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Notes

UTILIZING CORPORATE COMPLIANCE METHODOLOGY TO ASSESS THE EFFECTIVENESS OF ELECTIONS

SAMUEL C. DAMREN[1] AND NATHANIEL J. DAMREN[2]

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I. INTRODUCTION

Applying rules of corporate law to assess the effective workings of governmental structures is not new. Samuel Issacharoff and Richard Pildes previously applied principles of anti-trust law[3] and corporate standards prohibiting self-dealing[4] to the analysis of the gerrymandering of election districts to the United States House of Representatives and other aspects of federal elections law. While again borrowing from corporate law, the analysis suggested here is different. It applies components of compliance programs, specifically "risk assessments" and "periodic evaluations," to measure the effectiveness of federal congressional elections by comparing the Founders' original design and expectations with present day results. The implications of this non-partisan analysis apply to Michigan and every other state in both their federal and state legislative structure and elections. However, this article focuses on federal congressional results as they present the largest available source of information over the longest period of time for analysis.

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1. Member, Dykema Gossett PLLC, 400 Renaissance Center, Detroit, Michigan.
2. Juris Doctor, 2011, DePaul University College of Law.
3. Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593, 594 (2002).
4. Samuel Issacharoff & Richard H. Pildes, *Politics As Markets: Partisan Lockups Of The Democratic Process*, 50 STAN. L. REV. 643, 648 (1998).

This article is divided into three sections. The first section sets forth a generalized methodology for making, updating and evaluating risk assessments as part of a compliance program. The second section assesses the effectiveness of representative democracy in federal congressional elections in the United States. This part of the analysis has twin objectives: first, to dispel the notion that in judging the adherence to the rule of law, the present day system of representative democracy in the United States is a model without fault; second, to demonstrate that even well-designed institutional components of a system of representational democracy can be undermined if these components are not periodically assessed and reconfigured. Larry J. Sabato previously raised several of the flaws identified in this assessment in *A More Perfect Constitution*.[5] However, the instant analysis advances and extends those criticisms to further "stir the pot."[6] The third section compares the balance of risks contained in the original design of congressional elections with current operations and results, and concludes that the failure to monitor "compliance" with the Founders' original design and to periodically re-balance our system of checks and balances limits the remedial options now available.

II. COMPLIANCE METHODOLOGY AND QUALITY CONTROL

A compliance program is functionally equivalent to a "quality control" protocol. The "product" that a compliance program measures is not a "widget" but the degree to which an organization complies with regulations and meets its legal and ethical obligations and intended goals.[7] The general structure for a compliance program is set forth in the *Federal Sentencing Guidelines*.[8] The implementation of the "risk assessment" component begins by cataloging the universe of risks to an organization, analyzing where in the organization these risks might occur and then prioritizing the risks.[9]

As part of the overall structure of a compliance program, the *Federal Sentencing Guidelines* require organizations to "evaluate periodically the effectiveness of the organization's compliance and ethics program[s]."[10]

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5. LARRY J. SABATO, A MORE PERFECT CONSTITUTION 233 (2007).

6. *Id.*

7. *See* David Collins & Samuel Damren, *Persuading Business Clients to Implement Gold Plated Compliance Programs: Sell it as Quality Control*, *in* BEST PRACTICES FOR CORPORATE GOVERNANCE AND COMPLIANCE (2008).

8. FEDERAL SENTENCING GUIDELINES MANUAL (2010).

9. *See* STEPHEN A. MILLER & ROBERT A. WADE, THE HEALTHCARE COMPLIANCE PROFESSIONAL'S GUIDE TO RISK ASSESSMENTS (2007).

10. FEDERAL SENTENCING GUIDELINES MANUAL, *supra* note 8, at §8B2.1(b)(5)(B).

Periodic evaluations of compliance programs are an integral component of "best practices" for corporate governance. Organizations that meet these high standards recognize that merely having an ethics code, an assigned compliance officer, and adequate staff is insufficient to assure compliance effectiveness. The self-evident goals of a compliance program include encouraging behavior that is ethical and within the scope of required regulatory and legal conduct, while preventing and detecting unethical and illegal conduct. The goal is not only to have high standards, but also to meet them. The methodology for making these periodic assessments focuses on comparing organizational structure and operational results with originally intended goals.

The *Federal Sentencing Guidelines* do not prescribe a methodology for periodic evaluations of compliance programs or for the periodic risk assessments that compliance programs must undertake. Nevertheless, at a minimum, each periodic assessment should verify that the compliance program is fully operational, not just a "paper" program, and should include a "sampling" of organizational data that might provide evidence of both effective and ineffective compliance procedures. However, to meet best practices standards, a sound periodic risk assessment also should seek to identify operational weaknesses in quality control by comparing actual results of production with the intended goals and structure of the business model.

To make this assessment, the assessor first must identify the organizational components or groups relevant to a given legal or regulatory requirement, how they interrelate, and the tensions between and among them in meeting applicable legal, ethical, and regulatory rules. Next, the assessment must widen its scope to include other constituencies both within and outside the organization that, directly and indirectly, affect these same tensions and the overall success of the organization in meeting intended goals. The assessor then determines how the risks and rewards associated with the activities are allocated within the organization and the mechanisms that check and balance those allocations. The overall purpose is to isolate circumstances where operational risk, motives, neglect, and possibilities for illegal and improper conduct are the greatest. The analysis is familiar: assess motive, opportunity, gaps, the "shelf life" of wrongful conduct before its detection and available remedial measures. This is best explained by example.

In the mortgage lending business, there is typically a division between groups of employees charged with procuring and encouraging potential borrowers to secure loans and other employees charged with conducting appropriate due diligence to ensure that the borrower and collateral are creditworthy. There are several reasons for this division of

labor. First, the personality that makes a salesperson successful is rarely consistent with the skeptical perspective of a person charged to conduct due diligence. Second, if not directly rewarded through commissions, a salesperson's reward is almost always tied in some manner to productivity. As a result, a salesperson has every reason to place as many loans as possible irrespective of potential repayment problems "down the road." Third, since the lender – not the salesperson – lives with the potential risks of the loan, the lender has a substantial incentive to ensure that other employees within the organization make independent assessments of the risks.

For decades, this traditional division of function, risk, and reward operated so successfully that mortgage companies were able to reliably predict the percentage of particular types of loans that would default compared to those that would be fully satisfied. This predictability led to the implementation of a new business model. Pursuant to this model, lenders began to "bundle" varieties of loans in packages to sell down the financial services foodchain at a discount so that originating lenders could invest the profit from these transactions to make even more loans. The sales pitch for this altered business model was that, given the reliability of predicting default rates, and by placing different varieties of loans in a single package, the "down the road" risk of default was diversified, thereby minimizing the risk of purchasing these bundles. Nonetheless, there was a problem with this new business model that many lenders did not initially appreciate: because the originating lender would now "flip" their loans to other lenders long before maturity, the incentive for originating lenders to conduct thorough due diligence was separated from the "down the road" risks that the loan would ultimately default. This separation of reward and risk was a fatal flaw.

