to increase their vote share across the state, their new seat share was

disproportionately high.

> **In most single-member districts, Black voters would continue to constitute a minority, unable to elect a candidate of their choosing. Even today, a majority of Black voters in states with racially polarized voting are electoral minorities in their districts.**

The design of majority-minority districts requires, by definition, that voting populations be geographically segregated enough for a minority to otherwise constitute a majority, either naturally or deliberately. According to Marsha Darling, these districting schemes in effect determine which minority voters will have the power to elect a candidate of their choosing and which will not, such that"[m]inority group members that happen not to live in a [majority-minority] district must be content with minority representation from *outside* their own district" — with "virtual, not actual, representation."[100] Implications may also extend to the nature of coalitional politics that do and do not emerge. Lani Guinier, an early critic of single-member districts and their implications for voting rights and minority representation, observed that majority-minority districts "carve up politically viable communities of interest. . . arbitrarily limit[ing] electoral choices based solely on where particular voters happen to live."[101] In her view, the artificial packing together of certain groups breaks apart real and potential political coalitions that span race while artificially reinforcing racial divides:

> [I]n order to create majority-black districts, racially homogeneous white districts are also created on the assumption that white voters are a racially undifferentiated mass. The result often is that moderate white voters are

xvii   These are districts where racial minorities do not constitute a majority but nonetheless "influence" electoral outcomes. Richard Engstrom more particularly defines them as districts "in which minority voters are not viewed as having an opportunity to elect a member of their group, but do have an opportunity to help choose the winner from among the white or Anglo (and sometimes other) candidates contesting that election. The choice of minority voters in these contests do not necessarily equate to a 'representative of choice,' in the nomenclature of Section 2 [of the VRA], or a 'preferred candidate of choice,' per Section 5. On the contrary, it is simply a choice between what is available." *Redistricting: Influence Districts — A Note of Caution and a Better Measure*, The Chief Justice Earl Warren Institute on Law and Social Policy (May 2011) at 2.

submerged in the resulting majority-white district, separate from blacks who would form coalitions with them but for [single-member districting]. Thus, districting limits options of white, as well as black, voters.[102]

Guinier also argued that the insistence of majority-minority districts "to remedy the electoral aspects of minority vote dilution . . . exclusively to retain winner-take-all elections"[103] has come at the expense of imagining alternative electoral systems that "would assure fair minority representation and would better reflect all voters' true preferences," including "proportional or semi-proportional representation."[104] Writing in the early 1990s, Guinier lamented that "[s]ingle-member districts are preferred despite their tendency to waste votes, to encourage gerrymandering, and to achieve less than full proportionality."[105]

Indeed, the "wasted vote" effect generated by grouping minorities into majority-minority districts remains stark today. In a district with a 65 percent Black electorate, for example, at least 15 percent do not contribute to the outcome; those votes could have contributed to securing additional minority representation in a neighboring district.[xviii] In Mississippi's 2nd congressional district, Rep. Bennie Thompson won the 2018 election with 71.8 percent of the vote and the 2020 election with 66 percent. At the same time, Black voters in adjoining Mississippi districts were unable to elect the candidates of their choosing or meaningfully affect the outcomes.

Margins of victory tend to be "overwhelming" in majority-minority districts.[xix]

The UCDA prohibited states from exploring alternative systems — such as proportional representation — to remedy the problematic effects of single-member districts. Instead, any proposed solutions to the system's dilution of minority voting power were bound by the system itself.

Through the 1990s and 2000s, the Supreme Court heard a number of cases involving majority-minority congressional districts, where it clarified the manner in and degree to which state legislatures could (or must) consider race when drawing district lines.[106] None contemplated alternatives to the single-member district model itself.[xx] The UCDA prohibited states from exploring alternative systems — such as proportional representation — to remedy the problematic effects of single-member districts. Instead, any proposed solutions to the system's dilution of minority voting power were bound by the system itself. As John R. Low-Beer observes,

> Two fundamental values underlie the Supreme Court's debate about constitutional rights in voting: majority rule and minority representation. The debate has taken the traditional system of winner-take-all single-member districts as a given. Yet within the

---

xviii This also means that gains among voters by an opposing party in these districts often fail to translate into seat gains. In 2022, with 60 percent of the vote, Rep. Bennie Thompson's margin of victory had contracted, as had the margins of some others representing majority-minority districts. *See* Linda Sánchez, Ballotpedia (2022). But as Sean Trende observes, improved performance by Republicans among "Black and especially Hispanic voters . . . didn't translate into seats." @SeanTrende, Twitter (Nov. 10, 2022), https://archive.vn/UafiY.

xix Andrew Spencer, Christopher Hughes and Rob Richie, *Escaping the Thicket: The Ranked Choice Voting Solution to America's Districting Crisis*, Cumberland Law Review vol. 46, no 2. (Jun. 22, 2016) at 398. Indeed, the Department of Justice under the Reagan and Bush administrations advised states to draw majority-minority districts such that minorities would constitute upwards of 65 percent of the electorate, in effect creating "supra-Democratic districts." Paul E. Peterson, "A Politically Correct Solution to Racial Classification" in *Classifying by Race*, Princeton University Press (1995) at 11–12.

xx Of note, at the turn of the century, the Supreme Court tried to reconcile the 1941 statute (requiring at-large congressional elections in certain circumstances) with the 1967 statute (requiring the use of single-member districts). *Branch v. Smith*, 538 U.S. 254 (2003). In *Branch v. Smith*, a majority agreed that the 1967 law did not implicitly repeal the 1941 law. However, there was no majority as to the operative effect of the seemingly contradictory provisions. The plurality concluded that the 1941 law applied only as a "last-resort remedy" — that is, only when "the election is so imminent that no entity competent to complete redistricting pursuant to state law (including the mandate of [the 1967 law]) is able to do so without disrupting the election process." *Id.* at 275. Justices O'Connor and Thomas disagreed, stating that the 1941 law controls until a state has redistricted pursuant to state law, requiring a federal court to "order at-large elections" in the meantime. *Id.* at 300 (O'Connor, J., concurring in the judgment). Under their rationale, only once a state has completed redistricting is a federal court bound by the 1967 command to use single-member districts. *Id.* at 299–300 (O'Connor, J., concurring in the judgment). This issue remains an open, unsettled question.

traditional system, neither value is fully attainable, and gains in one are often traded off against losses in the other . . . . The Court's efforts to resolve this issue within the parameters of the existing electoral system are in vain, leaving it thrashing about in the political thicket.[107]

Scholars have thus long proposed that other electoral systems beyond winner-take-all, such as proportional representation, could more effectively remedy systematic underrepresentation of racial minority groups and harmonize values articulated by the courts.[108]

21st Century: Worrisome Trends

As problems with single-member districts persist and worsen — for example, with legislatures further diluting the electoral strength of Black voters through aggressive racial gerrymandering, and locking-out the opposing party from fair competition through aggressive partisan gerrymandering[109] — remedies reliant on existing legal tools appear increasingly ineffective.

In 2013, the Supreme Court effectively invalidated the VRA's preclearance regime in *Shelby County v. Holder*.[110] For decades, a number of states and jurisdictions with particularly egregious histories of racial discrimination in voting had to seek approval from the Department of Justice or a federal court prior to changing voting laws or redistricting, with the state bearing the burden of proving the new laws or district map did not have a racially discriminatory effect or purpose. Preclearance would be denied if a proposed map produced a "retrogression in the position of racial minorities," *i.e.*, a reduction in "the number of districts in which minority groups could 'elect their preferred candidates of choice.'"[111] While Congress could attempt to legislate a new coverage formula to determine which states are subject to preclearance (thereby addressing the specific issue in *Shelby County*), there is a serious risk that the Supreme Court would invalidate any new coverage formula or even the preclearance mechanism itself (a question it expressly reserved in *Shelby County*).[112]

In 2018, the Supreme Court made it more difficult to prove a legislature's discriminatory intent under Section 2 in *Abbott v. Perez*.[113] And in 2021, the Court made it more difficult to prove that a state law imposes a racially disproportionate burden on the right to vote under Section 2 in *Brnovich v. DNC*.[114]

A case currently pending before the Supreme Court, *Merrill v. Milligan*, is another concerning sign that the Court intends to further weaken the VRA. In February 2022, the Supreme Court issued a surprising emergency order staying the lower court's ruling that found Alabama's congressional map in violation of Section 2, thereby allowing use of a racially dilutive map for the November 2022 election.[115] It is possible, if not likely, that the Court's decision on the merits (expected by June 2023) will make it more difficult to bring successful racial dilution claims under Section 2. The ruling might involve changes to the traditional *Gingles* framework or the introduction of an entirely new liability standard under the VRA. Either way, the Court is expected to make it more difficult for voting rights plaintiffs to seek equitable representation for minority voters.

Additional threats to the VRA are percolating through the federal courts. Most prominent is a case in Arkansas, where a federal court held — for the first time in the law's nearly sixty-year history — that only the U.S. Attorney General can file suit under Section 2.[116] This would eliminate the overwhelming majority of VRA suits and shift all responsibility to the Department of Justice, which lacks the resources (and in some administrations, the will) to adequately protect these interests. As of March 2023, the appeal of that decision remains pending before the Eighth Circuit. It seems highly likely the Supreme Court will eventually take up this question in this or a future case; at least two justices have expressly signaled their openness to this new limitation.[117] This approach would be a radical departure from decades of precedent, but it is not inconceivable given the current Court's hostility to the VRA.

The VRA is not the only safeguard under attack. In 2019, the Supreme Court held that claims of unconstitutional partisan gerrymandering could

not be entertained in federal court.[118] And while that decision purported to limit its reach to the U.S. Constitution and federal courts — with the majority making clear that state courts were free to regulate partisan gerrymandering as dictated by state constitutional and statutory law[119] — even that limitation is now being drawn into question.

A newly contested question is whether, and to what extent, state constitutions apply to congressional elections, and may therefore prohibit partisan or racial gerrymandering. Once a fringe concept, the "independent state legislature" theory contends that the Election Clause in the U.S. Constitution entrusts state legislatures alone with authority over administration of congressional elections.[120] Under this theory, state constitutional provisions do not apply to federal elections and state courts therefore may not remedy abusive practices of state legislatures that violate state constitutions, such as gerrymandering. In December 2022, the Supreme Court heard arguments in *Moore v. Harper*, which presents the question of whether the North Carolina Supreme Court's ruling that the latest congressional map is an unlawful partisan gerrymander under state law violates the Elections Clause.[121] A ruling was expected by June 2023, but, in a highly unusual and controversial decision, the North Carolina Supreme Court granted rehearing in the underlying case in February 2023. As a result, it is possible that the U.S. Supreme Court will not issue a ruling on the independent state legislature theory in *Moore* due to this unexpected procedural development. To the extent the Supreme Court embraces any form of the independent state legislature theory in *Moore* or a subsequent case, there are likely to be implications regarding the extent to which state legislatures are constrained by state constitutions, state courts and even gubernatorial vetoes when drawing congressional maps or changing voting rules.

For decades the U.S. has relied on judicial remedies to mitigate the worst effects of single-member districts, including the dilution of racial minority voting power. These remedies have provided crucial protections against invidious attempts to exclude or minimize minority political participation. Still, current solutions have delivered mixed results; and recent and anticipated rulings suggest that remaining protections may be weakened or eliminated. But even supposing zealous judicial oversight, systematic underrepresentation of minority groups would nonetheless persist given the non-proportional effects inherent to single-member districts. Reform efforts have thus contemplated other electoral systems that would, inherent to their structure and design, provide more proportional outcomes and therefore lessen or obviate the reliance on these remedies.

Even supposing zealous judicial oversight, systematic underrepresentation of minority groups would nonetheless persist given the non-proportional effects inherent to single-member districts.

PAST EFFORTS AT REFORM

For at least three decades, advocates and lawmakers have sought to reform the single-member district mandate through various legislative proposals.[xxi] None, of course, have become law; but they have increased in their sophistication over time.

In October 1995, Rep. Cynthia McKinney[xxii] introduced the *Voters' Choice Act* (H.R. 2545).[122] The bill granted states the discretion to use single-member districts, multi-member districts or a combination for congressional elections and specified that any multi-member districts would need to use certain semi-proportional systems.[123] The bill also included a requirement that any states employing multi-member districts ensure that "the number of residents per Representative in a district shall be equal for all Representatives elected."[xxiii] Rep. McKinney re-introduced slightly revised versions of this bill in four of the next five Congresses.[124]

In March 1999, Rep. Mel Watt[xxiv] introduced the *States' Choice of Voting Systems Act* (H.R. 1173) to repeal the UCDA and grant states the discretion to use single-member districts, multi-member districts,

or a combination for congressional elections.[125] The draft included just two limitations: any congressional districting plan must (i) "meet[] the constitutional standard that each voter should have equal voting power" and (ii) "not violate the Voting Rights Act of 1965." In September 1999, the Judiciary Subcommittee on the Constitution held a hearing on the bill and Republican Rep. Tom Campbell, who had been a professor of constitutional law at Stanford Law School, testified in support.[126] The Justice Department, under then-Attorney General Janet Reno, supported the bill, as did the Deputy Assistant Attorney General in the Civil Rights Division, Anita Hodgkiss,[xxv] who provided supportive testimony.[127] Opposition by other witnesses[128] included concerns that the bill would "open the door to the use of controversial electoral systems," including "proportional representation."[xxvi]

In recent years, Reps. Jamie Raskin, Don Beyer, Joe Neguse and several other members have introduced the *Fair Representation Act*[xxvii] — a substantially more detailed bill than preceding reform proposals. Most relevant for present purposes is Title II, which requires all states with six or more Representatives

---

xxi Some Members of Congress were advocating for a transition to proportional or semi-proportional representation for the House as early as the 1860s. *E.g.*, S. 722, 40th Congress (1869); H.R. 922, 52nd Congress (1892); H.R. 20737, 63rd Congress (1915).

xxii McKinney's motivation to pursue reform arose from her first-hand experience with the convoluted and contradictory jurisprudence around race-conscious redistricting of single-member districts. Six months before she introduced the 1995 bill, the U.S. Supreme Court struck down Georgia's redistricting plan in *Miller v. Johnson*, 515 U.S. 900 (1995), holding that Georgia had impermissibly used race as a "predominant" factor in creating the majority-minority Eleventh District — the district that in 1992 elevated McKinney as the first Black woman to represent Georgia in the House. After the Georgia legislature failed to agree on a new plan, a federal court adopted a plan that eliminated two of the state's three majority-minority districts, placing McKinney in a new district that was only one-third Black. Cynthia McKinney, *Keep It Simple*, Boston Review (Feb./Mar. 1998)

xxiii Rep. McKinney apparently meant to formalize in statute the "one person, one vote" principle's requirement of roughly equal district sizes. However, the plain language could be read to impose a higher and practically unattainable standard of precise equality. Further, this provision could be read to imply that states with exclusively single-member districts do not have an obligation to create roughly equal districts, creating tension with the long line of cases establishing and refining that rule.

xxiv Like Rep. McKinney, Rep. Watt's personal experience with redistricting prompted his interest in reform. After the 1992 redistricting cycle, the North Carolina legislature drew two majority-Black districts. Watt, a former state senator, won a competitive primary in the 12th District and coasted to a general election victory. Both majority-minority districts were challenged and in flux for the next decade, including several revised maps and four visits to the U.S. Supreme Court. Watt introduced the bill shortly after oral argument in the third trip to the Court. *See Easley v. Cromartie*, 532 U.S. 234 (2001); *Hunt v. Cromartie*, 526 U.S. 541 (1999); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Shaw v. Reno*, 509 U.S. 630 (1993).

xxv Anita Hodgkiss is now Anita Earls, an associate justice on the North Carolina Supreme Court.

xxvi *States' Choice of Voting Systems Act: Hearing Before the Subcommittee on H.R. 1173*, Google Books at 6–7 (statement of Rep. Canady). Rep. Canady further explained his opposition: "Some political scientists have . . . concluded that proportional representation systems undermine majority rule by allowing political forces with support of only a minority of voters to win elections. Proportional representation systems have also been criticized for turning the focus of politics away from individual candidates and toward conformity to party, as voters are no longer choosing between candidates but between parties." *Ibid*.

xxvii *Fair Representation Act*, H.R. 3057, 115th Congress (2017). This same group also introduced this bill in the 116th Congress (H.R. 4000) and 117th Congress (H.R. 3863). In each case, the bill died in committee. As of the publication of this report, the Fair Representation Act has not been introduced in the 118th Congress.

to use multi-member districts with (i) three to five members-per-district and (ii) "equal population per Representative as nearly as practicable." If a state's independent redistricting commission (required by the bill) concludes that a multi-member plan would have a racially disparate impact or otherwise violate the VRA, the commission must instead develop a single-member district plan. For states with five or fewer Representatives, Title II requires that the entire state be treated as one multi-member district (or a single-member district, in the case of states apportioned a single Representative).[xxviii]

Beginning with the 104th Congress and through the 117th Congress, two different bills have also been proposed and re-introduced that would establish a commission to study various electoral reforms, including proportional representation, and to issue recommendations.[129]

xxviii The text refers to elections in states with five or fewer Representatives as "at large," but Title I clarifies that such elections should be conducted under the same proportional rules applicable to multi-member districts in larger states. These elections would therefore not be "at large" in the traditional sense.

FIGURE 2

CHANGES TO THE HOUSE'S ELECTORAL SYSTEM

With few constitutional limitations, the House's electoral system has varied since the Founding era following changes in both federal and state law.

Founding Era

The Constitution is ratified with few limitations on how states may structure congressional elections. Some states use this discretion to draw single-member districts, while others elect their delegations with state-wide bloc voting. Only decades later would the concept of "proportional representation" be developed and implemented in other democracies as an alternative electoral system to winner-take-all.

1842 Apportionment Act

Recognizing that bloc voting was depriving political minorities of any representation in a state's delegation, Congress for the first time exercises its power under the Elections Clause to require states to use single-member districts for congressional elections. Several recalcitrant states nonetheless use bloc voting in defiance of new federal law.

Late 19th & Early 20th Centuries

Congress consistently imposes a single-member district mandate when reapportioning House seats every ten years. After repeatedly expanding the total number of members in the House, Congress sets the statutory cap at 435 in 1920. Despite a general consensus in favor of single-member districts, a lapse in federal regulation allows a small number of states to use bloc voting during the middle of the 20th century.

Early 1960s

Landmark "one person, one vote" rulings by the Supreme Court require states to redraw legislative maps to equalize population across districts. After decades of malapportioned maps providing disproportionate representation to rural areas at the expense of urban centers, federal courts wield new power to compel more equitable district plans.

1967

With many states failing to draw congressional maps in compliance with "one person, one vote" principles, there is a growing risk that federal courts will impose state-wide bloc voting as a remedy. After failed negotiations over a more comprehensive redistricting proposal, Congress instead passes a law requiring states to use single-member congressional districts.

1970s & 1980s

Despite grossly non-proportional outcomes, the Supreme Court upholds some uses of bloc voting in state and local elections. Congress amends the VRA to provide greater protections for minority voters seeking to challenge discriminatory maps and election laws. The Supreme Court articulates new standards that incentivize states to draw majority-minority districts to avoid VRA liability.

1990s & Early 2000s

The creation of majority-minority districts leads to increased, but still disproportionately low, minority representation in Congress. This new approach reduces the influence of minority voters in other districts and produces many new predominantly white, safe Republican seats.

21st Century

Across a series of cases, the Supreme Court weakens key protections in the VRA, making it more difficult to prove that a state law is discriminatory and ending the pre-clearance regime that kept jurisdictions with a history of racial discrimination from adopting legislative maps and other election laws without federal approval. Other protections are weakened and future cases show warning signs of further backsliding.

II.

BENEFITS & RISKS OF REFORM

Proportional systems include an extraordinary variety of models; no two systems around the world look exactly alike. Additionally, some countries blend electoral system properties to produce systems with facets of both winner-take-all and proportional representation.[xxix]

This report does not advocate for a particular model of proportional representation. Instead, as described in Part III, amending the UCDA should avoid narrow prescriptions, opting instead to provide states with flexibility in considering variations that might be especially suitable to their own political and cultural contexts. Thus, as a general term, we refer below to *proportional multi-member districts* as the central policy change of UCDA reform.

What follows examines key anticipated effects of proportional multi-member districts for the U.S. House. If the House indeed moved towards a more proportional system, what changes across dimensions like outcome proportionality, racial representation, electoral competition and partisan polarization should we expect? As with any reform, we should also anticipate potential downsides; what might they be, and how could policy design help to mitigate them? The purpose of this analysis is to inform policy principles that maximize key benefits while minimizing or accounting for risks.

