

THE STATE OF REDISTRICTING 2022

By Michael Watson

Summary: Every decade, the federal Census determines the apportionment of congressional seats among the 50 states and compels states to reallocate the seats in Congress and state legislatures to ensure equal representation. The process of drawing the new district boundaries, known as “redistricting,” is profoundly political, and Democrats and Republicans—and their respective liberal and conservative outside allies—are locked in battles across the country to secure advantages in legislative elections for the next 10 years.



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Since the government conducted the first Census in 1800, the representation in Congress has been apportioned every decade according to its outcome. With rare exceptions, states have apportioned representation through geographic districts dividing up the states, making control of those districts’ geographies a way to sneak in a partisan advantage in congressional and state legislative elections. This advantage was recognized as early as the First Congress, in which Patrick Henry’s anti-Federalist Virginia allies tried (unsuccessfully) to draw out then-Federalist James Madison. In the round of redistricting after the second Census in 1810, then-Gov. Elbridge Gerry’s Democratic-Republicans drew a salamander-shaped district that secured his party’s control of the Massachusetts State Senate, earning the practice the name “gerrymandering.”

Since 1929, the Permanent Apportionment Act has capped the size of the House of Representatives and placed no specific restrictions on how states shall draw congressional districts. From 1790 until 1911, the Congress passed a once-a-decade apportionment law setting the size of the House (usually expanding its size modestly) and in some cases (like

the Apportionment Act of 1911) setting guidance on how districts should be drawn. But after the 1920 Census, Congress could not agree on an updated Apportionment Act, leading to wild disproportions in representation.

In 1929, Congress settled the matter for its part by passing the Permanent Apportionment Act. The act set the size of the House at 435 members, a number that has not changed except for two years after the admission of Hawaii and Alaska as states. Now, the apportionment automatically adjusts after the completion of each decennial Census, causing states that gain or lose seats to redraw their district boundaries. Supreme Court decisions since the passage of the 1929 Act further require that legislative and congressional districts contain equal represented populations. As a result, even states that do not gain or lose seats must adjust their district lines to ensure equal representation, unless they have only one seat elected at-large. The Voting Rights Act of 1965 placed additional constraints on redistricting to prevent dilution of ethnic minorities’ rights to representation.

The result is now a decennial ritual: State legislatures draw the new districts, often in a manner that their political opponents say resembles Gov. Gerry’s. From the 1960 redistricting cycle through the 2000 cycle, this strongly benefited Democrats, helping the party secure a “lock” on the House of Representatives, which it held from the 1954 elections until the 1994 elections. But now that Republicans

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have gained a foothold in state legislatures and secured the powers to draw large numbers of districts themselves, liberal groups like Common Cause, the League of Women Voters, and FairVote have sought to place the power of redistricting outside the normal political process—into “independent” processes unaccountable to voters and ripe for takeover by organized special interests that disproportionately fall on the political Left.

In truth, the only “law” of redistricting is Barone’s: “All process arguments are insincere, including this one.” The process of apportionment and representation is inherently political. Even assigning “technocratic” criteria to draw districts requires privileging some over others, a decision laced with political considerations.

We will now survey the landscape as states consider redistricting in advance of the 2022 elections. I start with an update of our previous work to determine the state-considered proportionality of congressional elections. I follow with an examination of how “independent” redistricting commissions, the favored approach of the Left in state-level campaigns and in federal legislation like H.R. 1. Yet redistricting commissions are compromised by vested interests, which we will then examine before drawing conclusions.

Update to the Proportionality Analysis

In 2020, the Republican Party made unexpected gains in the U.S. House of Representatives, even though the party failed to retake control of the chamber. Democrats and liberals naturally blamed gerrymandering, but the proportionality analysis showed the same outcome in 2020 as 2018: The Republican and Democratic coalitions in the hypothetical case of proportional representation would be exactly equal in size to the actual results. In 2020, the test case showed each party holding one more seat in reality than it would in a hypothetical proportional-by-state allocation. The excess seats would go to the Conservative Party of New York (allied with the Republicans) and the Working Families Party of New York (allied with the Democrats), leaving the “party coalitions” equal in size in the test and real-world cases.