Beginning in the late 1990s some originating lenders in the subprime housing market, as a result of this altered business model, began to substantially reduce the intensity of their initial due diligence and scrutiny of borrower qualifications in favor of promoting quick turnaround profit through the sale of bundled loans. Over time lending criteria were loosened and more and more less qualified borrowers were approved. This reduced due diligence became exacerbated each time mortgage bundles were placed in even larger packages by purchasing lenders for additional downstream sales and thus further distanced from the originating lender. In the short term, these changes did not immediately impact originating lenders because they had transferred the risk of borrower default to lenders down the financial foodchain. But the shelf life of this short-term business model expired in the summer of

2008, and the impact on the subprime mortgage lending business was calamitous, extending outward to the entire economy.[11] To their credit, many well-advised banking institutions have corrected this flawed business model and put protections in place to guard against any reoccurrence.

Whether applied to traditional or new models of organizational activity, the methodology to identify structural weaknesses in an organization's operational model cannot be applied by rote. Consistent with the above example, traditional organizational models can often succeed for years, only to become misaligned because they fail to account for changing circumstances, or because they alter an aspect of their business model without fully evaluating the effect. Accordingly, periodic assessments of the effectiveness of an organization's models in operation, whatever the "product" under review, is essential for risk management. This type of analysis is not a checklist, an equation, or an algorithm. While organizations in similar industries or types of businesses have similar components and constituencies, the allocation of risks and rewards is always idiosyncratic. Fraud, neglect, greed and similar behaviors are a risk to organizations that, like a meandering stream of water, seek the lowest and weakest points in the environment to spread.

This same methodology also can be applied to assess whether and to what extent the structure of government institutions in operation actually produces by accomplishing goals. One example is the comparison of the operation and "product" of today's federal elections for U.S. Senators and Representatives with the expectations for the operation of American representative democracy as originally designed by the Founders.

III. AN ASSESSMENT OF THE EFFECTIVENESS OF TODAY'S FEDERAL CONGRESSIONAL ELECTIONS IN DELIVERING THE FOUNDERS' ORIGINALLY INTENDED GOALS

In today's world, a healthy form of representative democracy includes the following minimal components:

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11. *See* MICHAEL LEWIS, THE BIG SHORT: INSIDE THE DOOMSDAY MACHINE at 225, 237-252 (2010). As Lewis notes in *The Big Short*, while most did not, a small number of Wall Street analysts correctly predicted that the new subprime mortgage business model was unsustainable and some made billions of dollars in profits by hedging against it. *Id.* at 24.

- One person – one vote;[12]
- That no group or class of individuals should have privileged status or unfair advantage in the electoral process;[13] and
- That no candidates or class of candidates be able to "rig" the electoral process.[14]

A. The United States Senate

At the time that the United States Constitution was adopted, the Founders divided the legislative function into two branches: the Senate and the House of Representatives. The Founders provided that each of the thirteen states elect two senators each with six year terms, as a balance to the two year terms of members in the House of Representatives, who would represent smaller but equal numbered groups of citizen voters. A principal reason for this division was the Founders' belief that longer terms and the inviolate state boundaries established for selection of Senators would balance and check the more volatile voter swings anticipated in the shifting boundaries for the selection of shorter termed House representatives.[15] For over one hundred twenty years, Senators were selected by state legislatures. In 1913, as a result of widespread corruption in senatorial selections by state legislatures, this process was changed through ratification of the Seventeenth Amendment, and thereafter, voters of each state selected their Senators directly.[16]

Despite the absence of direct election of Senators in the Founders' original design, the allocation of voter power on a per-state basis constitutes an instance where one group of voters in a particular state have an advantage over the voters of another state. For example, a state with a population of 100,000 selects two Senators; just as a state with a population of 500,000 selects two Senators. Thus, the voters of the less populated state have five times the power, on a per capita basis, of the

12. MICHAEL L. BALINSKI & H. PEYTON YOUNG, FAIR REPRESENTATION: MEETING THE IDEAL OF ONE MAN, ONE VOTE 1-3 (2001).

13. Glenn P. Smith, *Interest Exceptions to One-Resident, one-Vote: Better Results from the Voting Rights Act,* 74 TEX. L. REV. 1153 (1996) (citing the history of the elimination of land ownership as a qualification for suffrage).

14. Henry F. Carey, *Irregularities or Rigging: The 1992 Romanian Parliamentary Elections*, 29 EAST EUR. POL. & SOCIETIES, 43-66 (1995).

15. *See infra* Part IV.

16. U.S. CONST. amend. XVII.

voters of the more populated states in determining the composition of the Senate.

When the first census was conducted in 1790, the thirteen original states had a population of 3.9 million.[17] Virginia had the largest population (approximately 750,000) and Delaware the smallest (approximately 60,000).[18] The ratio between the most populated and the least populated state was 12.5 to 1. Thus, it was clearly acceptable to the Founders for citizens in the least populated state to have 12.5 times the power to determine the composition of the U.S. Senate as citizens in the most populated state. Circumstances, however, have dramatically changed since the 1790 census. As Sabato observed in *A More Perfect Constitution* "a powerful case can be made that today's Senate has taken the Founders' desire to an extreme."[19] Consider:

> In 2004 that ratio was an incredible 70 to 1 between California and tiny Wyoming. Therefore the current Senate is absurdly skewed in the direction of the small states. Theoretically, if the twenty-six smallest states held together on all votes, they would control the U.S. Senate, with a total of just under 17 percent of the country's population.[20]

The U.S. Census Bureau's *State Resident Population-Projections: 2010 to 2030* [21] anticipates an even more significant increase in these ratios over the next twenty years. In 2030, California is predicted to have 46.5 million residents compared to Wyoming's 523,000. Thus, the ratio between the resident population of our most and least populated states may swell to 90 to 1 in 2030. At that time, the Wyoming voter will have ninety times the power of each California voter to determine the composition of the Senate. However, to assess whether the power of the most highly populated states compared to the least populated states is consistent with the Founders' original allocations, the ratios existing at the time of the Founders' original design must be compared to the ratios existing today and the projections for the future.

In his review of the changes in these allocations of voter power between the 21st century and 1790, Sabato noted the 70:1 ratio between

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17. U.S. CENSUS BUREAU, FIRST CENSUS OF THE UNITED STATES: 1790, at 4 (1793), http://www.census.gov/prod/www/abs/decennial/1790.html (the population estimate includes both free persons and slaves).

