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Routing

Uncompetitive Elections and the American Political System

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Executive Summary

American representative government suffers from the handicap of a largely uncompetitive political system. American politics has fewer and fewer competitive elections. In arguing that political competition matters a great deal, this paper traces the increasing trend toward uncompetitiveness and details the role and nature of incumbency advantage in fostering an uncompetitive political system.

Current redistricting practices and campaign finance regulations, in tandem with publicly financed careerism, have significantly negative consequences for the health of the political system. This study analyzes several of the major instruments of campaign finance regulation, such as contribution limits, public financing, and the ban on soft money, in terms of their relationship to political competition. Simply put, campaign finance regulation and public financing have not improved political competition.

In the past, campaign finance restrictions and taxpayer-subsidized elections have generated unintended consequences. The most recent regulatory round is no exception to that rule. This study also looks at other reforms, namely, term limits and improvements to the redistricting process, in light of their comparatively successful record regarding political competition.

Changes in the manner in which districts are designed, campaigns are funded, and politicians are tenured require immediate implementation. In short, elected officials should be disconnected from campaign and election rule making and regulation. There will not be an improvement in political competition until the incumbent fox ends his tenure as guardian of the democratic henhouse.

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American representative government clearly suffers from the handicap of a largely uncompetitive political system.

Introduction

American politics has fewer and fewer competitive elections. Should one be concerned about this situation? In arguing that political competition matters a great deal, this paper traces the trend toward declining competitiveness and details the role and nature of incumbency advantage in fostering an uncompetitive political system. Several of the major instruments of campaign finance regulation, such as public financing, contribution limits, and the ban on soft money, are analyzed in terms of their relationship to political competition. Other reforms, namely, term limits and reform of the redistricting process, are discussed in light of their comparatively successful record regarding political competition.

As James Madison noted in *Federalist* 63, the House of Representatives was viewed as a "numerous and changeable body"[1] reflecting the shifting popular will. The decline in congressional political competitiveness is grossly inhibiting the extent to which the contemporary House serves this function of democratic responsiveness.[2] The word "election" derives from the Latin *electus*, meaning "to pick out" or "to select," thereby implying choice, competition, and the possibility of both success and failure. The evidence shows that American elections no longer offer those elements in a meaningful fashion. In recent elections, 98 percent of incumbent representatives successfully sought reelection. Only a few dozen of the 435 congressional districts experience truly competitive elections.[3] During the 1980s, 99.3 percent of unindicted congressional and state legislative incumbents won reelection.[4] American representative government clearly suffers from the handicap of a largely uncompetitive political system. Political scientist Ross Baker observes:

> Incumbency has become so entrenched . . . that many voters lack any real say in who represents them. Democratic and Republican House incumbents alike share a semi-perpetual easement on their seats that more nearly resembles hereditary entitlement than the competitive politics we associate with a democracy.[5]

Rhetorically, at least, everyone favors more political competition. According to the liberal political columnist Albert R. Hunt, "The appalling lack of competition in Congressional elections is another void in the system."[6] In the long term, most analysts and electoral participants agree that this state of affairs is clearly incompatible with a healthy political system.

It is reasonable to assume that more candidates for office and the increased turnover of representatives would produce better choices for voters.[7] Economist Anthony Downs famously informed us that political competition produces parties and policies reflecting the median voter's preferences.[8] Political competition has been found to heighten voter interest, stimulate the adoption of distinctive policies by candidates and parties, and produce higher voter turnout.[9] Competitive elections also help to legitimize the political system and aid in the political socialization of new citizens.[10] According to economists Pranab Bardham and Tsung-Tao Yang, "increased accountability for incumbents would appear to carry at least one unambiguous benefit for constituent welfare: to the extent that incumbent rulers have a personal interest in maintaining power, their incentives to respond to the public's wishes are stronger when the public can more easily strip them of their power."[11] Unfortunately, voters' ability to strip incumbents of their power has steadily eroded over the past several decades.

Incumbency Advantage

People who hold office enjoy tremendous advantages in electoral competition. Economist David S. Lee's empirical analysis found "striking evidence that incumbency has a significant causal effect of raising the probability of subsequent electoral success."[12] A number of social scientists have measured incumbency advantage in quantitative terms, thereby providing an unbiased estimate of incumbency advantage. In federal politics, political scientists Andrew Gelman and Gary King found that incumbency is worth an 11 percent increase in expected vote share to the average officeholder.[13] Political scientists Gary Cox and Scott Morgenstern found a comparable advantage accruing to incumbents at the state level.[14]

The advantages of incumbency not only are important, but their importance has risen over time.[15] Over the past 50 years, the percentage of the vote that a candidate receives simply for being an incumbent has risen to 11 percent from just 2 percent.[16] Another measure of this trend is found in the congressional reelection rate. The reelection rate is not as reliable a measure of the competition problem as is the incumbency advantage measure because it is biased somewhat by incumbent choice, that is, some incumbents do not seek reelection in the face of anticipated defeat, but it is still indicative of a tremendous advantage to incumbents. Over the past 50 years, the congressional reelection rate has averaged more than 90 percent and has gradually risen.[17] The reelection rate for House members has been above 90 percent in every election year except one since 1976.[18] Both the 2000 and 2002 congressional elections saw 98.5 percent of House incumbents reelected. In 2004, 402 representatives sought reelection; only 7 were defeated. The reelection rate for House incumbents was 98.3 percent.