Further, the findings from the previous proportionality analyses concerning the effects of independent redistricting

commissions continued to hold. California’s “independent” mapmaking, which was reportedly manipulated by the state Democratic Party, created a map that returned 10 “excess” Democratic seats. Despite Republicans recovering four seats relative to the 2018 elections, those gains only narrowed the “excess” to seven of the state’s 53 seats, a percentage deviation of 13 percent. That deviation is far out of line with the effect of the map the state’s “independent commission” generated through the full 2012–2020 districting period. In fact, it matched the average deviation from proportionality of the full period.

For comparison, in Texas—an open Republican “gerrymander”—the average deviation was 9 percent, and the deviation in 2020 was three seats, or 8 percent of the state delegation. Further, two (Arizona and Washington) of the other four states that used the Democratic model of “independent commissions” returned one “excess” Democrat, with Arizona returning more Democrats than Republicans despite Republicans winning more aggregate House votes in the state.

Republicans continued to pay the price for their New Jersey “dummymander.” The state’s map, drawn by a Republican-leaning commission of politicians, returned three “excess” Democrats of its 12 allocated seats, with the one change from 2018 being the defection of ex-Democratic U.S. Rep. Jeff Van Drew (R-NJ).

Connecticut’s and Massachusetts’ maps perfectly wipe out Republicans, who poll somewhere between one-third and two-fifths of votes in those states. Maryland, Illinois, and New York—all recognized Democratic gerrymanders—returned “excess” Democrats. Likewise, the Republican-drawn map in Ohio returned “excess” Republicans.

In short, if there is a “gerrymandering” crisis, the 2020 elections to U.S. House of Representatives failed to demonstrate it.

Broken Commissions

The Left has sought to replace state legislative redistricting with so-called “independent redistricting commissions” of nonpolitical professionals, most prominently in the For the People Act (H.R. 1), an omnibus bill that would legislate a federal takeover of elections. For the post-2020 Census redistricting cycle, congressional districts will be redrawn in at least seven states and as many as ten states. Montana may gain a second congressional seat and engage in redistricting using this system. New York and Virginia maps, a responsibility shared between a commission and the state legislature, will be drawn by such commissions.



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While the Left presents commissions as the surest way to achieve “fair” districts, the proportionality analysis shows that they are often unsuccessful. Important to figuring out the likely impact of commission-drawn districts is to examine how previous commissions broke down and why they yielded de facto gerrymanders. In the 2010 cycle, the two most disproportionate commissions (in California and Arizona) both drew de facto Democratic gerrymanders: California’s by apparent accident, and Arizona’s by the apparent design of its chairperson.

Capture from Without: California’s Citizens Redistricting Commission

California adopted an independent redistricting commission for its congressional districts in a 2010 referendum; it had already adopted a redistricting commission for state legislative districts in 2008. Democratic donors spent heavily on an unsuccessful 2010 referendum to overturn the 2008 commission referendum; nevertheless, that referendum was defeated, and the congressional commission proposal was adopted.

The California Citizens Redistricting Commission (CCRC) created by those referenda consists of five registered voters of the Democratic Party, five registered voters of the Republican Party, and four voters registered with no party or a minor party. By rule, none of the commissioners or their immediate families are allowed to have been a political candidate, a registered lobbyist, or a donor of more than \$2,000 to a candidate. This left political professionals (largely) off the commission but did not keep them out of the process.

As the left-leaning nonprofit investigative journalism group ProPublica

reported in 2011, “Democrats surreptitiously enlisted local voters, elected officials, labor unions and community groups to testify in support of [district] configurations that coincided with the party’s interests.”

The CCRC’s own practices created openings for creative activists to manipulate redistricting. ProPublica’s report noted that the commissioners agreed “not to even look at data that would tell them how prospective maps affected the fortunes of Democrats or Republicans,” leaving “the commissioners effectively blind to the sort of influence the Democrats were planning.”

The California commission’s reliance on preserving ambiguous “communities of interest” gave further avenues for Democratic-aligned meddlers to entice the CCRC into drawing a de facto Democratic gerrymander. Consultants

aligned with U.S. Rep. Judy Chu (D-CA), who represents a district mostly within Los Angeles County, apparently formed a front group called the “Asian American Education Institute” to persuade the commission to include Chu’s political home base of Rosemead in the district; the commission ultimately did so. Of course, other “communities of interest” not aligned with a Democratic incumbent fared less well. ProPublica noted that the Vietnamese “Little Saigon” neighborhoods of Orange County, which have elected Republicans to state and municipal office, were split among multiple districts.