18. *Id.*

19. SABATO, *supra* note 5, at 24.

20. *Id.*

21. U.S. CENSUS BUREAU, THE 2008 STATISTICAL ABSTRACT, ch. 14, *available at* http://www.census.gov/compendia/statab/2008/cats/population.html.

the most and least populated states in 2004 compared to the 12.5:1 ratio in 1790, as well as the increased power of lesser populated states to determine the composition of the Senate.[22] But that is not the truly significant change. Appendices A, B and C rank the states in order of population, the number of senators and percentage total of the entire Senate in 1790, 2010, and as projected in 2030.[23]

In 1790, the most populated state (Virginia) had 20.6% of the total population; whereas in 2010 California had only 12.1% of the total population. Rather, the significant change between 1790 and 2010 is in the proportionate increase in the number of states with small populations. While Sabato noted the increased power of America's less populated states in determining the composition of the Senate, he did not focus on how disproportionate this allocation of state voter power had become in the last two centuries.

In 1790, Delaware, the least populated state, had 1.6% of the population of the country but still selected two Senators. In 2010, however, there were twenty-nine states with population percentages equal to or less than 1.6% of the country, ranging from Wyoming at 0.2% to Colorado with 1.6%. In 1790, Delaware with 1.6% of the population accounted for 1/13 or 7.7% of all states. In 2010, states with a population of no more than 1.6% accounted for 29/50 or 58% of all states and could elect 58 senators. These twenty-nine states combined have a total population of 22.5% of the country.

The next least populated state in 1790 was Rhode Island with 1.9% of the country's population. In 2010, thirty-three states had populations of 1.9% or less of the country's population. In 1790, Delaware and Rhode Island, with 3.5% of the total population of the country (1.6%+1.9%), were allotted 15.4% of senators; in 2010 states with populations of 1.9% of the national total (or less), accounted for 66 senators, and 29.9% of the country's total population. The next least populated state in 1790 was Georgia with 2.3% of the population. In 2010, there were thirty-eight states with populations less than 2.3% of the total country that together comprised 40.4% of the country's entire population. These thirty-eight states account for 76 senators.

In 1790, states with populations of 2.3% or less comprised only 5.8% of the total population of the country and controlled 23.1% of the Senate.

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22. SABATO, *supra*, note 5 at 24.

23. The Appendices were compiled based on data contained in the 1790 Census, *supra* note 17; the 2030 Projection, *supra* note 21; and the 2010 Census of state populations in U.S. CENSUS BUREAU, POPULATION DISTRIBUTION AND CHANGE: 2000 TO 2010, *available at* http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf. The data analyzed throughout Part III.A are compiled therein.

In 1790, Senators from the seven least populated states, representing 28.1% of the country's population, could theoretically control a majority of Senate seats. The more relevant percentage is the current and projected population of the twenty-one smallest states. Due to the Senate's internal rules, specifically the filibuster, it takes only forty-one Senators to block the passage of legislation. In 1790, had the current rules of filibuster been in effect, a group of twelve Senators representing 21.3% of the country's population could block the enactment of federal legislation. However, in 2010, a group of forty-one Senators representing only 11.3% of the population could do so; in 2030 that percentage is projected to be 10.5%. As these comparisons demonstrate, whether directly elected or designated by state legislatures today's least populated states have a far greater allocation of power to determine the composition of the Senate than the Founders originally intended. Leverage and advantage, whether in business, politics, or in any competitive activity, is always exploited.

There are many theoretical alternatives to correct this imbalance. Sabato urges that the Constitution be amended to rebalance the current allocation of voter power among the states to determine the composition of the Senate through the addition of thirty-five Senators apportioned among the most populated states. One impediment to this remedy that Sabato does not address is Article V of the Constitution, which prohibits amendments that would deprive a State of "equal Suffrage in the Senate" without its consent.[24] Notwithstanding this impediment and because he urges that other portions of the Constitution be amended as well, Sabato suggests that a national convention be called for the purpose of proposing amendments pursuant to another provision of Article V.[25] This provision permits two-thirds of state legislatures to call for a national convention and that three-quarters of the states approve any amendments proposed by the convention. In 1790, four of the original thirteen states could have blocked any amendment to the Constitution. The four least populated states in 1790 had 9.7% of the country's total population. Perhaps ironically, today it would take the opposition of thirteen states to block an amendment. In 2010, the thirteen least populated states accounted for only 4.5% of the country's population. It is unlikely today that thirteen of our least populated states would surrender their disproportionate power to elect 26% of the Senate by amending the Constitution.

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24. U.S. CONST. art. V.

25. SABATO, *supra* note 5, at 8, 199-200.

B. The United States House of Representatives

Consistent with their original system of checks and balances, the Founders designed the process for the selection of members to the House of Representatives to encourage the greatest direct accountability between individual voters and their representatives. The Founders originally anticipated that elections for two-year terms in the House would produce volatility and result in more frequent changes in membership than would the staggered selection of senators to six-year terms. For many decades this was an accurate prediction. However, the results of federal elections to the House over the last half-century contradict the original assumption.

The non-partisan public interest group, FairVote, has published an assessment of the level of competition in House elections from 1992 to 2008. The assessment includes detailed mathematical analyses of votes, state-by-state and district-by-district. In the 2008 edition, entitled *Dubious Democracy 2008*, the group notes:

> *Dubious Democracy* has one overriding message: although our constitutional framers gave the House of Representatives extraordinary powers and, of all the branches of government, the clearest accountability to the American people, that accountability has been destroyed beyond all recognition. This breakdown of democratic accountability can be measured in different ways. Here are two:
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> Accountability of leadership: since 1952, the White House has changed partisan control seven times in 14 elections, while voters have changed control of the U.S. House just twice in 28 elections. This means that voters are seven times more likely to change the party running the White House, than "the people's house."
>
> Voter choice: the last decade of elections resulted in the two least competitive House elections in American history by most standards. In each of the four national elections between 1998 and 2004 more than 98% of incumbents won, and more than 90% of all races were won by non-competitive margins of more than 10 percentage points. In 2006 and 2008, the elections competitiveness was slightly improved, but still 95% of

> incumbents won and 87% of all races were won by non-competitive margins of more than 10 percentage points.[26]

The 2008 Report points to several factors that contribute to these results:

> Winner-take-all elections held with plurality voting rules tend to limit general elections to candidates from two parties. Given that the great majority of geographically-defined areas in the nation show clear preference for one party over the other, most incumbents have virtually a free ride in general elections because their party is preferred in their district. The problem of lack of competition, even in those relatively few districts that are more balanced, has become more pronounced for several reasons: incumbents and parties are more sophisticated about what incumbent officeholders should do in serving their district to shield themselves from competition; new computerized methods of redistricting, combined with the need to draw new districts every ten years and the lack of nonpartisan standards governing the process, increase more districts with a tilt toward one party and/or particular incumbents; those partisan tilts are more decisive than ever because the national parties have become quite distinct in most voters' minds, leading to less ticket-splitting. [27]

In the first twenty-eight elections to the House of Representatives, partisan control of the House changed nine times. In the next twenty-eight elections, from 1848 to 1904, partisan control again changed nine times. In elections from 1904 to 1960, partisan control of the House changed seven times. From 1960 to today, it has changed only three times, with the most recent change in 2010.[28] From America's founding through the middle of the Twentieth Century, the Founders' expectation of volatile House election and frequent changes to membership of the House was realized. Recently it has all but vanished. Since the late 1950s, many of our presidential elections have been won by razor thin margins. As a result, during this period one might have expected elections to the House of Representatives to have been much more

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26. *Dubious Democracy 2008: Overview and Data*, FAIRVOTE, www.fairvote.org/dubious-democracy-2008 (last visited Mar. 23, 2012).