Increasing Proportionality in Outcomes

Most fundamentally, electoral systems translate *votes* into *seats*. Proportional representation aims to ensure that the share of seats won by a party is in rough proportion to its share of the vote. In a proportional system, a voter group constituting 35 percent of the electorate would more or less be presumed to secure

35 percent of legislative seats. By contrast, assume that those same voters cast their ballots in the same proportion in every district across a state: in a winner-take-all system, they would secure *zero* percent of the seats.

A critical difference underlying these disparate outcomes is the number of representatives per district, or district magnitude.[xxx] With only a single seat available in a single-member district, it is effectively a given that some meaningful share of the electorate will be unable to secure representation of its choosing (as in the case above, wherein 35 percent of the vote translates into zero percent of the seats). A single-member district often produces a distinctly non-proportional outcome. However, as the number of representatives per district increases, so too, as a general rule, does the degree of proportionality in outcomes, assuming the use of a proportional electoral formula to allocate seats. With, say, *three* seats available in a district, that group is likely to win one of them. Thus, roughly one-third of the votes translates into roughly one-third of the seats.

Of course, not all systems under the broad class of "proportional representation" are the same, as proportional systems exhibit a diversity of rules and varying degrees of proportionality. However, in contrast to winner-take-all, and despite rich variation, systems of proportional representation collectively share "the common aim of proportionality between seats and votes."[130] Indeed, most proportional systems generally diverge, and sometimes starkly, from winner-take-all on this dimension. Greater proportionality in outcomes for House elections would be a general benefit of discarding the single-member district requirement.

In particular, greater proportionality can reduce biases in electoral outcomes that favor one party over

---

xxix   Particularly since the 1990s, an increasing number of democracies have adopted mixed-member electoral systems. As Matthew Shugart and Martin Wattenberg explain: "In the prototype mixed-member system, half the seats in a legislative chamber (the nominal tier) are elected in single-seat districts and the other half (the list tier) are elected from party lists allocated by proportional representation." *Mixed-Member Electoral Systems: The Best of Both Worlds?*, Oxford University Press (Feb. 6, 2003) at 9. For a summary of mixed-member electoral systems, see David Farrell, *Electoral Systems: A Comparative Introduction*, Palgrave Macmillan (2011) at 93–118.

xxx   Other important variables also determine the proportionality of outcomes, including legal thresholds and assembly size. However, the impact of district magnitude is typically much greater.

another within congressional delegations.[xxxi] For instance, despite Democrats constituting roughly a third of Oklahoman voters, not a single seat in its current five-seat House delegation is Democratic. Instead, winner-take-all elections translate two-thirds support for Republicans into 100 percent of the seats, exaggerating one group's electoral dominance and depriving another of any representation. In Massachusetts, despite Republicans constituting roughly a third of the electorate, the state's entire nine-seat House delegation is Democratic.[xxxii]

These non-proportional effects not only skew the composition of state delegations, but also generate an aggregate bias that can favor one party over another nationally. In 2012, for instance, the Republican Party retained majority control of the House, despite the Democratic Party winning more votes nationwide. In 2022, the bias was in favor of Democrats, as it had been for much of the mid- and late-20th century. While gerrymandering contributes to these biased outcomes, they are structurally and unavoidably a function of single-member districts.[131] Significant biases in electoral outcomes are also observable in winner-take-all systems beyond the U.S.[132] New Zealand, before abandoning its winner-take-all system, experienced two consecutive elections in which the party that won *fewer* votes nationwide assumed control of government.[133]

These biases affect parties, and so also, in turn, voters. Consider that there are more Republican voters in California than any other state in the nation; and more Democratic voters in Texas than in either New York or Illinois. The non-proportional nature of winner-take-all elections ensures that many of these voters are regularly and systematically excluded from securing representation. According to a recent national survey, "the vast majority of eligible citizens do not vote in every national election," and the belief that "my vote doesn't matter" is among the most commonly cited reasons.[134]

Illinois' century-long experiment with cumulative voting — a type of semi-proportional representation[135] — illustrated the changes to the partisan composition of assembly delegations under a more proportional alternative to winner-take-all. The system, which prescribed three-seat districts for the state's lower chamber such that candidates required at least 25 percent of the vote to win, reflected "an effort to diminish sectionalism and bitterness following the Civil War by affording Republicans in the southern part of the state and minority Democrats in the northern part opportunities for representation which they would not have had in a [single-member district] system."[136] Indeed, "[s]ubsequent experience and research validated that this result was achieved," with partisan outcomes between the two major parties roughly reflecting their actual share of votes.[137] Republican voters in cities and Democratic voters in suburbs and rural communities were both better able to elect candidates of their choice.

Abner Mikva, a Democratic former Illinois state representative (and later, U.S. Representative and federal judge) observed that the system "gave a voice to a critical minority so that Democrats in the [heavily GOP] suburbs had a spokesperson from their district . . . . Similarly, in Chicago you had Republican representatives and these Republican outposts in a city that was dominated by the Democratic Party . . . . Between us we represented just about every organized point of view within the district. And that's something that you can't do with just one representative."[138] Lee Daniels, the Republican former Speaker of the Illinois House, reflected similarly after Illinois reverted to a winner-take-all system: "I thought

---

xxxi Winner-take-all systems tend to "exaggerate" electoral wins in order to "manufacture" a governing majority by generating an electoral bias in one party's favor. Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems*, International Political Science Review vol. 18, no. 3 (Jul. 1997) at 297–312; Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Yale University Press (1984) at 166–168; Richard Rose, "Elections and electoral systems: choices and alternatives" in *Democracy and elections: Electoral system and their political consequences*, Cambridge University Press (Vernon Bogdanor and David Butler, eds., 1983) at 30–34. Such manufacturing is possible often regardless of the actual margins of victory. *See* Douglas Rae, *The Political Consequences of Electoral Laws*, Yale University Press (1967) at 27 ("In effect, the plurality system can reward strong parties out of all proportion to the size of their margins by giving the same reward to parties with 1 percent as to those with 50 percent margins. Hence, strong parties with support evenly spread over many districts may win a preponderant majority of the seats with fewer than half the total votes.").

xxxii For an expanded analysis on the importance of a party's relative concentration of voters in winner-take-all systems, see Jonathan Rodden, *The Geographic Distribution of Political Preferences*, Annual Review of Political Science vol. 13, no. 55 (Jun. 15, 2010) at 321–340.

FIGURE 3

VOTE SHARE VS SEAT SHARE

With winner-take-all elections, a single political party can sweep an entire House delegation, even if a substantial share of the electorate votes for another party. Under proportional representation, delegations would more closely reflect the preferences of each state's electorate.

Oklahoma

Massachusetts
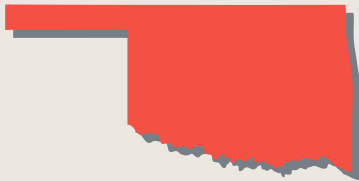
1/3 Votes Cast (D)	2/3 Votes Cast (R)
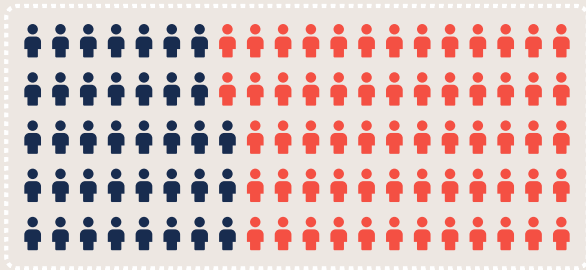
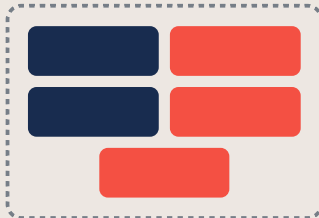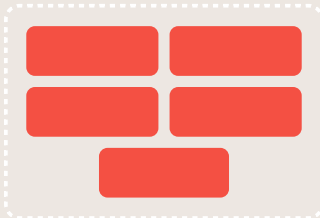| 2/3 Votes Cast (D)	1/3 Votes Cast (R)
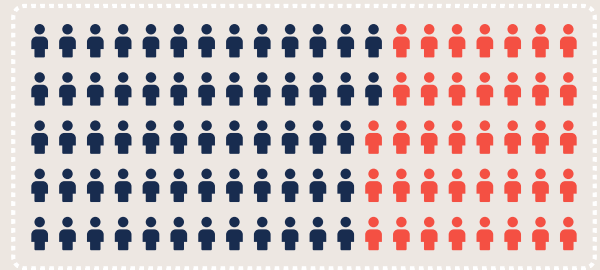
WINNER-TAKE-ALL

Winner-take-all currently translates two-thirds of the vote for Republicans into 100 percent of its House seats.

PROPORTIONAL

Proportional representation would likely translate one-third of the vote for Democrats into two of its five House seats.

WINNER-TAKE-ALL

Winner-take-all currently translates two-thirds of the vote for Democrats into 100 percent of its House seats.
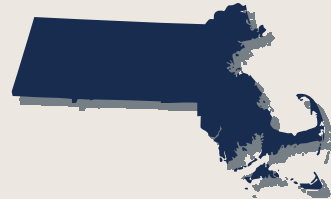
PROPORTIONAL

Proportional representation would likely translate one-third of the vote for Republicans into three of its nine House seats.

0% of seats (D)	100% of seats (R)

40% of seats (D)	60% of seats (R)

100% of seats (D)	0% of seats (R)

66% of seats (D)	33% of seats (R)
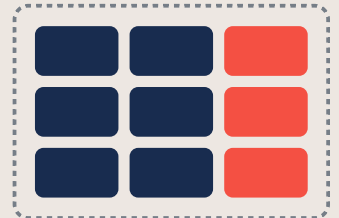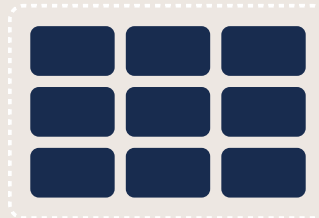
proportional representation worked well. I thought it gave a guarantee of minority representation. In the Republican caucus, frequently we had Republican legislators talking about the needs of the city of Chicago. Today, generally speaking, there are very few [elected] Republicans that come from the city . . . ."[139]

As in Illinois, proportional multi-member districts would increase the likelihood that more voters generally — Democrats in rural areas, Republicans in urban ones — could secure representation of their choosing; that House delegations would more closely approximate the actual composition of their electorates; and that majority control of the House rested with the party commanding more votes.

Improving Racial Representation

The proportionality of an electoral system carries particularly profound ramifications for the U.S. in light of its long history of racial discrimination and racially polarized voting.

The non-proportional effects of single-member districts are especially pronounced among historically disenfranchised groups, including racial and ethnic minority voters and candidates. In both Alabama and South Carolina, for example, Black voters constitute roughly one-quarter of the electorate while Black Representatives constitute one-seventh of each House delegation. Discrepancies in descriptive representation persist despite the design of majority-minority and influence districts.

More proportional systems tend to improve descriptive representation, better ensuring that elected officials more closely reflect their electorates. In practice, proportional multi-member districts achieve this by permitting a greater share of voters to elect more candidates of their choosing. If, for instance, a given district has five seats, and forty percent of the district is composed of Black voters who in general vote cohesively, two of the seats will likely be filled by a preferred candidate. If that same region is broken into five single-member districts, by contrast, whether

those same voters could elect a candidate of their choosing would turn in large part on their geographic distribution. If these voters are distributed evenly across the region, they would regularly and predictably elect *none* of their preferred candidates in any of the districts. If a substantial share of these voters are concentrated, they would likely be able to elect a preferred candidate in one district, while exerting minimal electoral power in any of the others.

In 2021, Michael Latner, Jack Santucci and Matthew Shugart examined election results from 159 cities in 13 U.S. states, along with results from Australia, Ireland and the Netherlands, and found that higher district magnitudes are associated with "larger numbers of parties seating candidates of color." (Other electoral system factors, including assembly size, also jointly and independently generated similar associations.) As the authors emphasize: "Our results suggest that these basic electoral system features should figure more prominently into U.S. debates about electoral reform."[140]

> **The non-proportional effects of single-member districts are especially pronounced among historically disenfranchised groups, including racial and ethnic minority voters and candidates.**

Various modeling exercises also find that the use of proportional multi-member districts for U.S. House elections would likely have important effects on racial representation. According to the results of one simulation (using the criteria of the *Fair Representation Act*), in Southern states — where 60 percent of Black voters (who have generally favored the Democratic Party in recent decades) currently live in majority-white districts with white Republican representatives — substituting single-member districts with proportional multi-member districts would increase the share of Black voters able to elect at least one candidate of their choosing to 98 percent.[141] Another simulation using comparable criteria found

that in Massachusetts, for example, voters of color would likely elect more than three candidates of choice — and often, four or five — out of the state's nine representatives in a proportional system.[142] Today, at most one district in Massachusetts allows minority voters to elect a candidate of choice; indeed, it was not until 2018 that the state elected its first Black representative to the House, Ayanna Pressley. Importantly, these modeling outcomes are generally not sensitive to how districts are drawn; which is to say, representational gains are predicted even without race-conscious line drawing.[143]

Other simulations among various U.S. localities similarly find that proportional systems tend to expand the ability of racial minority groups to elect candidates of choice, while accounting for important voting behavior patterns including variable voter turnout.[144] Indeed, VRA lawsuits targeting racial discrimination in municipal and county elections throughout the country have been resolved through the judicially-sanctioned imposition of multi-member districts and proportional or semi-proportional allocation rules.[145]

Proportional multi-member districts also improve interest representation. While "proportional representation provides racial minorities with the opportunity to elect representatives in proportion to their numbers . . . there is no expectation that they do so."[146] Rather, it also "allows voters to identify themselves with each other based on a consensus of shared interests as opposed to physical attributes."[147] Whereas single-member districts create pre-determined constituencies by law — *i.e.*, through the drawing of territorial districts, sometimes including along racial lines — proportional representation permits voters to elect their preferred candidates irrespective of where they happen to live.[xxxiii] In practice, racially homogenous groups often vote cohesively — but not necessarily. More liberal white voters who were previously relegated to a white-majority district may find themselves able and interested in voting for Black candidates, along

with other Black voters. Or, conservative Hispanic voters previously in a majority-minority district may find themselves voting with white conservatives for a white conservative candidate. Permitting interest representation, argues Lani Guinier, obviates a reliance on descriptive representation as "a fixed proxy for interests."[148]

Proportional representation may prove to be especially desirable as federal courts continue to undermine existing remedial tools to address the systematic underrepresentation of racial minorities, such as the VRA. Indeed, scholars have long observed how proportional representation lessens or obviates dependence on districting schemes in the U.S., like majority-minority districts and reliance on judicial enforcement. As Joseph Zimmerman observed in 1978, proportional representation "not only virtually eliminates the possibility of overrepresentation" of an already dominant group, such as white voters, but also makes racial gerrymandering prohibitively difficult.[149] Douglas Amy similarly noted in 2002 that proportional representation allows "representation of racial and ethnic minorities without the need for race-based districting . . . and by eliminating the possibility of racist gerrymanders."[150] In 2022, Lee Drutman and Aziz Huq argued that "for at least a decade (if not longer), any approach to political equality that depends on the courts is a losing battle . . . from regulating gerrymandering to enforcing voting rights."[151] By significantly lessening or eliminating various harms uniquely associated with single-member districts, such as partisan and racial gerrymandering, a shift to proportional multi-member districts would in turn reduce reliance on courts to "referee the electoral process."[152]

Certainly, the U.S. has not been alone in its struggle to provide fair representation for minority groups, including struggles over the basic features of electoral system design. But the U.S. has been an outlier in its maintenance of a winner-take-all system despite persistent underrepresentation issues. As Arend

---

xxxiii For example, many states require redistricting bodies to preserve "whole communities of interest" within the same single-member district. *E.g.*, Colorado Independent Redistricting Commissions, *Congressional Redistricting Overview* (2021). This requires countless subjective decisions by a commission, legislature and/or court as to which communities are sufficiently defined to warrant preservation and the precise boundaries of those communities. There are inevitable conflicts between these communities, as the limitations of single-district line drawing cannot accommodate equal preservation of all communities to the same degree. Further, locking in these district lines for a decade fails to account for meaningful changes across and within these communities over time.

Lijphart argues, concerns about racial and ethnic representation were among the most important factors driving the adoption of proportional representation in Europe, finding that "PR was designed to provide minority representation and thereby to counteract potential threats to national unity and political unity."[153] Similarly, Stein Rokkan observes "that the earliest moves towards [PR] came in the ethnically most heterogeneous countries."[154]

In addition to implications for racial representation, a rich body of research from other countries' experiences, as well as the U.S. experience, suggests comparable advantages of multi-winner races for other groups historically disenfranchised at the ballot box, including women.[155]

Enhancing Electoral Competition

Eight percent of House seats were regarded as competitive in the November 2022 midterm elections, such that either party had a reasonable chance of winning;[156] and 6 percent of seats flipped from one party to another.[157] More seats per district, allocated in rough proportion to votes, would likely increase the House's share of competitive seats.

The decline in competitive districts is in part a function of partisan gerrymandering, which has succeeded at artificially ensuring a higher share of safe districts for one party or another.[158] The decline is also a function of increased geographic sorting, or the more natural clustering of partisans that create "lopsided" districts.[159] As geographic sorting across the U.S. intensifies, such that more "red" and "blue" voters are separately concentrated, the share of districts that favor one party over the other increases. Indeed, even in states that have all but eliminated partisan gerrymandering through independent redistricting commissions — as in Arizona, California, Colorado

and Michigan — the vast majority of districts remain uncompetitive.[160] Higher district magnitudes address both drivers of decreased competition.

First, higher magnitudes impair the ability to gerrymander. As Ferran Martínez i Coma and Ignacio Lago conclude from a 2016 survey of 54 democracies: "Not all electoral systems are equally prone to gerrymandering. The problem is inherent in the system of one-seat districts, while it is less serious in [proportional] multimember districts."[161] What explains the differences? Proportional multi-member districts make gerrymandering "prohibitively difficult" in practice.[162] The more seats per district, the more difficult it becomes "to predict the exact seat distribution in every district due to the higher number of parties entering the race and the smaller percentages separating winners from losers."[163] Indeed, after some threshold of seats per district, gerrymandering becomes functionally impossible; as long as a district has at least five seats, it is effectively immune from gerrymandering.[164]

> After some threshold of seats per district, gerrymandering becomes functionally impossible; as long as a district has at least five seats, it is effectively immune from gerrymandering.

Available tools *within* the winner-take-all system to effectively blunt or eliminate gerrymandering, including judicial intervention, are proving inadequate.[xxxiv] Non-judicial efforts have also fallen short. After decades of advocacy, only four U.S. states employ independent redistricting commissions.[xxxv] Another six states use a commission of some sort but allow politicians to directly select commissioners.[165]

---

xxxiv *E.g.*, *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (holding that federal courts are prohibited from adjudicating constitutional claims of partisan gerrymandering); *Shelby County v. Holder*, 570 U.S. 529 (2013) (holding that certain states with a history of racial discrimination in voting no longer must seek pre-clearance for redistricting plans); *see also Merrill v. Milligan*, No. 21-1086 (pending case in which the U.S. Supreme Court is expected to make it more difficult to bring successful racial gerrymandering claims under Section 2 of the VRA).

xxxv As noted above, these include Arizona, California, Colorado and Michigan. *Redistricting Commissions: Congressional Plans*, National Congress of State Legislatures (Dec. 10, 2021).

The performance of these bodies is a mixed bag: they generally do not produce more competitive maps.[166] Moreover, their continued legal viability is far from certain given the current composition of the U.S. Supreme Court.[xxxvi] Proportional multi-member districts would largely obviate the need for devising

tools to curb partisan gerrymandering — including tools subject to judicial review — by structurally weakening or eliminating the practice altogether.