The consequences of the capture of the California Citizens Redistricting Commission are observed in the proportionality analysis. While California Democrats’ vote share would entitle them to a projected 35 seats, they won an additional seven. The percentage of “excess” Democrats returned by the commission’s map in California exceeds the percentage of “excess” Republicans returned by Texas’s map, generally considered a Republican partisan gerrymander.



Public Domain.

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Capture from Within: Arizona’s “Mathismander”

Arizona’s independent redistricting commission has a fundamental structural flaw. It is evenly divided between two Democrats and two Republicans with an unaffiliated chair presiding, but either partisan bloc plus the chair can make decisions up to and including approving final maps without support from the opposite party. In effect, this enables the “independent commission” to be captured by the partisan bloc with which the “unaffiliated” chair is most aligned.

In 2010 that alignment was clear, and the proportionality analysis through the decade tells the tale. Independent commissioner Colleen Mathis sided with the Democratic bloc on most matters, most notably by acting contrary to the letter of the Arizona redistricting mandates and placing “political competitiveness” as the *most*, rather than *least*, important consideration in districting. Republican commis-

sioners further alleged that Mathis and Democratic commissioners made decisions outside of public meetings.

The result was a map that handed Democrats a majority of congressional seats in the state despite Republicans winning the popular vote for the House in the state by 8 percentage points in 2012. A similar split between the popular vote and seats won occurred under the same map in 2020, in the same direction.

Both parties could see the effect of the map Mathis’s commission drew. The Republican-controlled legislature attempted to oust Mathis, voting to impeach and remove her only to see the move blocked by state courts in litigation supported by the state Democratic Party. After the Mathismander took effect and Democrats profited from the popular vote–seats won split, and Democrats could praise the map more openly: One Democratic congressman admitted, “The maps performed like they were designed.”



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The Coming Commissions

In the 2021 redistricting cycle, up to 11 states will draw their congressional districts using a commission of some kind. (The “up to” question centers on whether Montana will in fact gain the second congressional seat that previous projections of the Census apportionment have indicated. If it does, it will join the 10 other states using commissions.)

Arizona. Arizona’s independent redistricting commission has not changed in structure since the 2011 redistricting cycle. The structural flaw that led to the Mathismander remains. However, the alignment of the commission may change. Chair Erika Schupak Neuberg has been involved with the cross-partisan pro-Israel group American Israel Public Affairs Committee and contributed to members of both major parties. The commission’s first major vote to choose an executive director split 3-2 with Neuberg joining the Republican bloc to choose Republican-aligned political operative Brian Schmitt for the role. Arizona is unlikely to adopt a functional partisan-Democratic gerrymander like the one for the post-2010 cycle—at least not deliberately.

California. California’s Citizens Redistricting Commission has not changed in structure since the 2011 redistricting cycle. Democrats are well-positioned to repeat their success from the 2020 cycle simply based on the makeup of the commissioners. The Republican commissioners include a Berkeley resident with strong environmentalist ties, a civil servant with ties to the charter school movement, a Los Angeles sheriff’s investigator, a retired federal civil servant, and a former pastor who writes on religious topics.

The Democratic commissioners have extensive ties to liberal institutions, with one having founded a community organizing group, another having worked for left-leaning nonprofit groups, a third having worked extensively in California-based left-leaning community philanthropy, another having worked extensively in international election assistance, and the fifth working as a university professor of political science.

The no-party-preference commissioners include one who included protests against the Trump administration in her application and one whose online presence demonstrated extensive support for left-wing U.S. Senator Bernie Sanders (I-VT). While it is possible that the expert-level Democratic commissioners will *not* attempt to leverage their expertise to run over the average-voter-level Republican commissioners *and* that the no-party-preference commissioners (who also include the chair of Leadership Education for Asian Pacifics’s Alliance for Board Diversity) will *not* act as closet partisans, Democratic interest groups may find themselves pushing on a functionally open door to gain maps favorable to their interests, as they did in 2010.