27. *Id.*

28. *Party Divisions of the House of Representatives (1789-Present)*, U.S. HOUSE OF REPRESENTATIVES: OFFICE OF THE CLERK, http://artandhistory.house.gov/house_history/partyDiv.aspx (last visited Feb. 22, 2012).

competitive than they turned out to be and that partisan control over the House would have changed at least as frequently as partisan control of the Presidency.

Understanding the absence of this correlation requires an analysis of what has changed in the requisites for being successfully elected to the House of Representatives over the last half century. Based on the analysis contained in this article, in order to be assured of election in the House today, a candidate must: (1) be either a Republican or Democrat; (2) be an incumbent; (3) pick the right District to run in since most Districts, as a result of gerrymandering, are strongly slanted toward one party or the other; and (4) outspend his opponent.

Sabato recognized that the influence of these factors caused many recent congressional races in House to be non-competitive.[29] However, the recent sky-high re-election rates for House incumbents reflect the functional success, which Sabato did not identify, of the "Republican/Democrat Duopoly."[30]

Given the intense volleys of invectives and libels tossed across party lines today, it is difficult to conceive of the Democratic and Republican parties ever cooperating on any project. But, in a functional sense, they work hand and glove in all but guaranteeing that each party's well-funded incumbents in the House of Representatives will be re-elected. From an operational perspective, the "product" of the Republican/Democratic Duopoly (or the "Duopoly Party") is successful incumbent re-elections. And as first borne out by a Congressional Research Service report in 1995, the Duopoly Party's "production levels" have been on a steep rise since the mid-20th Century. [31] Notwithstanding the 2010 elections, since 1994, the rates for successful incumbent reelections have reached and exceeded 95%.[32]

A duopoly, like a monopoly, prevents fair competition by limiting access to the market in order to preserve the status quo of its dominance. The most pervasive instance of the exercise of this power by the Duopoly Party in American politics is in the gerrymandering of electoral districts for the House of Representatives. Whether the party conducting the gerrymandering is Democrat or Republican, the result is the same: more "safe" Republican and Democratic seats are created. If the Republicans gerrymander, more Republican than Democratic safe seats are created; if

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29. SABATO, *supra* note 5, at 33-37.

30. Terry Smith, *Parties and Transformative Politics*, 100 COLUM. L. REV. 845, 867 (2000).

31. *See generally* DAVID C. HUCKABEE, CONG. RESEARCH SERV., 95-361 GOV, REELECTION RATE OF HOUSE INCUMBENTS: 1790-1994 (1995).

32. *Id.*

the Democrats gerrymander, more Democratic safe seats are created than Republican. However, from the perspective of those who believe their views are underrepresented by either party, that Democrats may have gerrymandered more safe seats than Republicans or vice versa is of little consequence. No matter which of the two partners to this duopoly succeeds in carving up the electoral marketplace to benefit its incumbents, access to the market for citizens whose views are underrepresented by either party is denied.[33] More importantly, and in contrast to the Founders' original design and expectations, today well-funded incumbents face no real threat to re-election provided they are competitively funded.[34]

The value of incumbents to their Party cannot be over-estimated. Democratically conducted elections are intended to produce representatives that reflect a majority of the electorate, who should then work to enact legislation broadly in accordance with those views. Thus, from a macro-level of political analysis, every two years, newly elected Representatives to the House pose a threat to the status quo. But the power of freshman Representatives and Senators to influence lawmaking is limited by seniority rules in both chambers. In Congress, chairpersons of the committees who achieve their position through seniority set the legislative agenda. These seniority rules amplify the power of

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33. Richard L. Hanson, *Entrenching the Duopoly: Why the Supreme Court Should Not Allow the States to Protect the Democrats and Republicans From Political Competition,* 1997 SUP. CT. REV. 331, 355-361 (1977); Gregory P. Magarian, *Market Triumphalism, Electoral Pathologies and the Abiding Wisdom of First Amendment Access Rights*, 35 HOFSTRA. L. REV. 1373, 1418 (2007). The disadvantage to third parties caused by the innumerable advantages enjoyed by the two party system have also been pointed expressed by the United States Supreme Court in *Clingman v. Beaver*, 544 U. S. 581 (2005). In *Clingman*, the Court opined that:

> The Libertarian Party of Oklahoma is not the only loser in this litigation. Other minor parties and voters who have primary allegiance to one party but sometimes switch their support to rival candidates are also harmed by this decision. In my judgment, however, the real losers include all participants in the political market. Decisions that give undue deference to the interest in preserving the two-party system, like decision that encourage partisan gerrymandering, enhance the likelihood that so-called "safe districts" will play an increasingly predominate role in the electoral process. Primary elections are already replacing general elections a the most common method of actually determining the composition of our legislative bodies. The trend can only increase the bitter partisanship that has already poisoned some of those bodies that once provided inspiring examples of courteous adversary debate and deliberation.

Clingman, 544 U.S. at 619.

34. Lani Guinier, *Supreme Democracy: Bush v. Gore Redux*, 34 LOY. U. CHI. L.J. 23, 40-1 (2002).

incumbents. The Duopoly Party's focus on reelecting incumbents represents a smart allocation of resources, but further entrenches the status quo.

Gerrymandering activities have been practiced in America since colonial times, although they did not receive that moniker until later.[35] Over the past several decades, there has been a radical increase in the predictive capacity of gerrymandering activities due to computers, polling techniques, and the ability of the parties to identify their partisans through all manner of media, mass mailing, telecommunications, and the internet.[36] Through these technological advances, gerrymanders can now more fully realize the ultimate objective of their trade: to allow incumbent members of the House to "pick" their own voters rather that vice versa.[37] Finally, there is money.[38] Modern congressional campaigns are very expensive: they occur every two years, and since the 1980s their costs have doubled every decade.[39]

The Duopoly Party draws district lines to secure the seats of their incumbents and rewards senior incumbents with superior legislative power. Each partner in the Duopoly Party is a "brand name" that supplies consistent and abundant funds to finance congressional campaigns. The combination of all these factors has resulted in a "tipping point" beginning in 1960 for House incumbents where challengers rarely have the chance to even mount a competitive race, much less win. The *Dubious Democracy 1982-2010* report, discussing the 2010 elections, notes that this circumstance did not really change despite the unusual number of incumbent losses.[40] According to *Dubious Democracy*, those results masked several other highlights of the election:

> Unusually high seat changes amidst generally lopsided races. 54 incumbents lost to challengers even as two-thirds of incumbents

35. E. GRIFFITH, THE RISK AND DEVELOPMENT OF THE GERRYMANDER, 26-28 (1974).

36. Alex J. Whitman, *Pinpoint Redistricting and the Minimization of Partisan Gerrymandering*, 59 EMORY L. REV. 211, 234-5 (2009).

