

ASSESSING THE PARTISAN IMPACT OF THE 2001 UTAH STATE  
LEGISLATIVE REDISTRICTING PLAN

by

Bryson Baird Morgan

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“If there was ever an argument for letting someone other than the legislature do redistricting, this is one.”

Congressman James Hansen (R-UT) commenting  
on the 2001 Utah redistricting plan.

Partisan gerrymandering is a topic of increasing controversy in academia, the courts, political bodies, and the minds of voters. Partisan gerrymandering has most recently been accused of decreasing electoral competition and increasing partisan polarization in Congress. In Utah, Democrats have repeatedly claimed that the 2001 (and previous) redistricting plans discriminated against Utah Democrats. As the prospect of gaining a fourth Utah congressional seats lingers, and with the 2011 redistricting cycle approaching rapidly it is important to better understand the partisan impact of the 2001 Utah redistricting plan. Is there a true need for redistricting reform in Utah? Or, are Democratic claims of gerrymandering unsubstantiated? This paper answers these questions by analyzing the impact of redistricting on the electoral system, identifying the objectives and gerrymandering tactics of majority-party legislators, and presenting an analysis of the 2001 Utah legislative redistricting plan.

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## Introduction

The 2001-2002 round of congressional and state legislative redistricting strained the fabric of American democracy in unprecedented ways. In the name of gaining electoral advantages, legislators and their allied partisan officers systematically fragmented, packed, cracked, stacked, dislocated, overpopulated, and underpopulated congressional and state legislative districts. Where partisan advantage was not feasible, legislators reached across the aisle and created “safe” districts to protect the interests and incumbents of both parties. The result was bizarre shaped districts with finger-like extensions, tentacles, and spindly legs.

Gerrymandering threatens the integrity of our electoral system by undermining fairness, reducing officeholder accountability and the responsiveness of our elected bodies, and stifling electoral competition. Contemporary redistricting literature has focused heavily on the impact of redistricting on the candidate selection process and the resulting effects on Congress that allegedly include decreased electoral competition and increased partisan polarization. Much of this literature concludes that the redistricting process should be removed from state legislative control and vested in a non-partisan and/or independent commission. In fact, 11 states currently use a body other than the state legislature to draw district lines (Campaign Legal Center 2006).

Few states have escaped the recent rounds of redistricting without suffering from partisan gerrymandering. With the failure of the Supreme Court to strike down the 2003 Texas mid-decade redistricting plan in *LULAC v. Perry* (2006), the prospects for nationwide redistricting reform appear bleak. Prior to the 2006 congressional elections, Democratic leaders such as Nancy Pelosi vowed to end gerrymandering if elected.

However, soon after taking office, Pelosi and other Democrats announced their withdrawal of support for redistricting reform and created the left-leaning 527 organization Foundation for the Future, charged with the goal of implementing pro-Democratic gerrymanders in several key states. As the *Washington Monthly* noted in late November 2006, winning 50 targeted legislative seats could translate into a gain of as many as 15 congressional seats for Democrats (Morris, November 2006). As political scientist Tom Mann of the Brookings Institution has noted, “changing conditions have elevated redistricting as a weapon of choice for party leaders and incumbents to advance their political interests” (Mann, 2005b). Gaining congressional seats through the traditional electoral process is a risky and resource consuming process. Gaining seats through redistricting can be inexpensive and extremely effective. This political reality was demonstrated by the direct gain of six Republican seats in the U.S. House as a result of the 2003 Texas mid-decade redistricting plan engineered by Karl Rove and Rep. Tom Delay (R-TX).

Utah is one such state where citizens have been shuffled to and fro in the name of partisan gain. In Utah, the 2001 congressional redistricting plan was the subject of much heated controversy. It was clear to many Republicans and Democrats that Utah’s 2<sup>nd</sup> Congressional District was being reworked to bring about Rep. Jim Matheson’s (D-UT) defeat in the 2002 election. With the exception of noting that several Democratic districts were combined, the 2001 Utah state legislative redistricting plan received little in-depth coverage. This paper seeks to fill that void by presenting an analysis of the 2001 Utah State Legislative redistricting plan following the model of a similar study performed in 1985 by Bruce Cain to examine the infamous California “Burton Plan” of 1981. With

the lingering prospect that Utah will gain a fourth congressional seat prior to the 2010 round of congressional reapportionment, and the rapidly-approaching 2011 redistricting cycle commencing in only four years, the time is ripe for a thorough analysis of the effects of legislative-controlled redistricting in Utah.

In what follows, this paper offers a brief glimpse into the contemporary research that has sought to quantify the effects of partisan gerrymandering on American democracy and demonstrates how the current legal framework for addressing partisan gerrymandering fails to curb this partisan abuse. The paper then turns its attention to the state legislative redistricting process, identifying the objectives of the majority party in redrawing district boundaries and outlining the available redistricting tactics. The paper then presents an in-depth analysis of the 2001 Utah State Legislative Redistricting plan, exposing the gerrymanders that were employed by the Republican-controlled Utah State Legislature.

### **The Legal and Political State of Redistricting: The Impact on Electoral Fairness, Responsiveness, Officeholder Accountability, and Competition**

After the 2001 Utah redistricting cycle, Senator Robert Bennett (R-UT) called political gerrymandering the “greatest threat to democracy in the United States; greater than soft money in political campaigns” (Burton 2002, B2). Senator Bennett is not the only person to voice concern. In reflection on his years presiding over the greatest era of expansion of civil liberties, Chief Justice Earl Warren offered his opinion that redistricting, and more specifically, *Baker v. Carr* (1962) was “the most important case of his tenure on the Court” (Warren 1977, 306). While the intricacies of redistricting are complex and difficult to understand, the impact of gerrymandering is familiar even to the novice observer. In fact, many consider redistricting to place considerable limits on the

ability of the United States to be considered a truly democratic nation. This claim has been echoed by organizations such as *Freedom House* who, in its 2005 annual report, expressed grave concern over “the widespread use of sophisticated forms of gerrymandering” in the United States (Freedom House 2005). Gerrymandering has most recently been accused of undermining the four democratic values of fairness, responsiveness, officeholder accountability, and electoral competition. This section outlines how redistricting affects these four democratic values and summarizes the legal status of redistricting.

### **Fairness**

Redistricting infringes on electoral fairness in two ways: the unequal weighing of votes and the spreading and packing of populations in order to dilute the voting power of certain targeted groups within society (vote dilution). Significant progress has been made in the area of population equality and racial vote dilution, but ample room for partisan tinkering remains in the area of partisan vote dilution.

The “One Person, One Vote,” or Population Equality Standard. Prior to the 1960s it was common for states to draw districts with unequally populated districts, and in some cases, states went for more than 50 years without changing district boundaries (Mann & Cain, 2005). With the United States Supreme Court decision in *Baker v. Carr* (1962), and subsequent rulings in *Wesberry v. Sanders* (1964), *Reynolds v. Sims* (1964), and *Avery v. Midland County* (1968), the Supreme Court applied the one-person, one-vote standard to congressional, state legislative, and local government elections. The population equality standard was reaffirmed in *White v. Regester* (1973) and *Karcher v. Daggett* (1983) and been commonly interpreted as meaning that congressional and state legislative

redistricting plans must have total population deviations of less than 1% and 10%, respectively. As political scientist Bruce Cain noted, these cases have made population equality the highest redistricting priority for all states (Mann and Cain 2005).

Racial Vote Dilution: The Voting Rights Act at Work. Since the early 1980s, challenges to redistricting plans have increasingly focused on racial vote dilution. Section 5 of the Voting Rights Act requires that states receive preclearance for “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” (Voting Rights Act of 1965). As applied to redistricting, this means that proposed plans must satisfy two “prongs” – that the plan will not have the effect of worsening the voting power of minority voters, known as “retrogression,” and that the plan does not have the purpose of “denying or abridging the right to vote” (Hebert et al. 2000). Section 2 of the Voting Rights Act has been interpreted to require the creation of “majority-minority districts” (yet to be fully defined by the Court) when certain criteria, set forth in *Thornburg v. Gingles* (1986), are met. The “Gingles test” requires that 1) the minority group is “sufficiently large and geographically compact to constitute a majority” in a single-member district (*Grove v. Emison* 1993), 2) that the minority group be “politically cohesive,” and 3) that the white majority votes “sufficiently as a bloc to enable it...usually to defeat the minority’s preferred candidate” (*Thornburg v. Gingles*, 1986). Despite recent cases such as *Shaw v. Reno* (1993), *Miller v. Johnson* (1995), and *Georgia v. Ashcroft* (2003) that have weakened Section 2 of the Voting Rights Act, the legal protections against minority vote dilution remain strong.

Partisan Vote Dilution. The limits on partisan gerrymandering are few and seldom enforced. Political or partisan motivations in drawing lines are acceptable, and there is

no requirement that lines be drawn neutrally. In fact, the Supreme Court, in *Gaffney v. Cummings* (1973), condoned both partisan and incumbency-protection gerrymanders as it asserted that “politics and political considerations are inseparable from districting and apportionment,” and warned against “politically mindless” approaches to redistricting – arguing that they “may produce, whether intended or not, the most grossly gerrymandered results.” Furthermore, as established in *Shaw v. Reno* (1993), proving that a partisan gerrymander was adopted in order to protect an incumbent or to further a party’s partisan interests shields it from challenges that race was used as the “predominant” factor in drawing district lines. Such was the case in *Hunt v. Cromartie*, (1999), where an expert witness convincingly testified that political party affiliation was the predominate motivation for districting rather than the suspected use of race.

Despite its ruling in *Davis v. Bandemer* (1986) that established that partisan gerrymandering was justiciable, the U.S. Supreme Court has failed to invalidate even the most blatantly partisan redistricting plans. In one such case, California Republicans were ruled not to have been the victim of an unconstitutional gerrymander because there were “no allegations that California Republicans have been ‘shut out’ of the political process,” and the Court wrote further that “Republicans remain free to speak out on issues of public concern” (*Badham v. EU* 1988). Several cases challenging the constitutionality of partisan gerrymanders emerged following the 2001 round of redistricting. In *Veith v. Jubelirer* (2004), the Court upheld a Republican redistricting plan that “ignored all traditional redistricting criteria, including preservation of local government boundaries, solely for the sake of partisan advantage,” and created “meandering” and “irregular” districts designed to maximize partisan electoral outcomes.

Most recently, in *LULAC et. al. v. Perry* (2006), Texas Democrats and minority organizations challenged the mid-decade redistricting plan masterminded by Rep. Tom Delay (R-TX) that solidified Republican control of the Texas Legislature and added to the party's domination of Congress by yielding a net gain of six Republican seats. On June 28, 2006, the Supreme Court issued its six-part/132 page opinion largely upholding the mid-decade redistricting plan. As Jeffrey Rosen of George Washington Law School has indicated, "political gerrymandering, at least for the foreseeable future, may be a problem without an obvious judicial or political solution" (Rosen 2006, 1). This warning has also been reiterated by other scholars such as Bruce Cain of Berkeley, who wrote that while "partisan gerrymandering is theoretically justiciable, there is nothing much for line-drawers to worry about" (Cain 2006, 1).

### **Responsiveness**

Responsiveness is the ability of an electoral system to accurately reflect public opinion and mirror both short-term and long-term changes in public sentiment. Gerrymandering limits the responsiveness of the American electoral system in three ways: 1) moving the main arena of the candidate selection process from general elections to party primaries, 2) limiting the electoral influence of the "moderate middle," increasing the partisan polarization in Congress, and 3) severely limiting the ability of the electorate to change the partisan composition of elected bodies.

Candidate Entry and Selection. In February of 2006, the Associated Press published a guide for prospective Pennsylvania legislative candidates. The advice it gives underscores the impact of gerrymandering on the candidate-selection process. It read: "House districts contain about 60,000 people each, but a primary can be won with just a

few thousand votes if the turnout is low. Because of gerrymandering, the primary is often the only real contest” (Associated Press 2006). Potential candidates are well aware of the effect that gerrymandering has on their prospects of electoral success. Research suggests that qualified candidates are less likely to run in districts that have been adversely gerrymandered and more likely to run in districts that have been favorably gerrymandered (Krasno and Green 1988). As will be explained later in this paper, redistricting decreases the competitiveness of congressional and state legislative elections. This lack of competition dramatically affects the willingness of qualified candidates to run for elected office. Specifically, large previous margins of victory for incumbents deter qualified challengers (Hetherington, Larson, and Globetti 2003).