The number of safe congressional seats grew significantly over the decade. There are now close to 400 safe House seats. After eliminating turnover due to death, poor health, and indictment, one is left with only 1 to 2 percent turnover due to electoral defeat. Not only do incumbents win more often than they used to do, but they win by increasingly wide margins. The number of marginal congressional districts, that is, districts won by close vote margins that could be categorized as competitive, has fallen dramatically over the past 40 years. Political scientists James Campbell and Steve Jurek found that, in the typical election year between 1956 and 1964, 94 districts were decided by a margin of less than 10 percentage points (55 percent to 45 percent of the vote or closer).[19] From 1966 to 1972, the number of marginal districts fell to 59. The past three decades saw the number of marginal seats fall further. In the 2002 election, just 38 races had a small victory margin.

In the 1992 election, 65 percent of incumbents running for reelection won in a landslide (that is, a victory margin in excess of 20 percent).[20] In 1998 and 2000, 90 percent of successful congressional candidates secured at least 55 percent of the popular vote, constituting the least competitive elections (with one exception) since 1946. In 2002, nearly 80 percent of House races nationwide produced landslide victories.[21]

In the first 14 House elections after World War II, one party or another gained an average of 27 seats; in the past 14 elections, the average gain was only 16 seats.[22] In 2002, nonincumbent challengers defeated just four House incumbents, a modern-day record.[23] One in five incumbent representatives is returned to Capitol Hill following an uncontested race in his or her district, that is, one in which the incumbent has no major party challenger. In 2002, 81 incumbents received a free pass back to Congress (Figure 1).[24]

Incumbency advantage is a concept that is not lost on the public. A Rasmussen poll found that 72 percent of Americans agreed with the statement that "in American elections, members of Congress have unfair advantages over people who want to run against them."[25]

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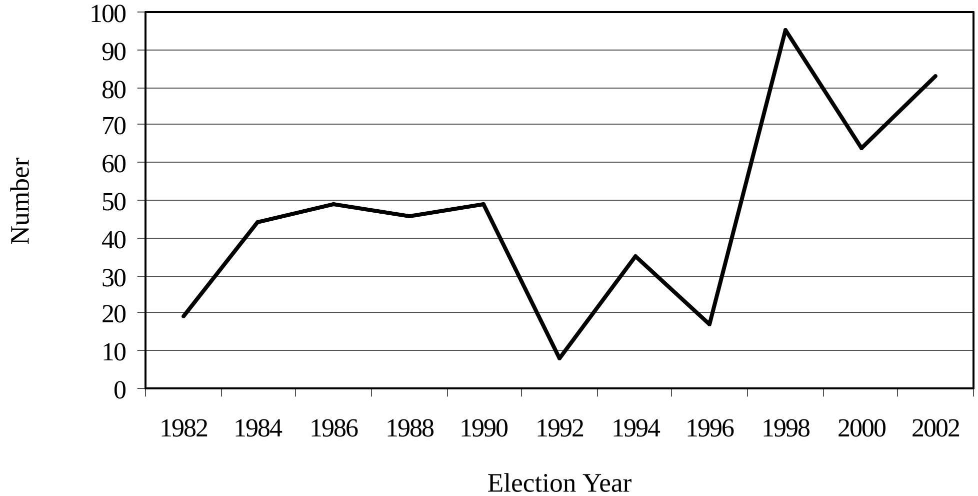
Causes of Incumbency Advantage

Some scholars argue that the American political system is not malfunctioning; instead, they say, the disproportionate success enjoyed by incumbents in elections reflects what the voters want. That position is most closely identified with the political scientist John Zaller. He fleshes out his argument about why incumbents win reelection at high rates by building

Figure 1
Uncontested House Races (1982–2002)



Source: Center for Voting and Democracy, http://www.fairvote.com/reports/index.html.

upon what political scientists Robert S. Erikson and Gerald C. Wright term "electoral selection."[26] According to Zaller, because of their manner of selection, incumbency advantage reflects the fact that incumbents are simply better politicians than most of their opponents and are therefore usually able to best them in electoral combat.[27]

Are incumbents simply better politicians than their challengers? Without question, the average incumbent possesses valuable communications, fundraising, and legislative skills that reflect a longer period of time spent mastering the political arts than the average challenger spends. The skills deficit experienced by the average challenger contributes to his or her electoral disadvantage.

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Nevertheless, if the electoral playing field is indeed fairly even, absent the "better politician" variable we should experience a far greater number of challenger victories in congressional elections. Although a majority of incumbents may be better politicians than their respective challengers, that almost every incumbent is a far better politician than his or her challenger is extremely unlikely. One must also ask why incumbency advantage has increased so significantly over the decades, not simply in terms of less turnover and higher reelection rates but also in terms of greater margins of victory and fewer partisan seat gains. For the better politician thesis to hold, today's average incumbent would have to be vastly better as a politician than the average incumbent of yesterday. That is also highly unlikely.

Public Subsidies

There are several artificial factors that directly contribute to the average member of Congress's incumbency advantage entering any given election. Members supply themselves through public subsidy with significant resources to pursue reelection. Those resources include the congressional franking privilege that allows incumbents to flood their districts with free mail. Members send out hundreds of millions of pieces of mail annually that serve to raise their political profiles.[28] Members also employ large administrative and political staffs both on Capitol Hill and in their district offices. In 1999, members of Congress had 11,488 full-time staffers, many of whom focused on helping constituents with their problems, thereby generating support in the home district.[29]

Members enjoy unlimited free travel back to their districts,[30] access to the media, free television studio facilities, and, most recently, free websites for communicating with the electorate. Of course, members also enjoy lawmaking power, including district-specific pork-barrel spending.[31] The salary, travel, office, staff, and communication allowances alone are estimated to be worth more than $1 million annually per House member. In addition to being subsidized by taxpayers, these vote-enhancing instruments share a common origin. Members of Congress award themselves these benefits.