Second, higher district magnitudes are less sensitive to the spatial distribution of partisans that likewise generates uncompetitive districts. "Unintentional

FIGURE 4

U.S. HOUSE SEATS HAVE BECOME LESS COMPETITIVE

In the 1990s, roughly 40% of House districts were considered competitive, *i.e.*, won by 5 percentage points or less. Today, more than 80% of all House districts are considered safe Democratic or Republican seats.
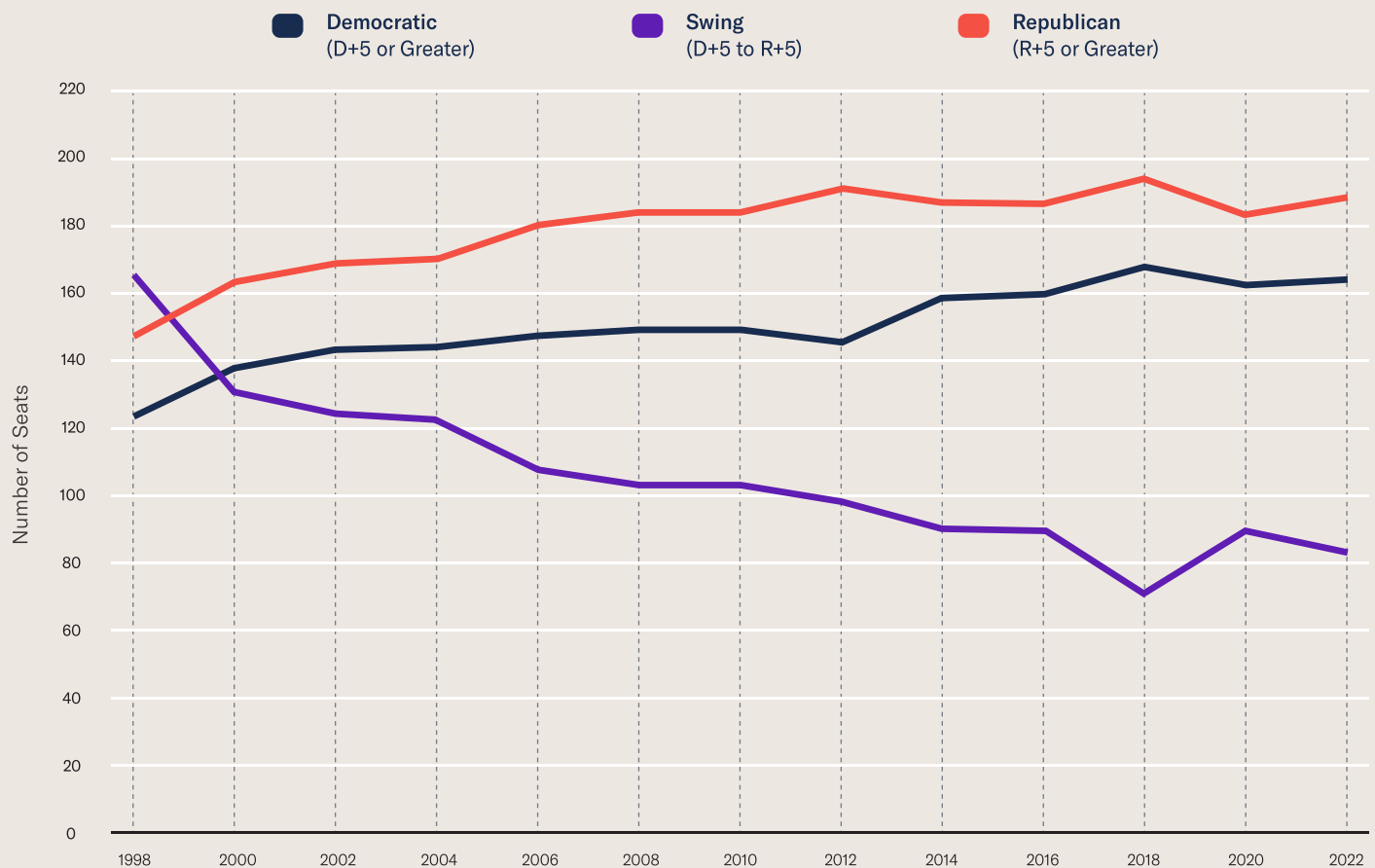
Source: Adapted from Cook Political Report & FiveThirtyEight

xxxvi In 2015, the Supreme Court affirmed the constitutionality of Arizona's independent redistricting commission in a 5–4 decision. *Ariz. State Legislature v. Ariz. Ind. Redistricting Comm'n*, 576 U.S. 787 (2015). Yet, three of the justices that joined the majority are no longer on the bench, and each has been replaced with a justice who would be expected to agree with the views expressed in Chief Justice Roberts' dissent finding such commissions unconstitutional, should this issue come before the Court again.

gerrymandering,"[167] where the geographic sorting of partisans tilts a district in one party's favor, produces the same effects as its more intentional counterpart — and persists even when deliberate gerrymandering has been eliminated.[168] California, which through an independent commission has all but eliminated partisan gerrymandering, is currently estimated to contain only a small handful of competitive congressional districts — out of 52.[169] This result is simply a function of where voters of different partisan leanings happen to live. Correcting the problem, such as through creative map-drawing decennially, is not only prohibitively difficult, but also comes at steep costs. As Lee Drutman explains, "as long we have single-member districts, and as long as Democrats concentrate in cities while Republicans live outside of the cities, any attempt to redraw districts to make them competitive would require awkwardly connecting slices of city to far-flung patches of country in ways that look even stranger and uglier than the current gerrymanders. Such redistricting would also break apart many identifiable communities."[170]

Proportional multi-member districts would structurally decrease the share of "safe" seats for any party, and with no discernable differences in effects between parties.[171] Consider that in single-winner races, a margin of victory greater than 5 to 10 percent is generally sufficient to qualify the district as uncompetitive, leading the losing party to allocate resources and attention elsewhere, further decreasing competition. In a 60 percent blue district — the product of either gerrymandering, geographic sorting, or both — the likelihood of a Republican victory is small and the seat is effectively "safe" for Democrats. By contrast, imagine combining five neighboring districts that are "safe" for one or the other party into a five-member district. With the outcome for each seat less likely to be a foregone conclusion, parties would actively compete for more votes to secure one or more of the seats.

In a 2018 simulation of proportional multi-member districts for the House, using criteria that roughly reflect the requirements prescribed by the *Fair Representation Act*, the share of competitive seats — whereby voters have a reasonable ability to shift a seat from one major party to the other — increased from 15 percent to 43 percent.[172] This probably underestimates the actual changes in the nature and degree of competition, given that proportional multi-member districts also create space for more than two competitive political parties.

Proportional multi-member districts would structurally decrease the share of "safe" seats for any party, and with no discernable differences in effects between parties.

Tempering Polarization & Extremism

Studies observe different levels of polarization and political extremism in countries with winner-take-all systems as compared to those with proportional representation.

Affective polarization — or dislike of, as opposed to just disagreement with, partisan opponents — intensifies in countries with winner-take-all systems and decreases with more proportional ones.[173] Winner-take-all systems generally seem to be less successful at managing partisan conflict, especially in "deeply divided societies"[174] such as the U.S.[175] Indeed, research also finds that more proportional electoral systems correlate with lower levels of ethnic-based political violence in highly polarized contexts.[176]

Differences are driven largely by the presence and interaction of more viable parties in more proportional systems. As a general rule, for a given assembly size, as district magnitude increases, so too does the effective number of political parties.[177] Issue-based and identity-based polarization are lower in countries with proportional systems *and multiparty coalitions*.[178] Because multiparty coalitions bring different partisans together across time, and require compromise among them, both elites and voters exhibit less inter-party hostility.[179] Whereas winner-take-all systems tend

to structure political conflict as binary — pitting two dominant camps against one another — proportional ones permit greater fluidity in politics, "where few political enemies are ever permanent."[180]

In a 2014 survey of 31 democracies, the U.S. featured the strictest two-party system.[181] The system's rigidity is in part due to a panoply of state regulations designed to prevent new and minor parties from being electorally competitive, such as prohibitive ballot access laws and prohibitions on fusion voting.[182] But the number of electorally competitive parties is also a function of electoral rules, such as district magnitude.[183] By fracturing the binary conflict structured by America's rigid two-party system, and making room for the "the shifting politics of coalition formation in proportional democracies," a more proportional system may help to rein-in spiraling polarization.[184]

Having more seat-winning parties may also aid efforts to combat rising political extremism. Across democracies, multiparty coalitions have been at the forefront of efforts to confront and isolate extremist movements, including strategic coalitions between left- and right-leaning parties.[185] In the U.S., there are far fewer opportunities for competitive pushback against extremists *within* the two-party system. For instance, extremists within the current Republican Party are generally well-insulated from new competition, such as from challengers that might arise from a new center-right party and coalitions such a party might form to marginalize extremists.[186]

Marginalizing political extremism becomes significantly more difficult once extremists gain a foothold within one of only two major parties, as they are incentivized to use the major parties as a path to power absent other options. While multiparty systems tend to provide more extremist parties with legislative seats in the first instance,[187] it is

less likely that extremist movements commandeer a major party or majority coalition altogether. Instead, in multiparty democracies, political extremists unwelcome in mainstream parties tend to create their own, and secure limited seats in proportion to limited

Affective polarization — or dislike of, as opposed to just disagreement with, partisan opponents — intensifies in countries with winner-take-all systems and decreases with more proportional ones. Winner-take-all systems generally seem to be less successful at managing partisan conflict, especially in "deeply divided societies."

support.[xxxvii]

Proportional representation may also strengthen "losers' consent," or the willingness of those who lose an election to accept their loss and legitimize a democratically elected government. This foundational tenet of stable and peaceful democracies is under threat in the U.S., where the share of candidates and officeholders denying election results has skyrocketed. (A majority of Republican candidates for the 2022 midterm elections refused to accept the legitimacy of the 2020 presidential elections.[188]) By giving political minorities more seats at the table, proportional systems can disincentivize such extremist behavior. As Matthew Germer of R Street observes: "Proportional representation reduces the impact of losing a vote by giving losers more influence in the overall composition of their government. This directly encourages losers' consent by diminishing the number of people who fall squarely in the 'loser' category and ensures that political minorities still have a voice in their government."[189]

A fulsome review of the potential implications of a

---

xxxvii   In proportional systems, far-right extremists "can gain some representation. But unless they represent an actual majority, their power is limited." Lee Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America*, Oxford University Press (2020) at 231. Their success may also be limited by the competitive responses from the major parties. In Australia, for instance, the major center-right party has occasionally formed strategic electoral coalitions with the major center-left party in order to marginalize the One Nation party, a far-right party. Benjamin Reilly, *Electoral Systems for Divided Societies*, Journal of Democracy vol. 13, no. 2 (Apr. 2002) at 161-162.

more fluid party system are beyond the scope of this paper.[xxxviii] However, creating space for additional parties — something desired by more than 70 percent of Americans[190] — ought to figure as a major consideration (and potentially explicit goal) of UCDA reform, especially given the variety of effects relevant to issues like polarization and political extremism currently straining American democracy.

* * *

There is, of course, no such thing as an optimal electoral system. What follows are three potential issues that may arise with a move towards a more proportional electoral system for the House: issues that can be mitigated to varying degrees or are otherwise trade-offs to be acknowledged. Policy changes to the UCDA should take these issues into account and,

where possible, work to address them.
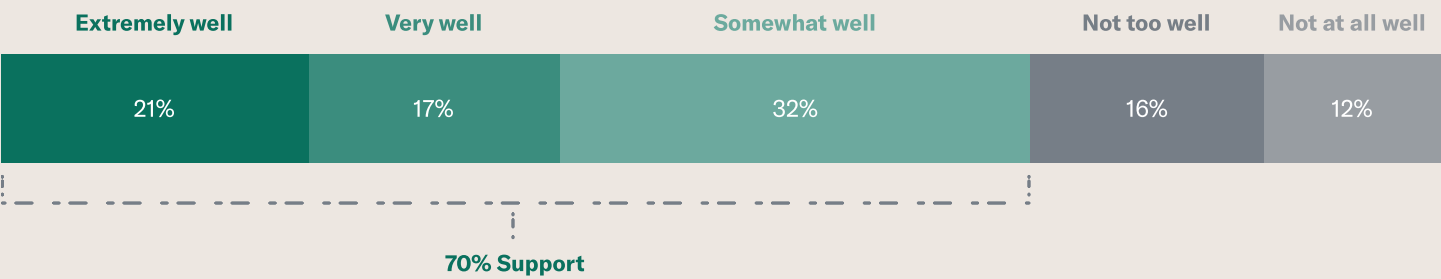
Avoiding Party Fragmentation

While more viable parties can improve electoral competition, dampen polarization and provide greater opportunities for marginalizing extremist movements, they also risk "party fragmentation" whereby more parties produce overly "broad and fractious coalitions."[191]

Fragmentation can hamper effective governance. Indeed, one argument for winner-take-all systems has been the promise of "strong party government."[xxxix] Fragmentation can also decrease voters' ability to hold individual lawmakers or parties accountable. Thus, much scholarly discussion has focused on "optimal" district magnitudes in order to maximize

70% OF AMERICANS WANT ADDITIONAL PARTIES

% who say "I often wish there were more political parties to choose from in this country" describes their views. . .

Extremely well	Very well	Somewhat well	Not too well	Not at all well
21%	17%	32%	16%	12%

70% Support

Source: Pew Research Center

---

xxxviii A multiparty system in Congress may not, in practice, be altogether new. Lee Drutman observes that for much of the 20th century, "America used to have four parties inside the two-party system" in which liberal Republicans (such as in the Northeast) and conservative Democrats (such as in the South) were elected "as independent subspecies of Republicans and Democrats." Only in recent decades has the U.S. party system nationalized and polarized into two distinct political parties, explaining, at least in part, record levels of affective polarization and other concerning trends that have become more pronounced in recent years. Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* at 85–102.

xxxix However, this argument is often understood to apply in contexts of parliamentary political systems. *See, e.g.,* Norris, *Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems* at 304. One related argument has been that winner-take-all systems, or majoritarian electoral systems, are associated with greater democratic stability overall. However, this claim has been roundly refuted by scholarship. *See, e.g.,* Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* at 157–158 ([I]n . . . countries with long records of reasonably stable democracy, the majority have multiparty systems. Similarly, most of these countries have used proportional representation for a long time.").

the benefits of multiparty systems and minimize fragmentation.[192] In practice, the effective number of parties across proportional systems varies widely.[xl] Israel, for instance, regularly features over two-dozen political parties in its legislature; none has ever won a majority of seats. Meanwhile, Uruguay features three dominant parties, with other minor parties occasionally garnering a small number of seats. Both employ proportional systems — so what explains their differences?

District magnitude is the major constraint on the effective number of parties.[193] Legal thresholds are another, meaning that parties may be required to secure a certain threshold of the vote share in order to secure any seats. However, district magnitude "naturally" regulates fragmentation,[194] and certain district magnitudes predictably correspond to the effective number of political parties.[195] While both Uruguay and Israel employ proportional systems, their party systems substantially diverge given dramatic differences in their average district magnitudes: in Uruguay, 2.5; and in Israel, 120.[xli] Consequently, the effective number of parties in Israel is nearly three times greater than in Uruguay.[196] While Uruguay features only three major political parties, Israel's party landscape is highly fragmented and has long "experienced difficulties in building and maintaining large coalition governments."[197]

Importantly, the number of parties in a given district is not the same as the number of nationally competitive parties; other factors, such as assembly size, also affect the latter. According to a quantitative model developed by Matthew Shugart and Rein Taagepera, assuming the overall size of the House remains constant, adopting proportional multi-member districts with an average district magnitude of five would likely result in a total of three to four nationally competitive parties in the U.S.[xlii]

Risks of fragmentation may also be offset in the U.S. context by characteristics unique to the U.S. political system. America's presidential system — with the presidency an inherently winner-take-all contest — will continue to favor the two existing major parties. Legislative parties in the U.S. are also strongly incentivized to build their respective coalitions around an independently elected and powerful executive, again favoring the largest and strongest parties. (Indeed, in other multiparty presidential democracies, multiple political parties tend to support a single political candidate from one of the major parties.[198]) The same is likely true for state governorships. Similarly, winner-take-all elections for the Senate will almost certainly continue to favor the two major parties.

Nonetheless, in light of potential fragmentation concerns, district magnitude should be a key consideration of UCDA reform as the principal lever to regulate the effective number of parties.

Preventing a Revival of Bloc Voting

Throughout most of American history, multi-member districts have been synonymous with the bloc vote. Every congressional multi-member district in American history has used bloc voting, as have many state and local jurisdictions.

Thus, much of the existing information about multi-member districts in the U.S. — from congressional debates in the 19th and 20th centuries, to judicial opinions from the Warren and Burger Courts, to academic research — contains important critiques of *bloc voting*. Indeed, even scholarly work on the U.S. electoral system has rarely distinguished multi-member districts in which winners were decided by a plurality or majority from *proportional* multi-member districts.[199]

---

xl The "effective" number of parties is a measurement of the number of parties that win seats in a country's legislature weighted by the relative electoral success of each party. This allows for a more accurate comparison of multipartism across countries. For example, a country with four parties that win a roughly equal share of seats in a legislature will have a greater effective number of parties than a country where two parties dominate all but a small handful of seats, with two minor parties winning the remainder. *See* Markku Laakso and Rein Taagepera, *"Effective" Number of Parties: A Measure with Application to West Europe*, Comparative Political Studies vol. 12, no. 1 (Apr. 1979) at 3–27.

xli Israel's exceptionally large district magnitude — a clear global outlier — is a function of doing away with districts altogether, such that the entire country serves as a "single district." That is, district magnitude and assembly size are equivalent.

xlii Using $N_S=(MS)^{.167}$, where N_S is the most likely effective number of parties in a national assembly, S is the number of national assembly seats, and M is average district magnitude. *See* Matthew Shugart and Rein Taagepera, V*otes from Seats: Logical Models of Electoral Systems*, Cambridge University Press (Oct. 2017) at 139–152.

While both systems — one winner-take-all, the other proportional — employ multi-member districts, they differ in their allocation formula (and often how votes are cast). Depending upon the formula employed, multi-member districts can either produce proportional or distinctly non-proportional results. If all voters "vote the slate" in a standard bloc vote election, for example, the majority (or plurality) slate can win every seat. Multi-member districts are a necessary but insufficient ingredient for proportional representation; multi-member districts must also be coupled with a proportional electoral formula for allocating seats.

In public dialogue, there is a serious risk of misassociating proportional multi-member districts with bloc voting. In policy design, there is also a serious risk of permitting bloc voting by failing to mandate the coupling of multi-member districts with a proportional allocation formula. As discussed in more detail below, a simple repeal of the UCDA would allow states to institute multi-member districts that could be used to either increase the proportionality of results (with proportional multi-member districts) or decrease proportionality (with bloc voting).

Thus, another principal consideration of UCDA reform must be identification and articulation of a range of appropriate allocation formulas to prevent the misuse of multi-member districts by reviving bloc voting.

Maintaining Constituent-Representative Relationships

Conventional wisdom has held that the "territorial basis of single member districts is believed to provide a strong incentive for constituency service, ensuring that members remain concerned about the needs and concerns of all their constituents, not just their party faithful."[200] By virtue of representing an entire district, this thinking goes, a single official is encouraged "to take heed of the views of all of their constituents" and can better advocate for and represent them.[201] Thus, one important concern regarding a switch to multi-member districts may be implications for the

representative-constituent relationship.

However, constituents in single-member districts are not more likely to feel that their representatives take heed of their views than constituents in proportional multi-member districts.[202] A variety of factors likely undermine the constituent-representative relationship in the U.S., including polarization and uncompetitive districts. As John Curtice and W. Phillips Shively reflect, there is "little reason why elected representatives should go out of their way to act as intermediaries on behalf of those who prove to be committed supporters of an opposition party"[203] — a dynamic likely exacerbated by the collapse in competitive single-member districts. On the other hand, with proportional multi-member districts, many (and in some cases, nearly all) voters are represented by at least one member of their own party.

Multi-member districts are a necessary but insufficient ingredient for proportional representation; multi-member districts must also be coupled with a proportional electoral formula for allocating seats.

In an assessment of 30 countries, Curtice and Shively find little supporting evidence that single-member districts create stronger representative-constituent linkages.[204] On the contrary, they find that citizens in multi-member districts are more likely "to believe that their elected representatives are in touch with public opinion" and just as likely "to name correctly at least one of the candidates standing in their district."[205] In the U.S., 52 percent of surveyed constituents can correctly name any candidate for their district, well below the average in surveyed multi-member systems (64 percent).[206] Assembly size, or the number of constituents per representative, may help to explain some variation between countries. The exceptionally large representative-to-constituent ratio in the U.S. likely exacerbates poor linkages between the two.[207]

It is unlikely that a change from single-to multi-

member districts in the U.S. would worsen representative-constituent relationships. However, as discussed below, other policy solutions could directly address this concern, such as coupling a switch to proportional multi-member districts with an expanded House of Representatives. The change could also implicate a variety of other considerations, including the practicalities of managing constituent services currently provided by members of Congress in a new multi-seat environment.

Constituents in single-member districts are not more likely to feel that their representatives take heed of their views than constituents in proportional multi-member districts.

III.