37. Michael J. Balinski, *Fair Majority Voting (or How to Eliminate Gerrymandering)*, 115 AM. MATHEMATICAL MONTHLY, no. 2, 2008, at 97; Magarian, *supra* note 33, at 1418-19.

38. Micah Ahman et al., *Pushbutton Gerrymanders*, *in* PARTY LINES: COMPETITION, PARTISANSHIP AND CONGRESSIONAL REDISTRICTING (Thomas E. Mann & Bruce E. Cain eds., 2002); Richard E. Cohen, *When Campaigns are Cakewalks*, 34 NAT'L J., no. 11, 2002, at 776-78.

39. THOMAS PATTERSON, THE AMERICAN DEMOCRACY 305 (2008).

40. *See Dubious Democracy 1982-2010*, FAIRVOTE, http://www.fairvote.org/dubious-democracy-1982-2010.

> were re-elected by "landslide" margins of a least 20 percentage points.
>
> Landslide wins continue. In even states, every race was won by a landslide margin of at least 20 percentage points. Only six states (all with one or two seats except for New Mexico, with three) recorded no landslide win.
>
> High victory margins. The average victory margin was a whopping 33 percentage points. Six of every ten (64.4%) U.S. House races were won by landslide margins of at least 20 percentage points. Only 81 races (18.6%) were won by competitive margins of less than 10 percentage points.
>
> Apathy and representation. Nearly two in three eligible voters did not vote for a winning U. S House representative.[41]

That two-thirds of eligible voters did not vote for a winning House candidate is astounding and demonstrates the abject failure of House elections to perform the role in our political system of checks and balances as envisioned by the Founders.

In configuring their original allocation of voter power, the Founders envisioned the House of Representatives as the institution most directly accountable to the voters. That accountability has been frustrated by the present dominance of the Duopoly Party in assuring the re-election of incumbents. Today's voters elect incumbents to the House who function more as proxies for their party than as individual statesmen or as true representatives of their constituents. It is a new and overriding factor the Founders' did not consider in their original configuration of checks and balances. As a result, in contrast to the Founders design, the House of Representatives is now the least responsive institution in congressional elections to voter choice instead of the most.

Until the Supreme Court's decision in *Citizens United v. Federal Election Commission*[42] holding that corporations have the same First Amendment political speech rights as individuals and thereby permitting unlimited corporate funding for independent political broadcasts and "electioneering communications," re-election to the House for an incumbent was a virtual certainty. The *Citizens United* decision undercuts that advantage for poorly funded incumbents facing well-funded adversaries. Indeed, although the 2010 election resulted in a

41. *Id.*
42. Citizens United v. Fed. Election Comm'n, 130 S. Ct. 876 (2010).

change of control of the House, an analysis of the results demonstrates that it is the exception that proves the rule of incumbent advantage. Each of the three changes in party control of the House since 1952 occurred during mid-term elections, when voter turnout is traditionally significantly less than in presidential elections. As a result, highly partisan voters are disproportionately represented in the constituencies of non-Presidential elections.[43] This disparity is even more pronounced in primary elections. In 2010, several House Republican incumbents – who were not well-funded and faced Tea Party candidates – suffered seemingly surprising defeats.[44] Ironically, a significant number of the primary victors backed by the Tea Party went on to suffer defeat in the 2010 general election.[45]

While some hailed the Supreme Court's landmark decision in *Citizens United* as a victory for free speech, campaign finance expert Jan Baran also welcomed the decision as a victory over incumbent politicians. "The history of campaign finance reform," Baran noted, "is the history of incumbent politicians seeking to muzzle speakers, any speakers, particularly those who might publicly criticize them and their legislation."[46] Critics, on the other hand, took issue with the manner in which the decision seemed to enhance the purchasing power of concentrated capital. Laurence Tribe, an eminent scholar of constitutional law, argued that the majority's characterization of "a business corporation as merely another way that individuals might choose to organize their association with one another to pursue their common expressive aims . . . obscures the very real injustice and distortion entailed in the phenomenon of some people using other people's money to support candidates they have made no decision to support, or to oppose candidates they have made no decision to oppose."[47]

Research conducted by Professor John Coates indicates that corporations with weaker, less shareholder-friendly corporate

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43. Martin P. Wattenburg & Craig L. Brians, *Partisan Turnout Bias in Midterm Legislative Elections*, 27 LEGIS. STUD. Q. 407-421 (2002).

44. Aaron Blake, *Tea Party Challengers Set Their Sights On House Incumbents*, WASH. POST, Oct. 10, 2011, http://www.washingtonpost.com/blogs/the-fix/post/tea-party-challengers-set-their-sights-on-house-incumbents/2011/10/06/gIQAz6hzZL_blog.html.

45. Charles S. Bullock, III, *The 2010 Elections*, *in* SARAH PALIN, THE TEA PARTY AND THE 2010 ELECTIONS 1-10 (2012).

46. Jan Baran, Op-ed, *Stampede Toward Democracy*, N.Y. TIMES, Jan. 26, 2010, at A23.

47. Laurence Tribe, *What Should Congress Do About* Citizens United*?*, SCOTUSBLOG (Jan. 24, 2010), http://www.scotusblog.com/2010/01/what-should-congress-do-about-citizens-united/.

governance have been more likely to engage in corporate political activity, and spend more when they do.[48] Professors Lucian Bebchuk and Robert Jackson have argued that the interests of directors and executives may significantly diverge from those of shareholders with respect to decisions about appropriate political speech, that these decisions may carry special expressive significance from shareholders, and that as a result of the decision in *Citizens United*, new laws providing shareholders with a greater role in determining how corporate money is spent on political activity would be beneficial to shareholders.[49]

C. The Role of the Executive and the Supreme Court

The executive branch has no means to address the imbalances set forth above in this article. Likewise, the Supreme Court does not have any constitutional methodology to address the current imbalances of voter power to determine the composition of the Senate as described in Section II.A. The same cannot be said of the question of gerrymandering to favor incumbents in the House.

Nevertheless, the Supreme Court has addressed the general issue of political gerrymandering to little effect. In *Vieth v. Jubelirer*,[50] a plurality of the Court in an opinion by Justice Scalia found two faults with legal claims based upon political gerrymandering: first, that all such claims must be based on a constitutional right to proportionate representation, which the Court found did not exist;[51] and second, that even if there were such a right, there is "no judicially discernible and manageable standards for adjudicating political gerrymandering claims," and as a result, "political gerrymandering claims are nonjusticiable."[52] The plurality, however, did acknowledge that severe partisan gerrymandering is incompatible with democratic principles.[53]

In his concurring opinion, Justice Kennedy also indentified two "obstacles" to the consideration of claims based on political gerrymandering:

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48. John C. Coates, *Corporate Governance and Corporate Political Activity: What Effect Will* Citizens United *Have on Shareholder Wealth?* (Harvard Law & Econ. Discussion Paper No. 684, Sept. 21, 2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id= 1680861##.