Partisan Polarization. Of increasing concern to many reformers is the rise in partisan polarization in Congress and many state legislatures since the 1980s (Mann and Cain 2005). With the general election threat largely removed, candidates have compelling incentives to focus the majority of their time, energy, and funds on appeasing party loyalists in primary elections. As Mann and Ornstein write in their recent book *The Broken Branch*, “new and returning members are naturally most reflective of and responsive to their primary constituencies, the only realistic locus of potential opposition, which usually are dominated by those at the ideological extremes. This phenomenon has tended to move Democrats in the House left and Republicans right” (Mann and Ornstein, 2006, 12). Where in a competitive election primary voters are more likely to favor moderate candidates with widespread appeal, uncompetitive elections produce elected officials that appease the most partisan factions of their political party. Hence the “moderate middle” is quickly becoming the “vanishing middle.” As Tom Mann recently

noted, “a healthy degree of party unity among Democrats and Republicans has deteriorated into bitter partisan warfare” (Mann 2005a).

This partisan warfare is the result of a decline of ideologically moderate members and an increase in the number of fiercely partisan elected officials who are less willing to compromise and less likely to engage in deliberative legislative processes. As Norm Ornstein noted, the rise in polarization in Congress has been accompanied by a sharp decline in the number of committee meetings and days spent in deliberative session (Mann and Ornstein 2006). The rise in polarization leads to policy outcomes that fail to represent public opinion, or as one political scientist has noted, the current climate leaves a large portion of the electorate with moderate policy preferences stuck with choices that are simultaneously too liberal and too conservative (Masket et al. 2006).

The relationship between gerrymandering and the rise in partisan polarization has been hotly debated in recent years. Political scientists Abramowitz, Alexander, and Gunning have argued that redistricting has a minimal impact political partisanship – pointing out that most of the increases in partisanship have occurred between redistricting cycles, not immediately following redistricting (Abramowitz, Alexander, and Gunning 2006). However, political scientists McDonald (1999) and Carson, Crespino, Finocchiaro, and Rohde (2004) have shown that roll-call voting of Members from newly-redrawn congressional districts is more polarized than roll-call voting of Members from unaltered districts. Most recently, Masket, Winburn, and Wright (2006) found that “districting will almost invariably involve packing like-minded voters together. The result is districts that are more homogeneously liberal and conservative than the districts from which they were created.” This view has been echoed by Bruce Cain of Berkeley who pointed out that “as

districts get more safe, the need to attract independent and centrist cross-over votes lessens. This allows a shift to the extremes of the ideological continuum. As more members represent the extremes, Congressional politics becomes more polarized and uncivil” (Cain 2006).

Distributional Bias. The third way in which gerrymandering perverts the responsiveness of the American electoral system is by imbedding an advantage, often referred to as a distributional bias, into the district maps, making it difficult for a party that receives a majority of votes to receive a majority of seats. The distributional bias of the current 2001 redistricting map is well documented. Samuel Issacharoff of New York University has shown that this bias occurs in both Democratic and Republican controlled states. By comparing the percentage of the vote that states gave to George W. Bush and Al Gore in the 2000 election to the percentage of congressional seats that each party received in the 2002 congressional elections, he found that “in those states where Democrats controlled the last redistricting process, Al Gore won 51.5% of the vote, while Democrats won 57.1% of the Congressional seats... in states where Republicans controlled redistricting, George Bush won 53.1% of the vote, while Republicans won congressional elections in 66.7% of districts” (Issacharoff 2004, 428). Issacharoff’s results are significant, showing that both parties have crafted favorable plans - giving a 5.5% advantage to Democrats in blue states and a 13.6% advantage to Republicans in red states. These findings dispel the notion that the distributional bias of the current electoral map is due to natural “social sorting” – a common argument of many redistricting reform opponents.

### **Officeholder Accountability**

Gerrymandering reduces officeholder accountability by limiting the ability of constituents to elect their candidates of choice. This is done in two manners. First, by implementing what are known as “incumbency protection” gerrymanders – incumbents districts are redrawn to shield the officeholder from electoral competition or remove potential challengers from the district boundaries. Second, incumbents are able to move unfavorable voters out of their districts in exchange for favorable constituents – reducing the threat that a candidate feels from unhappy or unfavorable constituents. With the ability to redraw district lines at will, incumbents seldom fear electoral defeat and are faced with few incentives to act as a delegate in the representation of their constituents. As many have stated, politicians are choosing their voters when voters should be electing their representatives.

### **Electoral Competition**

In 1971, Political Scientist Robert A. Dahl advanced his seminal theory of pluralism in his work, *Polyarchy: Participation and Opposition*. Dahl argued that the mechanisms of competitive politics make governments responsive to the people, and that a truly democratic government must include certain institutional guarantees in the areas of competition, participation, and civil liberties (Dahl, 1971 p. 3). In essence, for a government to be legitimate it must be characterized by intense electoral competition between competing interests and elites. This means that frequent and meaningful elections in which individuals who are free to form groups are allowed to represent differing views are necessary. Dahl’s theory also requires that no particular alignment of

groups be allowed to gain permanent control over government. Rather, empowered majorities should be composed of continually shuffling coalitions.

Over the last quarter century the number of competitive House seats has been on average 58, or 13% percent of all seats. However, this number plummeted after the 2001 redistricting cycle, when in 2002 less than 10% of congressional elections were competitive, and in 2004 when only 27 seats, or 6% were decided within a 10 percent margin- an all-time low in American history (Mann 2006a). The 2006 elections brought what many believed to be dramatic change, yet 87% of congressional elections were won by more than 10% of the vote.

Redistricting is closely tied to this decline in competition. Masket, Winburn, and Wright's (2006) studies showed that there is a strong correlation between partisan-controlled redistricting and a decline in competition in state legislative races. There is also considerable evidence that the 2001 round of redistricting has been the worst on record. In the past, the election cycles immediately following a redistricting cycle – typically those election in the years ending in “2” – were characterized by increased electoral competition and increased quality of electoral challengers (Hetherington et al. 2003). However, the 2002 congressional elections were shockingly uncompetitive. As Tom Mann wrote, “less than 50 of the 435 seats were seriously contested in 2002, many fewer than the number of targets in 1972, 1982, and 1992, the first elections after the previous rounds of redistricting” (Mann 2005a, 4).

In a study of the impact of the 2001 round of redistricting on competition, Sam Hirsch revealed that of the 108 Members of Congress considered to be “at-risk” (Republicans representing districts in which Al Gore won the 2000 Presidential election,

Democrats representing districts in which Bush won the 2000 election, and incumbents who won with less than a 10% margin in the 2000 election ) in the 2002 election, “20 at-risk Democrats and 25 at-risk Republicans” were the beneficiaries of significant boundary shifts “that made their districts *more* secure —and not surprisingly, none of them was defeated in November 2002” (Hirsch 2003, 188). These findings have been echoed by Michael McDonald, who has calculated that “incumbency protection maps were adopted in twenty states, which affected 231 districts, due to bipartisan plans adopted in larger states such as California and Texas” (McDonald 2006a).

The democratic values of fairness, responsiveness, officeholder accountability and competition are being undermined by the persistent use of gerrymandering. The Supreme Court of the United States has issued powerful rulings reigning in the power of state legislatures to vary district populations and use redistricting plans to discriminate against voters based on race. These rulings have significantly increased the fairness of the American electoral system. However, redistricting plans remain free to discriminate against voters based on their political party affiliation, undermining the effectiveness with which individuals can organize into groups. This group-based discrimination allows officeholders to discharge unfavorable constituents rather than incorporate their views and causes the American electoral system to become unresponsive to changes in public opinion and increasingly uncompetitive. If, as Dahl has written, a necessary precondition of democracy is vibrant competition among groups for control of government power, the United States must move beyond its minimal requirements of equal district population and protection of minorities and adopt protections against group-based discrimination.

### **Assessing Redistricting Outcomes**

To understand state legislative redistricting, the incentives and available actions of the majority party must be identified and understood. With the incentives and tools established we must also know how to identify the implementation of such tools in the redistricting process. This paper operates under the premise that legislators are rational actors seeking to further their individual and party interests through the redistricting process, and that when that interest is furthered it will be detectable in the redistricting plan, and thus, observable. This section seeks to identify the objectives of the majority party in state legislative redistricting, explain the ramifications of a collective action dilemma that the majority party faces in advancing its interest, and enumerate the tools available to redistricters and how their implementation is identified in a redistricting plan.

#### **Objectives: Increased Electoral Efficiency & Removing Minority Party Incumbents**

The majority party of the state legislature has three objectives in the state legislative redistricting process: increasing the electoral efficiency of the majority party, ousting minority party incumbents, and protecting key majority party members from electoral challenge or defeat (Cain, 1985).

Electoral efficiency is defined as the effectiveness with which majority party votes are distributed throughout the electoral system. To illustrate this, tables 1 and 2 represent the distribution of “D party” support in an electoral system with 10 districts, 100 votes per district (1000 total votes). In table 1, the “D party” has 56.5% of the statewide vote, which has translated into electoral victories in 6 or 60% of the electoral districts. In table 2, the “D party,” despite losing statewide electoral support (now 52.3%), has increased its electoral victories to 9, or 90% of the electoral districts. Table 2

represents a more *efficient* distribution of electoral support, meaning that fewer votes are wasted in the victorious seats allowing more seats to be gained by the D party. This dramatic change in the relationship of votes to electoral victories is made possible by moving the “wasted votes” from districts already held to districts that were narrowly lost in the previous election.

**TABLE 1. Less Efficient Vote Distribution**

Total D Party votes: 565 or 56.5%.

Total D seats: 6 or 60%

75%	33%
57%	48%
56%	72%
82%	59%
43%	40%

**TABLE 2. More Efficient Vote Distribution**

Total D Party votes: 523 or 52.3%.

Total D Party seats: 9 or 90%

51%	22%
52%	57%
53%	65%
60%	55%
53%	55%

A majority party whose proportion of the statewide vote is 51% could win 100% of the state’s legislative districts if majority party support was equally distributed within each individual legislative district – resulting in the majority party winning each district with 51% of the vote. Such perfect distribution of party support is perhaps only possible

in a hypothetical scenario, but the example illustrates that by increasing the efficiency of the distribution of the party's supporters the majority party can gain legislative seats.

Removing minority party incumbents, and making it likely that certain minority party incumbents are defeated in the next election, can be achieved in three ways. 1) Increasing the population (within the legal boundaries) of minority party districts and decreasing the population of majority party districts. Although the Supreme Court has established the precedent that state legislative districts may only deviate by 10% without coming under close judicial scrutiny, this leaves majority parties ample room to pick up seats simply by packing minority party voters into as few districts as legally permissible and spreading majority party voters among the remaining districts. 2) Combining the districts of minority party incumbents, forcing them to run against each other in their party primary or forcing one incumbent to forego reelection. This tactic guarantees the removal of one minority party incumbent. 3) Drawing minority party incumbents into districts that contain only a small proportion of their previous districts, thereby offsetting the advantage gained by incumbency. This tactic is known as incumbent displacement.

Protecting key majority party incumbents from electoral challenge or defeat can take two forms: reconstructing the partisan makeup of the district in order to protect the incumbent from electoral defeat, or surgically removing powerful challengers from the incumbent's district. With the technology currently available to redistricting committees and political parties, removing a potential challenger from an incumbent's district is remarkably easy. However, adding a partisan buffer to a majority party incumbent's district can require a sacrifice in electoral efficiency if the incumbent demands more of a buffer than he or she will need. When majority party votes are added to the district

wasted votes are created. Thus the goals of increasing electoral efficiency and protecting key incumbents may be at odds with each other if protecting the incumbents requires the creation of wasted votes.