POLICY CHOICES & PRINCIPLES

Any future efforts at legislative reform of the UCDA that seek an alternative to the current winner-take-all system will confront at least three critical policy choices: whether to make the use of multi-member districts for congressional elections mandatory or optional; what limitations, if any, are imposed on other relevant electoral system design decisions by states; and how the new law would be enforced.

Each of these policy issues is discussed below. Following the analysis are recommended policy principles to guide UCDA reform efforts.

Discretion or Mandate

Legislative reform of the UCDA foremost requires a threshold decision regarding whether to give states discretion in their use of single-member districts, multi-member districts, or a combination; or instead to mandate, with certain exceptions, the universal use of multi-member districts for House elections.

Rep. McKinney's *Voters' Choice Act* and Rep. Watt's *States' Choice of Voting Systems Act* each took the permissive approach, while the *Fair Representation Act* crafts a national multi-member mandate. The latter would require that all 44 states with more than one Representative switch from single- to multi-member districting. This approach could produce a new electoral system for all but a handful of congressional seats in one fell swoop.

In each state that transitions to proportional multi-member districts, some changes would materialize quickly while others would be expected to develop gradually. The effects of gerrymandering and geographic sorting would almost certainly dissipate quickly, as higher district magnitudes are inherently less sensitive to both, likely producing more competitive elections from the onset. On the other hand, while larger district magnitudes are likely to increase the effective number of political parties, this change would unfold over time. Creating *space* for more parties does not mechanically, of course, bring them into existence; parties must be built. Whether or not states collectively adopt proportional multi-member districts would have an effect: delayed

or staggered transitions would likely stymie the development of any nationally competitive new parties, while widespread change would probably expedite that process.

Providing discretion to states on this element of reform would all but ensure that many states retain their winner-take-all systems. Institutional inertia and political calculations — especially for those groups and parties that are currently advantaged by biased electoral outcomes — would likely be formidable obstacles. Further, expensive efforts may be needed to break many states free of the status quo through legislative reform or successful voter initiatives. Even with substantial investments, state advocacy efforts might prove slow and substantially delay reform; or they might fail altogether, leaving a substantial share of delegations elected from single-member districts. Perhaps most evidently, because reform would diversify the partisan make-up of many state delegations (in Massachusetts, for instance, more Republican representatives; and in Mississippi, more Democratic ones), states are unlikely to pursue a go-it-alone approach.

Or, if some states did opt to go it alone, substantial risks persist: namely, that partial success in multi-member district adoption would exacerbate non-proportional aggregate outcomes for the House. For example, Alabama, North Carolina and Texas all currently provide Republicans with a disproportionately higher share of their congressional seats through electoral biases generated by single-member districts, partially negating imbalances in favor of Democrats in states like California, Maryland and Massachusetts. If the former states adopted multi-member districts, Democrats would likely secure a handful of newly competitive seats without any commensurate offset elsewhere. The House may then be even *less* proportionally representative of the electorate than it is today. Anticipating such a scenario, a more likely outcome may be *no* states opting for reform.

Core Electoral System Design Decisions

Electoral systems are defined by four core components: district magnitude, electoral formula, assembly size and ballot structure. Expansive choice-sets exist within them, and decisions for each interact to generate a specific kind of electoral system.[208]

A system using *proportional multi-member districts* feature district magnitudes greater than one and a proportional electoral formula. However, these general decisions permit many more specific possibilities. A multi-member district may call for only two representatives — or ten.[xliii] The precise number or range carries significant implications. Additionally, exact proportionality is generally not possible (divisions of votes typically produce fractional numbers of seats), so differing electoral formulas are used to allocate winners based on vote shares. Thus, that multi-member districts ought to be "roughly proportional" in their vote-to-seat translations leaves broad room for allocation decisions.

Further, proportional multi-member districts speak to only two of the basic electoral system design decisions; they do not suggest a certain ballot structure choice, nor do they prescribe an assembly size for the total number of representatives. Ballot structure does not determine whether an electoral system is winner-take-all or proportional, and thus does not feature centrally in this report. Nonetheless, ballot structure choices interact with other rule choices and may be important to consider in policymaking. Assembly size, however, *does* affect the proportionality of outcomes; we explore it in more detail below.

While proportional multi-member districts represent a clear departure from winner-take-all, a variety

WINNER-TAKE-ALL VS PROPORTIONAL REPRESENTATION: KEY COMPONENTS

Two basic design choices distinguish winner-take-all and proportional representation: the class of electoral formula and the use of single- or multi-member districts.

Winner-Take-All

=

plurality **OR** majority formula

+

single- **OR** multi-member districts

Proportional Representation

=

proportional formula

+

multi-member districts
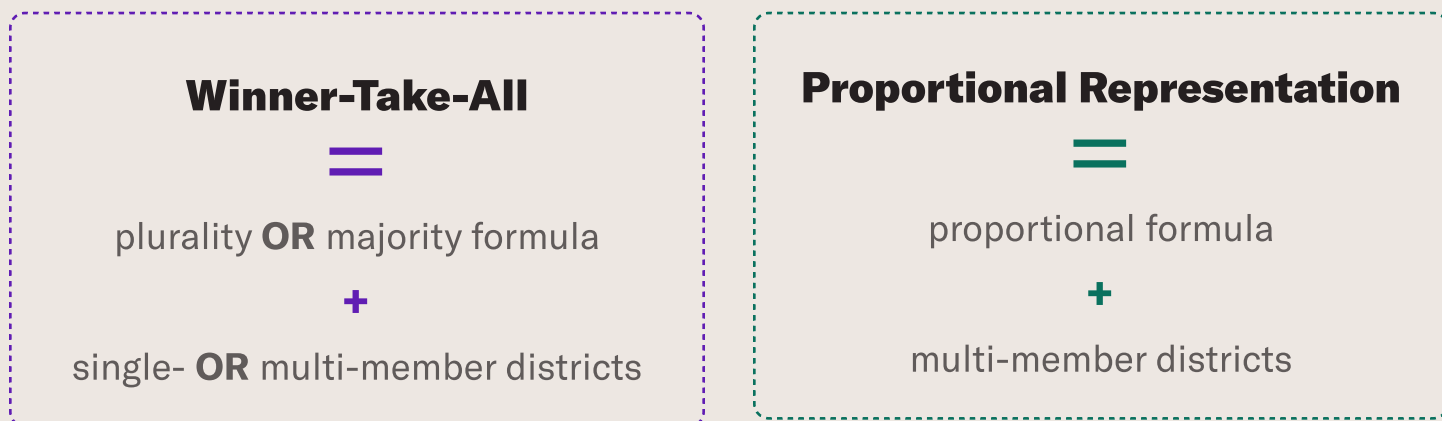
xliii The functional limit in the U.S. would be equivalent to the total number of representatives for the largest state: currently California, with 52.

of important policy details remain. To what extent then should federal legislation restrict the electoral system design choices available to states for the implementation of proportional multi-member districts? Rep. Watt's proposal imposed a few, high-level restrictions, leaving the specifics to state discretion. Rep. McKinney charted a similar path in the later versions of her proposal. The *Fair Representation Act* takes a different approach, prescribing a specific district magnitude range, form of ballot structure and allocation formula. Each of the following variables should be carefully considered as potential components of UCDA reform.[xliv]

1. Electoral Formula

Electoral formulas — the rules and mathematical operations governing the translation of votes to seats — play an important role in the proportionality of an electoral system.[xlv] Multi-member districts are a necessary but insufficient requirement for a system of proportional representation; they must also be coupled with some kind of proportional representation (PR) formula.

Adding more seats per district while maintaining a non-proportional electoral formula, as with the current widespread use of the plurality rule in U.S. elections, further reduces potential for proportionality. Indeed, bloc voting's use of plurality or majority rules in multi-member districts was long a deliberate attempt to maintain all-white congressional delegations and bar various groups from any representation whatsoever. At minimum, then, any UCDA reform should prohibit states from using non-proportional electoral formulas in a multi-member district.

Rep. Watt's and Rep. McKinney's proposals sought to address this problem by expressly incorporating the VRA's protections, reasoning that bloc voting would never be permitted by virtue of its inevitable harm to minority voting power. While that may have been an adequate guardrail at the time, the Supreme Court's ongoing efforts to defang the VRA counsel against such a strategy today. Nor can policymakers count on the Constitution's Equal Protection Clause or the Fifteenth Amendment as a bulwark against bloc voting, given the Supreme Court's methodical erosion of both provisions.[209] Rather, legislative language should expressly prohibit bloc voting *in addition* to affirming the applicability of the VRA.

Prohibiting the bloc vote forces the question of whether a specific PR formula should be required instead. Policymaking could prescribe a specific and universal formula for congressional elections with multi-member districts, but it may be difficult to build a critical mass of congressional support for a highly circumscribed regime. On the other hand, simply banning bloc voting may not be enough to protect against the inevitable and unpredictable creativity of state lawmakers keen on subverting the goals of reform. The most prudent approach may be a middle ground: setting broad guardrails for the proportionality of the new system while giving states discretion for experimentation and implementation of discrete allocation formulas.

Clear articulation and definition of these parameters will be important to constrain potentially hostile courts and ensure that states follow the letter and spirit of reform.

2. District Magnitude

When coupled with a proportional electoral formula, a modest increase in district magnitude is associated with substantially more proportional outcomes.

However, because magnitude decisions interact with other variables such as assembly size and electoral formula to determine the nature of an electoral system and its proportionality, their effects are difficult to assess in isolation. Different magnitude decisions also carry different benefits, trade-offs and risks. Given

---

xliv Further research is warranted to examine the practical administration of each of the following policy choices. Such questions are beyond the scope of this report.

xlv While electoral formulas can play a decisive role in determining the proportionality of an electoral system — indeed, including whether a system is winner-take-all or some form of proportional representation — they can also carry other implications for electoral politics, such as structuring incentives for electoral alliances and governing coalitions among parties. *See, e.g.*, Alexander P. Martin and John M. Carey, *Great for Constitution Writing but an Obstacle to Democratic Consolidation: The Ephemeral Value of the Hare Quota Formula in Tunisia's Parliamentary Elections*, Representation (Oct. 30, 2022); John Carey, "Elections and Policy Responsiveness" in *The Oxford Handbook of Electoral Systems* at 85–111; John Carey, *Electoral formula and fragmentation in Hong Kong*, Journal of East Asian Studies vol. 17, no. 2 (Feb. 17, 2017) at 215-231.

these complexities and uncertainties, arriving at an optimal and standard magnitude for congressional districts is unlikely. Instead, policymakers could consider what an appropriate range might be.

A district magnitude increase from one to two would almost certainly fail to realize many of the intended benefits of reform. For example, such a marginal increase is unlikely to enhance district-level competition. Instead, a district magnitude of two would probably result in the election of one Republican and one Democrat in many districts,

entrenching outcomes that may in practice suppress interparty competition.[xlvi] Nor are two-seat districts likely to generate proportional outcomes or multiparty activity typically associated with systems of proportional representation.[210] Substantially larger magnitudes may also be problematic, as the benefits from marginal gains in proportionality would likely be offset by party fragmentation.[211]

---

xlvi This dynamic arguably played out in Illinois under its semi-proportional system of three-seat districts for the state's lower chamber. According to Leon Weaver, the system featured "noncompetitiveness in general elections in many districts because the majority party would nominate only two and the minority party only one candidate. To some critics, this behavior smacked of interparty collusion . . . ." Leon Weaver, "Semi-Proportional and Proportional Representation Systems in the United States" in *Choosing an Electoral System: Issues and Alternatives*, Praeger New York (1984) at 198.

STANDARD PROPORTIONAL REPRESENTATION FORMULAS

Nearly all systems of proportional representation use one of two classes of proportional representation formulas to allocate seats: *quotas with largest remainders* or *divisors* (also called highest average methods).[xlvii] While formulas within these categories all generally work to allocate seats in proportion to votes — in contrast to plurality or majority allocation rules — each operates differently and therefore affects the proportionality of outcomes differently.[212]

Quota methods specify the number of votes that guarantee a party a seat within a multi-member district; any seats unfilled are allocated, one per party, to the parties with the largest remainders after deducting votes used up on quotas. Divisor methods divide the total number of votes won by each party by a series of divisors to produce quotients, with

seats in a multi-member district allocated to parties in order from highest to lowest quotients. While various quota and divisor formulas exist, a handful are most common: the *Hare quota and largest remainders* method and the *D'Hondt divisors* method are the best known.[213]

Different formulas produce more or less proportional results.[214] Relatedly, some formulas are relatively more advantageous to larger parties, while others are more favorable towards smaller ones. Attention to formula choices and their implications is crucial for electoral system design, especially when district magnitude is moderate (*i.e.*, three-to-seven). Policymaking could require that a state select a formula from within one of these classes; that a state select a formula from within either class; or that states employ a specific formula.

---

xlvii The term "quota" here describes a category of mathematical formulas for allocating seats in proportion to votes. This bears no relation to "quotas" in common usage, which typically refer to a mandatory minimum number or share of seats in a body reserved for a given group.

The practical risk of legislative silence on district magnitude is the erasure of reform's potential benefits, in addition to the substantial risk of lopsided adoption as reviewed above. Thus, legislating a minimum of three members per district (where possible, in light of current apportionment constraints[xlviii]) could ensure a floor of benefits. Legislating a maximum may be less important given that the currently dominant political parties face the greatest threat from overly large districts and are therefore unlikely to implement them. On the other hand, because more parties under a more proportional system may be incentivized to push for further increases in district magnitudes, a ceiling may be prudent.

3. Assembly Size

Assembly size, or the total number of representatives in a legislative chamber, interacts with the aforementioned variables to affect an electoral system's proportionality.

The Permanent Apportionment Act of 1929 fixed the size of the House at 435 Representatives. The bill has largely come to be seen as antithetical to the Framers' intentions of decennially expanding the House to keep pace with population growth, such that districts remained small enough for Representatives to remain adequately attuned to the needs of their constituents.[215] The Constitution initially prescribed districts of 30,000 constituents, then directed Congress to reapportion every decade; indeed, a precise constituent-to-representative ratio was nearly included as a constitutional amendment in the Bill of Rights.[216] Today, the U.S. features among the world's largest constituent-to-representative ratios (roughly three-quarters of a million-to-one), second only to India, and six times greater than the average democracy.[217]

That the U.S. population has more than tripled since the 1920s while the size of its representative body has remained the same carries a host of consequences germane to the goals of UCDA reform. For example, 21 states currently have fewer than five Representatives in Congress; and six states have only one. House expansion would increase the share of states able to participate in adopting a more proportional system by permitting greater district magnitudes where they are currently constrained by their small apportionment. Fewer states would be excluded from the benefits of electoral system change.

Smaller assembly sizes relative to population size generate greater disproportionality. A larger House would increase proportionality.

Research also finds that representatives with larger constituencies tend to adopt more extremist positions and cater to narrower and wealthier interests.[218] Such representatives are also less trusted by their constituents.[219] (States exhibit similarly concerning trends, where small assemblies have resulted "in more negative evaluations of representative government."[220]) The House's relatively small size is thus likely weakening the representative-constituent relationship, and has been for some time.[xlix] It has long been common for state populations to remain the same or even grow while also losing seats during decennial reapportionment, harming representation.[221]

Smaller assembly sizes relative to population size generate greater disproportionality.[l] A larger House would increase proportionality. It is not essential to include changes to assembly size in UCDA reform — *i.e.*, reforming the Permanent Apportionment

---

xlviii A dozen U.S. states currently have fewer than three representatives. Without enlarging the size of the House, these states would remain an exception to a district magnitude floor of three. The five states with two representatives each could nonetheless elect them through a single statewide election with a district magnitude of two and proportional formula.

xlix For an expanded analysis of the House's current size and its various effects, see Lee Drutman, Jonathan D. Cohen, Yuval Levin and Norman J. Ornstein, *The Case for Enlarging the House of Representatives, Part II: The House and Representative Democracy*, American Academy of Arts and Sciences (2021).

l Matthew Shugart observes a contemporary example with Italy's 2022 national election, in which "the center-right bloc obtained 59.3% of the seats on 43.8% of votes," while in 2018, "it had 42.1% of the seats on 37.0% of the votes. Its votes grew by 6.8 percentage points, but its seats by 17.2." The difference is in part attributable to a significant reduction in the country's assembly size, which affected the proportionality of the system and in turn advantaged one block of parties. Different electoral outcomes were made possible without a commensurate change in the distribution of votes. *The output indicators for Italy 2022: Yes, MMM in a smaller assembly really mattered*, Fruits and Votes (Sep. 28, 2022).

Act of 1929 and adding some number of new seats — as adopting a more proportional system in lieu of winner-take-all is possible through changes to district magnitude and allocation formula alone. However, coupling proportional multi-member districts with an expanded House would go even further towards more proportional representation.[li]

4. Ballot Structure

A ballot can be categorical, such that voters select a single preferred candidate or party, or ordinal, such that voters rank their preferences.[lii] Various advocates and scholars debate the benefits and drawbacks of employing one ballot structure over the other, both as a standalone reform (such as ordinal ballots in current single-winner races) as well as with multi-member districts.[liii]

Changes to ballot structure do not determine whether an electoral system is winner-take-all or proportional. For example, when ordinal ballots — as with ranked-choice voting — are used to elect a representative in a single-seat district, there still remains only one winner who "takes all."[liv] But, when ordinal ballots are used to elect multiple representatives in a multi-seat district, winners can be allocated in rough proportion to their vote share.[lv] In this case, the variable change that ensures the system is proportional is the substitution of single-member districts with multi-member districts; ordinal ballots may be used, but so too could categorical ballots. Thus, as it relates to the UCDA's single- versus multi-member district requirements and associated proportionality concerns, ballot structure choices are not a principal consideration; either ballot structure is capable of producing proportional outcomes.

Nonetheless, ballot structure choices across proportional systems vary significantly; and while these choices do not differentiate winner-take-all from proportional systems, they generate potentially important effects. For instance, systems that use categorical ballots also typically use a kind of "list" structure, which vary considerably across systems. Among some list-types, voters may cast a vote for only a party; while with others, they may vote for a candidate nominated by a party; while still with others, voters may choose to do either. How voters are permitted to cast their votes can carry implications for issues such as government accountability, responsiveness and voters' satisfaction with democracy.[222]

While ballot structure effects are likely to be less significant than the adoption of increased district magnitudes with PR formulas, which fundamentally move a country's electoral system beyond winner-take-all, they nonetheless constitute an important design choice. As is currently the case, ballot structure choices could remain at the discretion of states.

---

li Increasing assembly size may make a transition to proportional representation more politically viable. Implementing proportional multi-member districts *without* increasing assembly size may be viewed by current lawmakers as zero-sum: for instance, newly elected Massachusetts Republicans would displace incumbent Democrats, for instance. Increasing assembly size may help assuage incumbency concerns.

lii There is also a (less common) third type — "dividual" — in which "voters may, if they wish, cast their constituency vote for a candidate of one party and their list vote for a different party" in certain systems, such as mixed-member proportional. Michael Gallagher and Paul Mitchell, "Dimensions of Variation in Electoral Systems" in *The Oxford Handbook of Electoral Systems*, Oxford University Press (Erik S. Herron, Robert J. Pekkanen and Matthew S. Shugart, eds., Apr. 2017) at 29.

liii For a review of literature on ranked-choice voting in the U.S., also known internationally as preferential voting, see Lee Drutman and Maresa Strano, *What We Know About Ranked-Choice Voting*, New America (Nov. 10, 2021).

liv Ordinal ballots are designed to ensure a majority winner instead of a plurality winner, *i.e.*, changing an electoral system from *single-member plurality* to *single-member majority*. Both are winner-take-all systems.

lv The use of preferential voting (*i.e.*, ranked-choice voting) with ordinal ballots is a defining feature of the Single Transferable Vote (STV) system, a variant of proportional representation. (This is the system proposed in the *Fair Representation Act*.) Most proportional systems use categorical ballots on which voters select a single candidate and/or party. See "Party Lists: Voting for Parties, Candidates or Both" at 53 for additional information on STV.

PARTY LISTS: VOTING FOR PARTIES, CANDIDATES OR BOTH

In nearly all systems of proportional representation, voters select their choices from a *party list*, or a party's slate of candidates. This is the mechanism used to achieve proportionality in results, with seats allocated to party lists based upon a party's share of the vote. Proportional systems employ a wide variety of lists, while a few use none.

List systems are distinguished principally by the degree of control given to either parties or voters in determining the selection of candidates for office. Under *closed list* proportional representation, voters may only cast a vote for a political party. Parties' seats are allocated based upon their share of votes; and which candidates are seated is determined by a party's ordering of candidates on a list. For instance, the Republican Party would determine the ordered list of its candidates, and should it secure three seats, the top-three listed candidates from its slate would be elected.