Colorado. Colorado adopted a new redistricting commission in a 2018 referendum. If voters had not done so, Democrats would have controlled district drawing through the state legislature. Instead, a blended system of random drawings, choices by a panel of judges, and choices by state legislative caucus leaders generates a commission split 4D-4R-4 unaffiliated. The final map must be approved by a vote that includes affirmative votes from at least two of the unaffiliated commissioners. It is not clear how the process will proceed. The commission’s most notable action as of press time was sidelining its Republican chair for an unaffiliated chair on a unanimous 11-0 vote for statements the ousted chair (who remains a commissioner) made alleging without evidence widespread fraud in the 2020 presidential election.

Hawaii. Hawaii was the first state to adopt a redistricting commission, and its commission has not changed in composition. State legislative caucus leaders each choose two commissioners, with a 3/4 supermajority vote needed to choose a chairperson, who is chosen by the state Supreme Court if a deadlock occurs. Hawaii’s Democratic partisanship in 2010–2020 has been such that even proportional representation typically yields a Democratic whitewash in its two seats. The Hawaii commission is unlikely to appreciably change the national House alignment.

Idaho. Idaho’s commission has not changed in form since the 2010 cycle. The commission is evenly divided between the parties and acts by 2/3 majority vote. While the state is not as mono-partisan Republican as Hawaii is Democratic, a proportional map yielding a 1-1 result (which would hold anytime the Republicans won between one-third-plus-one to two-thirds-minus-one of the vote) is difficult to draw in Idaho without a nasty gerrymander. Elections Daily’s “Democratic Gerrymander” of the state creates one R+50 seat and one snaking R+12 seat (by 2016 presidential election results). The Idaho commission is unlikely to appreciably affect the national House alignment.

Michigan. Michigan adopted a redistricting commission in the “Voters Not Politicians” Proposal 2 of 2018, since immortalized by the factually problematic documentary film *Slay the Dragon*, which Ken Braun critiqued for Capital Research Center in June 2020. The Michigan commission relies heavily on random draw for its selection. Eric Cunningham of the political analysis website Elections Daily suggested the commissioners selected by a the convoluted series of draws might be “people who might be way in over their head and have no idea how any of this works,” with one commissioner having written in an application that he sought the statistically impossible (and likely illegal) goal that “a random sampling of individuals out of a district will yield approximately 50% each of two main parties.”

Passage of any map requires a majority and a minimum of two commissioners from each bloc of five unaffiliated, four Democratic, and four Republican commissioners.

Montana. While finalized 2020 Census data have been delayed by the COVID-19 pandemic, projections for the 2021 reapportionment of House seats suggest that Montana would gain a second seat, which it has not had since the 1990 Census cycle. Montana's constitution gives redistricting authority to a commission of two Democrats and two Republicans appointed by their state legislative caucus leaders plus a chair selected by either a majority of commissioners or the state Supreme Court. Republican commissioners complained about the process used by the liberal-leaning state Supreme Court to select the chair, but it is not clear how successful even an aggressive Democratic-favoring gerrymander could be, given the state's alignment with the Republican Party in most recent federal elections. It is likely that an at-least-somewhat competitive, but Republican-tilting, district and a staunchly Republican district could be drawn if Montana secures a second seat.

New Jersey. New Jersey uses a politician-commission chosen by state legislative caucus leaders and state major-party chairmen. A voting chair is chosen by the state Supreme Court if the commission cannot select a chair. The 2010-cycle commission for congressional districts (a separate, similar commission draws state legislative boundaries) aligned with Republicans and drew a Republican-favoring map that collapsed into a Democratic-favoring "dummysmander" after the 2016–2018 election cycles and the attendant political realignments. As of writing, the chair has not been chosen, and until the chair is chosen it is unclear how the redistricting plan may play out. However, given the collapse of the Republican-favoring map into an 10-2 Democratic map, it will likely not substantially affect the balance of national power.

New York. New York adopted an independent commission in a 2014 referendum. However, the state legislature, now under control of a Democratic supermajority, has proposed a new referendum to give the state legislature more powers to override the commission's decisions on a party-line basis. Until the commission is set and the vote threshold to override a map is solidified, New York's outcomes could range from an outright partisan-Democratic gerrymander to a more moderate disproportion similar to its current map, which returns two more Democratic-Working Families members than Republican-Conservative members in real life than in the proportional test case. Also notable is that New York is all but assured to lose one seat to reapportionment and may lose a second depending on the precise outcome of the 2020 Census.