49. Lucian A. Bebchuk & Robert J. Jackson, *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83 (2010).

50. 541 U.S. 267 (2004).

51. *Id*. at 288.

52. *Id*. at 281.

53. *Id*. at 292.

> First is the lack of comprehensive and neutral principles for drawing electoral boundaries. No substantive definition of fairness in districting seems to command general assent. Second is the absence of rules to limit and confine judicial intervention. With uncertain limits, intervening courts-even when proceeding with best intentions-would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust.[54]

He concluded with the following observation:

> Whether spoken with concern or pride, it is unfortunate that our legislators have reached the point of declaring that, when it comes to apportionment: "'We are in the business of rigging elections.'"
>
> Still, the Court's own responsibilities require that we refrain from intervention in this instance. The failings of the many proposed standards for measuring the burden a gerrymander imposes on representational rights make our intervention improper. If workable standards do emerge to measure these burdens, however, courts should be prepared to order relief.[55]

The Court's reluctance to enter into this fray exists despite the fact that the concurring and plurality opinions acknowledge that partisan gerrymandering exists, is incompatible with democratic principals, and that federal elections are being "rigged" through this technique. In this regard, it is beyond dispute that political races where the incumbent routinely wins between 95-99% of the time are not "elections" in any sense of the word. Today, so-called "elections" in the House where the Duopoly Party chooses the voters for incumbent districts are the functional equivalent of political "show trials" where the outcome is a forgone conclusion because one side selects the jury.

Two years after *Vieth*, in *LULAC v. Perry*,[56] several justices in various concurring opinions acknowledged the theory of "partisan symmetry" as a reliable after-the-fact standard to identify partisan gerrymandering. However, the Court also indicated that this theory could not meet the rigors of justiciability as part of a prospective analysis of newly drawn districts because it would depend upon a "hypothetical state

54. *Id*. at 306- 307 (Kennedy, J., concurring).
55. *Id*. at 317 (Kennedy, J., concurring) (internal citations omitted).
56. LULAC v. Perry, 548 US 399 (2006).

of affairs," i.e., how people in adjoining districts would vote in a prospective election.[57] Since the Court's opinion in *LULAC,* a distinguished mathematician, Michael Balinski, offered a mathematical solution to "partisan gerrymandering" based on formulating the problem as "symmetric."[58] The procedure is quite simple. Where each party does not receive the number of elected Representatives that is proportional to the votes it receives in statewide House elections, then party votes in each district are "scaled" up or down by the statewide proportion to leech the effects of partisan gerrymandering from the process and to identify the actual winners. Although elegant, this formula runs afoul of the "one man, one vote" principal. There are, however, other mathematical solutions to eliminate partisan gerrymandering in the initial drawing of district lines, including the "Shortest Splitline Algorithm."[59] These applications leech all but coincidental partisanship from district drawing.

IV. THE FOUNDERS' ORIGINAL RISK ASSESSMENT AND DESIGN

The Federalist Papers contain one of the first examples of "risk assessment" applied to the structure and operations of a government based on representative democracy. The Papers were intended to promote and explain the Founders' configuration of checks and balances that make up the Constitution, and the risks identified therein demonstrate remarkable prescience. Nevertheless, many of the checks and balances that the Founders installed to minimize and offset these risks have been purposefully overridden or lost through neglect. As a result, the organizational model for representational democracy in congressional elections under current practice is flawed.

In designing the House of Representatives to be the legislative body that would be most directly accountable to voters, Federalist Paper No. 57 observes:

> Hence, in the fourth place, the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people. Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their

57. *Id*. at 420.

58. Balinski, *supra* note 37, at 100 (Balinski was awarded the Lester R. Ford Award in 2009 for his article by the American Mathematical Association).

59. *The Shortest Splitline Algorithm*, RANGEVOTING.ORG, http://rangevoting.org/GerryExec. html.

> exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it . . . . Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition itself, are the chords by which they will be bound to fidelity and sympathy with the great mass of the people.[60]

The Founders also recognized the necessary tension in any democracy between the immediate passions of the masses and the need for calm deliberation in making decisions. As a result, the Founders' original configuration of legislative power in Congress was to counterbalance a more stable and deliberate Senate with the volatility of the House in their "sympathy with the great mass of the people." Without such a counter balance, the Founders feared that allocating too much power to the volatile House would result in "public instability" as set forth in Federalist Paper No. 62:

> Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.[61]

As it operates today, with a change in party control occurring only once every twenty years, the House of Representatives no longer serves as the legislative body in Congress most responsive to the temporal whims of the electorate. Instead, it is the least responsive (with well-funded incumbents who set the legislative agenda that are all but guaranteed re-election). As a result, it is not "instability" that places the country's congressional institutions at risk today. Rather, it is the operational and structural impediments to change now embedded within these institutions that threatens the democratic principal of majority rule.

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60. THE FEDERALIST NO. 57 (Alexander Hamilton or James Madison).
61. THE FEDERALIST NO. 62 (James Madison).

V. CONCLUSION

In the operation and structure of current congressional elections, the United States has fallen out of compliance with the central requirements of our democratic design. The Founders' concern that an imbalance between the desires of the "MANY" as opposed to the interests of the "FEW" would threaten American democracy was originally checked in the structure of federal congressional elections by having members of the House and Senate each responsible to, and dependent upon, different constituencies for election and re-election. However, as set forth in Section II of this article, these checks, while still in place, no longer effectively operate to balance these tensions. Today, the "FEW" – whether our least populated States exercising disproportionate power in determining the composition of the Senate, or the intractable well-funded incumbents of the Duopoly Party in the House of Representatives – confound the Founders' original design.

One cause of this present imbalance was a lack of vigilance. As opposed to the "best practices" of its most successful businesses and not-for-profit organizations, America did not periodically and critically assess the results of electoral structures in operation against the intended design of effective checks and balances. Due to this neglect, significant components of the structures the Founders designed to balance various societal tensions no longer perform as intended:

- Constitutional Amendments are now a practical impossibility with those FEW states having a population of only 4.4% of the nation able to block any amendment.

- As a consequence of a disproportionate increase in the number of states with small populations, the imbalance between the allocation of individual voter power to determine the composition of the U. S. Senate has been skewed in favor of the FEW in those states. Theoretically, forty-one senators from our least populated states and representing only 11.2% of the country's population can block all federal legislation.

- The Duopoly Party's gerrymandering of districts for incumbents in the House of Representatives has neutralized the founders' original design that the House would be the legislative body most responsive to the views of the MANY and counterbalance the more stable senate. In contrast to the Founders' design, well-funded incumbents

in the House, those FEW, have *de minimus* fear of not being re-elected by their "chosen" electorate.