Redistricting

Redistricting has evolved into the electoral instrument that perhaps best serves to protect and strengthen incumbency advantage. Redistricting creates political winners and losers and, in the process of doing so, literally reshapes American democracy. Political scientist Jonathan Williamson describes redistricting as "both a necessary chore and an electoral opportunity."[32] Consequently, the party or politician who controls redistricting has an enormous electoral advantage.[33] In general, redistricting plans tend to focus on incumbency protection and partisan gain, or both. When one party controls the redistricting process, that party endeavors to draw district lines in ways that favor its candidates.[34] That form of redistricting is known as gerrymandering, that is, the redrawing of electoral districts to favor one political party over another.

Partisan gerrymanders are very effective in increasing a party's share of legislative seats.[35] The creation of so-called safe districts allows the two major parties to work together to minimize their respective election risks. The minority party usually prefers a level of certainty regarding its base number of legislative seats. To the extent that political parties cooperate and compromise with each other, the redistricting process has degenerated into a conspiracy against competitive elections, undermining the fundamental notion of representation. This anti-competitive trend led economist Randall Holcombe to conclude that "political markets are divided in the same way that cartels would divide markets in order to make each member a monopolist in his own territory to help enforce the cartel agreement."[36]

In many states, gerrymandering may be a more serious problem today than it has ever been in American history.[37] Representative democracy is a system of government whereby citizens control the government through their chosen representatives. In the United States, however, political representatives increasingly choose those they will represent, as election results tend to be predetermined by gerrymandering. Even politicians such as Tom Davis (R-VA) say that it used to be the voters who chose the politicians. Now the politicians choose the voters. Therefore, redistricting has important consequences for the health of the American political system. Under a system of gerrymandered districts, the health of American democracy is at risk. Gerrymandering diminishes voter sovereignty over elections.[38] Partisan legislative gerrymandering severely undermines electoral competitiveness, arguably to the point of violating the Constitution's Equal Protection Clause, as it consigns electoral majorities to minority status on the basis of their political views.[39] Scholarship at the state level finds that partisan redistricting actually harms the quality of representation in state legislatures.[40]

Thanks to increasingly sophisticated gerrymandering, the redistricting process makes it harder for newcomers to run for office because it strengthens the advantages incumbents already enjoy. The redistricting that occurred in 2001 and 2002 will predetermine most election outcomes for the rest of this decade. Following the 2000 census, the two major parties carved up the national political map into a few hundred political fiefdoms with the help of computer programs that allow parties to design, with pinpoint accuracy, advantageous districts.[41] Political scientists Richard Forgette and Glenn Platt document how "partisan balance nationwide, a decline in district level competitiveness, and ideological polarization among House members significantly raises the political impact of small

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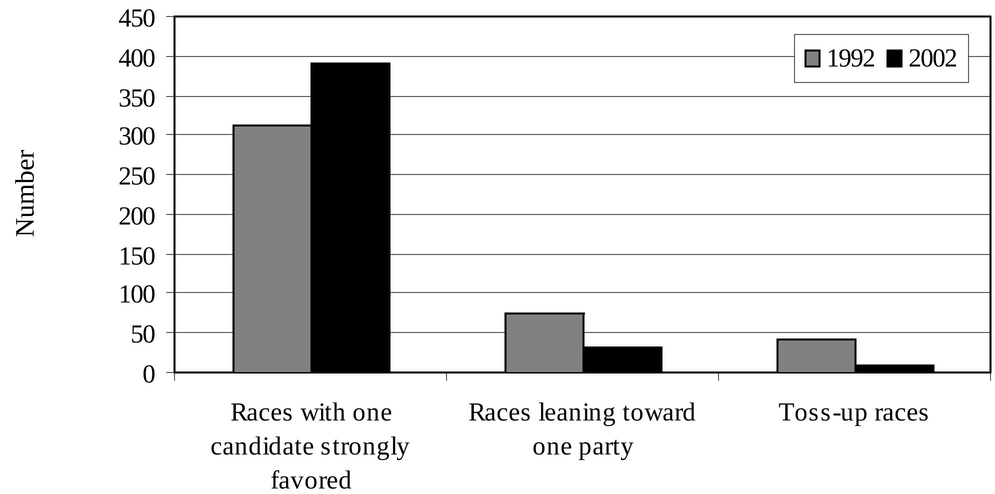
Figure 2
Competitiveness in House Races , 1992 vs. 2002



Source: *Cook Political Report*, May 1992 and May 2002 surveys.

Almost 90 percent of Americans live in congressional districts where the outcome is so certain that their votes are irrelevant.

increases in partisan bias."[42] Consequently, many more congressional races became non-competitive affairs. The 2002 electoral battleground was smaller than ever, as only 30 to 45 seats were truly competitive,[43] compared with 121 seats a decade earlier.[44] Of the few dozen competitive seats, only 11 were toss-up contests that either party could just as easily win, down from 44 in 1992 (see Figure 2).[45] The influential congressional prognosticator Charles E. Cook Jr. notes:

> Perhaps most alarming about this decline in competition is that, typically, greater competition and turnover characterize the first couple of congressional elections after redistricting. Then legislators settle into their new districts and the level of competition goes down until new maps are drawn. If the competition is this low in the first election after a redistricting, imagine what it will be like by 2008 and 2010.[46]

Observing the state of California, for example, one is struck by the fact that the nation's largest delegation to the House—53 seats—had only one competitive race (in the 18th District) in 2002. That contest occurred only because of Democratic state representative Dennis Cardoza's primary defeat of disgraced seven-term Rep. Gary Condit, scandal-tarred by the investigation of the disappearance and murder of Chandra Levy, Condit's former intern.