### **The Dilemma**

As briefly touched on above, increasing electoral efficiency presents the majority party of the state legislature with a dilemma – in order to increase efficiency, some majority-leaning districts must be made more competitive, increasing the chance of the defeat of a majority party incumbent and/or candidate. The situation resembles the classic collective action problem of the prisoner’s dilemma, a situation in which (in the case of two individual actors) cooperation by both individuals results in the greatest collective outcome, but defection by one individual results in the best individual outcome regardless of whether or not the other actor cooperates. As applied to the majority party of the state legislature, we would expect each individual legislator to favor the collective good of increased electoral efficiency but be very resistant to sacrifice their own electoral support in their district in order for the collective good to be obtained. In essence, each legislator will prefer to defect and become a free-rider.

Table 3 represents the application of the prisoner’s dilemma model to a theoretical state legislative redistricting scenario. In our scenario, complete cooperation from members of the majority party will result in the gain of 10 additional electoral seats. For simplicity, we assume that cooperation from each individual requires the sacrifice of 5% of the individual’s electoral strength in their own district and yields the gain of one additional electoral seat. As demonstrated by Table 4, the individual legislator faces significant incentives to defect regardless of whether or not the group (all other majority

party legislators) cooperates or defects. The preferred scenario to the individual is one in which the group cooperates and the individual defects.

**TABLE 3. Group v. Individual Payoff**

		<b>Group</b>	
		Cooperate	Defect
<b>Individual</b>	Cooperate	10 seats gained / 10 seats gained - decreased electoral strength in own district (5%)	1 seat gained / 1 seat gained – decreased electoral strength in own district (5%)
	Defect	9 seats gained / 9 seats gained	0 seats gained / 0 seats gained

Upon closer examination we also notice that, in contrast with the traditional prisoner’s dilemma model, the model of the state legislative redistricting dilemma differs in one important way. The payoffs in the state legislative redistricting model are asymmetric. This means that whereas in the traditional prisoner’s dilemma model the payoffs to the group and individual are equal when one party defects (individual cooperation and group defect results in the same outcome for the individual as the group receives when the individual defects and the group cooperates), state legislative redistricting results in unequal payoffs when one party defects and the other parties cooperate. In our model, the individual payoff when the group defects and the individual cooperates is one electoral seat minus the 5% of sacrificed electoral support. When the individual defects and the group cooperate the group payoff is 9 seats. This means that the individual can defect without causing a serious harm to the group and the risk of being the sole cooperator is comparatively larger (the individual can only gain one additional electoral seat by cooperating at the cost of risking being the sole cooperator).

The prisoner's dilemma model predicts very compelling reasons for the individual to defect. Additionally, the asymmetric relationship of the individual and group payoffs results in an increased incentive to defect. As Beckenkamp, Hennig-Schmidt, and Maier-Rigaud assert in their analysis of asymmetric prisoner's dilemma models, "asymmetric dilemmas require much more complicated negotiations than typical PD games. The dilemma no longer consists of a relatively simple choice between the risks of mutual cooperation and the regrets of mutual defection" (Beckenkamp, Hennig-Schmidt, and Maier-Rigaud 2007, 2). Therefore, state legislative redistricting present us with a situation in which there are significant obstacles to achieving increased electoral efficiency. As Chong writes, "when collective action is formulated as a prisoner's dilemma, it appears that plans...are doomed from the start; rational individuals will prefer to be free riders rather than participants" (Chong 2000,7).

In order to overcome the collective action dilemma that redistricting presents, certain incentives for participation must be present. According to Mancur Olson, "only a separate and 'selective' incentive will stimulate a rational individual in a latent group to act in a group-oriented way" (Olson 1965, 51). These incentives may take the form of material, social, and expressive or participatory benefits. Material benefits can come in the form of a monetary reward. For example, those who are willing to sacrifice some of their electoral support may be promised campaign contributions or a position on a key committee. Social incentives may come in the form of a legislator's desire to assist their colleagues or to have the reputation of making a sacrifice for the good of the majority caucus. As Chong notes, such reputational incentives stem from the desire to "maintain one's social standing and avoid ridicule and ostracism" (Chong 2000, 9). Expressive or

participatory benefits “psychological benefits (feelings of efficacy, empowerment, righteousness, etc.) that people derive from contributing to a group effort” (Chong 2000, 10) may also be present. In fact, for some legislators, their sacrifice of electoral strength may be worth it if it means that the opposition will be worse off in the next election.

What does the majority party do when such cooperation cannot be reached? Are all hopes of achieving their political goals lost? The answer is no. Where cooperation cannot be achieved the majority party can still resort to other gerrymandering tactics such as population inequality, incumbent/challenger removal, incumbent displacement, and bipartisan incumbent protection gerrymanders - tactics which present no collective action dilemma.

### **The Tools**

In seeking to fulfill the goals of increasing electoral efficiency, ousting minority party incumbents, and protecting key caucus members, the majority party has various gerrymandering tools at its disposal. With the advent and widespread availability of redistricting software to state legislators and their allied partisan operatives gerrymandering can take on increasingly subtle forms. Before one can determine whether or not gerrymandering has occurred they must know what to look for. It is easy to identify where minority party incumbents districts have been combined, but it can be much harder to identify subtle shifts in the partisan makeup of districts. In essence, the toolbox contains both mallets and scalpels.

Population Inequality. The Supreme Court has required states to make “an honest and good faith effort” in creating equally populated districts (Brown v. Thomson, 42 U.S. 835, 842 1983). As noted above, a total population deviation of up to 10% has been

considered to be acceptable to the Court and requires no special justification. Total population deviations of 16.4% have been identified by the court as approaching the tolerable limits of population deviation when a compelling justification is present (Hebert, Smith, and Virilli, 11). Thus states are left with a powerful, albeit restrained, ability to discriminate against voters by packing certain undesirable voters into as few districts as possible while spreading desired voters into many lesser populated districts.

The following example demonstrates the importance of even slight population deviations. In a state with 1 million voters and 100 state legislative districts the ideal district population would be 10,000 individuals. In this hypothetical state, that is evenly divided amongst Republicans and Democrats (500,000 of each), it would be legally permissible without special justification to create 53 Republican leaning districts with populations of roughly 9,500 individuals, leaving 47 Democratic leaning districts of populations close to 10,500 each. Thus a disparity of six seats is created without drawing extensive legal scrutiny.

Identifying population inequality gerrymanders is simple. The average minority party leaning district population will be either increased or maintained larger than the average majority party leaning district. If population inequality gerrymanders are present in Utah then, on average, Democratic leaning districts in both the Utah House and Senate will be larger than Republican leaning districts in those bodies. The aggressiveness of the population inequality gerrymander can be measured by the total population deviation, with close to or above 10% indicating an aggressive approach and lesser population deviations representing moderate use of population inequality as a gerrymandering technique in the 2001 Utah redistricting plan.

Partisan Reconstruction. Partisan reconstruction gerrymanders occur when the redistricting plan alters the partisan makeup of districts and requires the achievement of our collective good mentioned above, increased electoral efficiency. The way in which the majority party will seek to alter the district composition depends on the district's existing, or pre redistricting, makeup. In the employment this tactic, districts are divided into the following four categories: safe majority party districts, marginal majority party districts, marginal minority party districts, and safe minority party districts. To increase electoral efficiency, fewer majority party votes must be wasted while more minority party must be wasted. This principle applies to the four categories of districts in the following ways.

1) Safe majority party districts will be made less safe. For example, a district in which the majority party has enjoyed significant victories will sacrifice some of its strength, or wasted votes. It is important to note that weakening a safe seat will not be favored by the district's majority party incumbent. There are likely to be significant restraints on the adoption of this tactic depending on the willingness of majority party incumbents to sacrifice their electoral strength.

2) Marginal majority party districts (districts in which the majority party was victorious by a small margin) will be made more favorable to the majority party. In order to maintain control of existing majority party seats, those seats that were won narrowly – the seats likely to be most vulnerable in the following election – will be strengthened. For example, after a close election in which a majority party incumbent narrowly escapes defeat his or her district will be strengthened.

3) Marginal minority party districts (districts in which the minority party was victorious by a small margin) will be made more favorable to the majority party. The majority party will make marginal minority party seats which are perhaps just leaning to the minority party lean to the majority party. For example, a minority party legislator who enjoyed a narrowly favorable district may find his or her district altered so that it is no longer favorable. This alteration is designed to allow the majority party to gain control of the district in the following election.

4) Safe minority party districts will be made safer. Minority party voters will be packed into districts that the minority party already controls and is likely to control in the following elections. This increases the amount of minority party wasted votes, decreasing the minority party electoral efficiency.

Identifying partisan reconstruction gerrymanders is quite difficult. One must first have an accurate measure of the partisan makeup of districts, and then be able to compare that makeup before and after redistricting. Once this ability is reached one must look for alterations in district partisanship as mentioned above. As applied to Utah, one would look for the following changes: Safe Republican districts will be made less Republican, marginal Republican districts will be made more Republican, marginal Democratic seats will be made more Republican, and safe Democratic seats will be made more Democratic.

Bipartisan Incumbent Protection. Where increased electoral efficiency cannot be achieved and incumbent/challenger removal gerrymanders are exhausted, legislators are left with no other tactics to employ to further their collective partisan interest. However, their personal interests can still be served. Incumbent protection gerrymanders occur

when both parties' incumbents are given increased electoral strength. This takes the form of "vote-swapping," a process in which opposing party legislators trade with each other for like-minded voters. This results in decreased electoral efficiency for each party as like-minded voters are packed into districts. Certain factors could lead even a large majority to forego partisan gain and employ incumbent protection gerrymanders. Fear of criticism from the public and media, an unwillingness to sever relationships with minority party members and leaders, and the objection of a critical number of majority party legislators to furthering partisan goals via redistricting, may result in the majority party abstaining from partisan gerrymandering.

Like partisan reconstruction gerrymanders, identifying incumbent protection gerrymanders requires accurate measures of the partisan composition of districts before and after redistricting. Once these measures are obtained, incumbent protection gerrymanders can be identified in Utah by looking for the following pattern: Seats held by Republican incumbents will become more Republican and seats held by Democratic incumbents will become more Democratic.

Incumbent/Challenger Removal. When increased electoral efficiency resulting in partisan reconstruction gerrymandering cannot be achieved, all is not lost for the majority party. Two of the remaining options are to remove incumbents by combining their districts and remove strong minority (or majority) party challengers from the districts in which they pose a threat to a majority party incumbent.

Incumbent removal gerrymanders occur when districts are redrawn so that two or more minority party incumbents reside within one district – requiring them to run against each other in the following election. This not only eliminates one member of the

minority party, but for each incumbent combined into a district it creates an “open seat” in which the minority party no longer enjoys the electoral advantages of incumbency.

Challenger removal gerrymanders occur when districts are drawn in order to remove a potential challenger of a majority party incumbent. The challenger will most likely be drawn into the district of minority party incumbent or a district in which the majority party incumbent does not fear the challenger.

Identifying incumbent removal gerrymanders is simple. In Utah, the redistricting commission report clearly identifies the elected officials who reside in the pre and post redistricting districts. However, identifying the removal of challengers is quite difficult and requires knowledge of both who the potential candidates were in a given district and their strength relative to the incumbent. Such information is undoubtedly known by incumbents and state political parties but seldom disclosed or identified comprehensively by the media. To overcome this obstacle one can use two techniques, identifying potential challengers by looking at past elections, and interviewing state political party officials - the minority party is likely to be willing to divulge information regarding their potential candidates that were gerrymandered out of a particular district.

Incumbent Displacement. Incumbent displacement gerrymanders also require no sacrifice by majority party incumbents, but can be effective in reducing and/or eliminating the advantages of incumbency that minority party incumbents enjoy.

Incumbent displacement gerrymanders consist of drawing a minority party incumbent's district in such a way that the new (post redistricting) district contains little area covered by the old (pre redistricting) district. For example, a minority party incumbent may find that his or her new district contains only 50% of his or her previous district. With half of

the district comprised of “new turf,” the advantages of incumbency (with the exception of existing campaign funds) are essentially halved.

To identify incumbent displacement gerrymanders one must be able to calculate the percentage of the population that is retained in a district following redistricting. In the case of Utah, if incumbent gerrymanders are present we would observe that, on average, districts with Democratic incumbents would retain a significantly smaller percentage than districts with Republican incumbents.

