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Independent Study and Mentorship

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The Issue of Redistricting - A Look into Texas' Organization of Constituents

Research Assessment 2

Subject:

State Public Policy

Works Cited:

Jones, Mark P., et al. "Partisan Redistricting in Texas: How Much Is Too Much?"

TribTalk, Baker Institute.

Assessment:

This document encompasses the issue of Texas' redistricting policies, and the modern applications of gerrymandering discriminating against ethnic minorities. The article begins by underscoring the background of the topic, highlighting the upcoming Supreme Court deliberation on *Gill v. Whitford* that will inevitably determine a federal stance towards (and possibly restrictions on) gerrymandering in the 50 states. This summary also details Ken Paxton's, the Texas Attorney General, involvement with the case after filing an amicus brief on the topic. After discussing the background of the case, the authors from the Baker Institute and University of Houston then bring to light a measure of calculating the benefits reaped from gerrymandering through the "efficiency gap." The authors delve into this measurement system and explain its applications to Texas House and Senate elections, accentuating the presence, within Texas Congress elections, of unconstitutional gains from the process of discriminatory redistricting. After touching on the data presented from the efficiency gap's application to Texas elections, the article then proceeds to analyze it, discussing the implications of the Supreme Court's deliberation on the case in terms of the state's ability to reform their district maps.

After reading through and learning more of the central topic of the efficiency gap measurement system, I felt much more motivated to understand the policy-making behind restricting, or possibly promoting, gerrymandering. In an attempt to understand how elected officials interpret the topic of redistricting in Texas, I looked towards House Bill 369, authored by District 48 representative Donna Howard, that promotes the creation of a commission by 2021 that would review all cases of redistricting to ensure a nonpartisan justification for the

arrangement of constituents. This bill demonstrates the limitless possibilities of state legislation to reform the organization of representation of American citizens even today, and accentuates the importance of identifying your representatives in any major governmental body so to ensure your voice is as equal as others'. Not only that, but the legislation also underlines the importance of the redistricting issue in its effects on the public, as from this added screening, the public can be ensured the protection of their equal vote.

With such a prevalent issue to discuss, it is inevitable that a certain degree of bias might sway the interpretation of the article on gerrymandering in Texas. However, I found that, true to the Baker Institute's pledge to nonpartisanship, the article discusses the issue facing the Supreme Court at a very neutral stance. The authors attempt only to inform the public on the issue, while also elucidating on the concept of the efficiency gap that may reform policy across the country. If bias were present, though, I feel that it would contribute to a more one-sided and stubborn collection of the public in favor or against redistricting reform. And thus, many would become more intolerant towards the other side's opinion, potentially leading to an even tighter stalemate and lack of plausible solutions put to use.

From this article, I was able to learn more about the risks at stake today concerning the constitutionality of gerrymandering, as well as how elected officials react towards its reform. The discussion led me to understand the level of education elected officials have about a variety of topics, as state district maps are not nearly as focused on as other significant issues in Texas. Truly, those who do represent a portion of constituents in a governmental body must be aware of the implications of and possible solutions for a plethora of topics facing the American public today.

Partisan gerrymandering has traditionally been an accepted part of the redistricting process. To the victors go the spoils, and this has been especially true over the last decade with many of the post-2010 redistricting plans across the country representing some of the most extreme partisan gerrymanders in recent U.S. history.

This fall, the U.S. Supreme Court will consider a case from Wisconsin and decide if there is a threshold for partisan gerrymandering that, once crossed, makes a redistricting plan unconstitutional.

Our analysis of the current Texas delegation to the U.S. House, state Senate and state House of Representatives plans suggests that under a novel test presented by the Wisconsin plaintiffs, and heavily referenced by a federal lower court, Texas's congressional redistricting plan is likely unconstitutional while the Texas Senate and Texas House redistricting plans are constitutional.

In [Gill v. Whitford](#), Democratic voters in Wisconsin have challenged the state legislative maps drawn by the Republican-controlled state Legislature, claiming they discriminate against Democrats. In a 2-1 decision, a panel of federal judges concluded Wisconsin's redistricting plan was unconstitutional, due to extreme partisan gerrymandering.

That decision was appealed by the state of Wisconsin (an appeal supported by an [amicus brief](#) filed by Texas Attorney General Ken Paxton), and will be heard by the U.S. Supreme Court in October. The court could decide whether gerrymandering can be so partisan that it moves from the realm of the legal to the illegal.

The Wisconsin plaintiffs employed a new statistical measure of partisan gerrymandering known as the [efficiency gap](#). This method evaluates the number of votes wasted, that is, votes cast on a losing candidate or votes cast on a winner who already has enough votes to win. It compares votes wasted on Republican candidates compared to those wasted on Democratic candidates to create a proportion that can vary from positive values (an efficiency gap benefiting the Republican Party) to negative values (an efficiency gap benefiting the Democratic Party). The higher the value, the greater the gap; the closer the value is to zero, the smaller the gap.