Under *open list* proportional representation, voters may instead select a particular candidate on a party list (*i.e.*, cast a "preference vote"). As with closed lists, seats are allocated to parties in proportion to the votes they receive, which is determined by the total vote share captured by a party's list of candidates. But unlike closed lists, candidates are seated in order of votes won. For instance, if the Democratic Party secures three seats, the top three vote-getters on the list would prevail. Open list allows voters to select their preferred candidates while still optimizing for

proportionality in outcomes. It is for this reason that some scholars suggest an open list system may be more suitable to America's more candidate-centric political culture. As Jack Santucci describes: "From the voter's perspective, there would be almost no change — pick your most preferred candidate."[lvi]

Unlike closed lists, open lists also exhibit significant diversity in voting methods. In some instances, voters must select a party list and may also vote for a candidate; in others, voters may only vote for a candidate; and still in others, voters are given the option of voting for either a party or a candidate. Particular voting methods aside (indeed, "[t]here are almost as many different configurations of [open list] as there are countries that use it"[223]), open list systems share the common attributes of allocating seats to lists of candidates based upon their pooled totals and of voters determining which of those candidates are elected.

Further, other systems combine the use of preference votes with a party's pre-ordering decisions to determine a final list order in what is sometimes called a "flexible list." And in certain instances, proportional systems do not use party lists at all. The Single Transferable Vote (STV) system differs from those above in that voters rank various candidates all listed together, *i.e.*, not organized by party on a ballot. STV also uses a different allocation process than list systems to determine winners ranked by voters in a multi-seat contest.[lvii] Among national legislatures, STV

---

lvi Santucci also describes the lack of meaningful changes from the perspectives of incumbents and election administrators. *See* Jack Santucci, <u>*A modest and timely proposal*</u>, voteguy.com (Dec. 9, 2020) ("From the incumbent's perspective, there would be almost no change" given that OLPR permits "each incumbent [to] campaign as they do now . . . . From the election official's perspective, there would be almost no change," except for "a larger ballot . . . . Just count up the votes, and report the totals.").

lvii Nicolaus Tideman, *The Single Transferable Vote*, Journal of Economic Perspectives vol. 9, no. 1 (1995) at 27 ("The different varieties of STV share the following features: a quota of votes is established, and any candidate who attains the quota is elected; surplus votes of elected candidates are transferred to other candidates favored by those who voted for the elected candidates; candidates are eliminated sequentially and their votes transferred to other candidates, with the candidate eliminated at each stage generally being the one with the fewest current votes."); *see also* Michael Gallagher, *Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes and Majorities*, British Journal of Political Science vol. 22, no. 4 (Oct. 1992) at 480–482.

is used in Ireland's lower house, the Australian Senate, and Malta's House of Representatives. A number of U.S. municipalities previously used STV as well, and a modest but growing number are using STV today.[lviii]

Along the broad spectrum of voting methods available in proportional systems, options range from those that, from the perspective of voters, candidates and election officials, appear nearly the same as those in winner-take-all systems to those that markedly differ.

---

lviii Although the Australian Senate is typically characterized as an STV system, because nearly all voters opt to not rank candidates—instead, choosing the "above the line" vote for a party—the system in practice operates more similarly to closed-list proportional representation. *Above the line and below the line voting – Senate Ballot Paper Study 2016*, Australian Electoral Commission (2016). For a review of STV in Australia, Malta, and Ireland, see Shaun Bowler and Bernard Grofman, *Elections in Australia, Ireland, and Malta under the Single Transferable Vote: Reflections on an Embedded Institution*, Michigan University Press (2000). For a review of STV in U.S. localities, see Weaver, "Semi-Proportional and Proportional Representation Systems in the United States" in *Choosing an Electoral System: Issues and Alternatives* at 191–206. Most of these systems are no longer in use. For a review of the efforts that led to their repeal and replacement with winner-take-all systems, see Jack Santucci, *More Parties or No Parties*, Oxford University Press (Aug. 19, 2022). In more recent years, some localities in the U.S. have begun adopting STV. *See* Fairvote, *Proportional RCV Information*.

Enforcement

To the extent that reform includes new limitations on district magnitude, allocation formula, or other criteria, there is a question as to whether litigation could compel states to comply with these requirements. Absent express legislative language on enforcement, it is possible (but not guaranteed) that the U.S. Attorney General would be permitted to bring an enforcement action. Absent such language, it is unlikely that private parties would be permitted to bring suit. Thus, an express grant of authority to either or both could eliminate this uncertainty.

A separate issue arises if federal law were reformed to permit, but not require, multi-member districts: whether a state opting to retain single-member districts could be forced through litigation to adopt proportional multi-member districts. Congress likely could lawfully authorize federal courts to impose multi-member maps upon finding that a single-member district map was unlawful under the VRA, Fourteenth Amendment or other relevant federal standards.[lix] However, if reform were silent on permissible judicial remedies, it is an open question whether a federal court could lawfully or, in practice, impose a multi-member map.[lx]

Prior to the 1967 law, it was widely accepted that a federal court could impose a multi-member map to remediate single-member districts that violated the constitutional "one person, one vote" guarantee.[224] While only plurality at-large maps were considered at the time, nothing in the relevant court decisions (apart from the era's limited imagination) foreclosed the use of a proportional multi-member system. Further, prior to all other current members joining the Supreme Court, Justice Thomas stated his view that a federal court may impose a proportional multi-member map as a remedy for single-member districts that violate Section 2 of the VRA, at least in certain circumstances.[225] Indeed, in dozens of state and local VRA districting cases, federal courts have approved non-winner-take-all remedies as part of settlements or consent decrees.[226]

However, the 1982 amendment to the VRA noted that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population," which could conceivably be an obstacle to relying on the VRA for enforcement of UCDA reforms.[227] However, the plain language of this provision merely disclaims any right to have representatives of a certain race elected in direct proportion to their share of the electorate. And the legislative history indicates that Congress sought

---

lix The 1982 amendment to the VRA addressed the necessary showing for liability under Section 2 and had nothing to do with permissible judicial remedies. However, given that at least one federal court has misinterpreted this provision as limiting remedial options, it would be prudent for Congress to expressly clarify this issue in any such reform. *See* 52 U.S.C. § 10301(b); *see also* Thomas Boyd and Stephen J. Markman, *The 1982 Amendments To The Voting Rights Act: A Legislative History*, Washington and Lee Law Review vol. 40, no. 4 (1983) at 1347.

lx Rep. Watt's bill was silent on this question, and this issue predominated during the 1999 hearing. *States' Choice of Voting Systems Act: Hearing Before the Subcommittee on H.R. 1173* at 6–7.

merely to clarify that non-proportional outcomes were not, on their own, sufficient to establish a Section 2 violation. While at least one federal appellate court has mistakenly construed this provision as precluding the imposition of a non-winner-take-all remedy,[228] this is clearly a minority view that other courts should reject.

Nonetheless, in a series of cases between the 1970s and 1990s, the Supreme Court invoked federalism to discourage federal courts from imposing multi-member systems as a remedy in state and local constitutional districting litigation.[lxi] On their face, several of the rationales articulated in defense of this rule would seemingly counsel against judicial imposition of a proportional multi-member congressional map.[lxii] Consistent with this guidance, several federal appellate courts overturned district courts that sought to remedy malapportioned state and local single-member districts with multi-member maps and semi-proportional allocation formulas.[229] Thus, to the extent a state will not consent to the adoption of a proportional multi-member congressional map, a federal court may be disinclined to impose one. This is particularly likely if the state could produce a single-member district map that addresses the underlying liability, even if the multi-member map would better serve the harmed groups.

While some state courts might be inclined to remediate unlawful single-member districts with a proportional multi-member map, some states' constitutional provisions prohibiting multi-member plans would likely preclude any such relief. In other states, where multi-member plans are prohibited only by state statute, state courts faced with single-member districts that violate the state constitution could impose a multi-member map. Yet, in practice, few (if any) courts would be expected to do so without state consent. The Supreme Court cases establishing a presumption against judicially imposed multi-

member plans are driven by federalism concerns and therefore only bind federal courts;[230] yet, a number of state courts have nonetheless chosen to embrace this presumption.[231]

Policy Design Principles

Below are five principles to guide policymaking reforms to the UCDA derived from the analysis above, including the statue's history and principal benefits and risks of reform. Taken together, these principles aim to maximize benefits while mitigating risks of legislating proportional multi-member districts for the U.S. House.

1. Amend or Replace

Simple repeal of the UCDA risks making the House of Representatives even less proportional — across both racial and partisan lines — by permitting bloc voting. In lieu of the single-member district mandate, states should not be permitted to employ multi-member districts coupled with a non-proportional allocation formula.

Situating the UCDA in its historical context helps to illuminate the important reasons for its enactment, which include a prohibition of bloc voting for congressional elections. At the time, imposing single-member districts — while still a winner-take-all system — moved the House towards greater proportionality and fairer representation. Repeal without a replacement risks backsliding.

Thus, policymaking should focus on reforms to the law that move the House's electoral system towards some form of proportional representation, as outlined below, while maintaining a prohibition of bloc voting.

---

lxi In *Connor v. Johnson*, the Court held that "when district courts are forced to fashion apportionment plans, single member districts are preferable to large multi-member districts as a general matter," emphasizing that federal courts must use single-member districts "absent insurmountable difficulties." 402 U.S. 690, 692 (1971); *see Wise v. Lipscomb*, 437 U.S. 535, 540–41 (1978) (collecting cases)*; see also Growe v. Emison*, 507 U.S. 25, 40 (1993); *Upham v. Seamon*, 456 U.S. 37, 43 (1982).

lxii In *White v. Weiser*, the Court explained that federalism requires that federal courts respect "policies and preferences of the State" unless federal law compels otherwise. 412 U.S. 783, 795 (1973) (noting that federalism interest in preserving state policy choices applies equally to congressional and state apportionment). In *Connor v. Finch*, the Court justified this presumption on several other considerations: (i) "the practice of multimember districting can contribute to voter confusion"; (ii) multi-member districts can "make legislative representatives more remote from their constituents"; and (iii) multi-member districts "tend to submerge electoral minorities and over-represent electoral majorities." 431 U.S. 407, 415 (1977). It is unclear what, if any, evidence the Court relied on in reaching the first two conclusions. And the third point, of course, applies to at-large plurality maps, but would not apply to a proportional multi-member plan.

2. Allow a Range of District Magnitudes

Building consensus around proportional multi-member districts will inevitably require compromise, but poorly designed UCDA reform could make the House even less representative. It is crucial to understand at the outset which aspects of electoral design could be safely left to state discretion and which require a settled national standard. Given that the absence of district magnitude standards could generate a host of serious risks, clear prescriptions here are appropriate.

Total state discretion risks lopsided adoption of more proportional systems, such that some states supplant single-member districts with proportional multi-member districts while others maintain the status quo. Lopsided adoption may lead to a greater aggregate bias in electoral outcomes for the House: for instance, if a large majority-red state, like Texas, adopts a more proportional system (likely increasing its share of Democratic representatives), while a large majority-blue state, like California, does not.

Policy should instead permit states flexibility within a district magnitude range. A minimal increase in district magnitude — say, from one to two — is unlikely to generate various intended benefits, such as an increase in electoral competition, while a radical increase — say, from one to twenty — risks fragmentation. The *Fair Representation Act* prescribes three to five representatives per district where mathematically possible. However, various scholars have debated other optimal district magnitudes, both generally and in the American context,[232] and some suggest a three-to-five range may in fact be too modest to realize intended benefits.[lxiii] Formulating a precise range may benefit from further discussion among policymakers and scholars.[lxiv]

3. Allow a Choice of PR Formula

Policymaking should require the use of a PR formula when allocating winners in a multi-member district to ensure states do not resuscitate the bloc voting schemes of the past — that is, a prohibition of the use of non-proportional (plurality or majority) formulas with multi-member districts. Mandating multi-member districts without specifying requirements for an appropriate allocation formula opens the door to abuse of the former. The Supreme Court's continued erosion of federal voting rights protections amplifies this risk.

Clear prohibitions should be coupled with affirmative guidelines for the use of a PR formula in order to produce proportional multi-member districts. The issue of *which* electoral formula to use within the broad class of "PR formulas," however, is not straightforward. Extensive research has sought to both theoretically and empirically assess PR formulas based upon their ability to produce more (or less) proportional outcomes. Certain formulas, for example, may be more likely to benefit the largest party, while others may advantage smaller parties.[233]

While these formulas matter — indeed, "a difference in electoral formula. . . may be at least as important as district magnitude in determining the proportionality of legislative representation"[234] — the most important distinction that separates winner-take-all from proportional systems is the use of a PR formula in multi-winner contests. Thus, that states employ a PR formula should be considered a threshold requirement for reform. Legislative language should further define what constitutes a compliant PR formula.[lxv]

---

lxiii One study using data from 610 election outcomes in 81 countries between 1945 and 2006 finds that "[e]lectoral systems that use low-magnitude multi-member districts produce disproportionality indices almost on par with those of pure PR systems while limiting party system fragmentation, producing simpler government coalitions, and surpassing both majoritarian and pure PR systems on some indicators of government performance." *See* John M. Carey and Simon Hix, *The Electoral Sweet Spot: Low-Magnitude Proportional Electoral Systems*, American Journal of Political Science vol. 55, no. 2 (Apr. 2011) at 383–397. In this case, "low-magnitude" is between four and eight. Thus, proposals for between three and five in the U.S. context may be considered especially low. Further, various features of the U.S. political system likely cut against fragmentation risks, such as winner-take-all contests for the presidency and Senate, suggesting that higher district magnitudes could yield greater benefits with minimal risk.

lxiv In some circumstances, a district magnitude of three may itself be insufficient to ensure a meaningfully equal opportunity for certain racial groups to elect their preferred representatives. This is an increasingly important consideration given the ongoing efforts by the federal judiciary to limit the reach and impact of the VRA to guarantee such protections.

lxv This could be achieved, for example, by simply articulating a *broad* basket of *specific* formulas — which is to say, a predetermined menu of mathematical functions that could be employed. For a comprehensive list of standard PR formulas, see Arend Lijphart, "Degrees of Proportionality of Proportional Representation Formulas" in *Electoral Laws and Their Political Consequences*, Agathon Press (1986) at 170-182.

States should enjoy discretion in selecting their allocation method from within the broad category of standard PR formulas. Depending upon states' other electoral system design choices, such as ballot structure, different PR formulas would in fact be necessary. For example, a state that elects to use (or in some cases, already uses) ranked-choice voting for congressional elections would naturally require a particular kind of allocation formula in a multi-winner race.[lxvi]

NUMBER OF REPRESENTATIVES BY CONGRESS

Since the Founding, Congress regularly expanded the size of the House to roughly keep pace with population growth — until The Permanent Apportionment Act of 1929, which fixed its size at 435 Representatives.
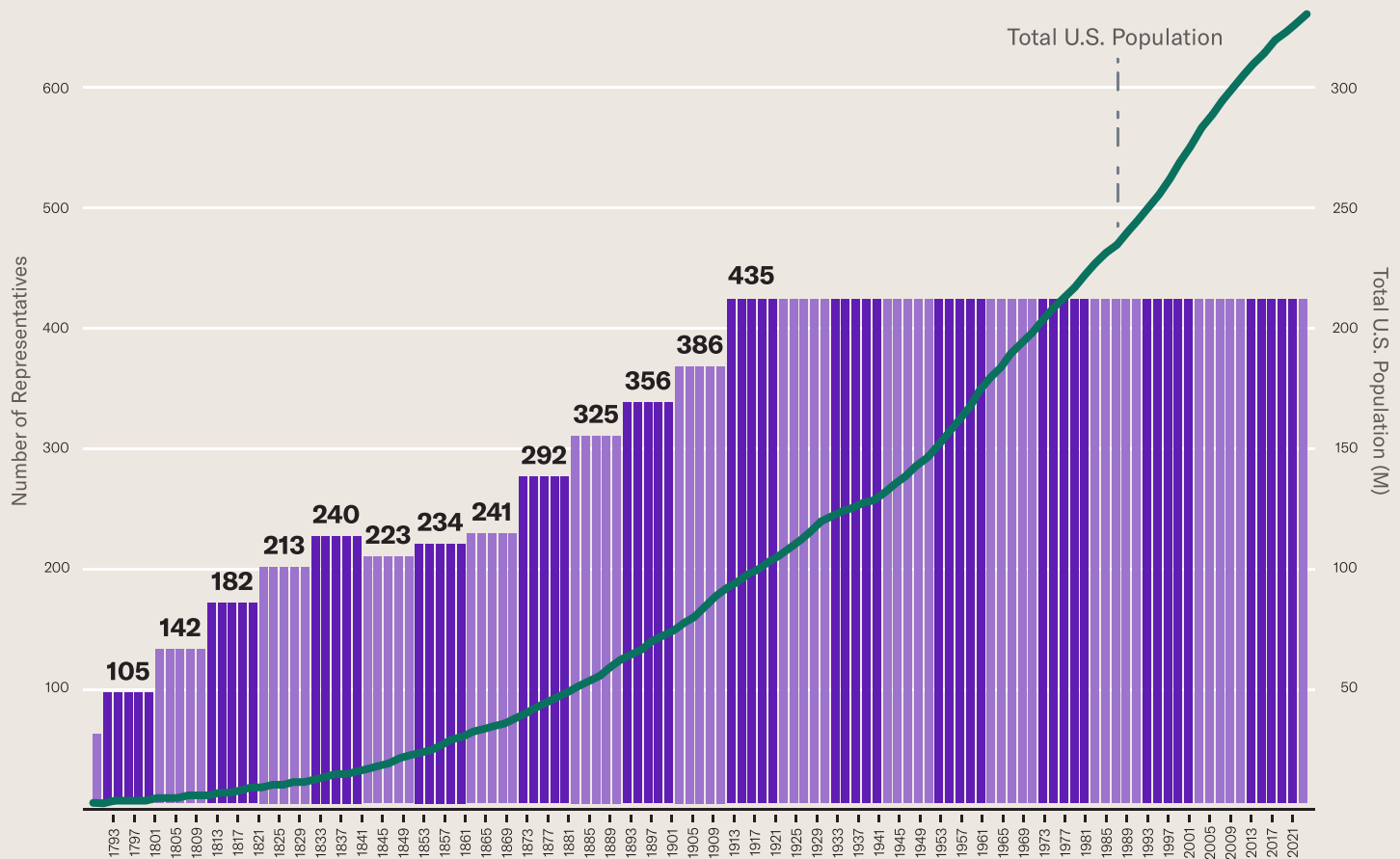
Source: Five Thirty Eight & U.S. Census Bureau

lxvi   In a multi-member district system with ranked-choice voting — also known as the Single Transferable Vote (STV) system — a specific allocation method, the Droop Quota, is used. Unless all states used ranked-choice, a national standard would conflict with this differing ballot structure decision.

4. Encourage House Expansion

An expanded House would have salutary effects on representation, including greater proportionality. Policymaking should consider coupling the introduction of proportional multi-member districts with an increased number of House seats, so that as states combine single-member districts into multi-member districts, the constituent-to-representative ratio decreases.

Various scholars and advocates have proposed both a specific number of new seats as well as methods for decennial expansion.[235] For example, the Cube Root Law, which expresses the size of a country's legislature (unicameral or lower chamber) as the cubed root of a country's population,[lxvii] is a fair approximation of the size of many democratic legislatures around the world. This ratio has been used in various proposals for suggesting an optimal number of new seats for the U.S. House.[lxviii] Some proposals also suggest a "formula of expansion that would bring the House in line with the cube root of the population gradually," rather than all at once.[236]

However, the inclusion of assembly size changes to UCDA reform should be viewed as additive, not as necessary. By contrast, UCDA reform *must* include certain prohibitions (of bloc voting) and minimum standards (for proportional multi-member districts where possible) in order to effectively move the House's electoral system beyond winner-take-all. While an enlarged House would further certain goals and mitigate certain risks — such as greater proportionality in outcomes and improved constituent-representative relationships — the issue should not preclude congressional districting reform.

5. Include Enforcement Mechanisms

The U.S. has a checkered history of effectively enforcing federal districting law. Indeed, American history is replete with examples of states ignoring federal requirements that relate to the House's electoral system, such as continuing the use of bloc voting despite explicit prohibitions, and Congress permitting violations to proceed unremedied.