### **The Case of Utah: The 2001 State Legislative Redistricting Plan**

Utah, like many other states, is a state that has allegedly been the victim of rampant partisan gerrymandering. With control of both legislative bodies and the executive branch, the Utah Republican Party is free to engage in partisan gerrymandering at will with only fierce criticism from Utah Democrats and the media holding them back. Dominant Republican Party control of Utah makes the state a perfect subject for an analysis of unrestrained partisan gerrymandering. The Utah Legislature is free to manipulate district lines at will without fear of an executive branch veto, and Republican majorities are large enough to ensure passage of aggressive partisan gerrymandering plans even if a few majority party legislators refuse to engage in discriminating against their colleagues across the aisle. In essence, Utah offers us the chance to see gerrymandering at its worst or best: either Utah lawmakers will have refrained from gerrymandering despite the ability to do so, or they will have implemented aggressive gerrymanders, using every tactic available to further their partisan interests.

Despite an unbridled ability to gerrymander and repeated allegations from Democrats, many Republican legislators maintain that no partisan gerrymandering has

occurred in the state. One such lawmaker is Senator Michael Waddoups, chairman of the 2001 Utah Redistricting Commission, who when speaking recently at the Hinckley Institute of Politics asserted that “no gerrymandering problem exists in Utah” (Hinckley Institute of Politics 2007). However, given the unfettered opportunity to improve its electoral prospects it is difficult to believe that the Republican Party has been so benevolent.

In 2001, media attention focused heavily on the reworking of Utah’s congressional districts. Although claims of gerrymandering were dismissed by Republican legislators as necessary for the creation of an urban rural mix of constituencies in each Utah congressional district, it was clear to many that the GOP was seeking to gerrymander Democratic Congressman Jim Matheson out of office. To do so, Republicans shifted 90,000 left-leaning voters out of Matheson’s 2<sup>nd</sup> District and into the district of 1<sup>st</sup> District Republican Jim Hansen, added 14 rural conservative counties to Matheson’s 2<sup>nd</sup> District, and narrowed Republican Chris Cannon’s 3<sup>rd</sup> District. This strategy was largely successful. In 2002 Congressman Jim Matheson narrowly beat Republican challenger John Swallow by 1,641 votes while the 1<sup>st</sup> and 3<sup>rd</sup> Districts were held by the Republicans with 61% and 67%, respectively. Thus the Republicans succeeded in creating a competitive district without sacrificing their dominance in the other two districts.

This aggressive gerrymandering prompted fierce criticism from Utah Democrats and Republicans. Senator Robert Bennett (R-UT) called it one of the worst examples of political gerrymandering he had ever seen (Burton, B2). Republican Congressman Jim Hansen, whose district was made less Republican as a result of the gerrymandering,

criticized the redistricting process saying that “if there was ever an argument for letting someone other than the legislature do redistricting, this is one” (Burton, B2).

The congressional alterations in the 2001 Utah redistricting plan garnered extensive media coverage. It was clear to all that the districts of several Democratic incumbents had been combined, but media reports failed to address changes in the partisan makeup of districts. While even the novice observer can recognize that the 2001 Utah Congressional redistricting was subject to aggressive gerrymandering, was the Utah Legislature subjected to similar partisan gerrymanders? Until now no in-depth studies of the 2001 Utah legislative redistricting have been made available to the public. In this paper, I attempt to fill this void by presenting an analysis of the partisan impact of the 2001 Utah state legislative redistricting by identifying the use of the gerrymandering tactics mentioned in the previous section.

### **Methodology**

In order to reveal which type(s) of gerrymander(s) the Utah State Legislature implemented in 2001, I conducted an analysis of the 2001 Utah redistricting plan following the model established by Bruce Cain in 1985 for his analysis of the 1981 California redistricting plan commonly known as the “Burton Plan.” In his work, *Assessing the Partisan Effects of Redistricting* (1985), Cain estimated the probabilities of Democrats and Republicans winning various seats both before and after redistricting using party registration figures and vectors of coefficients that estimated the electoral strength of incumbent candidates and factored in demographic data. Once these figures were tabulated, Cain was able to calculate a probability score (the predicted Democratic

performance) for each congressional and legislative district both prior to and after redistricting.

Alternative methods proposed by Kousser (1996) and King (1990) measure the effects of redistricting by using pre and post redistricting vote totals and by pooling election results across multiple electoral districts and adjusting for counterfactual conditions and hypothetical election scenarios, respectively. According to Kousser (1996), these methods of measurement can be utilized without significantly sacrificing accuracy. Although Kousser was able to prove that his more simple method of analyzing redistricting outcomes was similar in accuracy to Cain's method, this study seeks to be maximize accuracy, as even marginal changes in district partisanship can have dramatic electoral implications. It would be tempting to simply assess how legislative incumbents and candidates fared in pre and post redistricting elections. However such a method fails to take into account local factors such as candidate name recognition, strength, and spending which may significantly alter election outcomes. In essence, to say that candidate X won by a larger margin in 2002 than in 2000 fails to consider many factors other than the district's partisan composition that could have fueled that outcome. In fact, an analysis of pre and post redistricting election results which I conducted in April 2007 led me to mistakenly believe that the partisan impact of the 2001 Utah Legislative redistricting was marginal. The results of this more accurate study paint an entirely different picture.

Thus, I employed a method aimed at analyzing the 2001 Utah redistricting plan following Cain's lead. Due to the unavailability of accurate partisan registration information in Utah (neither party maintains past party registration figures at the precinct

or district level) for pre and post redistricting elections, and the difficulty in accurately predicting incumbency advantage - a topic that has been the subject of much debate (see Gelman and King 1990) – a study strictly following Cain’s model was not possible. So, instead of using party registration data, this study uses past election figures from multiple statewide and congressional races to, like Cain, calculate probability scores called “Democratic Performance” indicators for each state legislative district prior to and after redistricting. This allows me to measure the changes in Democratic Performance that were enacted during the 2001 round of Utah State Legislative redistricting.

This study uses the results of the several statewide Presidential, Utah Governor, Utah Attorney General, and Congressional elections to calculate Democratic Performance, or the percentage of the electoral vote that a Democrat would be expected to receive in a particular district. Using 2000 Census Bureau data including the TIGER (Topologically Integrated Geographic Encoding and Referencing system) shape files, a database of election returns from statewide and congressional races broken down into census blocks, and *autoBound*<sup>TM</sup> redistricting software with the assistance of the National Committee for an Effective Congress, I was able to look at the statewide and congressional results at the census block level and divide and aggregate those results into the pre and post redistricting Utah House and Utah Senate districts. I also present an analysis of census figures accompanying the 2001 Utah Redistricting Commission Report in order to calculate the changes in district populations and the impact of the 2001 redistricting on minorities.

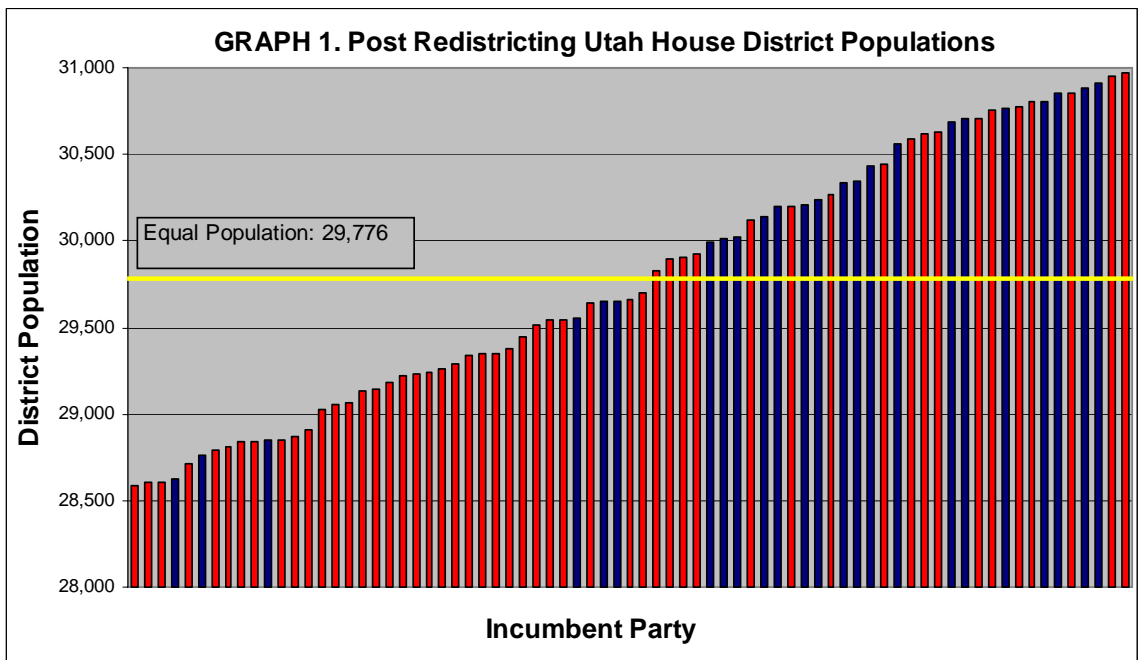
To conduct my study I was assisted heavily by the Utah State Office of Legislative Research and General Counsel, Utah Democratic Party, the National Committee for an Effective Congress, and the National Conference of State Legislatures.

### **Findings and Analysis**

As discussed earlier, the gerrymandering techniques of partisan reconstruction, incumbent/challenger removal, and bipartisan incumbent protection translate into unique and identifiable redistricting outcomes. If partisan outcomes are unintended and randomly distributed, as many Republican legislators and party officials in Utah claim, we would expect partisan alterations to districts to not be strongly correlated with whether or not the incumbent or district was Democratic or Republican. If, on the other hand, gerrymandering was intentional and targeted towards Democrats we would expect district alterations and incumbent or district partisanship to be strongly correlated. As Cain notes, the key in identifying gerrymandering is that both parties will be treated differently in the redistricting process (Cain, 1985 321). This section presents the results of the study which identify the implementation of the gerrymandering tools identified above.

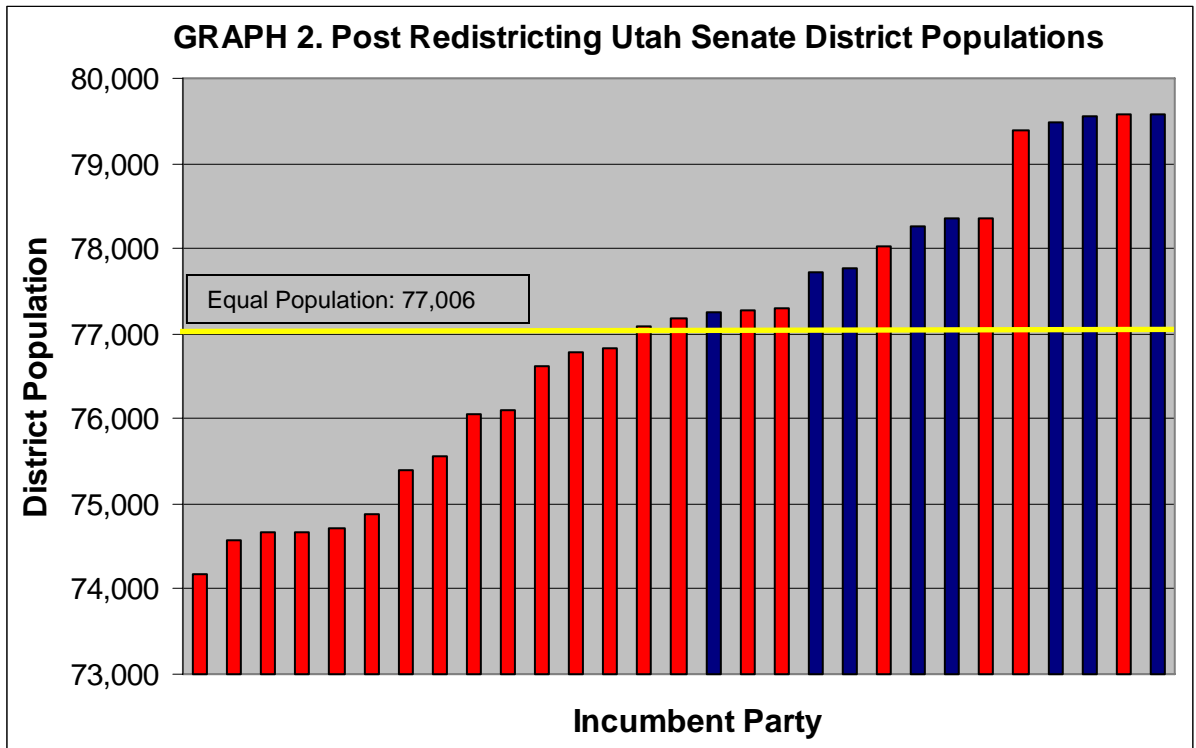
Population Inequality. The analysis suggests that the 2001 redistricting plan used disparities in district population to discriminate against Democrats. With the total population of Utah tabulated by the 2000 U.S. Census to be 2,233,169 persons (Utah State Legislature, 2001), an equal division of the 75 Utah House districts was determined to be 29,776 persons, and an equal division of the 29 Utah Senate districts was determined to be 77,006 persons.