Today, the average House incumbent faces a more competitive party primary than general election contest.[47] The more notable battles in 2002 occurred within four primary elections in each of which two incumbents of the same party battled one another in primary competition. Across the country, according to Rob Richie, executive director of the Center for Voting and Democracy, in practice "the only way you can lose a seat that's safe is by losing a primary."[48] According to voting expert Dan Johnson-Weinberger, national field director for the center, "a lot of states are drawing out competitive districts. This might make for interesting primaries . . . but it makes for coronations in the general elections."[49]

Because of gerrymandering, almost 90 percent of Americans live in congressional districts where the outcome is so certain that their votes are irrelevant.[50] Consequently, gerrymandering contributes to the removal of a potentially meaningful vote from tens of millions of Americans.[51] As long as gerrymandering is permitted, control over redistricting will have more influence on election outcomes than any other factor, including voter preferences.

Gerrymandering has helped the members of the U.S. House to become a political aristocracy. However, the problem of politicians using redistricting to create safe seats is not limited to the U.S. House. At the state level, the problem is equally disconcerting. Although safe seats typically feature a token partisan opponent, some seats are so safe that it is futile for anyone to bother. Of the roughly 6,000 state legislative seats filled every two years nationwide, about 40 percent feature a race in which only one party fields a candidate.[52] Given that partisan change is unlikely within a district, changes in the ideological intensity of the parties themselves can have a significant impact on policy outcomes.

Campaign Finance Regulation

What can be done to stop the trend toward near-universal "safe seats"? Can we increase the amount of competition in the political system? This section examines the impact that specific campaign finance regulations have had, and can be expected to have, on our increasingly uncompetitive political system.

Regulations on campaign finance are ostensibly designed to prevent corruption or the appearance of corruption in the political process, but a consequence of such regulations may be a reduction in the competitiveness of elections. Campaign finance regulations place limits on the manner in which candidates and parties acquire contributions, the size of those donations, and the way in which they are spent in pursuit of electoral success. Such restrictions affect the competitive balance between incumbents and challengers (and potential challengers) in both predictable and unpredictable ways.

Most campaign finance regulators profess to believe American politics should have more competition. Contrary to the regulators' wishes and forecasts, however, as we have seen, the incumbent advantage problem has grown worse since the passage of the first package of comprehensive campaign finance regulations in 1974.

Two decades later, under the provisions of the Bipartisan Campaign Reform Act of 2002, soft money donations to the national parties were prohibited, the limit on hard money donations was increased to $2,000, and severe constraints were placed upon independent political advertising. Those provisions collectively constitute the most significant changes to campaign finance law since the Watergate era. Thanks to the retention of contribution limits, the ban on soft money, and new regulations affecting independent advertising, the latest attempt to regulate political behavior will almost certainly prove equally unsuccessful at fostering political competition.[53]

Contribution Limits. A person may currently donate up to $2,000 to a congressional candidate.[54] That is a "hard money" contribution; the candidate may use it directly for his own campaign. Such limits on contributions to candidates were designed to ensure an uneven campaign playing field that favors the incumbent.[55] Extensive scholarship by Gary Jacobson and other political scientists confirms what politicians recognize at first glance: it is difficult for a challenger to oust an incumbent unless the former spends at least as much as, and probably more than, the latter during the campaign period.[56] Only by spending large sums on television advertising, direct mail solicitations, and grassroots organization can a challenger develop the levels of name recognition, issue identification, and voter mobilization needed to catch up with the years (frequently decades) of subsidized campaigning and pork-barrel spending that characterize an incumbent's terms in office.

Under the rhetorical guise of warding off unspecified corruption, an incumbent is happy to limit himself to $2,000 donations. Certainly, he may detest the phone calls he has to make and the fundraising breakfasts, lunches, and dinners he has to attend. But at night he sleeps well in the knowledge that his challenger back

A consequence of campaign finance regulations may be a reduction in the competitiveness of elections.

The ban on soft money may be expected to make future elections even more uncompetitive.

home must do the same (more, if the challenger is serious about winning) without, in most cases, a comparable network of contacts, donors, and lobbyists whose longstanding collective investment in the incumbent's career ensures their continuing financial commitment. Hence, incumbent politicians raise, on average, two to three times the amount of campaign contributions that their challengers do.[57] For example, political action committees (PACs) contribute nearly eight times more money to incumbents than to challengers.[58] As political scientist James Campbell has noted, there is considerable evidence to suggest that the fundraising advantage has made a highly significant contribution to the incumbency advantage in recent decades.[59]

In practice, contribution limits are simply political price controls, and, as such, they are both ineffective and costly.[60] Contribution limits have three negative consequences. First, contribution limits raise the costs of fundraising above what they would be with no limits. Without contribution limits, challengers would raise money relatively quickly as many would receive very large contributions from a small number of contributors. Incumbents, by contrast, thrive under contribution limits because they are fully adapted to the regulations. They possess the enormous advantage of a perpetual fundraising organization that solicits relatively small contributions from a very large number of predominantly longstanding donors. Second, contribution limits greatly reduce the likelihood that a challenger will successfully oust an incumbent; that reduces competition below the level necessary for a healthy political system. Third, this boon to incumbency advantage makes candidate recruitment much harder. Such long odds against success provide an enormous disincentive for qualified, successful people to put themselves forward as candidates in the first place, thereby reducing the quality of the pool of potential challengers and would-be successors should—by scandal, death, or resignation—an incumbent fail to gain or seek reelection.[61]

Soft Money Ban. The ban on soft money fundraising by the national parties may be expected to make future elections even more uncompetitive.[62] In general, banning soft money tips the scales further toward incumbents. To overcome an incumbent's advantage, a challenger must raise significant sums of money. Challengers who defeat House incumbents raise, on average, well over $1 million.[63] The new regulations will make it harder for parties to support challengers to the extent necessary for them to compete with an incumbent. Without the necessary party resources pouring into targeted districts, serious challengers will threaten fewer incumbents, thereby further reducing political competition.