Rather than leave enforcement mechanisms and authorities ambiguous, UCDA reform should provide a pathway for judicial review and enforcement. At minimum, this should include authorizing the U.S. Attorney General and state Attorneys General to bring civil actions, and clarifying that existing causes of action in federal law remain available. It may also be worthwhile to explore a limited private right of action to permit private parties to bring civil suits to enforce the most critical and core guardrails of the law that prevent states from backsliding into less representative electoral systems.

* * *

These policy principles do not cover the full range of decisions for structuring the U.S. House's electoral system, but they are the most relevant to the districting issues implicated by the UCDA. A variety of other issues are not examined in detail here, including decisions that may be better left to states altogether, such as the methods by which states draw new multi-seat districts. The *Fair Representation Act* mandates the use of specifically structured independent commissions. Another option is to leave such decisions regarding how maps are drawn to the states, in particular given that multi-seat districts are less susceptible to gerrymandering.

Nor do we examine in detail the use of party lists, which are used in most proportional systems to organize candidates on a ballot and to decide which candidates are sent to a legislature depending upon their parties' share of the vote. If a state were to adopt a list system, it might employ an open party list in which voters indicate their preferred candidate on a party's slate — for example, a preferred Democratic candidate among a list of Democratic candidates. Alternatively, it might employ a closed list, in which voters only cast a vote for a party instead, and the

---

lxvii The Cube Root Law was first developed by Rein Taagepera in 1972. *See* Taagepera, *The size of national assemblies*, Social Science Research vol. 1, no. 4 (Dec. 1972) at 385–401.

lxviii Given the current U.S. population (according to the 2020 census), using the Cube Root Law would generate 257 new seats (from a cube root of 692, less the current 435 seats).

order of candidates elected is determined by the party itself; or they might forgo lists altogether, among other options.[lxix]

These determinations are likely to be informed by state-specific considerations, such as the differing nature of states' primary, or preliminary, contests. Consider the emerging use of "top-X" preliminary rounds (top two, or four, or five) as in Alaska, whereby X number of candidates move from the first round through to the general election. Scholars have examined how these fields of candidates might populate party lists in a multi-seat general election.[237] Or, consider a recent proposal in the Wyoming state legislature that would shift the lower house from winner-take-all to closed list proportional representation, whereby party lists for the new multi-seat general election reflect winners in the traditional first-past-the-post primary election (such that primary vote totals are used to order the candidates on each party's list).[lxx] Should the bill become law, Wyoming may wish to maintain the same closed list proportional system for congressional elections.[lxxi]

A transition to a system of proportional representation for the House is likely more politically viable if states are permitted to retain and integrate other aspects of their current electoral processes where possible. Such a transition should also be understood as broadly consistent with federalism principles, as Congress frequently sets forth general rules and prohibitions governing federal elections while leaving ample discretion to states.

---

lxix While list types are typically fixed at the national level, this is not always the case. For example, both Denmark and Colombia permit political parties to present different list-types. Parties in Denmark may use either an open list or certain types of flexible lists. Jorgen Elklit, "Denmark: Simplicity Embedded in Complexity (or Is It the Other Way Around?)" in *The Politics of Electoral Systems*, Oxford Academic (Michael Gallagher and Paul Mitchell, eds., Sep. 2005) at 452–471. In Colombia, parties may present either closed or open lists. Mónica Pachón and Matthew S. Shugart, *Electoral reform and the mirror image of inter-party and intra-party competition: The adoption of party lists in Colombia*, Electoral Studies vol. 29, no. 4 (2010) at 648–660.

lxx Andy Craig, *Andy Craig testifies at the meeting, "Joint Corporations, Elections & Political Subdivisions," before the Wyoming Legislature*, Cato Institute (Jun. 30, 2022). In the general election, voters would select their preferred party, with candidates securing seats in proportion to their party's vote share and in listed order.

lxxi Because Wyoming only has one House representative, this concern would be relevant only in the event that House expansion provided the state with more seats.

CONCLUSION

Heated conflicts over the House's electoral system were present during the Founding era and have continued through the present. Yet despite this rich history, what began as a winner-take-all system remains a winner-take-all system.

The consequences today are profound. The trends dominating U.S. House elections — a collapse in competition across most congressional districts; biased electoral outcomes that advantage one party over another; the dilution of voting power along racial lines; intractable polarization and escalating extremism — not only constitute serious problems in their own right, but are likely destabilizing American democracy itself. Voters who do not perceive their vote to count for much, or at all, are unlikely to think highly of their system of government.

These phenomena, however, are not a given. Changing the design of an electoral system, like any other institutional arrangement, can either aggravate or mitigate these trends. Indeed, our electoral system was designed to be changeable. As Supreme Court Justices Clarence Thomas and Antonin Scalia have recognized, "there is no principle inherent in our constitutional system, or even in the history of the Nation's electoral practices, that makes single-member districts the proper mechanism for electing representatives to governmental bodies . . . ."[238]

Few institutional arrangements are as consequential to the nature of a country's politics than the design of its electoral system. As Larry Diamond and Marc Plattner explain,

[An] electoral system can shape the coherence of party control of government, the stability of elected governments, the breadth and legitimacy of representation, the capacity of the system to manage conflict, the extent of public participation, and the overall responsiveness of the system . . . . [It] may polarize electoral politics or . . . unwittingly empower extremist political forces . . . . These dimensions of democratic character and quality, in turn, may well determine whether democracy survives or fails.[239]

> **The trends dominating U.S. House elections — a collapse in competition across most congressional districts; biased electoral outcomes that advantage one party over another; the dilution of voting power along racial lines; intractable polarization and escalating extremism — not only constitute serious problems in their own right, but are likely destabilizing American democracy itself.**

Few institutional arrangements are also as mutable as electoral systems. "Often, the electoral system may be changed by legislation alone," write Diamond and Plattner. "Among the many structural and historical variables that affect democracy, few are more open to rapid and intentionally designed changed than the electoral system."[240] Indeed, the U.S. has taken advantage of these institutional design opportunities before.

In the mid-20th century, single-member districts were understood as a solution to skewed representation. At the time, the national imposition of single-member districts for congressional elections marked an important step towards fairer representation by prohibiting the bloc vote system that had long been used to preclude minority parties and entire groups from securing representation. But that progress towards a more proportional system has been stalled for decades. Despite the many alternatives to winner-take-all — various systems of proportional representation that did not exist when the U.S. was first experimenting with its own electoral system — the House remains wedded to an antiquated system by law.

Through new law, the current system can be remade. While the depth of the current crisis is profound, so too is the broad-based desire for reform. Today, far more Americans than not believe that the American system of government is deeply flawed and in need of fundamental reforms.[241] As Lee Drutman reflects, "it is in periods where it feels like we are rapidly careening towards trouble that we should expect a much more fundamental change ahead."[242] Of course, what that change looks like will matter. This report aims to provide important context and practical considerations for potential and consequential changes to one of the more fundamental characteristics of congressional elections: the single-member district.

As America's representative democracy falls further behind the promise of its name, calls for reform will almost certainly grow louder. Channeling that energy into policymaking that effectively addresses the structural causes of our democracy's discontents — that does not settle for tweaking at the margins of our winner-take-all system, but imagines something different altogether — will be the enduring challenge of reform.

ENDNOTES

1 Shaun Bowler, David M. Farrell and Robin T. Pettitt, *Expert opinion on electoral systems: So which electoral system is "best"?*, Journal of Elections, Public Opinion and Parties vol. 15, no. 1 (2005) at 3–19.

2 Reilly, *Electoral Systems for Divided Societies* at 156–170; Donald L. Horowitz, *Ethnic Groups in Conflict*, University of California Press (Apr. 2001) at 632; Larry Diamond, *Developing Democracy: Toward Consolidation*, John Hopkins University Press (May 7, 1999) at 104–106; Douglas J. Amy, *Proportional Representation: Empowering Minorities or Promoting Balkanization?*, The Good Society vol. 5, no. 2 (1995) at 22–24; Bogdanor, "Introduction" in *Democracy and elections: Electoral system and their political consequences* at 4; Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, Yale University Press (1977).

3 *See*, *e.g.*, Lee Drutman, *This Voting Reform Solves 2 of America's Biggest Political Problems*, Vox (Jul. 26, 2017) ("These politicians' only worry is the remote chance that they might get primaried, a lingering threat that keeps them from doing anything that would upset their party's base voters. If they have any ambition in Congress, they will also remain loyal partisans, scoring points and raising money for the "team" so their party can use the money to reach those few swing voters in those few swing districts. There are few rewards for them to depart from party groupthink to work with the other side to broker deals, and lots of punishments should they try.").

4 *See*, *e.g.*, Lani Guinier, *Second Proms and Second Primaries: The Limits of Majority Rule*, Boston Review (Sep. 1, 1992) ("Single-member districts also tend to under-represent minority voters, even where some race-conscious districts are created. Unless minority voters are both large enough and concentrated 'just right,' they will not enjoy representation in proportion to their presence in the population. Thus after a decade of race-conscious districting, blacks are not proportionately represented in any of the Southern legislatures. Districting then, is limited as a strategy of empowerment.").

5 *See*, *e.g.*, Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* at 166–168 ("The tendency of electoral systems to yield disproportional results favoring the large parties becomes especially important when parties that fail to get a majority of the votes are awarded a majority of the seats . . . . All [systems] are capable of creating majorities where none are created by the voters, but this capacity is especially strong in the plurality and majority systems . . . In contrast, proportional representation very rarely produces manufactured majorities.").

6 Kamil Bernaerts, Benjamin Blanckaert and Didier Caluwaerts, *Institutional design and polarization. Do consensus democracies fare better in fighting polarization than majoritarian democracies?*, Democratization vol. 30, no. 2 (Sep. 30, 2022) at 153-172; Will Horne, James Adams and Noam Gidron, *The Way We Were: How Histories of Co-Governance Alleviate Partisan Hostility*, Comparative Political Studies vol. 56, no. 3 (May 21, 2022) at 299–325; Noam Gidron, James Adams and Will Horne, *American Affective Polarization in Comparative Perspective*, Cambridge University Press (Dec. 2020).

7 Rachel Kleinfeld, *The Rise of Political Violence in the United States*, Journal of Democracy vol. 32, no. 4 (Oct. 2021) at 169 ("The fissures in divided societies such as the United States can be either mitigated or enhanced by electoral systems. The U.S. electoral system comprises features that are correlated with greater violence globally. Winner-take-all elections are particularly prone to violence. . . ."); John Ishiyama and Ibrahim Shliek, *Rethinking the Relationship between Inclusive Institutions and Political Violence*, Nationalism and Ethnic Politics vol. 26, no. 3 (Oct. 1, 2020) at 240-259.

8 Diamond, *Developing Democracy: Toward Consolidation* at 104.

9 *American Democracy at the Start of the Biden Presidency: January-February 2021 Surveys*, Bright Line Watch (2021).

10 Nils-Christian Bormann and Matt Golder, *Democratic Electoral Systems around the world, 1946–2011*, Electoral Studies vol. 32, no. 2 (2013) at 360–369.

11 Richard W. Soudriette and Andew Ellis, "A Global Snapshot" *in Electoral Systems and Democracy*, The Johns Hopkins University Press (Larry Diamond and Marc F. Plattner, eds., 2006) at 21.

12 Protect Democracy, *Advantaging Authoritarianism: The U.S. Electoral System and Antidemocratic Extremism* (Jan. 2022) at 25–27.

13 Electoral biases disadvantaging the Republican Party may persist. *See 2022 National House Vote Tracker,* The Cook Political Report with Amy Walter (2022)*;* Zachary Donnini, *US House Was Biased Toward Democrats in 2022: Why Republicans Are Developing a Geography Problem*, Decision Desk HQ (Nov. 29, 2022); Aaron Blake, *Why the GOP's popular-vote edge hasn't translated to more House seats*, Washington Post (Nov. 15, 2022); Nate Cohn,*Why Republicans Could Prevail in the Popular Vote but Lose in the House*, New York Times (Oct. 11, 2022); Nathaniel Rakich and Elena Mejia, *The House Map's Republican Bias Will Plummet In 2022 — Because Of Gerrymandering*, FiveThirtyEight (Mar. 31, 2022).

14 Seth Moskowitz, *The House's Republican Bias: Does it Exist?*, UVA Center for Politics (Sep. 12, 2019).

15 David Wasserman, *Is It Time to Rethink Hyper-Minority Districts?*, The Atlantic (Sep. 20, 2021).

16 John Adams, _Thoughts on Government, April 1776_, National Archives.

17 Fairvote, _Dubious Democracy 2022_ (2022).

18 _2022 House Race Ratings_, The Cook Political Report with Amy Walter (Oct. 5, 2022).

19 Geoffrey Skelley, _Changing How Primaries Work Probably Won't Make Politics Less Divisive_, FiveThirtyEight (Jul. 19, 2021).

20 Josh Kraushaar and Mike Allen, _America's frozen midterms_, Axios (Nov. 17, 2022).

21 _The Primary Problem_, Unite America (Mar. 2021).

22 Lena Groeger, Olga Pierce, Justin Elliott and Theodoric Meyer, _House Seats vs. Popular Vote_, ProPublica (Dec. 21, 2012).

23 Guinier, _The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success_ at 1093.

24 Mary A. Inman, _C.P.R. (Change through Proportional Representation): Resuscitating a Federal Electoral System_, University of Pennsylvania Law Review vol. 141, no. 5 (1993) at 2044.

25 Danielle Allen and Rohini Somanathan, _Difference without Domination: Pursuing Justice in Diverse Democracies_, University of Chicago Press (Danielle Allen and Rohini Somanathan, eds., 2020) at 10.

26 Inman, _C.P.R. (Change through Proportional Representation): Resuscitating a Federal Electoral System_ at 2044.

27 Lani Guinier, "The Representation of Minority Interests" in _Classifying by Race_, Princeton University Press (1995) at 21.

28 Spencer, Hughes and Richie, _Escaping the Thicket: The Ranked Choice Voting Solution to America's Districting Crisis_ at 398.

29 Guinier, "The Representation of Minority Interests" in _Classifying by Race_ at 21.

30 Danielle Allen, _personal communication_ (Nov. 1, 2022).

31 Robert Dahl, _How Democratic Is the American Constitution?_, Yale University Press (Nov. 10, 2003) at 56.

32 _E.g._, _Georgia v. Ashcroft_, 539 U.S. 461 (2003); _Bush v. Vera_, 517 U.S. 952 (1996); _Shaw v. Hunt_, 517 U.S. 899 (1996); _Miller v. Johnson_, 515 U.S. 900 (1995); _Shaw v. Reno_, 509 U.S. 630 (1993); _see also Cooper v. Harris_, 136 S. Ct. 2512 (2017).

33 Rosemarie Zagarri, _The Politics of Size: Representation in the United State_s, 1776–1850, Cornell University Press (1987) at 107–114, 154.

34 U.S. Const. art. I, sec. 4.

35 John Leo Moore, _Congressional Quarterly's Guide to US Elections, Congressional Quarterly, inc._ (1994) at 925–926; Joel Francis Paschal, _The House of Representatives: "Grand Depository of the Democratic Principle"?_, Law and Contemporary Problems vol. 17, no. 276 (1952) at 276–277; Laurence F. Schmeckebier, _Congressional Apportionment_, Brookings Institution (1941) at 131; Federalist No. 56 (Madison); Federalist No. 57 (Madison).

36 Federalist No. 62 (Madison) ("[I]n a compound republic, partaking both of the national and federal character, the government ought to be founded on a mixture of the principles of proportional and equal representation."). James Wilson and James Madison were arguably the strongest proponents of proportionality in Congress during the Constitutional Convention. William Ewald, _James Wilson and the Drafting of the Constitution_, University of Pennsylvania Journal of Constitutional Law vol. 10, no. 5 (2008) at 901.

37 Steven L. Taylor, Matthew Shugart, Arend Lijphart and Bernard Grofman, _A Different Democracy: American Government in a 31-Country Perspective_, Yale University Press (Jan. 1, 2014) at 119 ("In any democracy founded in the contemporary era, electoral system choice is a prominent feature of the debate. . . . The lack of a serious debate over the electoral system of the early United States likely owes itself to the fact that the country was entering essentially uncharted territory.").

38 Jack Rakove, _Representation as a Mirror of Society: The Founders' Blueprint_ (forthcoming May 2023).

39 Nicolas Flores, "Chapter 3: The 1842 Apportionment Act" in _A History of One-Winner Districts for Congress_, FairVote.

40 _Ibid_.

41 _Congressional Globe_, 27th Congress, Second Session, Volume 11, Part II, Appendix (1842) at 320–322, 348–349.

42 John Moore, Jon P. Preimesberger and David R. Tarr, _Congressional Quarterly's Guide to US Elections_, Congressional Quarterly, inc. (2001) at 973.

43 Apportionment Act of 1842, 5 Stat. 491, Ch. 47, sec. 2.

44 Eliza Sweren-Becker and Michael Waldman, _The Meaning, History, and Importance of the Elections Clause_, Washington Law Review vol. 96, no. 3 (Oct. 1, 2021) at 997.

45 _Id_. at 1023-1033. President Tyler doubted the legality of the 1842 law on federalism grounds. Tory Mast, _The History of Single Member Districts for Congress: Seeking Fair Representation Before Full Representation_, FairVote (1995) ("One of the prominent features of the bill is that which purports to be mandatory on the States to form districts for the choice of Representatives to Congress, in single districts. That Congress itself has power by law to alter State regulations respecting the manner of holding elections for Representatives is clear, but its power to command the States to make new regulations or alter their existing regulations is the question upon which I have felt deep and strong doubts.").

46 Sweren-Becker and Waldman, _The Meaning, History, and Importance of the Elections Clause_ at 1033–1034.

47 André Blais, Agnieszka Dobrzynska and Indridi H. Indridason, _To Adopt or Not to Adopt Proportional Representation: The Politics of Institutional Choice_, British Journal of Political Science vol. 35, no. 1 (Jan. 2005) at 182–190.

48 9 Stat. 433 (1850). In 1852, Congress made a minor amendment to the 1850 apportionment, but did not address these issues. 74 Stat. 25 (1852).

49 12 Stat. 572, Ch. 170 (1862); Sweren-Becker and Waldman, _The Meaning, History, and Importance of the Elections Clause_ at 1035.

50 37 Stat. 13 (1911) (requiring single-member districts); 31 Stat. 733 (1901) (same); 26 Stat. 734 (1891); 22 Stat. 5 (1882) (same); 17 Stat. 28 (1872) (same); 17 Stat. 192 (1872) (permitting at-large elections for individual seats awarded in supplemental apportionment to several states in subsequent election, but otherwise requiring single-member districts thereafter).

51 *See generally Congressional Quarterly's Guide to US Elections*, Congressional Quarterly, inc. (1975) (Idaho (1912–1916); Montana (1912–1916); Utah (1912); North Dakota (1902–1910); South Dakota (1890–1910); Washington (1892–1906); Maine (1882); Florida (1872); Kansas (1872)).

52 Kane, Mascioli, McGarry and Nagel, *Why the House of Representatives Must Be Expanded and How Today's Congress Can Make It Happen* at 6.

53 Richard Edward McLawhorn Jr., *Apportionment or Size? Why the U.S. House of Representatives Should Be Expanded*, Alabama Law Review vol. 62 (2011) at 1075–1077.

54 McLawhorn Jr., *Apportionment or Size? Why the U.S. House of Representatives Should Be Expanded* at 1075–1077; Byron J. Harden, *House of the Rising Population: The Case for Eliminating the 435-Member Limit on the U.S. House of Representatives*, Washburn Law Journal vol. 51 (2011) at 79.

55 David Litt, *Congress Needs to Be Way, Way Bigger*, The Atlantic (May 5, 2020).

56 McLawhorn Jr., *Apportionment or Size? Why the U.S. House of Representatives Should Be Expanded* at 1075–1077.

57 *Id*. at 1077–1079.

58 *Id*.; *see* 2 U.S.C. § 2a, Pub. L. 71–13; 46 Stat. 21, Ch. 28, sec. 22 (1929).

59 *Wood v. Broom*, 287 U.S. 1 (1932). The Court held that the restrictions set forth in the preceding apportionment bill of 1911 "expired by their own limitation" because "they fell with the apportionment to which they expressly related." Id. at 7.

60 2 U.S.C. § 2a(c)(5).

61 *Congressional Quarterly's Guide to US Elections* (1975) at 1170–1172, 1244 (Alabama, Arizona, Hawaii, Kentucky, Minnesota, Missouri, New Mexico, North Dakota, Virginia).

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

63 *Reynolds*, 377 U.S. at 584.