- According to the nonpartisan Center for Responsive Politics, outside groups spent more than $296 million on the 2010 midterms elections – a 330% increase over spending in 2006 – with more than $135 million of that coming from undisclosed, anonymous donors.[62] While the Supreme Court's decision in *Citizens United* may have had the effect of weakening the iron grip that incumbents exerted over their gerrymandered districts, the political influence of the moneyed FEW who have both the ability and predilection to spend their capital without limit has filled that power gap.

The observations in this article should return to their starting point. The *Federal Sentencing Guidelines* mandate that businesses conduct regular periodic assessments of their compliance programs to insure that the fundamental objectives of the company's compliance program are met. However, American government has not followed this directive with regard to the practice of its own system of representative democracy. This inattention and neglect has destroyed the original design of the Founders and the balance they sought to create in federal congressional elections between and among various constituencies of the American electorate. As a result, their vision of majority rule and accountability to the American electorate for these officials has been supplanted by the new "FEW" of the 21st Century.

62. *Outside Spending*, OPENSECRETS.ORG, http://www.opensecrets.org/outsidespending/ index.php.

A

United States Population by State - 1790

States (Smallest to Largest Population)	Population	Percentage of Total U.S. Population - Excluding District of Columbia	Cumulative % of States Population	Number of Senators	Percentage of Total # of Senators	Cumulative % of Senators
Delaware	59,096	1.6%	1.6%	2	7.7%	7.7%
Rhode Island	68,825	1.9%	3.5%	2	7.7%	15.4%
Georgia	82,548	2.3%	5.8%	2	7.7%	23.c1%
New Hampshire	141,885	3.9%	9.7%	2	7.7%	30.8%
New Jersey	184,139	5.1%	14.7%	2	7.7%	38.5%
Connecticut	237,946	6.5%	21.3%	2	7.7%	46.2%
South Carolina	249,073	6.8%	28.1%	2	7.7%	53.8%
Maryland	319,728	8.8%	36.9%	2	7.7%	61.5%
New York	340,120	9.3%	46.3%	2	7.7%	69.2%
Massachusetts	378,787	10.4%	56.7%	2	7.7%	76.9%
North Carolina	393,751	10.8%	67.5%	2	7.7%	84.6%
Pennsylvania	434,373	11.9%	79.4%	2	7.7%	92.3%
Virginia	747,610	20.6%	100.0%	2	7.7%	100.0%
Maine		0.0%	100.0%	0	0.0%	100.0%
Alabama		0.0%	100.0%	0	0.0%	100.0%
Alaska		0.0%	100.0%	0	0.0%	100.0%
Arizona		0.0%	100.0%	0	0.0%	100.0%
Arkansas		0.0%	100.0%	0	0.0%	100.0%
California		0.0%	100.0%	0	0.0%	100.0%
Colorado		0.0%	100.0%	0	0.0%	100.0%
Florida		0.0%	100.0%	0	0.0%	100.0%
Hawaii		0.0%	100.0%	0	0.0%	100.0%
Idaho		0.0%	100.0%	0	0.0%	100.0%
Illinois		0.0%	100.0%	0	0.0%	100.0%
Indiana		0.0%	100.0%	0	0.0%	100.0%
Iowa		0.0%	100.0%	0	0.0%	100.0%
Kansas		0.0%	100.0%	0	0.0%	100.0%
Kentucky		0.0%	100.0%	0	0.0%	100.0%
Louisiana		0.0%	100.0%	0	0.0%	100.0%
Michigan		0.0%	100.0%	0	0.0%	100.0%
Minnesota		0.0%	100.0%	0	0.0%	100.0%
Mississippi		0.0%	100.0%	0	0.0%	100.0%
Missouri		0.0%	100.0%	0	0.0%	100.0%
Montana		0.0%	100.0%	0	0.0%	100.0%
Nebraska		0.0%	100.0%	0	0.0%	100.0%
Nevada		0.0%	100.0%	0	0.0%	100.0%
New Mexico		0.0%	100.0%	0	0.0%	100.0%
North Dakota		0.0%	100.0%	0	0.0%	100.0%
Ohio		0.0%	100.0%	0	0.0%	100.0%
Oklahoma		0.0%	100.0%	0	0.0%	100.0%
Oregon		0.0%	100.0%	0	0.0%	100.0%
South Dakota		0.0%	100.0%	0	0.0%	100.0%
Tennessee		0.0%	100.0%	0	0.0%	100.0%
Texas		0.0%	100.0%	0	0.0%	100.0%
Utah		0.0%	100.0%	0	0.0%	100.0%
Vermont		0.0%	100.0%	0	0.0%	100.0%
Washington		0.0%	100.0%	0	0.0%	100.0%
West Virginia		0.0%	100.0%	0	0.0%	100.0%
Wisconsin		0.0%	100.0%	0	0.0%	100.0%
Wyoming		0.0%	100.0%	0	0.0%	100.0%
	3,637,881			**26**		