Recent scholarship suggests that weakening the role of parties in campaigns undermines electoral competition. While interest groups and individual donors tend to favor incumbents, parties give disproportionately to challengers because they want to maximize their share of seats in a legislature.[64] Both major parties use soft money to increase the competitiveness of individual congressional races. A 2000 analysis shows that PACs tend to donate to incumbents while parties concentrate equally on vulnerable incumbents and credible challengers.[65] In close races, a soft money ban makes a challenger's life more difficult than it already was. Jacobson's study of congressional elections indicates that any loss of campaign funds hits challengers especially hard at the polls, compounding the problems caused by limits on party contributions.[66]

The argument that the new campaign finance regulations may reduce the competitiveness of elections is buttressed by state-level experience. Many states have enacted regulations on campaign finance, including limits on how much can be given to political parties. Political scientists' fears of dampening political competition by limiting the role of parties are justified. A close analysis of those state limits shows that restrictions on how much parties can raise and contribute to their nominees hinder the ability of candidates, especially those in close races, to raise money.

Political scientists Thad Kousser and Ray LaRaja analyzed the effects of campaign finance regulations on the competitiveness of state elections.[67] Pursuing electoral success efficiently leads parties to contribute to challengers in competitive districts if the challengers have a chance of winning.[68] Kousser and LaRaja used a representative sample of 15 states and analyzed donations to 2,234 candidates, all of whom ran for contested seats during 1996. They found that limits on how much parties can raise and contribute to their nominees do not penalize incumbents as harshly as they do challengers, since sitting lawmakers can attract more money from interest groups and individual donors. Because current officeholders begin with a broader fundraising base, and because campaign dollars yield decreasing returns, any loss in contributions caused by limits on parties hurts incumbents less. Most important, those fundraising obstacles, which are attributable to state regulatory limits on party activity, reduce the vote totals of challengers, thereby reducing the competitiveness of elections. Therefore, Kousser and LaRaja argue that restrictions on party activity to prevent corruption should be carefully weighed against the costs to political competition.

Regulated Advertising. The new federal campaign finance regulations protect incumbents from criticism during general elections by banning advocacy paid for by contributions above Federal Election Campaign Act limits. The new restrictions on "electioneering communications" by independent groups will further hamper the efforts of the average challenger. Media supporters of campaign finance regulation decry independent advertising campaigns, referring to them as ads for "sham"[69] or "phony" issues.[70] Sen. John McCain (R-AZ) campaigned in favor of new campaign finance regulation in part to rid our election-time airwaves of such "misleading issue ads." Those ads are produced by special interest groups, such as the National Rifle Association, the National Right to Life Committee, Planned Parenthood, and the Sierra Club—that is, private groups voluntarily supported by millions of ordinary Americans.

Overall, independent advertising campaigns are disproportionately critical of incumbents. Those campaigns generally are funded by and represent the views of individuals and groups representing business, labor, or single-issue interests that are organized in opposition to a particular candidate or a current or proposed piece of legislation. Generally, those groups disproportionately advertise *against* someone or something, They advertise their frustrations with the voting record of particular elected officials, warning their respective memberships (and potentially sympathetic segments of the electorate) about the likelihood of "more of the same," performance wise, if a given incumbent receives another electoral endorsement.

In sharp contrast, the legislation does nothing to further limit PAC money, which goes overwhelmingly to incumbents.[71] Until 1996, proponents of campaign finance legislation had focused their energies on eliminating or sharply restricting the role of PACs.[72] Ironically, during the final 60 days of general election campaigns in the future, the channeling of third-party advertising through PACs, paid for only in hard money donations, will increase the number of PACs and the proliferation of PAC-run microcampaigns.

Restrictions on party activity to prevent corruption should be carefully weighed against the costs to political competition.

The cumulative effect of the loss of soft money and constraints on independent advertising will be to reduce political competition by limiting information.[73] Therefore, even fewer candidates will step forward to challenge incumbents in the first place, thereby further reducing political choice.

Public Financing. Advocates of public financing argue that America's privately financed political system breeds uncompetitiveness. Those advocates maintain that ever more regulation and greater public subsidies combined with voluntary spending limits (spending limits are unconstitutional unless paired with public financing) will produce more competition than the current system does or a deregulated system would.

