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What Hath the Redistricting Commission Wrought?

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The way legislative districts are configured, whether at the federal, state, county, or city level, determines who holds political power. And by “who,” we refer, especially, to political parties and ethnic groups.

Ballot measures passed by California voters in 2008 and 2010 shifted responsibility for drawing district lines for the state Assembly, state Senate and congressional delegation from the admittedly self-interested state legislature and placed it in the hands of a theoretically disinterested, objective, independent citizens commission. The commis-

sion issued its new maps, reflecting the 2010 census, in mid August.

So, what hath the commission wrought? A plan that does a pretty good job of reflecting the ethnic and partisan composition of California, one not all that different from what the legislature might have produced, with two notable exceptions.

First, let’s examine the consequences from a partisan perspective.

Partisan Balance

The leadership of California’s Republican Party, blaming their paltry numbers in the state Assembly, state Senate,

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and congressional delegation on district maps approved by the Democratic controlled state legislature, successfully supported this shift of the responsibility for redistricting from the legislature to the independent citizens' commission.

Now, dissatisfied with the maps produced by the independent citizens' commission, the Republicans have mounted an effort to shift the task yet again, this time from the independent commission to the courts.

How bizarre.

The simple, inescapable truth is that any fairly drawn redistricting plan will reflect the collapse of the Republican Party in this state. In California, only 31 percent of registered voters are Republican. A fairly drawn plan will give the Republicans just over or just under one-third of the Assembly, Senate, and congressional delegation.

California's Democrats, on the other hand, fought efforts to place redistricting in the hands of the commission but will now be laughing all the way to the ballot box. As it turns out, they had nothing to fear from independently drawn maps. Their 13-point registration advantage over Republicans, with 44 percent of California voters officially identifying as Democrats, speaks for itself.

The current state legislature is composed of 77 Democrats and 43 Republicans. It appears that the new maps create 72 Democratic seats, 32 Republican seats, and 16 seats that are up for grabs. The current congressional del-

egation is composed of 34 Democrats and 19 Republicans. The new maps seem to have created 33 Democratic seats, 12 Republican seats and 8 that could go either way.

Are those numbers enough to drive the state's Republican leadership into a frenzy? Apparently. But when your share of the electoral marketplace is at 31 percent and dropping, when you are laboring under a massive registration deficit among the increasing number of nonwhite voters in this state, and when the new maps have been drawn by an independent commission of your own creation, you have a more fundamental problem. If you want to hold more seats in the legislature, certainly if you will ever have any hope of regaining a majority, you need to win over not the commission, not the courts, but more voters, particularly voters who are not white.

Ethnic Representation

With apologies to my fellow political insiders on both sides of the aisle, which party holds how many seats may preoccupy our little corner of the universe, but the law takes a different interest in redistricting.

The courts have generally been reluctant to second guess decisions in the political realm, that is, when a redistricting plan is alleged to be unfair to one of the major political parties. But over time they have become riveted

on preventing the misuse of district maps to disenfranchise traditionally underrepresented ethnic groups.

If African Americans constitute roughly 6 percent of California's population, Asian Americans 13 percent, Latinos 37 percent, and whites 42 percent, then of the 120 state legislators roughly 7 should be African American, 16 Asian American, 43 Latino, and 50 white.

Of course, this construct is easily challenged on any number of grounds. For one, registration numbers are different: approximately 6 percent African American, 6 percent Asian American, 22 percent Latino, and 64 percent white. These numbers may not matter to a court, but they clearly affect who wins elections.

The law looks kindly on the creation of majority-minority seats, meaning seats in which a majority of the voters are members of a traditionally underrepresented ethnic minority, and the commission's new maps create 20 Latino such seats and one that is Asian American. There are no majority African-American seats, but, for a number of reasons, that is not necessarily a source of concern in African-American political circles.

Ethnic representation under the commission's plans appears to reflect the ongoing shifts in California's population. Various ethnic communities may feel little need to challenge the commission, and the courts, if asked, may well conclude that the plan passes muster on this front.

Incumbents Not Welcome, But the Public Is

One enormous difference between the commission's new maps and those that would have been drawn by the legislature is that the commission ignored the impact of its work on incumbents. Consequently, the political world is abuzz with speculation on how a significant number of present officeholders will deal with new lines that essentially leave them without a seat or with a challenge from another incumbent.

But the courts are not concerned with the fate of incumbents. Examine the report of the Special Masters in the case of *Legislature v. Reinecke* back in 1973 and you will see that they do require that districts be as numerically equal as possible, something given little thought these days but not to be taken for granted; that their territory be relatively contiguous and compact; that they preserve city and county lines, the integrity of the state's basic geographical regions, and various communities of interest. There is also a judicial preference for nested districts that is not reflected in the commission's plans.

The other enormous difference between redistricting by the commission and how the process would have been conducted by the legislature is that the commission's process was conducted in the open, so much so that some participants probably suffered severe sunburn. The days of closed door meetings in smoke filled, or now mostly

smoke free, rooms, with mad redistricting wizards laboring through the night to weave their magic spell are gone.

When all is said and done, the composition of the state Assembly, state Senate and congressional districts created by the commission seems to differ little from the districts that would have been drawn by the state legislature, except for the impact on incumbents.

That may provide little comfort to California's Republican leadership, but it seems to vindicate the mad redistricting wizards of decades past.