On average Democrat-controlled Utah House districts deviated from the “ideal” or equal population by an average of 1.20%. Republican-controlled Utah House districts deviated from the ideal population by an average of -.57%. The average Utah House Democrat-controlled district population was 30,133, while the average Utah House Republican-controlled district population was 29,600. The total population deviation in the Utah House was 7.99% with the largest Utah House district totaling 30,967 and the smallest totaling 28,587 persons. Graph 1 demonstrates that the discrimination in Democratic and Republican district population is fairly consistent, with the vast majority of Democratic districts falling to the right, or upper end, of the graph.



The analysis reports the same findings in the Utah Senate, where Democrat-controlled Utah Senate districts deviated from the ideal population by an average of 1.93%, and Republican-controlled Utah Senate districts deviated from the ideal population by an average of -.74%. The average Utah Senate Democrat-controlled district population was 78,492, while the average Utah Senate Republican-controlled

district population was 76,436. The total population deviation in the Utah Senate was 7.02% with the largest Senate district totaling 79,586 and the smallest totaling 74,179 persons. Graph 2 demonstrates that the discrimination against the Democratic districts in the Senate was even more consistent. All Democratic districts fall to the right, or upper end, of the graph.

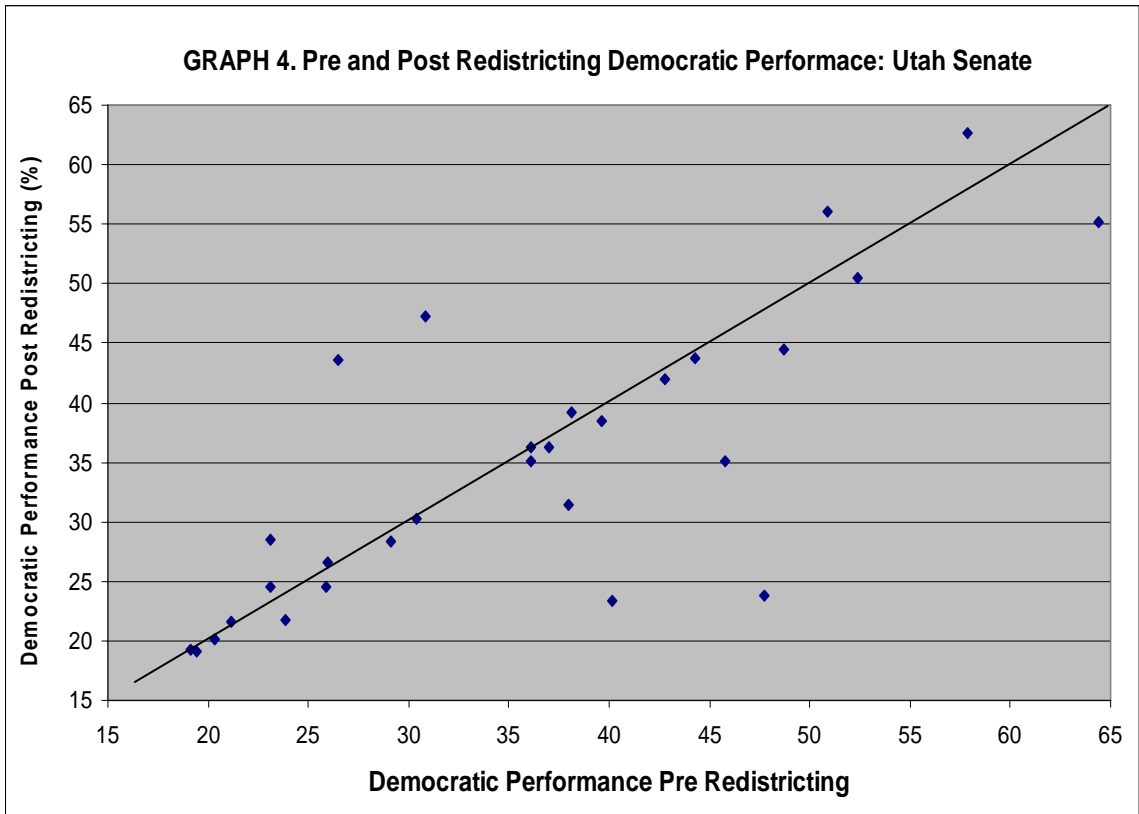
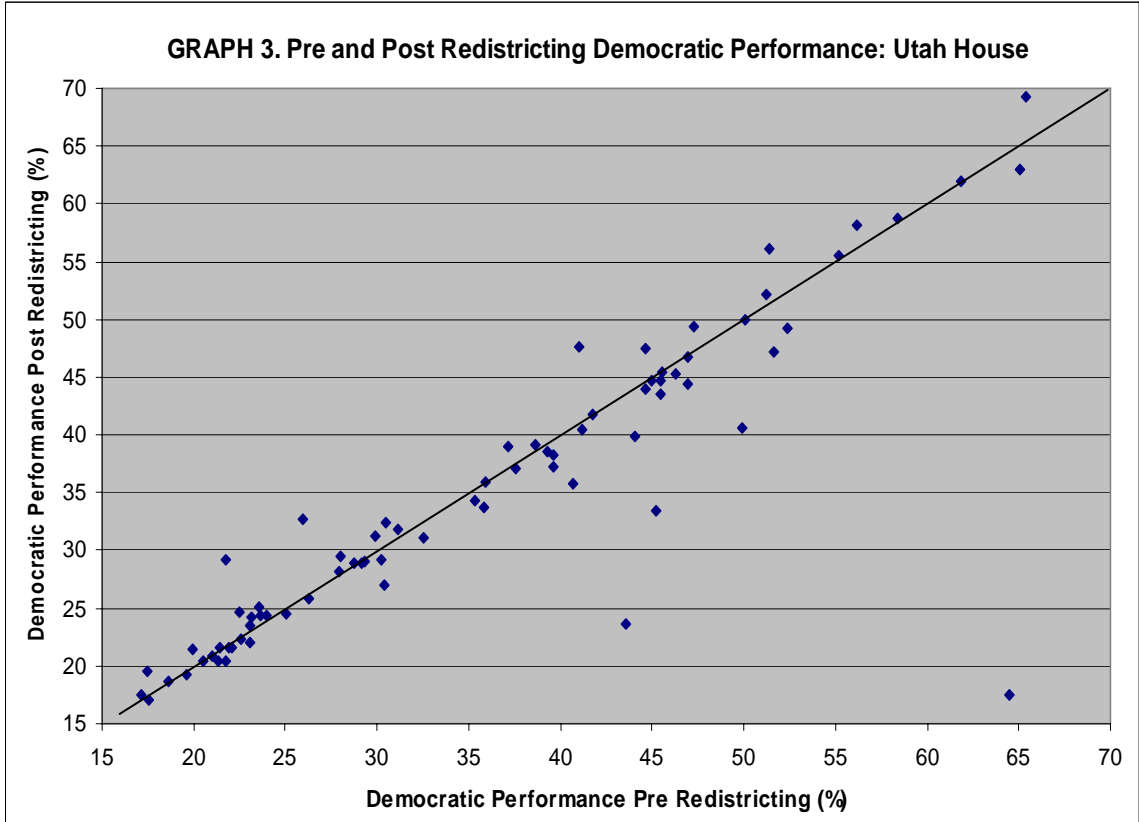


Partisan Reconstruction. Partisan reconstruction gerrymanders – aimed at achieving increased electoral efficiency – are identified by an increase in the efficiency with which the majority party’s electoral support is distributed throughout the electoral system. To identify a partisan reconstruction gerrymander one looks to see if the number of “wasted” votes for the Utah Republican Party decreases after redistricting. If partisan reconstruction gerrymanders are present we would expect to see the following pattern in the graphs of Democratic Performance in the Utah House and Utah Senate: 1) Safe

Democratic seats will be made more democratic. The seats represented by the points in the upper right-hand corner of the graph will be above the 45 degree line (the line represents no change in Democratic Performance). 2) Competitive or marginal Democratic seats will be made less democratic. The seats represented by the points in middle of the graph will be below the 45 degree line. 3) Safe Republican seats will be made less safe. The seats represented in the lower left-hand corner of the graph will be above the 45 degree line.

Both of the graphs below show evidence of these three indicators, supporting the conclusion that partisan reconstruction gerrymanders were present in the 2001 Utah State Legislative redistricting. Graph 3, which displays changes in Democratic performance of Utah House districts, demonstrates that seats in which Democrats are competitive (Democratic performance of between 35 and 55 percent) were made less Democratic while seats in which Democrats enjoyed electoral dominance (55 to 70 percent) and little support (15 to 35%) were made more Democratic. Democratic electoral efficiency decreased while Republican electoral efficiency increased.

Graph 4 reveals a similar pattern in the Utah Senate. Like the Utah House, seats in which Democrats were competitive (35 to 55 percent) were made markedly less Democratic. While the same pattern of packing Democrats into strong and weak Democratic performance seats is not as evident, the Republican electoral efficiency increases while the Democratic electoral efficiency decreases.



From this evidence we can see that both the Utah House and the Utah Senate were subjected to the predicted partisan reconstruction gerrymanders which increased the electoral efficiency of the Republican Party. To do so, certain Republican lawmakers had to sacrifice electoral support (martyrs) while others enjoyed added electoral support (majority party beneficiaries). On the other side of the aisle, certain Democratic legislators saw their electoral strength reduced (victims) while others' districts were made even more Democratic (minority party beneficiaries). Tables 4 - 11 list the top Utah House and Utah Senate martyrs, majority party beneficiaries, victims, and minority party beneficiaries of the partisan reconstruction aspect of the 2001 Utah Redistricting plan.

**TABLE 4. House Martyrs** (Majority-party legislators who sacrificed electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. Jack Seitz (R-55)	21.8%	29.2%
2. Darin Peterson (R-67)	26.0%	32.6%
3. Bradley Winn (R-57)	18.0%	19.5%
4. Richard Siddoway (R-20)	30.5%	32.4%
5. Brad Johnson (R-70)	23.6%	25.1%

**TABLE 5. House Majority-Party Beneficiaries** (Majority-party legislators who gained electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. David Ure (R-53)	44.0%	39.8%
2. Douglas Aagard (R-15)	30.4%	27.0%
3. Afton Bradshaw (R-28)	52.4%	49.2%
4. Lamont Tyler (R-36)	46.9%	44.4%
5. Carl Saunders (R-11)	39.6%	37.3%

**TABLE 6. House Victims** (Minority-party legislators who sacrificed electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. Gary Cox (D-38)	49.9%	40.6%
2. David Litvack (D-27)	64.5%	58.8%
3. Trisha Beck (D-48)	40.7%	35.7%
4. Brad King (D-69)	51.6%	47.2%
5. Scott Daniels (D-25)	65.0%	63.0%

**TABLE 7. House Minority-Party Beneficiaries** (Minority-party legislators who gained electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. Cindy Beshear (D-39)	40.9%	47.7%
2. Ty McCartney (D-31)	51.4%	56.0%
3. Jackie Biskupski (D-30)	65.4%	69.3%
4. Max Young (D-71)	43.6%	47.2%
5. Carol Moss (D-37)	44.7%	47.5%

**TABLE 8. Senate Martyrs** (Majority-party legislators who sacrificed electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. R. Mont Evans (R-5)	30.8%	47.3%
2. Leonard Blackham (R-28)	23.8%	28.5%
3. Peter Knudsen (R-24)	23.1%	24.5%
4. Bill Wright (R-17)	23.1%	24.5%
5. Terry Spencer (R-22)	26.0%	26.6%

**TABLE 9. Senate Majority-Party Beneficiaries** (Majority-party legislators who gained electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. David Gladwell (R-18)	42.8%	36.2%
2. L. Alma Mansell (R-10)	38.0%	35.1%
2. Howard Stephenson (R-4)	26.5%	23.8%
3. Steven Poulton (R-9)	45.8%	43.6%
4. Lyle Hillyard (R-25)	25.9%	24.5%

**TABLE 10. Senate Victims** (Minority-party legislators who sacrificed electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. Millie Peterson (D-12)	48.7%	44.5%
2. Gene Davis (D-3)	52.4%	50.5%
3. Paula Julander (D-1)	64.4%	62.6%
4. Ed Mayne (D-11)	47.7%	47.3%

**TABLE 11. Senate Minority-Party Beneficiaries** (Minority-party legislators who gained electoral support)

Legislator	Dem. Performance pre-redistricting	Dem. Performance post-redistricting
1. Karen Hale (D-7)	50.9%	56.1%
2. Pete Suazo (D-2)	57.9%	62.6%
3. Ron Allen (D-13)	40.2%	44.5%
4. Mike Dmitrich (D-27)	38.1%	39.1%

Bipartisan Incumbent Protection. Bipartisan incumbent protection gerrymanders are identified by a decrease in electoral efficiency for one or both parties. As demonstrated above in graphs 3 and 4, the 2001 Utah State Legislative redistricting was characterized by aggressive partisan reconstruction gerrymandering. Bipartisan reconstruction gerrymanders are possible only when the majority party forgoes aggressive gerrymandering and opts to protect both parties' incumbents. This was not the case in Utah in 2001. While Democratic incumbents in both Utah House and Senate were the recipients of more favorable districts, the Democrats who received more favorable districts did so due to the Republicans packing strategy.