Public financing would allegedly overcome existing barriers to entry into politics by providing challengers with a predictable source of funding. However, the empirical record suggests that public financing programs do not enhance electoral competition. Political scientists Michael Malbin and Thomas Gais's research on assorted public financing efforts at the state level found no evidence that public financing increases electoral competition. Their study concluded, "There is no evidence to support the claim that programs combining public funding with spending limits have leveled the playing field, countered the effects of incumbency, and made elections more competitive."[74] As my colleague John Samples has observed, believing that public financing will increase competitiveness constitutes the triumph of hope over experience.[75]

Presidential Public Financing with Spending Limits. The public financing of presidential elections has not spurred electoral competition in either the primaries or the general elections.[76] Proponents of public financing argue that the number of candidates who have accepted public money and run in primaries indicates that it enhances competition. In fact, that proves nothing about the effects of public financing on electoral competition. Samples's analysis of data on candidates in the presidential general elections and primaries for seven elections before and after the inception of public financing found that the presidential public funding system had no effect on candidate entry in the primaries or the general election.

Public presidential funding may be credited with three additional presidential campaigns in seven general elections (those of John Anderson in 1980, H. Ross Perot in 1996, and Ralph Nader in 2000). In comparison, the private system in place prior to 1976 produced four serious candidates, apart from the major party candidates, in the previous seven general elections. Therefore, American taxpayers spent $153 million to support presidential general election campaigns, an investment that has yielded one candidate *fewer* than the private system of financing it replaced. In addition, the data suggest that introducing public financing might have led to fewer primary candidates after 1976.

Public financing programs do not enhance electoral competition.

State-Level Public Financing. The record at the state level is no more promising as judged by the experience of Maine, a state on the cutting edge of the national movement to restructure campaign finance through public financing of political candidates. On November 5, 1996, voters passed the Maine Clean Election Act by ballot initiative. That was the first piece of state or federal legislation to offer public financing to state-level candidates who voluntarily accept spending limits and refuse private contributions. The legislation applied to state senate and house candidates beginning with the 2000 primary and general election campaigns. The success or failure of Maine's experiment may significantly influence the fortunes of comparable campaign finance restructuring efforts at both the state and federal levels. Many proponents of public financing maintain that the so-called Maine plan should serve as a blueprint for national campaign finance regulation.

An empirical analysis of the results of the 1998 and 2000 Maine state elections shows that the adoption of public financing for the 2000 election did not result in a substantially more competitive election than occurred under private funding in 1998.[77] Reformers predicted enhanced electoral competition as a result of "clean election" reforms, but the evidence for Maine implies the opposite. Comparison of districts that had "clean" candidates in 2000 with those that did not indicates that the "clean" districts displayed no improvement on two of three dimensions of electoral competitiveness, and actually performed far worse on a third. Specifically, "clean" districts exhibited no significant difference in victory margins or in contestedness (the frequency with which candidates were unopposed) relative to "nonclean" districts. In the case of openness (the tendency of incumbents to run), "clean" districts were far more likely to have incumbents running in 2000 and far more likely to have switched from an open race in 1998 to one in which an incumbent was running in 2000.

That analysis of the Maine election supports the following conclusions: the overall average margin of victory in both state senate and house races declined by a statistically insignificant margin; races for open seats that featured publicly financed candidates do not clearly show that taxpayer financing leads to more competitive elections; and, despite limits on campaign spending by incumbents, the advantages of holding office were almost impossible to overcome.

Arizona's experience with public financing tells a story similar story to Maine's. Compared with the general election of 1996, ten 1998 Arizona house races saw an increase in the number of candidates while eight saw a decrease. In the senate, eight races had more candidates while seven had fewer candidates running. However, that marginal increase in competition should not be credited to public financing. Term limits played a role in opening seats and fostering competition. Five of the eight senate races with more candidates than in 1996 involved seats opened up by term limits.[78]

At the state level, the lesson is that evidence to date does not support the proposition that public financing leads to more political competition. Instead of making incumbents more vulnerable to challenge, public financing has helped to entrench incumbents, diminishing electoral competition.

Fostering Political Competition

In their respective guises, campaign finance regulation and public financing have not improved political competition. In the past, campaign finance restrictions and taxpayer-subsidized elections have generated unintended and unanticipated consequences. The most recent regulatory round is no exception to this rule. Is it possible to identify other reform instruments that could more plausibly inject a modicum of competition into the American political system?

Redistricting Reform

As soon as congressional districts were introduced, the controversy about how to design them began.[79] Contemporary congressional redistricting efforts fall into three categories: the use of partisan panels or commissions, the use of nonpartisan or bipartisan commissions or panels, and the delegation of responsibility to the state legislature.[80] In 42 states, redistricting is the domain of the state legislature and the governor with legislators having the final say. Therefore, as political scientist Jonathan Winburn details, "Control of redistricting is fundamentally a legislative action open to manipulation for partisan gain."[81]

In three states (Iowa, Indiana, and Connecticut), redistricting panels draw the maps for congressional districts and submit them to the legislatures for approval. Iowa assigns redistricting to its nonpartisan Legislative Service Bureau, a professional body. In seven states (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming), special commissions both draw and approve the maps. A significantly larger number of states use independent commissions to redraw *state* legislative district lines.[82]

Electoral instruments such as redistricting serve to protect incumbents. Subjective criteria will always be the victim of manipulation. Redistricting that is favorable to one group is equally injurious to others. Unfortunately, there are no easy solutions to the problem. Nevertheless, removing politicians' control over redistricting and using objective redistricting criteria can help to lessen the problem. Redistricting reform is about moving in the direction of less malleable, more objective criteria.