The measure's creators ([Nicholas Stephanopoulos and Eric McGhee](#)) also propose thresholds to be used to determine whether or not a redistricting plan is unconstitutional based on the extent of the systematic advantage provided to one party or the other. For congressional districting plans in a state, this threshold is defined as anything above 2

congressional seats. For state legislative bodies, the threshold is anything outside of the range of 8 percent to -8 percent. In the case of the Texas House of Representatives, this threshold translates into any gap above 12 seats, while for the Senate it translates into anything above 2.5 seats when all 31 senators are elected simultaneously (as in 2012) and above 1.2 and 1.3 seats when 15 or 16 senators are elected in a partial renovation (as in 2014 and 2016).

Following the methodology of Stephanopoulos and McGhee, we calculated the efficiency gap for the Texas congressional districts and for the state Senate and House of Representatives, using data from the 2012, 2014 and 2016 elections. The efficiency gap, expressed in both percentage and seat terms, is provided in the table, along with the actual seats won by each party in the election. In all elections the efficiency gap is positive, indicating the state’s redistricting plans always advantaged the Republican Party rather than the Democratic Party.

REDISTRICTING PLANS AND THE EFFICIENCY GAP IN TEXAS: 2012, 2014, 2016

Institution	Election Year	Actual Seat Results		Efficiency Gap	
		Republicans	Democrats	Vote Percentage	Number of Seats
U.S. House	2012	24	12	8.58	3.1
	2014	25	11	5.53	2.0
	2016	25	11	12.60	4.5
	Average	24.7	11.3	8.90	3.2
TX Senate	2012	19	12	3.54	1.1
	2014	12	3	7.22	1.1
	2016	8	8	2.11	0.3
	Average	13	7.7	4.29	0.8
TX House	2012	95	55	7.19	10.8
	2014	98	52	1.07	1.6
	2016	95	55	5.45	8.2
	Average	96	54	4.57	6.9

The average efficiency gap for the Texas congressional maps across these three elections is 8.90 percent (ranging from 5.53 percent in 2014 to 12.60 percent in 2016), with two of the three elections (2012 and 2016) having efficiency gaps above 8 percent. In regard to seats, in 2012 the gap was 3.1 seats (1.1 over the 2 seat threshold), in 2014 it was 2.0 seats (right at the threshold). In 2016, it was 4.5 seats (2.5 over the

threshold). On average, the efficiency gap of the state's congressional plan is 3.2 seats. This value indicates that partisan gerrymandering provided Texas Republicans with an average of 3.2 seats more than they would have received under a completely proportional redistricting plan, and 1.2 seats more than could be justified for a plan that did not engage in an extreme partisan gerrymander.

The average Texas Senate efficiency gap was 4.29 percent (ranging from 2.11 percent in 2016 to 7.22 percent in 2014), with Republicans receiving an average seat benefit from partisan gerrymandering of 0.8 seats (i.e., less than 1 seat). In no election did the efficiency gap break the 8 percent threshold defined as the dividing line between constitutional and unconstitutional. In the median Senate election (2012), there was a 3.54 percent efficiency gap in favor of the Republican Party, which translated into a one (1.1) seat bonus for Republicans that can be largely attributed to the party's control over the redistricting process.

The average Texas House efficiency gap is 4.57 percent. As was the case with the Texas Senate, in no election did the efficiency gap surpass 8 percent. Republicans received the largest bonus from their control of redistricting in 2012 where the efficiency gap was 7.19 percent, which translates into 10.8 more seats won by Republicans than would have been the case in a proportional setting. The smallest Republican bonus was in 2014 where the efficiency gap of 1.07 percent equaled a seat bonus of only 1.6.

Across the three elections the average seat bonus obtained by Republicans in Texas House elections is 6.9, well below the 8 percent threshold of 12 seats, as well as being of relatively limited importance for partisan control of a legislative body where Republicans won between 95 (2012, 2016) and 98 (2014) of the 150 seats.

In early September, a three-judge panel in San Antonio will hold a remedial hearing in the ongoing challenge by plaintiffs who argue the state's congressional and state House redistricting plans discriminate against ethnic and racial minorities. The state of Texas has consistently countered that the 2011 maps upon which the current 2013 plans are largely based were legal partisan gerrymanders and not illegal ethnic/racial gerrymanders.

However, even if the U.S. Supreme Court eventually rules that lawmakers did not discriminate against ethnic and racial minorities when drawing these maps, the Legislature could still find itself asked to redraw the congressional districts (prior to the

2020 elections) in the event the Supreme Court sides with the Wisconsin plaintiffs. Such a ruling could, establish a standard under which the state's current congressional districts could be deemed an unconstitutional partisan gerrymander — especially if the efficiency gap in the upcoming 2018 election is comparable to that in 2016.