B

United States Population by State - 2010

States (Smallest to Largest Population)	Population	Percentage of Total U.S. Population - Excluding District of Columbia	Cumulative % of States Population	Number of Senators	Percentage of Total # of Senators	Cumulative % of Senators
Wyoming	563,626	0.2%	0.2%	2	2.0%	2.0%
Vermont	625,741	0.2%	0.4%	2	2.0%	4.0%
North Dakota	672,591	0.2%	0.6%	2	2.0%	6.0%
Alaska	710,231	0.2%	0.8%	2	2.0%	8.0%
South Dakota	814,180	0.3%	1.1%	2	2.0%	10.0%
Delaware	897,934	0.3%	1.4%	2	2.0%	12.0%
Montana	989,415	0.3%	1.7%	2	2.0%	14.0%
Rhode Island	1,052,567	0.3%	2.1%	2	2.0%	16.0%
New Hampshire	1,316,470	0.4%	2.5%	2	2.0%	18.0%
Maine	1,328,361	0.4%	2.9%	2	2.0%	20.0%
Hawaii	1,360,301	0.4%	3.4%	2	2.0%	22.0%
Idaho	1,567,582	0.5%	3.9%	2	2.0%	24.0%
Nebraska	1,826,341	0.6%	4.5%	2	2.0%	26.0%
West Virginia	1,852,994	0.6%	5.1%	2	2.0%	28.0%
New Mexico	2,059,179	0.7%	5.7%	2	2.0%	30.0%
Nevada	2,700,551	0.9%	6.6%	2	2.0%	32.0%
Utah	2,763,885	0.9%	7.5%	2	2.0%	34.0%
Kansas	2,853,118	0.9%	8.4%	2	2.0%	36.0%
Arkansas	2,915,918	0.9%	9.4%	2	2.0%	38.0%
Mississippi	2,967,297	1.0%	10.3%	2	2.0%	40.0%
Iowa	3,046,355	1.0%	11.3%	2	2.0%	42.0%
Connecticut	3,574,097	1.2%	12.5%	2	2.0%	44.0%
Oklahoma	3,751,351	1.2%	13.7%	2	2.0%	46.0%
Oregon	3,831,074	1.2%	14.9%	2	2.0%	48.0%
Kentucky	4,339,367	1.4%	16.3%	2	2.0%	50.0%
Louisiana	4,533,372	1.5%	17.8%	2	2.0%	52.0%
South Carolina	4,625,364	1.5%	19.3%	2	2.0%	54.0%
Alabama	4,779,736	1.6%	20.9%	2	2.0%	56.0%
Colorado	5,029,196	1.6%	22.5%	2	2.0%	58.0%
Minnesota	5,303,925	1.7%	24.2%	2	2.0%	60.0%
Wisconsin	5,686,986	1.8%	26.1%	2	2.0%	62.0%
Maryland	5,773,552	1.9%	27.9%	2	2.0%	64.0%
Missouri	5,988,927	1.9%	29.9%	2	2.0%	66.0%
Tennessee	6,346,105	2.1%	31.9%	2	2.0%	68.0%
Arizona	6,392,017	2.1%	34.0%	2	2.0%	70.0%
Indiana	6,483,802	2.1%	36.1%	2	2.0%	72.0%
Massachusetts	6,547,629	2.1%	38.3%	2	2.0%	74.0%
Washington	6,724,540	2.2%	40.4%	2	2.0%	76.0%
Virginia	8,001,024	2.6%	43.0%	2	2.0%	78.0%
New Jersey	8,791,894	2.9%	45.9%	2	2.0%	80.0%
North Carolina	9,535,483	3.1%	49.0%	2	2.0%	82.0%
Georgia	9,687,653	3.1%	52.1%	2	2.0%	84.0%
Michigan	9,883,640	3.2%	55.3%	2	2.0%	86.0%
Ohio	11,536,504	3.7%	59.1%	2	2.0%	88.0%
Pennsylvania	12,702,379	4.1%	63.2%	2	2.0%	90.0%
Illinois	12,830,632	4.2%	67.4%	2	2.0%	92.0%
Florida	18,801,310	6.1%	73.5%	2	2.0%	94.0%
New York	19,378,102	6.3%	79.7%	2	2.0%	96.0%
Texas	25,145,561	8.2%	87.9%	2	2.0%	98.0%
California	37,253,956	12.1%	100.0%	2	2.0%	100.0%
	308,143,815			**100**		

C

United States Population by State - 2030

States (Smallest to Largest Population)	Population	Percentage of Total U.S. Population - Excluding District of Columbia	Cumulative % of States Population	Number of Senators	Percentage of Total # of Senators	Cumulative % of Senators
Wyoming	522,979	0.1%	0.1%	2	2.0%	2.0%
North Dakota	606,566	0.2%	0.3%	2	2.0%	4.0%
Vermont	711,867	0.2%	0.5%	2	2.0%	6.0%
South Dakota	800,462	0.2%	0.7%	2	2.0%	8.0%
Alaska	867,674	0.2%	1.0%	2	2.0%	10.0%
Delaware	1,012,658	0.3%	1.2%	2	2.0%	12.0%
Montana	1,044,898	0.3%	1.5%	2	2.0%	14.0%
Rhode Island	1,152,941	0.3%	1.9%	2	2.0%	16.0%
Maine	1,411,097	0.4%	2.2%	2	2.0%	18.0%
Hawaii	1,466,046	0.4%	2.6%	2	2.0%	20.0%
New Hampshire	1,646,471	0.5%	3.1%	2	2.0%	22.0%
West Virginia	1,719,959	0.5%	3.6%	2	2.0%	24.0%
Nebraska	1,820,247	0.5%	4.1%	2	2.0%	26.0%
Idaho	1,969,624	0.5%	4.6%	2	2.0%	28.0%
New Mexico	2,099,708	0.6%	5.2%	2	2.0%	30.0%
Kansas	2,940,084	0.8%	6.0%	2	2.0%	32.0%
Iowa	2,955,172	0.8%	6.8%	2	2.0%	34.0%
Mississippi	3,092,410	0.9%	7.7%	2	2.0%	36.0%
Arkansas	3,240,208	0.9%	8.6%	2	2.0%	38.0%
Utah	3,485,367	1.0%	9.5%	2	2.0%	40.0%
Connecticut	3,688,630	1.0%	10.5%	2	2.0%	42.0%
Oklahoma	3,913,251	1.1%	11.6%	2	2.0%	44.0%
Nevada	4,282,102	1.2%	12.8%	2	2.0%	46.0%
Kentucky	4,554,998	1.3%	14.0%	2	2.0%	48.0%
Louisiana	4,802,633	1.3%	15.4%	2	2.0%	50.0%
Oregon	4,833,918	1.3%	16.7%	2	2.0%	52.0%
Alabama	4,874,243	1.3%	18.0%	2	2.0%	54.0%
South Carolina	5,148,569	1.4%	19.5%	2	2.0%	56.0%
Colorado	5,792,357	1.6%	21.1%	2	2.0%	58.0%
Wisconsin	6,150,764	1.7%	22.7%	2	2.0%	60.0%
Minnesota	6,306,130	1.7%	24.5%	2	2.0%	62.0%
Missouri	6,430,173	1.8%	26.3%	2	2.0%	64.0%
Indiana	6,810,108	1.9%	28.1%	2	2.0%	66.0%
Massachusetts	7,012,009	1.9%	30.1%	2	2.0%	68.0%
Maryland	7,022,251	1.9%	32.0%	2	2.0%	70.0%
Tennessee	7,380,634	2.0%	34.0%	2	2.0%	72.0%
Washington	8,624,801	2.4%	36.4%	2	2.0%	74.0%
New Jersey	9,802,440	2.7%	39.1%	2	2.0%	76.0%
Virginia	9,825,019	2.7%	41.8%	2	2.0%	78.0%
Michigan	10,694,172	2.9%	44.8%	2	2.0%	80.0%
Arizona	10,712,397	2.9%	47.7%	2	2.0%	82.0%
Ohio	11,550,528	3.2%	50.9%	2	2.0%	84.0%
Georgia	12,017,838	3.3%	54.2%	2	2.0%	86.0%
North Carolina	12,227,739	3.4%	57.6%	2	2.0%	88.0%
Pennsylvania	12,768,184	3.5%	61.1%	2	2.0%	90.0%
Illinois	13,432,892	3.7%	64.8%	2	2.0%	92.0%
New York	19,477,429	5.4%	70.1%	2	2.0%	94.0%
Florida	28,685,769	7.9%	78.0%	2	2.0%	96.0%
Texas	33,317,744	9.2%	87.2%	2	2.0%	98.0%
California	46,444,861	12.8%	100.0%	2	2.0%	100.0%
	363,151,021			**100**		