To make elections somewhat more competitive, at least initially after redistricting, it may be necessary to use nonpartisan or bipartisan commissions or panels. Unlike most democracies, most American states place redistricting authority in the hands of politicians rather than an independent commission, such as the United Kingdom's Boundaries Commission.[83] Partisan control of redistricting presents a serious threat to the health of the American democratic system.[84] By contrast, according to political scientists Brian Schaffner, Michael Wagner, and Jonathan Winburn, "When states use bipartisan or nonpartisan redistricting methods, the majority party tends to gain little through the process, and often that party loses

Partisan control of redistricting presents a serious threat to the health of the American democratic system.

seats."[85] Typically, bipartisan commission members include the attorney general, secretary of state, or members appointed by the governor or legislative leaders. Political scientist Mark E. Rush finds that a nonpartisan redistricting procedure can "remove the prima facie basis for challenging a redistricting plan as being predatory."[86]

The preference for a diminution of partisan control has an intellectual lineage dating to the country's founding. Historian Max Farrand recounts that, "James Madison . . . espoused the concerns of legislative control over popular sovereignty in his writings and speeches around the time of the Federal Constitutional Convention. Madison trusted the 'normal process of representation' in situations where representatives share a common interest with their constituents, not one in which they 'have a personal interest distinct from that of their constituents'."[87] According to the Madison Proviso, "no democratic institution should have the final authority to determine the rules or settle the disputes about its own membership."[88]

Resolving the redistricting issue and curing gerrymandering-related abuses could entail giving the voters the authority to approve district maps.

Iowa's professionalized approach to redistricting may demonstrate that politics can be largely, if not entirely, removed from the redistricting process.[89] Four of the state's five congressional districts were potentially competitive in the first election after redistricting, which is a far higher degree of political competition than exists in other states.

It may also be necessary to adopt and rigidly apply additional objective criteria. Compactness is the most obvious criterion missing from current redistricting. Political scientists Richard Forgette and Glenn Platt recommend that districts be composed of a tightly defined area. The presumption is that representatives and constituents may find it easier to interact and communicate with each other in a compactly shaped district. A stringent compactness standard may significantly constrain electoral manipulation.[90] Before the 2010 census, redistricting software may have the ability to create, evaluate, and compare a sufficiently large number of redistricting alternatives to ensure that the most compact plan is found. Currently, software programs are effective at evaluating alternative plans. They should be used to apply a compactness measurement method. Then, the redistricting commission should be mandated to select and implement the most compact plan.

In determining the most viable path to reforming the redistricting process, it may be advantageous to make the most of federalism to encourage experimentation at the state level. A state-by-state approach to resolving the redistricting issue and curing gerrymandering-related abuses could involve the citizen initiative petition process in those states that employ this direct instrument of democracy. In practice, that would entail giving the voters the authority to approve district maps.[91] For example, in 2000 public concern over the increasingly uncompetitive nature of Arizona elections led voters in that state to approve at the ballot box the creation of an independent, five-member, bipartisan commission to draw congressional and state legislative district lines.

Liberalization of Campaign Finance

America's campaign finance system, though based on private contributions, is far from free of government intervention and subsidy. Since the early 1970s, federal law has heavily regulated all campaigns and elections, including House contests. Nevertheless, House reelection rates have continued to climb. Therefore, complaints about competition may be better directed at that regulated system.

At the very least, the heavily regulated status quo has coincided with the problem of incumbency advantage. Given that neither limits on contributions and spending nor public financing have proven themselves capable of enhancing political competition, perhaps assistance may come in the form of fewer, rather than greater, constraints on the role of money in electoral politics.

The liberalization of the campaign finance system would probably result in more campaign spending. The absence of contribution limits would permit wealthy Americans to donate far larger sums to their preferred candidates and parties. Spending more, rather than less, money on campaigns may be good for America's political health. The criticism that there is too much spending ignores the positive contribution that campaign spending makes to our representative democracy.[92]

Higher campaign spending on more campaign literature, political advertising, and grassroots activity to register, identify, and mobilize voters may produce both an electorate that is better informed about politics and a politics that is more competitive. A better informed electorate and increased political competition are worthy goals for a representative democracy. Higher campaign spending may make both goals more attainable.

The unintended and unforeseen consequences of the newest constraints on political speech serve only to further the journey of American political campaigning down a path seemingly anathema to the stated desires of the leading campaign finance regulators. Perhaps it is time to stop looking to regulations to rescue our political system.

Term Limits

In addition to campaign finance liberalization, the expansion of term limits to the congressional level in tandem with reform of the congressional redistricting process would likely point the nation's political system in a more competitive direction.

Skepticism about and distaste for political careerism are central to the American experience.[93] Nonetheless, careerism flourishes because incumbents are virtually certain to be reelected, largely because of the inherent advantages of holding office. Therefore, the effort to limit the duration of terms in elective office constitutes, in large measure, an attempt to overcome the costs of the incumbency advantage.[94]

A tradition of voluntary retirement after only one or two terms in the U.S. House of Representatives lasted until nearly the end of the 19th century.[95] From 1830 to 1850, turnover in the U.S. House averaged 51.5 percent. After the Civil War, legislative tenure gained new importance when the introduction of the seniority principle for congressional committee membership changed the dynamics of obtaining leadership positions.[96] Consequently, between 1860 and 1920 U.S. House members' average tenure increased from four to eight years and has continued to rise ever since. The average House member currently serves for 13.2 years.