However, Republicans could have been more aggressive in their pursuit of increased electoral efficiency. As tables 3 and 4 show, certain Republican incumbents were the beneficiaries of increased electoral strength (resulting in lesser overall Republican electoral efficiency). The Republican Caucus sacrificed its overall electoral efficiency in order to strengthen the districts of these Republican incumbents. There are many possible explanations for this phenomenon. The Republican Party could have felt that these particular Republican incumbents were in need of additional electoral support. It is also possible that the Republican beneficiaries were able to use their leadership positions or other positions of power and influence in order to leverage a more favorable redistricting outcome for themselves despite the harm that it did to the caucus as a whole.

Incumbent/Challenger Removal. Incumbent/ challenger removal gerrymanders are detected by watching for the combining of minority incumbent districts such that both incumbents are drawn into the same district or identifying when districts are drawn so that a prospective challenger is excluded. The combining of incumbent Democrats is

easy to detect and this form of gerrymandering was the most evident form of gerrymandering that took place in Utah in 2001, drawing extensive media attention and spurring outcries from Democratic legislators and voters. Table 12 shows which legislators’ districts were combined by the 2001 redistricting plan.

**TABLE 12. Combined Utah State Legislative Districts**

<b>Legislative Body</b>	<b>Combined Legislators</b>	
Utah Senate	Sen. Ron Allen (D-13)	Sen. Millie Peterson (D-12)
Utah House	Rep. Fred Fife (D-26)	Rep. David Litvack (D-27)
	Rep. Patrice Arent (D-41)	Rep. Karen Morgan (D-46)
	Rep. Matt Throckmorton (R-65)	Rep. Glen L. Way (R-66)
	Rep. Brad King (D-69)	Rep. Max W. Young (D-71)

Incumbency removal gerrymanders were directly responsible for Republican gains of 3 seats in the Utah House with Reps. Dougall (R-27), Kiser (R-41), and Last (R-71) occupying the vacated Democratic House seats. In the Senate, incumbency removal gerrymanders added one seat to the Republican caucus with the vacated seat 13 being distributed among seats 1, 6, 12, 13, 17, allowing for the Republicans to create district 28, which was won by Sen. Hatch (R) in the 2002 election. While the table shows that the 2001 redistricting plan also combined the districts of Republican Reps. Throckmorton (R-65) and Way (R-66), this was not actually a self-inflicted partisan gerrymander. Rep. Throckmorton had already announced his retirement from the Utah House prior to the redistricting process (Bernick, Deseret Morning News, Nov. 8, 2001).

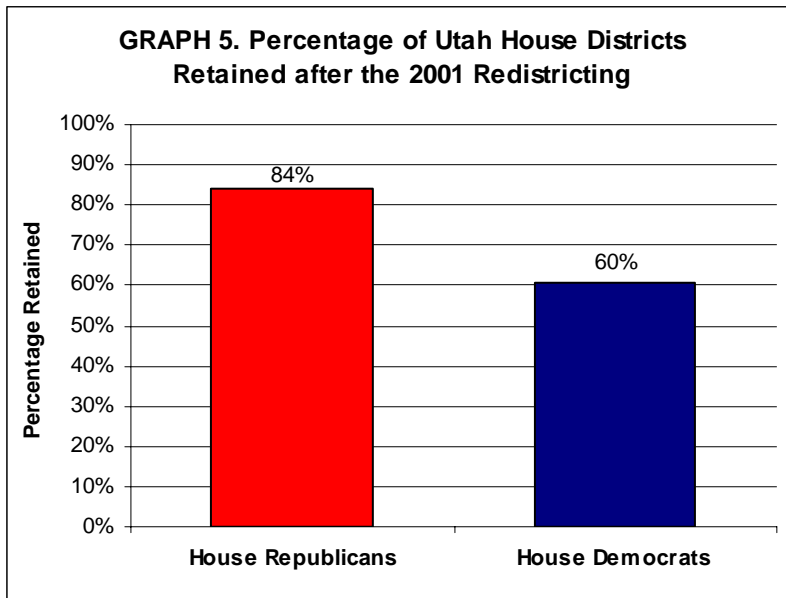
The 2001 Utah redistricting plan also removed at least one strong potential challenger from running against an incumbent Republican. The creation of the “Becky Richards nipple” – a bizarre and apparently nipple-shaped carve-out of then Majority Whip David Ure’s district removed Snyderville Democrat Becky Richards from Utah House district 53. Richards had challenged Ure in 2000, coming close to defeating the

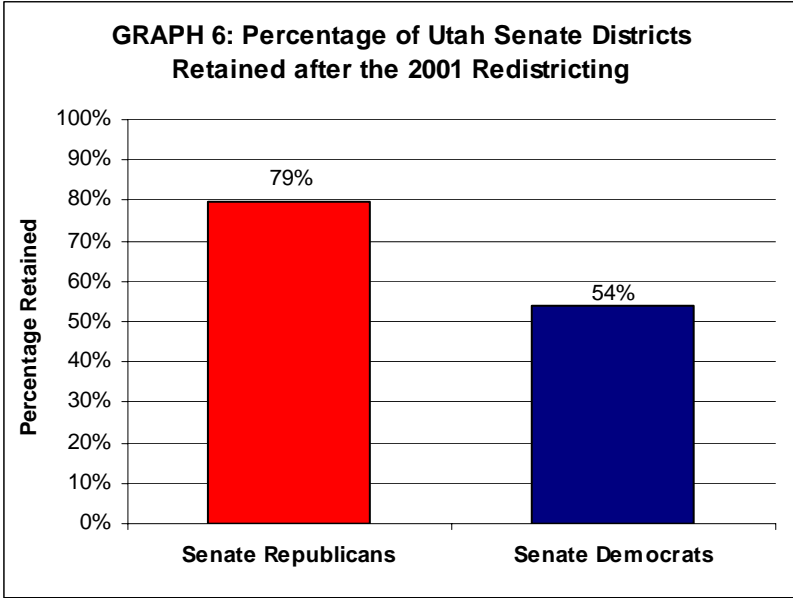
longtime incumbent (Harrie and Burton 2001). With the enactment of the 2001 redistricting plan Richards no longer posed a threat to Rep. Ure’s reelection in 2002.

Incumbent Displacement. Incumbent displacement gerrymanders reduce the strength of an incumbent legislator by adding “new” territory to the incumbents district, thus reducing the candidates name recognition and support in a portion of the new district.

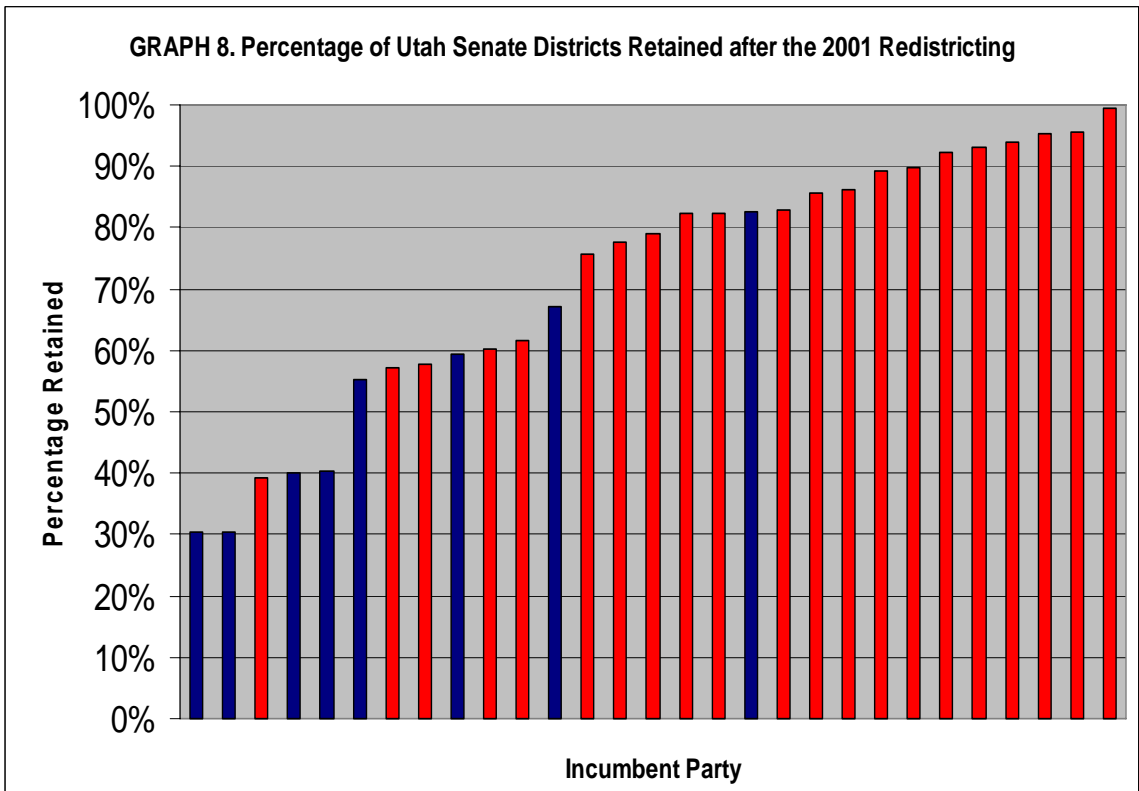
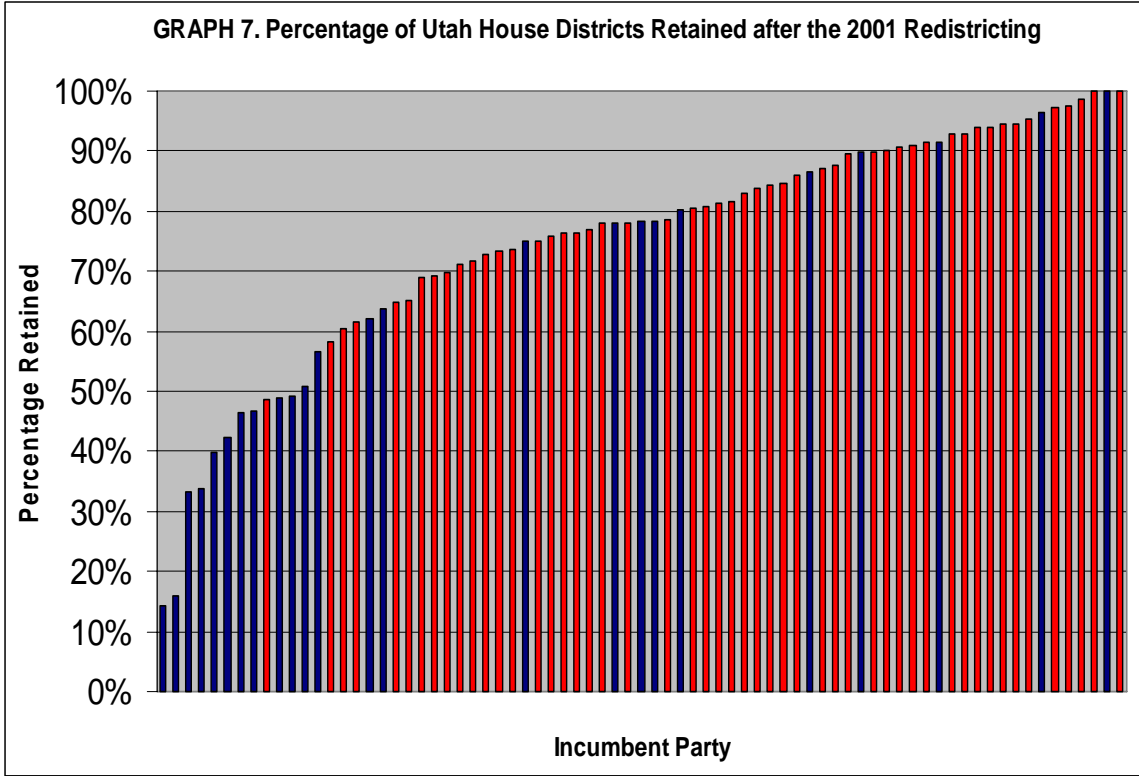
Incumbent displacement gerrymanders were present in the 2001 Utah redistricting plan.