64 *Branch v. Smith*, 538 U.S. 254, 269 (2003) (discussing litigation in Arkansas, Kansas, Michigan, Missouri, Tennessee and Texas); *Congressional Record*, 90th Congress, First Session vol. 113, Part 25 at 34365 (discussing litigation in Indiana).

65 Branch, 538 U.S. at 268–269 ("When Congress adopted § 2c in 1967, the immediate issue was precisely the involvement of the courts in fashioning electoral plans . . . . In a world in which the role of federal courts in redistricting disputes had been transformed from spectating to directing, the risk arose that judges forced to fashion remedies would simply order at-large elections.") (citation omitted).

66 *An Act for the relief of Dr. Ricardo Vallejo Samala (and provide for Congressional redistricting)*, H.R. 2275, 90th Congress (1967).

67 Niemi, Hill and Grofman, *The Impact of Multimember Districts on Party Representation in U. S. State Legislatures* at 441–455.; *Congressional Record*, 90th Congress, First Session vol. 113, Part 23 at 31718 - 20 (introduction, debate and passage of Baker Amendment).

68 Stephen Calabrese, *An Explanation of the Continuing Federal Government Mandate of Single-Member Congressional Districts*, Public Choice vol. 130, no. 1/2 (Jan. 2007) at 23–40. Democrats may have also strategically figured that a single-member district mandate would make "civil rights activists on the left flank" more dependent on the party. Santucci, *More Parties or No Parties* at 42 ("Some scholars have insisted that single-seat districts make minority politicians uncomfortably dependent on the Democratic establishment. Non-plurality rules in multi-seat districts would let them win office without 'benevolent gerrymandering,' *i.e.*, the drawing of majority-minority and minority-influence districts.").

69 Calabrese, *An Explanation of the Continuing Federal Government Mandate of Single-Member Congressional Districts* at 23–40

70 Santucci, *More Parties or No Parties* at 41–42.

71 Flores, "*Chapter 4: The 1967 Single-Member District Mandate*" in *A History of One-Winner Districts for Congress*, FairVote.

72 Rein Taagepera, "The Effect of District Magnitude and Properties of Two-Seat Districts" in *Choosing an Electoral System: Issues and Alternatives*, Praeger New York (1984) at 101.

73 Barbara L. Berry and Thomas R. Dye, *The Discriminatory Effects of At-Large Elections*, Florida State University Law Review vol. 7, no. 85 (1979) at 91–92.

74 Richard L. Engstrom and Michael D. McDonald, *Electoral Laws and Their Political Consequences*, Agathon Press (1986) at 203.

75 Francesco Trebbi, Philippe Aghio and Alberto Alesina, *Electoral Rules and Minority Representation in U.S. Cities*, Quarterly Journal of Economics vol. 123, no. 1 (2008) at 334.

76 Berry and Dye, *The Discriminatory Effects of At-Large Elections* at 85–122. These findings are generally mirrored elsewhere. *See*, *e.g.*, Richard A. Walawender, *At-Large Elections and Vote Dilution: An Empirical Study*, University of Michigan Journal of Law Reform vol. 19 (1986) at 1221.

77 Walawender, *At-Large Elections and Vote Dilutio*n at 1238.

78 Kenneth Benoit and Kenneth A. Shepsle, "Electoral Systems and Minority Representation" in *Classifying by Race*, Princeton University Press (1995) at 76; *National Roster of Black Elected Officials*, Joint Center for Political Studies vol. 1 (1976) and vol. 6 (1981).

79 Trebbi, Aghio and Alesina, *Electoral Rules and Minority Representation in U.S. Cities* at 335.

80 *Ibid*.

81 Frank R. Parker, *Black Votes Count: Political Empowerment in Mississippi after 1965*, University of North Carolina Press (1990).

82 Engstrom and McDonald, *Electoral Laws and Their Political Consequences* at 205.

83 *State legislative chambers that use multi-member districts*, Ballotpedia; Alistair Clark and Timothy B. Krebs, "Elections and Policy Responsiveness" in *The Oxford Handbook of Urban Politics*, Oxford University Press (Sep. 18, 2012) at 87–113.

84 *The Electoral College: How It Works in Contemporary Presidential Elections*, Congressional Research Service (May 15, 2017) at 10-11.

85 *See Wise v. Lipscomb*, 437 U.S. 535, 540–41 (1978) (collecting cases); s*ee also Upham v. Seamon*, 456 U.S. 37, 43 (1982).

86 *White v. Regester*, 412 U.S. 755, 765 (1973) (collecting cases).

87 *Id*. at 766.

88 *Mobile v. Bolden*, 446 U.S. 55, 61–65 (1980). While only a plurality of the Court joined this portion of the Mobile holding, a majority confirmed this intent requirement two years later. *Rogers v. Lodge*, 458 U.S. 613 (1982).

89 52 U.S.C. § 10301(a) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . .").

90 George Hallett, "Proportional Representation With the Single Transferable Vote: A Basic Requirement for Legislative Elections" in *Choosing an Electoral System: Issues and Alternatives* at 113–125.

91 52 U.S.C. § 10301(b) ("That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.").

92 *See generally* Boyd and Markman, *The 1982 Amendments To The Voting Rights Act: A Legislative History* at 1347.

93 *Thornburg v. Gingles*, 478 U.S. 30, 80 (1986).

94 *Id*. at 48.

95 Rob Richie, Drew Penrose and David O'Brien, *The Impact of the Fair Representation Act*, FairVote (Jun. 20, 2017).

96 For more on the prevalenceand patterns of racially polarized voting, see *RPV Near Me: Where in America is there Racially Polarized Voting?*, Harvard Law School Election Law Clinic; Zoltan Hajnal and Jessica Trounstine, *What Underlies Urban Politics? Race, Class, Ideology, Partisanship, and the Urban Vote*, Urban Affairs Review vol. 50, no. 1 (2014) at 63–99; Charles Stewart III, Nathaniel Persily and Stephen Ansolabehere, *Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act,* Harvard Law Review Forum (Apr. 26, 2013).

97 Congressional Research Service, *African American Members of the U.S. Congress: 1870–2020* (Dec. 15, 2020) at 8.

98 Grant M. Hayden, *Resolving the Dilemma of Minority Representation*, California Law Review vol. 92, no. 6 (Dec. 2004) at 1592 ("When a majority-minority district is created, the additional minority voters must be taken from somewhere, and that somewhere is the surrounding districts. This changes the racial composition not only of the new majority-minority district, but also of the districts that surround it. The newly created majority-minority district becomes, for example, more heavily black, while the surrounding districts become more heavily white. Because minority voters tend to vote Democrat, the loss of minority voters in the surrounding districts is more likely to result in the election of Republicans in those districts — unless, of course, the minority voters are replaced by white Democrats. Thus, while majority-minority districts reliably increase the number of minority officeholders, they may do so at the cost of electing candidates in surrounding districts with agendas that are at odds with minority interests."); *see also* Charles Cameron, David Epstein and Sharyn O'Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, The American Political Science Review vol. 90, no. 4 (Dec. 1996) at 794–812; L. Marvin Overby and Kenneth M. Cosgrove, *Unintended Consequences? Racial Redistricting and the Representation of Minority Interests*, The Journal of Politics vol. 58, no. 2 (May 1996) at 540–550.

99 Steven Hill, *How the Voting Rights Act Hurts Democrats and Minorities*, The Atlantic (Jun. 17, 2013); Peterson, "A Politically Correct Solution to Racial Classification" in *Classifying by Race* at 10–12.

100 Marsha J. Tyson Darling, *Alternative Voting Systems as Remedies for Unlawful At-Large Systems*, The Yale Law Journal vol. 92, no. 1 (Nov. 1982) at 147.

101 Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, Virginia Law Review vol. 77, no. 8 (Nov. 1991) at 1453.

102 *Id*. at 1454.

103 *Id*. at 1426.

104 Guinier, "The Representation of Minority Interests" in *Classifying by Race* at 21.

105 Guinier, *No Two Seats: The Elusive Quest for Political Equality* at 1427.

106 *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 276 (2015); *see, e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Miller v. Johnson*, 515 U.S. 900 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993).

107 John R. Low-Beer, *The Constitutional Imperative of Proportional Representation*, Yale Law Journal vol. 94, no. 1 (Nov. 1984) at 163, 188.

108 *See, e.g.*, Benjamin Plener Cover, *Two-Party Structural Countermandering*, Digital Commons @ UIdaho Law (2021); David Ingram, *The Dilemmas of Racial Redistricting*, Philosophical Forum vol. 31, no. 2 (2000) at 131–144; Guinier, *No Two Seats: The Elusive Quest for Political Equality* at 1413–1514; Richard H. Pildes, *Gimme Five!*, National Civic Review vol. 82, no. 2 (1993) at 179; Judith Reed, *Of Boroughs, Boundaries and Bullwinkles:*

The Limitations of Single-Member Districts In A Multiracial Context, Fordham Urban Law Journal vol. 19, no. 3 (1992) at 759–780; Low-Beer, *The Constitutional Imperative of Proportional Representation* at 163–188; Darling, *Alternative Voting Systems as Remedies for Unlawful At-Large Systems* at 144–160.

109 Kristin Shiuey, *Voting in 2022: The impact of partisan gerrymandering*, Fulcrum (Aug. 24, 2022); Nathaniel Rakich, *How This Redistricting Cycle Failed To Increase Representation For People Of Color — And Could Even Set It Back*, FiveThirtyEight (Mar. 17, 2022); Christopher Warshaw, Eric McGhee and Michal Migurski, *Districts for a New Decade — Partisan Outcomes and Racial Representation in the 2021–22 Redistricting Cycle*, Publius: The Journal of Federalism vol. 52, no. 3 (2022) at 428–451; Brennan Center for Justice, *2021–22 Redistricting Cycle Poses High Risk of Racial Discrimination in the South, New Projections Show* (Feb. 8, 2021).

110 *Shelby County v. Holder*, 570 U.S. 529 (2013).

111 Congressional Research Service, *Congressional Redistricting 2021: Legal Framework* (Sep. 10, 2021) at 3.

112 Shelby County, 570 U.S. at 557–559 (Thomas, J., dissenting) (explaining why the Court should have also held that the preclearance provision itself is unconstitutional); Richard L. Hasen, Shelby County and the Illusion of Minimalism, William & Mary Bill of Rights Journal vol. 22, no. 3 (2014) at 713, 714 (arguing that the Court has "set[] a standard under which any new coverage formula will likely fail a constitutional test.").

113 138 S. Ct. 2305 (2018).

114 141 S. Ct. 2321 (2021).

115 Amy Howe, *In 5–4 vote, justices reinstate Alabama voting map despite lower court's ruling that it dilutes Black votes*, SCOTUSblog (Feb. 7, 2022).

116 *Arkansas State NAACP Conference v. Arkansas Board of Apportionment*, No. 4:21-cv-01239-LPR, *Dkt. 100* (Feb. 17, 2022).

117 *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring).

118 *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

119 *Id.* at 2507–2508.

120 Helen E. White, *The Independent State Legislature Theory Should Horrify The Supreme Court's Originalists,* Just Security (Jun. 30, 2022).

121 Amy Howe, *December argument session will feature divisive cases on election law and the First Amendment*, SCOTUSBlog (Oct. 18, 2022).

122 *Voters' Choice Act*, H.R. 2545, 104th Congress (1995).

123 The bill prescribed the use of either "limited," "preference" or "cumulative" voting, and defined each of these terms. *See Voters' Choice Act*, H.R. 2545, 104th Congress (1995).

124 *See Voter Choice Act of 2005*, H.R. 2690, 109th Congress (2005); *Voters' Choice Act*, H.R. 1189, 107th Congress (2001); *Voters' Choice Act*, H.R. 5679, 106th Congress (2000); *Voters' Choice Act*, H.R. 3068, 105th Congress (1997).

125 *States' Choice of Voting Systems Act*, H.R. 1173, 106th Congress (1999).

126 S*tates' Choice of Voting Systems Act: Hearing Before the Subcommittee on H.R. 1173* at 6-7.

127 S*tates' Choice of Voting Systems Act: Hearing Before the Subcommittee on H.R. 1173* at 6-7.

128 Prof. Andrew E. Busch, University of Denver (*id*. at 7–12); Everett Robinson, Everett & Everett (*id*. at 12–21); Abigail M. Thernstrom, The Manhattan Institute (*id*. at 25–29); Roger Clegg, Center for Equal Opportunity (*id*. at 37–40); Prof. Mark Edward Rush, Washington & Lee University (*id*. at 53–60).

129 *Congress Commission Act*, H.R. 996, 117th Congress (2021); *Congress Commission Act*, H.R. 8587, 116th Congress (2020); *Congress 2014 Commission Act*, H.R. 3972, 111th Congress (2009); *Congress 2012 Commission Act*, H.R. 6396, 110th Congress (2007); *Congress 2008 Commission Act*, H.R. 1989, 109th Congress (2005); *Congress 2006 Commission Act*, H.R. 415, 108th Congress (2003); *Federal Elections Review Commission Act*, H.R. 57, 107th Congress (2001); *Congress 2004 Commission Act*, H.R. 506, 107th Congress (2001); *Federal Elections Review Commission Act*, H.R. 5631, 106th Congress (2000); *Congress 2000 Commission Act*, H.R. 187, 105th Congress (1997); *Congress 2000 Commission Act*, H.R. 4076, 104th Congress (1995).

130 Bogdanor, "Introduction" in *Democracy and elections: Electoral system and their political consequences* at 2 ("It is . . . a mistake to refer to 'proportional representation' as if it denotes a single type of electoral system. 'Proportional representation' is in fact a generic term denoting a number of different systems sharing only the common aim of proportionality between seats and votes.").

131 Nicholas Eubank and Jonathan Rodden, *Who Is My Neighbor? The Spatial Efficiency of Partisanship*, Statistics and Public Policy vol. 7, no. 1 (Sep. 28, 2020) at 87–100; Matthew Shugart, *Distortions of the US House: It's not how the districts are drawn, but that there are (single-seat) districts*, Fruits and Votes (Apr. 2, 2013).

132 *See, e.g.,* Ron Johnston, Charles Pattie, Danny Dorling and David Rossiter, *Fifty Years of Bias in the UK's Electoral System*, APSA: Elections, Public Opinion and Voting Behaviour (2001).

133 Shugart and Taagepera, *Votes from Seats: Logical Models of Electoral Systems* at 1.

134 Knight Foundation and Bendixen and Amandi, *The 100 Million Project: Full Topline Results* (2020).

135 Weaver, "Semi-Proportional and Proportional Representation Systems in the United States" in *Choosing an Electoral System: Issues and Alternatives* at 198.

136 *Id.* at 199.

137 Steven Hill, *What if Congress was elected by proportional representation?*, DemocracySOS (Aug. 23, 2022).

138 *Ibid.*

139 Enid Lakeman, *How Democracies Vote: A Study of Electoral Systems*, Faber and Faber (4th ed., 1974) at 82–91.

140 Michael Latner, Jack Santucci and Matthew Shugart, *Multi-seat Districts and Larger Assemblies Produce More Diverse Racial Representation* (Working paper, Aug. 25, 2021).

141 The simulation was conducted by Kevin Baas of the Auto-Redistrict program in partnership with FairVote using the provisions of the Fair Representation Act as a model. It assumed an expansion of districts with three to five members each while keeping the total size of the U.S. House the same. FairVote, *The Fair Representation Act in Your State* (2018).

142 *Modeling the Fair Representation Act*, MGGG Redistricting Lab (2022).

143 *Ibid.*

144 Gerdus Benade, Ruth Buck, Moon Duchin, Dara Gold, and Thomas Weighill, *Ranked Choice Voting and Proportional Representation* (working paper, Feb. 2, 2021); Christopher S. Fowler and Linda L. Fowler, *Here's a different way to fix gerrymandering*, The Washington Post (Jul. 6, 2021).

145 *Voting Rights: VRA Remedy Database*, FairVote.

146 Inman, *C.P.R. (Change through Proportional Representation): Resuscitating a Federal Electoral System* at 2045.

147 *Id*. at 2044.

148 Guinier, "The Representation of Minority Interests" in *Classifying by Race* at 21.

149 Joseph F. Zimmerman, *The Federal Voting Rights Act and Alternative Election Systems*, William & Mary Law Review vol. 19, no. 4 (1978) at 645.

150 Douglas J. Amy, *Real Choices/New Voices: How Proportional Representation Elections Could Revitalize American Democracy*, Columbia University Press (2nd ed., 1993) at 138–139.

151 Lee Drutman and Aziz Huq, *Winning Without the Courts*, Democracy Journal (Winter No. 63).

152 *Ibid.*

153 Arend Lijphart, *Constitutional Choices for New Democracies*, Journal of Democracy vol. 2, no. 1 (Winter 1991) at 75.

154 Stein Rokkan, *Citizens, Elections, Parties: Approaches to the Comparative Study of the processes of Development*, Universitetsforlaget (1970) at 157.

155 Nicholas Pyeatt and Alexandra B. Yanus, *Shattering the Marble Ceiling: A Research Note on Women-Friendly State Legislative Districts*, Social Science Quarterly vol. 97, no. 5 (May 31, 2016) at 1108–1118; Dania Korkor, *Remedies in Voting Rights Cases Could Create New Election Opportunities for Women*, FairVote (May 11, 2015); R. Darcy, Charles D. Hadley and Jason F. Kirksey, *Election Systems and the Representation of Black Women in American State Legislatures*, Women & Politics vol. 13, no. 2 (Oct. 26, 2008) at 73–89; Shaun Bowler, Todd Donovan and David Brockington, *Electoral Reform and Minority Representation: Local Experiments with Alternative Election*s, Ohio State University Press (2003); James D. King, *Single-Member Districts and the Representation of Women in American State Legislatures: The Effects of Electoral System Change*, State Politics & Policy Quarterly vol. 2, no. 2 (2002) at 161–175; Michael J. Horan and James D. King, *The 1992 Reapportionment Law: The Demise of the Multi-Member District System and Its Effect upon the Representation of Women in the Wyoming Legislature*, Land & Water Law Review vol. 34, no. 2 (1999) at 407–425; Richard E. Matland and Donley T. Studlar, *The Contagion of Women Candidates in Single-Member District and Proportional Representation Electoral Systems: Canada and Norway*, The Journal of Politics vol. 58, no. 3 (Aug. 1996) at 707–733; Wilma Rule, *Women's Underrepresentation and Electoral Systems*, PS: Political Science and Politics vol. 27, no. 4 (Dec. 1994) at 689–692; Richard E. Matland and Deborah Dwight Brown, *District Magnitude's Effect on Female Representation in U.S. State Legislatures*, Legislative Studies Quarterly vol. 17, no. 4 (Nov. 1992) at 469–492.

156 *The 2022 Cook Partisan Voting Index*, The Cook Political Report with Amy Walter.

157 Kraushaar and Allen, *America's frozen midterms*.

158 Alex Tausanovitch, *The Impact of Partisan Gerrymandering*, Center for American Progress (Oct. 1, 2019).

159 Eubank and Rodden, *Who Is My Neighbor? The Spatial Efficiency of Partisanship*, Statistics and Public Policy; Charlie Hunt, *No, gerrymandering is not THE cause for non-competitive congressional elections and legislative polarization*, LegBranch (Jan. 5, 2018); Corey Lang and Shanna Pearson-Merkowitz, *Partisan sorting in the United States*, 1972–2012: *New evidence from a dynamic analysis*, Political Geography vol. 48 (Sep. 2014) at 119–129.

160 Nathaniel Rakich, *Did Redistricting Commissions Live Up To Their Promise?*, FiveThirtyEight (Jan. 24, 2022).

161 Ferran Martínez i Coma and Ignacio Lago, *Gerrymandering in comparative perspective*, Party Politics vol. 24, no. 2 (Apr. 12, 2016) at 99–104.

162 Spencer, Hughes and Richie, *Escaping the Thicket: The Ranked Choice Voting Solution to America's Districting Crisis*.

163 Coma and Lago, *Gerrymandering in comparative perspective*.

164 Amy, *Real Choices/New Voices: How Proportional Representation Elections Could Revitalize American Democracy* at 66-67; Lijphart and Grofman, "Choosing an Electoral System" in *Choosing an Electoral System: Issues and Alternatives* at 7. Other research suggests that a district magnitude increase from one to two is in fact enough to effectively prohibit gerrymandering. *See* Taagepera, "The Effect of District Magnitude and Properties of Two-Seat Districts" in *Choosing an Electoral System: Issues and Alternatives* at 98–101.

165 *Redistricting Commissions: Congressional Plans*, National Congress of State Legislatures.