Careerism poses several problems for our system of representative democracy. Careerist legislators have become a political class attentive to their own interests. In the view of conservative columnist George F. Will, "Term limits are needed as an auxiliary precaution against the perennial lust for power,"[97] as "careerism is the shared creed of Democrats and Republicans."[98]

One of the most effective ways to level the political playing field and mandate frequent legislative turnover would be to limit congressional terms through the passage of a constitutional amendment.[99] At present, 75 percent of Americans live under term limits at the state or local level, or both. Congressional term limits would immediately reduce the barriers to entry to federal politics. That is, term limits would produce more open seats, where no incumbent runs. As the long odds against ousting an incumbent deter better-qualified potential candidates from running for office, the term limits experience at the state level suggests that congressional term limits would attract a different kind of candidate and, consequently, would provide far more citizen legislators, that is, people who are not professional politicians.[100]

Term limits have made state and local elections much more competitive.[101] As expected, turnover rates have increased. On average, term-limited legislatures have lost a third of their pre-term-limits incumbents.[102] The number of special elections increased as term-limited incumbents left office early to take private-sector positions or to begin campaigning for other offices. In 2004, term limits prevented 261 legislators in 12 states from seeking reelection. The projected tendency of lame duck, term-limited legislators to shirk their duties appears to be mitigated by the fact that term limits may "merely focus the reelection goals of legislators on other offices. Legislators might

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Elected officials should be disconnected from campaign— and election—rule making and regulation.

attempt to move up to statewide office, run for congressional seats, or even drop down from a legislature's upper house to its lower chamber."[103] As economists John R. Lott Jr. and Kermit Daniel explain:

> Making the date that incumbents leave office more certain encourages the entry by challengers even before the seat becomes vacant, if only to be better positioned once the incumbent does leave. . . . Term limits may thus make elections more competitive even before politicians find them binding.[104]

Traditionally, incumbents have been able to insulate themselves from serious competition. However, experience at the state level suggests that voter choice is increased by term limits. Under term limits, far more people are running for elective office, with record numbers of candidates in such disparate states as Arkansas, Michigan, and Oklahoma. Political scientist Richard Powell found increased competition for U.S. House seats where state legislators are term limited.[105] Political scientists Wayne Francis and Lawrence Kenney found a comparable increase in competition for state senate seats.[106]

Since the introduction of term limits in 1994, California has experienced relatively crowded, competitive state primaries and general elections. Impending term limits serve as a stimulus to political competition. The prospective imposition of term limits on the California state legislature more than doubled voluntary turnover (from 11 to 25 percent) in two years.[107] In California the average turnover rate between 1972 and 1992 was 20 percent in the state assembly and 12 percent in the state senate. Since 1990 the assembly's turnover rate has grown to 36 percent and the senate's turnover rate has risen to 17 percent.[108] Political scientist Stanley M. Caress found a 20 percent increase in the number of voluntary retirements and an increase in the number of special elections from an average of 1 per year between 1980 and 1989 to an average of 10 per year between 1990 and 1993.[109] The imposition of state-level term limits in 1990 led to a 1992 increase of more than 25 percent in candidate filings for the state senate and more than 50 percent for the state assembly. Lott and Daniel concluded that

> California's legislative term limits . . . races have become closer contests and more candidates are running for office. By any measure, term limits have coincided with large changes in the level of political competition. . . . The changes are so large that more incumbents are being defeated, races are closer, more candidates are running, and fewer single candidate races occur than at any other time during our sample period.[110]

Term limits were also relatively effective at opening up Maine's electoral process to greater competition. The state's term limits also came into effect in 1996 and caused a 40 percent turnover of the state legislature, an institution that prior to term limits had featured turnover in the 25 to 30 percent range. Interestingly, newly competitive seats benefited more from the introduction of term limits than from the introduction of taxpayer financing.[111] In Colorado, in the term-limited state senate elections, the number of candidates per seat was 35 percent higher than in the non-term-limited state senate races.[112] In Michigan, 67 of 110 state house legislators ended their final terms in 1998; 64 new legislators entered the state house following the 1998 elections.[113] In the South, half of the 100-seat Arkansas state house opened up in 1998 as a result of the 1992 term limits law.[114] Meanwhile, Florida's term limits came into effect in 2000. Consequently, 55 of 120 state House members and 11 of 40 state senators were term limited out of office. During the 1992–2000 electoral cycles, Floridians observed an unusually high number of long-time incumbents either retire or run for higher office. On November 7, 2000, Florida's voters elected first-time legislators to 52.5 percent of state house seats.[115] Ohio's term limits also did not come into effect until 2000. Ohio's March 2000 primary slate was the most crowded in 20 years with an uncharacteristically high number of nominations unresolved until primary day.[116] Seventy percent of Ohio state house members and 79 percent of state senators were term limited out of office. Prior to term limits, turnover in Ohio ranged from 15 to 20 percent.[117]

Unsurprisingly, a bipartisan majority of incumbent politicians continues to oppose term limits. A survey by the Council of State Governments found 76 percent of politicians opposed to term limits.[118] Term limits foreshadow electoral changes that are unsettling for career politicians. Incumbents fully appreciate that, absent term limits, it is unlikely that the currents of public opinion will rock the careerist politicians' electoral ship.

Term limits advance representative democracy by guaranteeing the regular turnover of politicians in and out of office. Without term limits, the average challenger finds it extremely difficult and expensive to overcome the inherent advantages of incumbency. This remedial measure remains overwhelmingly popular and appears effective at fostering political competition.

Conclusion

American representative government suffers from the handicap of a largely uncompetitive political system. Current redistricting and campaign regulatory practices, in tandem with publicly financed careerism, have significantly negative consequences for the health of the political system. Therefore, changes in the manner in which districts are designed, campaigns are funded, and politicians are tenured need serious consideration. In short, elected officials should be disconnected from campaign—and election—rule making and regulation. There will not be an improvement in political competition until the incumbent fox ends his tenure as guardian of the democratic henhouse.

Notes

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