There was a significant difference in the way Democrat and Republican incumbents were treated in regards to the percentage of their existing district that was retained in their new district boundaries. Graphs 5 and 6 illustrate the discrepancy in the treatment of incumbent Republicans and Democrats in the Utah House and Senate.

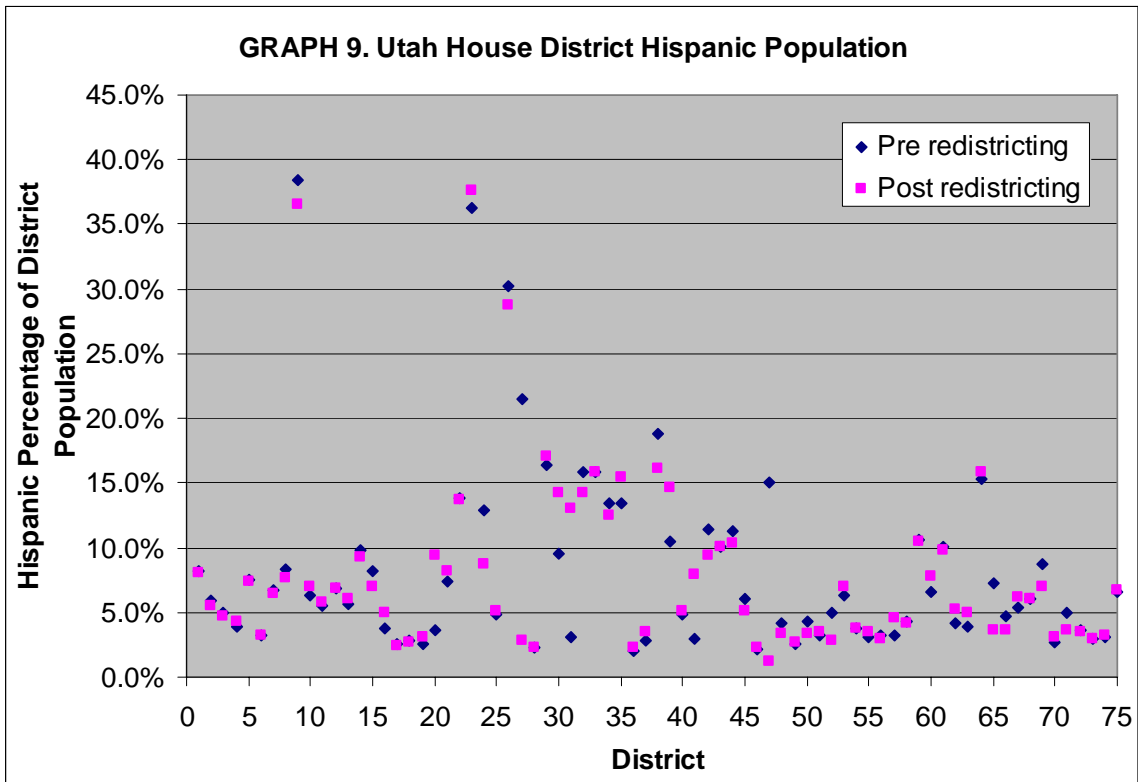


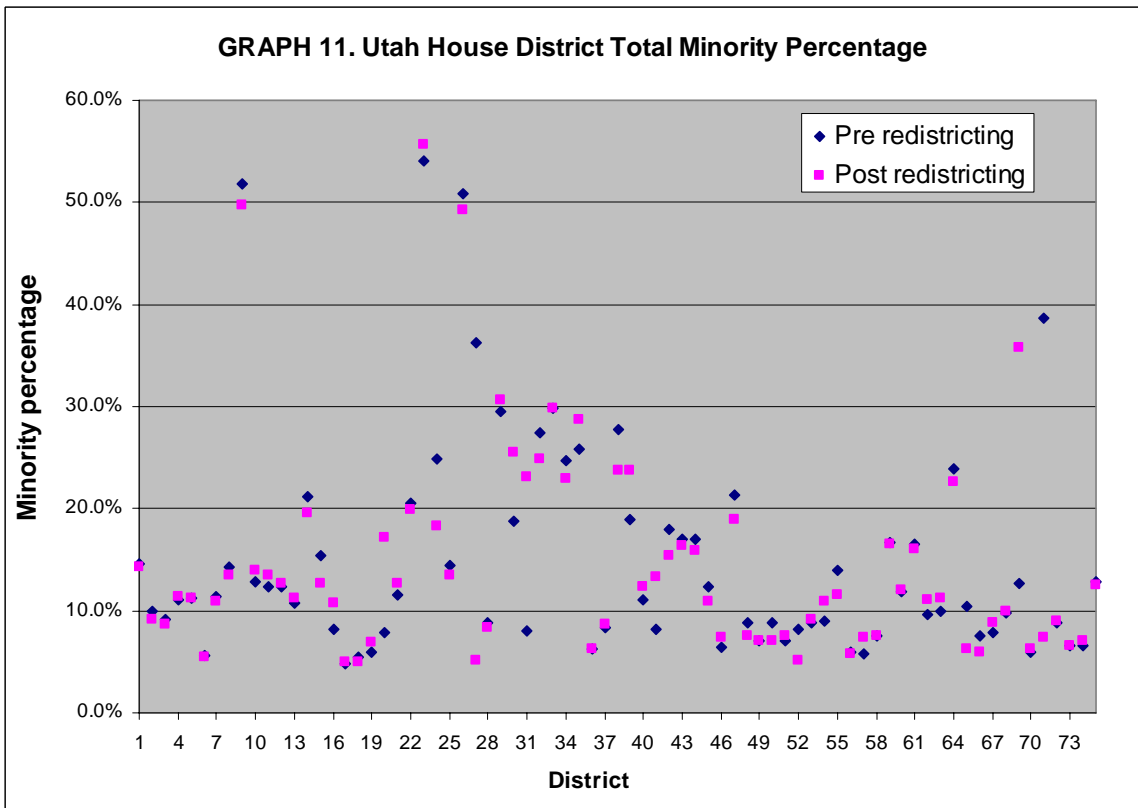
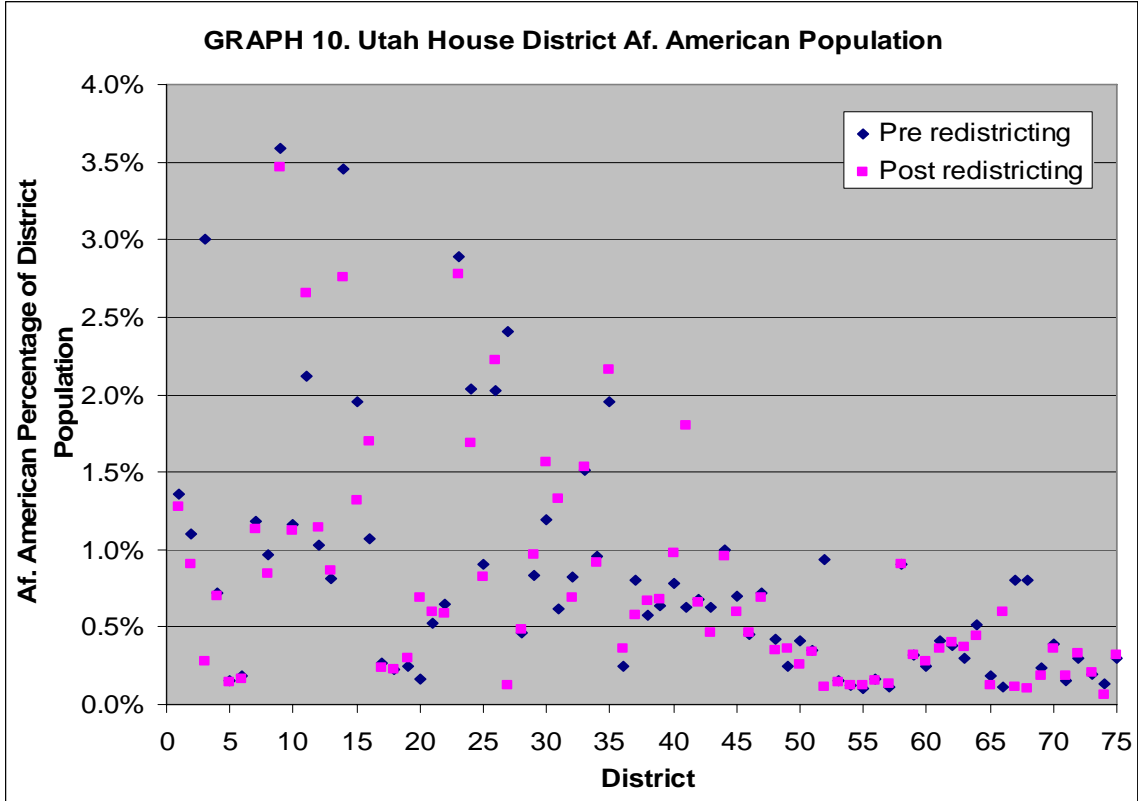