Virginia. Virginia adopted a hybrid politician-citizen commission in a 2020 referendum. The commission is evenly divided between the major parties and must adopt a map based on a cross-partisan supermajority. The commission removed redistricting power from the Democratic trifecta in the state legislature and governorship. Virginia's post-2010 maps that initially favored Republicans were substantially altered by litigation and turned into a very mild Democratic-favoring dummysmander after the 2016–2018 election cycles and the attendant political realignments. What effect the commission might have on the national balance of power is unknowable as of writing.

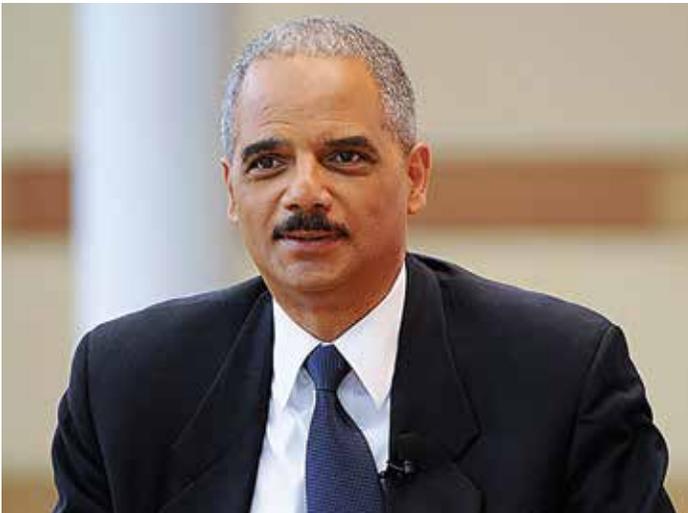
Washington. Washington state's independent commission has not changed in structure for the post-2020 redistricting cycle. Through much of the post-2010 period, the commission map yielded a slight Democratic advantage relative to strict proportionality. Liberal racial- and ethnic-interest groups as well as the left-leaning League of Women Voters (about which more later) have mobilized to promote "public involvement," likely to resemble in effect the Democratic-aligned advocacy that turned California's post-2010 redistricting into a de facto mild Democratic gerrymander.

Power Players

As redistricting heats up, activists aligned with both political parties will rally support for districts that favor their preferred party and target the other party. And as noted before, the only "law" of redistricting is Barone's, so everyone's definition of "fair districts" is "districts favorable to my side."

Eric Holder and the Democrats. In early January 2017, the Democratic Party announced a major effort to secure redrawing of congressional districts for the last two elections of the 2010–2020 cycle and to win control of redistricting for the post-2020 period. Launched by then-President Barack Obama and headed by former U.S. Attorney General Eric Holder, the National Democratic Redistricting Committee (NDRC) would serve as a "strategic hub for a comprehensive redistricting strategy" to secure a Democratic majority in the House of Representatives and in state legislatures for the post-2020 Census districting period. Its announcement proclaimed that the NDRC was the "first organization of its kind: A Democratic group that brings together major party organizations on a multi-cycle, state-by-state redistricting strategy ahead of the 2020 Census."

In October 2017, Holder's NDRC formed a formal partnership with Organizing for America, the successor organization to Obama's presidential campaign committees. By



Credit: The Aspen Institute. License: <https://bit.ly/3xbAnzJ>.

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2018, the partnership was characterized as a “merger” to “create a ‘joint force that is focused on this issue of singular importance’ (redistricting).”

The NDRC is associated with two other entities that perform Democratic-aligned redistricting advocacy under nominally nonpartisan IRS tax-exempt statuses: The National Redistricting Foundation, a charitable 501(c)(3) that litigates to secure district maps more favorable to Democrats and liberal interests, and the National Redistricting Action Fund, a 501(c)(4) “social welfare” lobbying organization.

National Redistricting Action Fund (NRAF) lobbies and advocates for ballot measures. It spent \$250,000 backing Michigan’s Proposal 2 of 2018. That measure replaced the known faults of legislative redistricting with a redistricting commission that may have more faults than other redistricting commissions. NRAF’s funding is not well identifiable, though the National Education Association labor union reported a \$100,000 contribution to the group in 2018 and the Ironworkers Union reported a \$25,000 contribution in 2019.