166 Rakich, *Did Redistricting Commissions Live Up To Their Promise?* ("Only 8 percent of commission-enacted districts in this redistricting cycle (nine out of 109) have partisan leans between D+5 and R+5, indicating they are highly competitive. That's the same as the share of legislatively enacted

districts that are highly competitive: 8 percent (12 out of 159).”).

167 Jowei Chen and Jonathan Rodden, *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures*, Quarterly Journal of Political Science vol. 8, no. 3 (2013) at 239–269.

168 Amy, *Real Choices/New Voices: How Proportional Representation Elections Could Revitalize American Democracy* at 65. Amy also observes that unintentional gerrymandering is not unique to the U.S., but instead a function of systems that use single-member districts, including, for example, the U.K. In her view, “This is exactly what has happened in Britain, where independent redistricting commissions have sometimes been offered as models for what we need here in the United States . . . although these commissions have used neutral criteria to draw district boundary lines, they often created unintentional gerrymanders that biased the results of national elections.”).

169 *What Redistricting Looks Like In Every State*, FiveThirtyEight (Jul. 19, 2022).

170 Lee Drutman, *This voting reform solves 2 of America’s biggest political problems*, Vox (Jul. 26, 2017).

171 FairVote, *The Fair Representation Act: Remedying Dysfunction in the U.S. House of Representatives* (2018).

172 *Id.* at 12.

173 Gidron, Adams and Horne, *American Affective Polarization in Comparative Perspective* at 44-45, 66-67; Jennifer McCoy and Murat Somer, *Toward a Theory of Pernicious Polarization and How It Harms Democracies: Comparative Evidence and Possible Remedies*, The ANNALS of the American Academy of Political and Social Science vol. 681, no. 1 (2019) at 234–271.

174 Reilly, *Electoral Systems for Divided Societies*.

175 Gidron, Adams and Horne, *American Affective Polarization in Comparative Perspective*.

176 Ishiyama and Shliek, *Rethinking the Relationship between Inclusive Institutions and Political Violence* at 240–259.

177 Shugart and Taagepera, *Votes from Seats: Logical Models of Electoral Systems* at 139-152; Yuhui Li and Matthew S. Shugart, *The Seat Product Model of the effective number of parties: A case for applied political science*, Electoral Studies vol. 41 (Mar. 2016) at 23–34.

178 Bernaerts, Blanckaert and Caluwaerts, *Institutional design and polarization. Do consensus democracies fare better in fighting polarization than majoritarian democracies?* at 153-172.

179 Horne, Adams and Gidron, *The Way We Were: How Histories of Co-Governance Alleviate Partisan Hostility*.

180 Lee Drutman, *Why The Two-Party System Is Effing Up U.S. Democracy*, FiveThirtyEight (Jun. 16, 2021).

181 Taylor, Shugart, Lijphart and Grofman, *A Different Democracy: American Government in a 31-Country Perspective*.

182 Blake Hounshell, *Does Fusion Voting Offer Americans a Way Out of the Partisan Morass?*, New York Times (Nov. 21, 2022); Dana Rubinstein, *New York’s Working Families Party cleared the threshold to keep its automatic ballot line*, New York Times (Nov. 4, 2020); Reed Galen, *How Republicans and Democrats prevent independent candidates from getting on the ballot*, NBC News (Apr. 17, 2018); *When states adopted sore loser laws*, BallotPedia.

183 Matthew M. Singer, *Was Duverger Correct? Single-Member District Election Outcomes in Fifty-three Countries*, Cambridge University Press (Aug. 20, 2012); Shaun Bowler, André Blais and Bernard Grofman, *Duverger’s Law of Plurality Voting: The Logic of Party Competition in Canada, India, the United Kingdom and the United States*, Springer (2009); Kenneth Benoit, *Duverger’s Law and the Study of Electoral Systems*, French Politics (2006); Maurice Duverger, *Political parties: their organization and activity in the modern state*, John Wiley & Sons (1954).

184 Drutman, *Why The Two-Party System Is Effing Up U.S. Democracy*.

185 Robert Tait, *Czech PM’s party loses election to liberal-conservative coalition*, The Guardian (Oct. 9, 2021); Koen Damhuis, *Dutch elections: Mark Rutte wins another term but fragmented results mask continuing popularity of the far right*, The Conversation (Mar. 19, 2021); Nick Ottens, *Swedish Center-Right Adjusts to Rise of Far Right*, Atlantic Sentinel (Dec. 11, 2019); Jenny Hill, *Germany coalition deal: Merkel set to lead fourth government*, BBC (Mar. 4, 2018); Richard Milne, *True Finns split holds lesson for Europe’s populists*, The Financial Times (Jun. 16, 2017).

186 Protect Democracy, *Advantaging Authoritarianism: The U.S. Electoral System and Antidemocratic Extremism* at 25–27.

187 Colin Copus, Alistair Clark, Herwig Reynaert and Kristof Steyvers, *Minor Party and Independent Politics beyond the Mainstream: Fluctuating Fortunes but a Permanent Presence*, Parliamentary Affairs vol. 62, no. 1 (Jan. 2009) at 4–18; Robert W. Jackman and Karin Volpert, Conditions *Favouring Parties of the Extreme Right in Western Europe*, British Journal of Political Science vol. 26, no. 4 (Oct. 1996) at 501–521.

188 Amy Gardner, *A majority of GOP nominees deny or question the 2020 election results*, Washington Post (Updated Oct. 12, 2022).

189 Matthew Germer, *Restoring Losers Consent: A Necessary Step to Stabilizing Our Democracy*, R Street Policy Study No. 240 (Sep. 2021); Christopher J. Anderson, André Blais, Shaun Bowler, Todd Donovan and Ola Listhaug, *Losers’ Consent: Elections and Democratic Legitimacy*, Oxford University Press (Jan. 13, 2005) at 139 (“Losers express less negative views about the political system than winners when electoral rules are more proportional, when the political system has a greater number of veto players, and when power is shared within the political system.”).

190 Pew Research Center, *As Partisan Hostility Grows, Signs of Frustration With the Two-Party System* (Aug. 9, 2022).

191 Carey and Hix, *The Electoral Sweet Spot: Low-Magnitude Proportional Electoral Systems* at 383–397.

192 *Ibid.*

193 Shugart and Taagepera, *Votes from Seats: Logical Models of Electoral Systems* at 139-152; Grigorii V. Golosov, *The Effective Number of Parties: A New Approach*, Party Politics vol. 16, no. 2 (2009) at 171–192; Douglas W. Rae, *Using District Magnitude to Regulate Political Party Competition*, Journal of

Economic Perspectives vol. 9, no. 1 (1995) at 65–75; Rein Taagepera and Matthew S. Shugart, *Predicting the Number of Parties: A Quantitative Model of Duverger's Mechanical Effect*, The American Political Science Review vol. 87, no. 2 (Jun. 1993) at 455–464.

194 Gallagher and Mitchell, "Dimensions of Variation in Electoral Systems" in *The Oxford Handbook of Electoral Systems* at 33 ("[I]n practice there is always an 'effective threshold' that makes it next to impossible for parties below a certain size to win a seat. This effective threshold is determined above all by the district magnitude . . . .").

195 Rein Taagepera, *Effective Magnitude and Effective Threshold*, Electoral Studies vol. 17, no. 4 (1998) at 400.

196 Michael Gallagher, <u>Election indices dataset</u> (2021).

197 Gideon Rahat and Reuven Y. Hazan, "Israel: The Politics of an Extreme Electoral System" in *The Politics of Electoral Systems*, Oxford Academic (Michael Gallagher and Paul Mitchell eds., Sep. 2005) at 333–352.

198 Marisa Kellam, *Why Pre-Electoral Coalitions in Presidential Systems?*, Cambridge University Press (Aug. 24, 2015); Jae-Jae Spoon and Karleen Jones West, *Alone or together? How institutions affect party entry in presidential elections in Europe and South America*, Party Politics vol. 21, no. 3 (2015) at 393–403.

199 *See, e.g.*, King, *Single-Member Districts and the Representation of Women in American State Legislatures: The Effects of Electoral System Change* at 161–175; Richard G. Niemi, Simon Jackman and Laura R. Winsky, *Candidacies and Competitiveness in Multimember Districts*, Legislative Studies Quarterly vol. 16, no. 1 (Feb. 1991) at 91–109; Niemi, Hill and Grofman, *The Impact of Multimember Districts on Party Representation in U. S. State Legislatures* at 441-455.

200 Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior*, Cambridge University Press (2004) at 244.

201 *Ibid*.

202 John Curtice and W. Phillips Shively, "Who Represents Us Best? One Member or Many?" in *The Comparative Study of Electoral Systems*, Oxford University Press (Hans-Dieter Klingemann, ed., 2009); Brian F. Crisp and Scott W. Desposato, *Constituency Building in Multimember Districts: Collusion or Conflict?*, The Journal of Politics vol. 66, no. 1 (Feb. 2004) at 136–156.

203 Curtice and Shively, "Who Represents Us Best? One Member or Many?" in *The Comparative Study of Electoral Systems* at 175.

204 *Id*. at 177.

205 *Id*. at 184.

206 *Ibid*.

207 Drew DeSilver, <u>U.S. population keeps growing, but House of Representatives is same size as in Taft era</u>, Pew Research Center (May 31, 2018).

208 Farrell, *Electoral Systems: A Comparative Introduction* at 6; Rein Taagepera and Matthew Shugart, *Seats and Votes: The Effects & Determinants of Electoral Systems*, Yale University Press (1989) at 19–37; Rae, *The Political Consequences of Electoral Laws*. Some scholars additionally include nomination rules as a fifth component. *See, e.g.*, Santucci, *More Parties or No Parties* at 13.

209 *See* Travis Crum, *The Superfluous Fifteenth Amendment?*, Northwestern University Law Review vol. 114, no. 6 (2020) at 1549–1630.

210 Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* at 155 ("Two member districts can therefore hardly be regarded as compatible with the principle of proportionality. . . ."); Taagepera, "The Effect of District Magnitude and Properties of Two-Seat Districts" in *Choosing an Electoral System: Issues and Alternatives* at 98 ("[I]n the United States . . . [t]he emergence of third parties would become easier in principle, but. . . none would likely to be formed.").

211 Carey and Hix, *The Electoral Sweet Spot: Low-Magnitude Proportional Electoral System*s at 383–397.

212 Kenneth Benoit, *Which Electoral Formula Is the Most Proportional? A New Look with New Evidence*, Political Analysis vol. 8, no. 4 (2000) at 381.

213 Bormann and Golder, *Democratic Electoral Systems around the world*, 1946–2011 at 366.

214 *See, e.g.*, Benoit, *Which Electoral Formula Is the Most Proportional? A New Look with New Evidence* at 381–388; Gallagher, *Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes and Majorities* at 469–496; Michael Gallagher, *Proportionality, Disproportionality, and Electoral Systems*, Electoral Studies vol. 10, no. 1 (Mar. 1991) at 51; Lijphart, "Degrees of Proportionality of Proportional Representation Formulas" in *Electoral Laws and Their Political Consequences*.

215 *See, e.g.*, Federalist No. 58 (Madison) ("The number which is to prevail in the first instance is declared to be temporary. Its duration is limited to the short term of three years. Within every successive term of ten years a census of inhabitants is to be repeated. The unequivocal objects of these regulations are, first, to readjust, from time to time, the apportionment of representatives to the number of inhabitants. . . [and] to augment the number of representatives at the same periods, under the sole limitation that the whole number shall not exceed one for every thirty thousand inhabitants."). For a historical summary of the discussion of the size of the House during the Founding era, see Lee Drutman, Jonathan D. Cohen, Yuval Levin and Norman J. Ornstein, <u>The Case for Enlarging the House of Representatives, Part I: How We Got to 435</u>, American Academy of Arts and Sciences (2021).

216 <u>Intro.4.7 Proposed Amendments Not Ratified by the States</u>, Constitution Annotated.

217 Desilver, <u>U.S. population keeps growing, but House of Representatives is same size as in Taft era</u>.

218 Rochelle Snyder, Devin Judge-Lord, Eleanor Neff Powell and Justin Grimmer, <u>Who Gets Constituent Service?</u> (2021) at 26; Karen Long Jusko, *Who*

Speaks for the Poor? Electoral Geography, Party Entry, and Representation, Cambridge University Press (Sep. 2017); David E. Broockman, *Distorted Communication, Unequal Representation: Constituents Communicate Less to Representatives Not of Their Race*, American Journal of Political Science vol. 58, no. 2 (Apr. 2014) at 307–321; Frances E. Lee and Bruce I. Oppenheimer, *Sizing Up the Senate: The Unequal Consequences of Equal Representation*, The University of Chicago Press (1999).

219 Brian Frederick, *The People's Perspective on the Size of the People's House*, Political Science and Politics vol. 41, no. 2 (Apr. 2008) at 329–335.

220 Daniel Bowen, *Constituency Size and Evaluations of Government*, Legislative Studies Quarterly vol. 47, no. 2 (May 2022) at 459.

221 Drutman, Cohen, Levin and Ornstein, *The Case for Enlarging the House of Representatives, Part III: Our Proposal for House Expansion* ("In the ten apportionments between 1930 and 2020, there were twice as many instances of a state losing at least one congressional seat as there were in the thirteen apportionments between 1790 and 1910. Over the last ninety years, in 86 percent of cases when a state lost at least one seat, it did so even when its population stayed flat or increased.").

222 *See, e.g.*, Damien Bol, André Blais, Xavier Gillard, Lidia Nunez Lopez, and Jean-Benoit Pilet, *Voting and satisfaction with democracy in flexible-list PR*, Electoral Studies vol. 56 (Dec. 2018) at 23–34; Lukas Rudolph and Thomas Däubler, *Holding Individual Representatives Accountable: The Role of Electoral Systems*, The Journal of Politics vol. 78, no. 3 (Jul. 2016) at 746–762; David M. Farrell and Ian McAllister, *Voter satisfaction and electoral systems: Does preferential voting in candidate-centered systems make a difference?*, European Journal of Political Research vol. 45 (2006) at 723–749; Jana Kunicova and Susan Rose-Ackerman, *Electoral Rules as Constraints on Corruption: The Risks of Closed-List Proportional Representation*, UC Berkeley Law and Economics Workshop (Jan. 2002).

223 Alan Wall, *Open List Proportional Representation: The Good, the Bad, and the Ugly*, International Institute for Democracy and Electoral Assistance (May 2021) at 3.

224 *Preisler v. Secretary of State of Missouri*, 257 F.Supp. 953, 981, 982 (W.D. Mo. 1966), *aff'd*, 385 U.S. 450 (1967) (per curiam); *Bush v. Martin*, 251 F.Supp. 484, 489 n. 11, 490 n. 17 (S.D. Tex. 1966); *Park v. Faubus*, 238 F.Supp. 62, 66 (E.D. Ark. 1965); *Baker v. Clement*, 247 F.Supp. 886, 897–98 (M.D. Tenn. 1965); *Meeks v. Anderson*, 229 F.Supp. 271, 273–74 (D. Kan. 1964); *Calkins v. Hare*, 228 F.Supp. 824, 830 (E.D. Mich. 1964); *Wesberry v. Sanders*, 376 U.S. 1, 2–4, 7–8 (1963); *id*. at 20 (Harlan, J., dissenting).

225 *Branch v. Smith*, 538 U.S. 254, 309–10 (2003) (O'Connor & Thomas, JJ., concurring in the judgment) ("[A] court could design an at-large election plan that awards seats on a cumulative basis, or by some other method that would result in a plan that satisfies the Voting Rights Act."); *see Holder v. Hall*, 512 U.S. 874, 910 (1996) (Thomas & Scalia, JJ., concurring in the judgment) ("[N]othing in our present understanding of the Voting Rights Act places a principled limit on the authority of federal courts that would prevent them from instituting a system of cumulative voting as a remedy under § 2, or even from establishing a more elaborate mechanism for securing proportional representation based on transferable votes."); *see also* L. Paige Whitaker, *Congressional Redistricting: Is At-Large Representation Permitted in the House of Representatives?*, Congressional Research Service (RS21585) (Aug. 7, 2003); Steven J. Mulroy, *Alternative Ways Out: A Remedial Roadmap for the Use of Alternative Voting Systems as Voting Rights Act Remedies*, North Carolina Law Review vol. 77, no. 5 (1999) at 1867.

226 *Voting Rights: VRA Remedy Database*, FairVote; *see also* Richard L. Engstrom, *Cumulative and Limited Voting: Minority Electoral Opportunities and More*, St. Louis University Public Law Rev. vol. 30 (2010) at 98; Steven J. Mulroy, *The Way Out: A Legal Standard for Imposing Alternative Electoral Systems As Voting Rights Remedies*, Harvard Civil Rights-Civil Liberties Review vol. 33, no. 33 (1998) at 339.

227 52 U.S.C. § 10301(b); *see also* Boyd and Markman, *The 1982 Amendments To The Voting Rights Act: A Legislative History* at 1347.

228 *Cousin v. Sundquist*, 145 F.3d 818 (6th Cir. 1998).

229 *Harper v. City of Chicago Heights*, 223 F.3d 593 (7th Cir. 2000); *Davis v. Chiles*, 139 F.3d 1414 (11th Cir. 1998); *Cousin v. Sundquist*, 145 F.3d 818 (6th Cir. 1998); *Cane v. Worcester County*, 59 F.3d 165 (4th Cir. 1995); *Cane v. Worcester County*, 35 F.3d 921 (4th Cir. 1994); *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993); *see also Cottier v. City of Martin*, 604 F.3d 553 (8th Cir. 2010) (concluding Sec. 2 violation was not established and therefore vacating the district court's imposition of an "at-large voting scheme using cumulative voting").

230 *In re Apportionment of State Legislature*, 413 Mich. 149, 167–71 & n.33 (1982) (recognizing that state judiciary has more flexibility than federal courts in managing redistricting litigation).

231 *E.g.*, *Hickel v. Southeast Conference*, 846 P.2d 38, 69–70 (Alaska 1992).

232 *See, e.g.*, Matthew Shugart, *Emergency electoral reform: OLPR for the US House*, Fruits and Votes (Jan. 19, 2021); Drutman, *Breaking the Two-Party Doom Loop: The Case for Multiparty Democracy in America* at 232–235; Johannes Raabea and Eric Linhart, *Which electoral systems succeed at providing proportionality and concentration? Promising designs and risky tools*, Cambridge University Press (Jan. 17, 2017).

233 Gallagher, *Proportionality, Disproportionality, and Electoral Systems* at 33–51; Gallagher, *Comparing Proportional Representation Electoral Systems: Quotas, Thresholds, Paradoxes and Majorities* at 469–496; Lijphart, "Degrees of Proportionality of Proportional Representation Formulas" in *Electoral Laws and Their Political Consequences* at 170–182.

234 Benoit, *Which Electoral Formula Is the Most Proportional? A New Look with New Evidence* at 388.

235 Danielle Allen, *The House was supposed to grow with population. It didn't. Let's fix that.*, The Washington Post (Feb. 28, 2023); Drutman, Cohen, Levin and Ornstein, *The Case for Enlarging the House of Representatives, Part III: Our Proposal for House Expansion*; Kane, Mascioli, McGarry and Nagel, *Why the House of Representatives Must Be Expanded and How Today's Congress Can Make It Happen*; Brian Frederick, *Not Quite a Full House:*

The Case for Enlarging the House of Representatives, Bridgewater Review vol. 28, no. 2 (Dec. 2009) at 23–25; Jonathan I. Leib and Gerald R.Webster, *On enlarging the US House of Representatives*, Political Geography vol. 17, no. 3 (Mar. 1998) at 319–329.

236 Drutman, Cohen, Levin and Ornstein, *The Case for Enlarging the House of Representatives, Part III: Our Proposal for House Expansion*.

237 *See, e.g.*, Shugart, *Emergency electoral reform: OLPR for the US House*; Santucci, *A modest and timely proposal*.

238 *Hall*, 512 U.S. at 897 (Thomas & Scalia, JJ., concurring).

239 Larry Diamond and Marc F. Plattner, *Electoral Systems and Democracy*, The Johns Hopkins University Press (Larry Diamond and Marc F. Plattner, eds., 2006) at ix.

240 *Ibid*.

241 Reid J. Epstein, *As Faith Flags in U.S. Government, Many Voters Want to Upend the System*, New York Times (Updated Aug. 10, 2022).

242 Lee Drutman, *How Democracies Revive*, Niskanen Center (Apr. 2022).

"Nothing is more certain than that the virtual blotting-out of the minority is no necessary or natural consequence of freedom; that, far from having any connection with democracy, it is diametrically opposed to the first principle of democracy — representation in proportion to numbers."

JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT, 1861