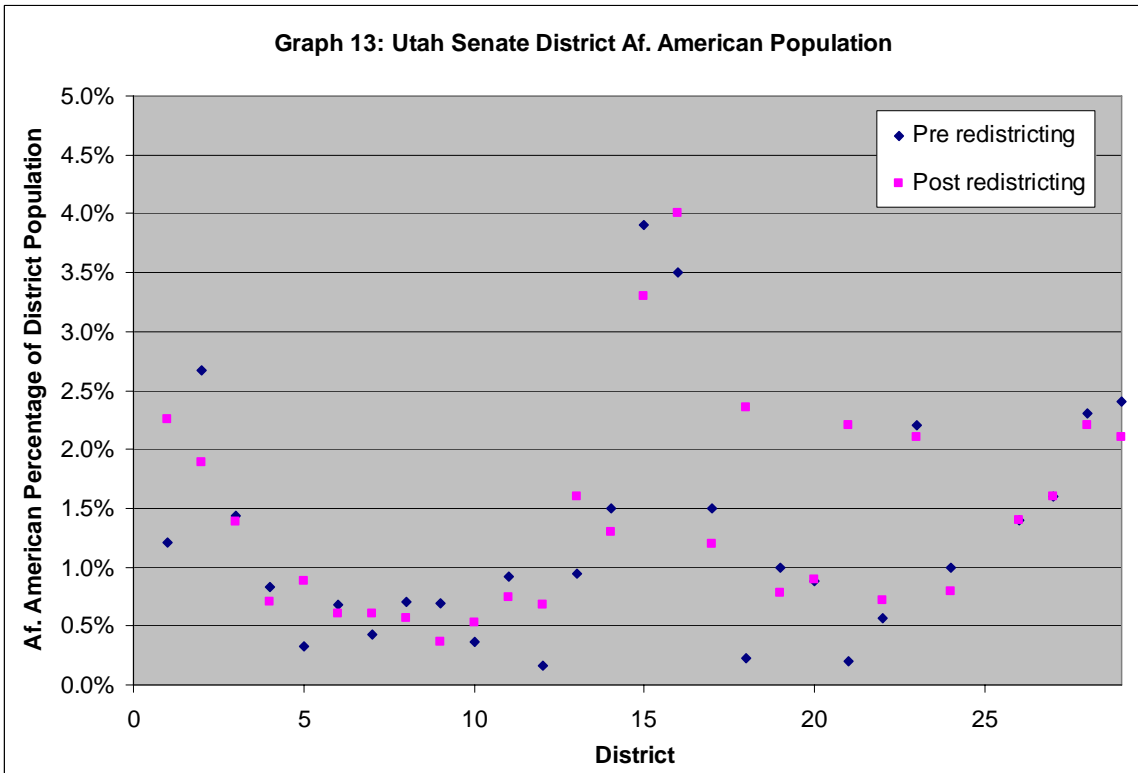
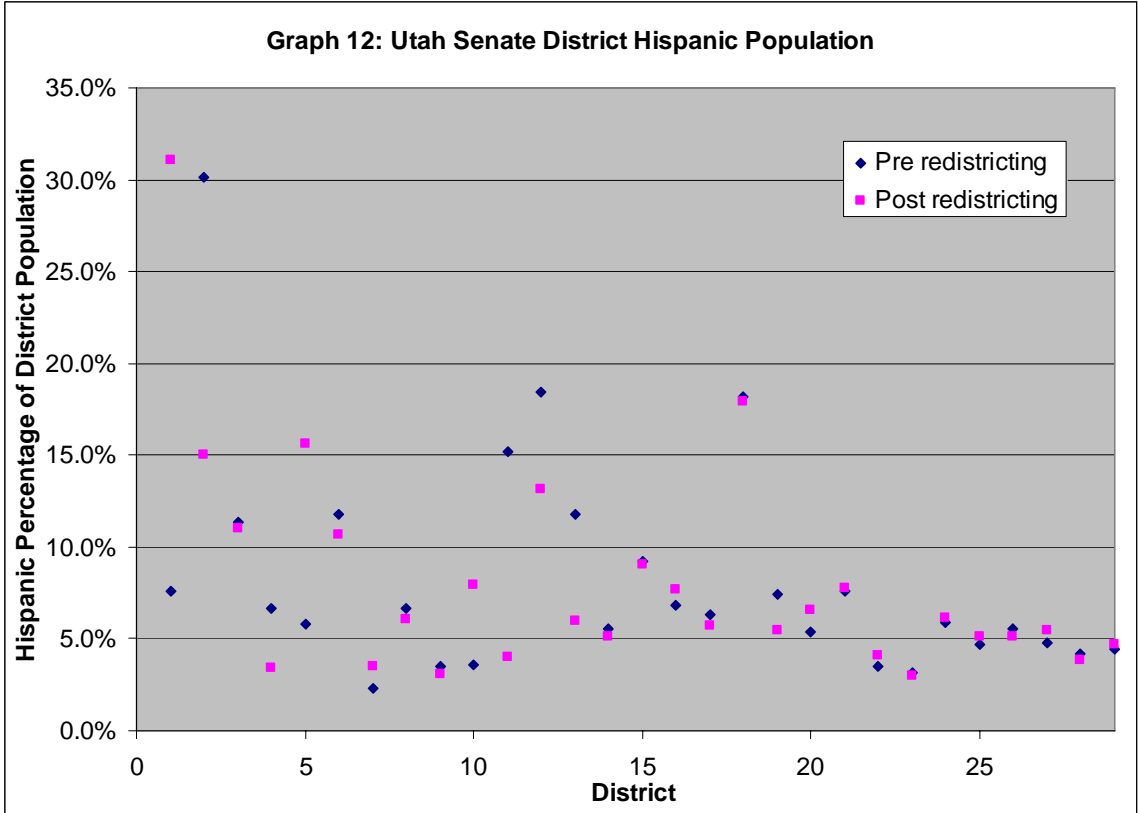
The discrepancy in the way Democrats and Republicans were treated is striking. On average, House Republicans retained 84.17% of their districts while House Democrats retained only 60.72% of their districts. In the Senate, Republicans retained 79.81% of their districts while Democrats retained only 54.20% of their districts. Graphs 7 and 8 demonstrate that this discriminate treatment is consistent, with the vast majority of Republican seats falling onto the right-hand side of the graph with the vast majority of Democratic seats falling onto the left-hand side of the graph.

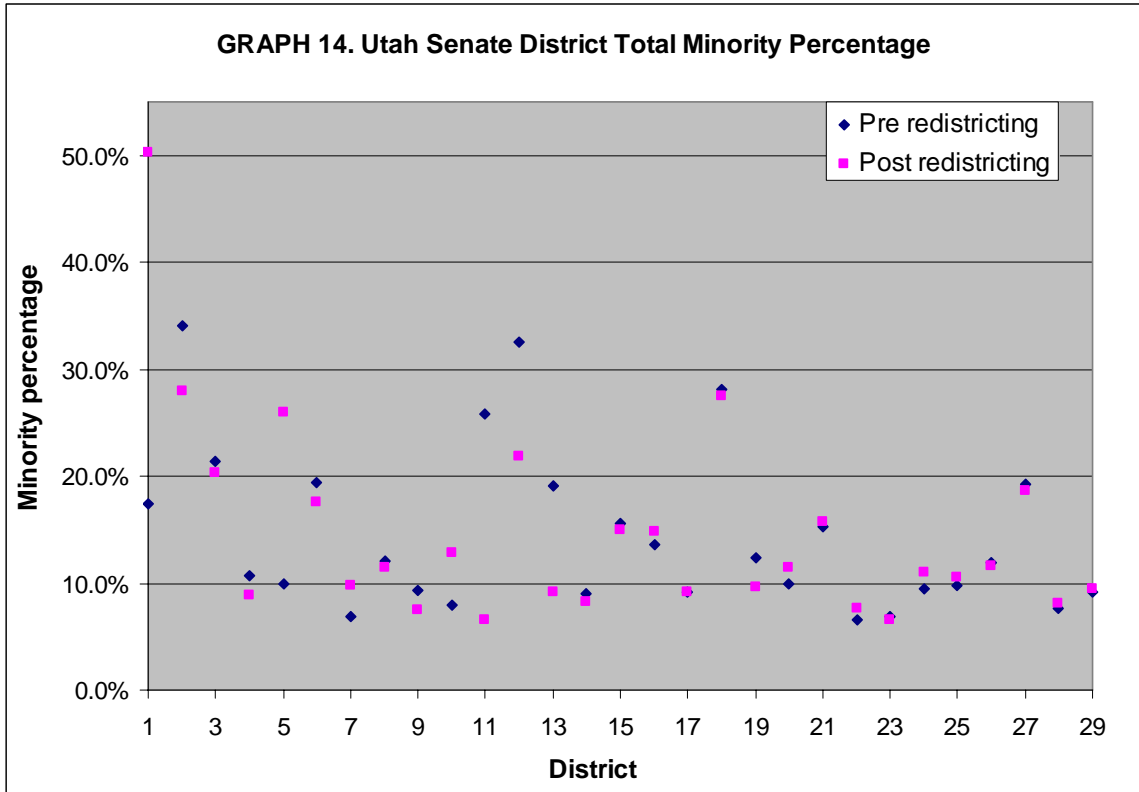


Racial Vote Dilution. The 2001 Utah Legislative Redistricting had no significant impact on Utah’s minority populations. Hispanics voters hold considerable influence in three Utah House Districts and one Utah Senate District, while African Americans hold little influence in all Utah House and Senate districts. Graphs 9 through 14 show the changes in the percentages of the African American, Hispanic, and Total Minority (including Pacific Islanders) voting-age populations (VAP) in the Utah House and Senate districts that were instituted by the 2001 redistricting plan. There is little evidence to support the claim that racial gerrymandering was instituted by the 2001 Utah redistricting plan.









## Conclusion

The evidence presented in this paper demonstrates that the 2001 Utah legislative redistricting plan included significant partisan gerrymandering in the form of population inequalities, partisan reconstruction of districts, combination of incumbents, removal of potential challengers, and displacement of incumbents. Republican legislators were remarkably strategic in implementing a plan that increased their electoral efficiency without immediately jeopardizing the districts of any Republican incumbents in the short term. As a result, Democrats lost 5 seats in the Utah House (from 24 seats in 2000 to 19 in 2004) and 1 seat in the Utah Senate (from 8 seats in 2000 to 7 seats in 2002).

It is important to note that in implementing such an aggressive redistricting plan, Republican legislators made a gamble – that Republicans will be able to hold onto marginal Republican seats over the course of the ensuing decade. Thus, the aggressive partisan gerrymandering of the 2001 Utah state legislative redistricting plan may backfire if Utah Democrats are able to perform better than expected in several Republican districts. The 2001 state legislative redistricting plan left several Republican incumbents at risk of electoral defeat. In the Utah House, the following Republican-controlled districts were left with Democratic Performance indicators of more than 40%: District 32 with a Democratic performance of 45.27%, District 34 (43.57%), District 36 (44.43%), District 38 (40.62%), District 39 (47.67%), District 44 (44.68%), and District 45 (40.39%). In the Senate, three Republican-controlled districts were left with Democratic performance indicators above 40%: District 1 (55.14%), District 8 (43.75%), District 18 (42.04%).

The 2002, 2004, and 2006 Utah state legislative elections demonstrated that these marginally-controlled Republican districts are in danger, and in some cases have been overtaken. In the 2006 Utah House elections, Democrats successfully overtook District 36, which was won by Phil Reisen (D) over Susan Lawrence, and came close to winning districts 45, 47, 49, which were held by Republican incumbents by 18, 422, and 10 votes, respectively. Of particular note and concern to Republicans is the narrow victory (10 votes) of Speaker Greg Curtis over challenger Jay Seegmiller in District 49. In the Utah Senate, District 1 was overtaken by Democrat Fred J. Fife in 2004 and in 2006 districts 9, Wayne Neiderhauser beat challenger Trisha Beck by 1,053 votes, and 18, Jon Greiner beat challenger Stuart Reid by 462 votes, appear to be within close contention. Even a small shift in partisanship in Utah could result in the pickup of several districts in the Utah House and Senate for Utah Democrats.

The result of the 2001 Utah redistricting plan, when added to the effects of past plans that have most likely also included similar forms of partisan gerrymandering, is a Utah legislative district map that severely limits the voting power and legislative representation of Utah Democrats. Some may find this result acceptable, and indeed many claim that the ills of legislative-controlled redistricting are an unavoidable yet integral part of our electoral system. To the winner go the spoils they say. Such targeted discrimination against Utah's citizens solely based on their political views should not be brushed aside so readily. With the failure of the Supreme Court of the United States to overturn blatantly partisan plans and the obvious reluctance of the Utah Legislature to reform the redistricting process, the only recourse for redistricting reform in Utah is the

passage of a ballot initiative that removes redistricting power from the state legislature and invests it in a nonpartisan and independent redistricting commission.

The adoption of a nonpartisan and independent redistricting commission, a step that Utah's neighbors to both the North and South have taken, would increase the quality of governance in Utah and improve the Utah election system by making the Utah electoral map more fair, increasing the responsiveness of the Utah State Legislature to changes in voter opinion, and making Utah legislators more accountable to their constituents by denying them their ability to remove unfavorable constituents from their districts. If, like Arizona and other states, Utah adopts an independent commission that is charged with creating competitive districts Utah could enjoy more state legislative competition in the future as well. Reform is likely to be proposed in the coming years and opponents of reform will most likely maintain that "no gerrymandering problem exists in Utah." Readers of this study now have evidence that such claims are not true.

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Name of Candidate: Bryson Baird Morgan  
Birth Date: July 9, 1982  
Birth Place: Salt Lake City, Utah  
Addresss: 8477 South Robidoux Road  
Sandy, Utah 84093