The National Redistricting Foundation (NRF), which handles the Holder-Democratic network’s litigation, is substantially funded by donor-advised funds, philanthropic vehicles sometimes derided as “dark money” organizations that allow donors to hide their connections to recipient organizations.

Fidelity Investments Charitable Gift Fund, the nation’s largest provider of donor-advised funds, handled \$1,142,000 in contributions directed to National Redistricting Foundation in 2018. For comparison, National Redistricting Foundation reported total revenues of \$3,325,489 in its tax year ending June 2018.

Other major funders of National Redistricting Foundation include several community foundations, which may also provide “dark money” donor-advised funds. The Greater Washington Community Foundation provided \$1 million to NRF in 2017. The San Francisco Foundation provided grants of \$50,000 in 2016 and \$100,000 in 2018. The Baton Rouge Area Foundation, California Community Foundation, and East Bay Community Foundation all provided five-figure grants in various years.

Known liberal institutional funders of National Redistricting Foundation include the Hopewell Fund, an entity in the Arabella Advisors network of liberal “dark money,” which provided NRF with \$683,330 in 2019. Other known funders include the Goldhirsh Foundation, Miner Anderson Family Foundation, and Z. Smith Reynolds Foundation.

Republican-Aligned Networks. The Republican Party also has a redistricting advocacy network coordinated through the National Republican Redistricting Trust (NRRT). The trust is aligned with two nonprofit groups modeled on the Holder empire: Fair Lines America, a “social welfare” organization, and Fair Lines America Foundation, a charitable organization. While Holder’s NDRC intervenes substantially in state legislative elections, the NRRT’s political campaigning is limited, with its National Republican Redistricting PAC being reportedly created principally as a means to access small-dollar fundraising through the GOP’s “WinRed” funding platform. The Republican State Leadership Committee handles the party’s national coordination for state legislative and down-ballot state-executive campaigns.

Democratic Wolves in “Nonpartisan” Clothing. While both the Republican-aligned Fair Lines and Democratic-aligned National Redistricting 501(c) organizations are nominally nonpartisan for legal reasons, other, less-obviously-aligned groups campaign for and assist the Democratic redistricting efforts.

The most prominent of these Democratic-aligned organizations is the League of Women Voters (LWV) and its many state and local chapters. They have allied with Democratic efforts to set up redistricting commissions and supported liberal efforts to influence redistricting commissions. While the League made its name first promoting civil rights and later hosting candidate forums and presidential debates,



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the organization has aligned with—and received substantial funding from—left-progressive institutions, especially since the 1980s.

In states without commissions, the LWV and LWV chapters have established “Fair Districts” front organizations, among them Fair Districts PA for Pennsylvania and Fair Districts NC for North Carolina. In Pennsylvania, the league joined National Redistricting Foundation in litigation challenging the state’s congressional map, and the partisan-Democratic state Supreme Court later found in favor of Holder and the league.

Conclusion

While Democrats proclaim a “gerrymandering” crisis, an analysis of the U.S. House election results shows that even under a European-style proportional representation system the sizes of the House party caucuses would not have changed. This is not the sort of outcome that demands a fundamental reordering of how legislative apportionment works.

Further, the redistricting commission system—perhaps especially the “independent commission” system that H.R. 1 would mandate nationwide—does *not* yield a more propor-

tional outcome. Rather than placing power in the hands of people’s elected representatives and statewide officials above them, it places power in the hands of organized advocacy groups and nonprofits.

Those wondering why partisan progressives would want to take power from legislatures and elected officials and give it to organized advocacy nonprofits need only remember that Capital Research Center found that liberal advocacy nonprofit revenue exceeds conservative advocacy nonprofit revenue by approximately four-to-one. Further, these organized liberal interests freely hide behind front organizations like the League of Women Voters that appear to be and are sold by the metropolitan-liberal press as far less partisan than they are in reality.

For now, the trench warfare of redistricting continues as scheduled, subject only to Barone’s Law, the Voting Rights Act, and the Supreme Court’s one-man-one-vote standard. How it proceeds will greatly determine how the next Congresses look, until changes in the political winds demolish the best-laid plans of politicians and activists. ■

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