

# Extension of Remarks



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## Has the Senate Become the People's House?

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*The coat of constitutional mail bolted around the Senate was sturdy indeed--by design. Under the new Constitution, the power of the executive and the power of the people would be very strong. . . . Wanting [the Senate] to protect not only the people against their rulers but the people against themselves, [the framers] bolted around it armor so thick they hoped nothing could ever pierce it. (Caro 2002, p. 11)*

The framers of the U.S. Constitution created two separate legislative chambers with distinct structures. The Senate was designed to represent the states while the House of Representatives was made for the people. These differences were institutionalized by creating different methods of election, term lengths, and chamber sizes. In each case, the goal was to make the Senate more distant from the people than the House.

In recent decades, however, the House of Representatives has begun to look increasingly like it has paid its own visit to the armory. House Members, for the most part, sit safely in their seats, free to toe the party line and to enhance their personal power through seniority and party activity. These changes have resulted not from any constitutional amendment related to House elections or from any act of the federal government. The culprit has been the declining number of competitive districts, enhanced by state legislatures' use of gerrymandering to preordain the outcome of

House races. If we examine the major constitutional differences between the Senate and the House, we find that recent trends have reinforced the House's armor so strongly that it is nearly as thick as the Senate's. From an electoral standpoint, there is now little practical difference between the House and the Senate. Both are well protected against public opinion.

The Senate is a unique institution within the American political system. Wirls and Wirls (2004) note that it serves as the device to implement some of the most fundamental principles that undergird the U.S. Constitution. It is the centerpiece of the checks and balances system, combining executive, judicial, and legislative functions. It is the Senate--not the House--that confirms executive and judicial branch nominees. The Senate alone ratifies treaties and acts as a judicial body in the impeachment process. It also, in a less direct way, balances the House of Representatives. As James Madison wrote in Federalist 63:

The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

Similarly, the Senate is the means by which Federalism is incorporated into the legislative branch, to protect individual states from being mistreated by the federal government or by the whims of the people.

The Senate, therefore, needed to be structured in a way that it could stand as a bulwark against the misuse of power by the President, the Supreme Court, or the House of Representatives. The major electoral elements of that structure were the length of Senate terms, staggered terms of office, indirect election by state legislatures, and representation of the entire state. As a practical matter, however, each of these devices has been replicated in the House of Representatives as a result of modern redistricting practices. After reviewing the lack of electoral competition in House elections, and reviewing recent trends in redistricting, we will examine each of these institutional differences in turn.

### **Vanishing Marginals and Redistricting**

For decades, political scientists have noted the trend toward declining competitiveness of House elections. Scholars dating back to Mayhew (1974) and Fiorina (1989) have chronicled the declining number of elections in which the winner receives less than 60-percent of the vote. In every cycle since 1968<sup>1</sup>, no more than 35 percent of House elections have been “close” under this definition. In 2002, that figure shrank to 19 percent.<sup>2</sup> The framers’ expectation of

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<sup>1</sup> The modern era of redistricting began in 1968 after the U.S. Supreme Court’s ruling in *Baker vs. Carr* (1962) requiring equal population for each congressional district in a state and the 1967 passage of federal law requiring single member districts. We thus use this year as the starting point for all analysis in this article.

<sup>2</sup> Data on congressional elections prior to 2002 comes from Ornstein, Mann, and Malbin (2002). Data on the 2002 congressional races comes from Barone and Cohen (2003).

competitive House races was a key element in their effort to make the House of Representatives closer to the people than is the Senate. Remove the competitive element, and many of the institutional differences between the two chambers fall away.

While many causes of the increased number of non-competitive House races have been noted, one certainly is the increasing use of gerrymandering by state legislatures. Every decade, states redraw their congressional districts to rebalance their populations, providing an opportunity for the parties to engage in political mischief. The round of redistricting that followed the 2000 census was particularly notorious. In nearly every state, districts were drawn so that they overwhelmingly favored one party. In states where one party controlled both the governorship and the legislature, they attempted to maximize the number of seats their party would win by packing minority-party voters into as few districts as possible, while keeping a clear advantage in all the others. In states with divided government, the parties often resorted to “incumbent protection” schemes by drawing maps that created safe districts for all current Members of Congress. While these tricks have been around for decades, modern computer technology has facilitated the process. Nearly every state map appears designed to achieve a particular partisan outcome.

### **Staggered Senate Terms**

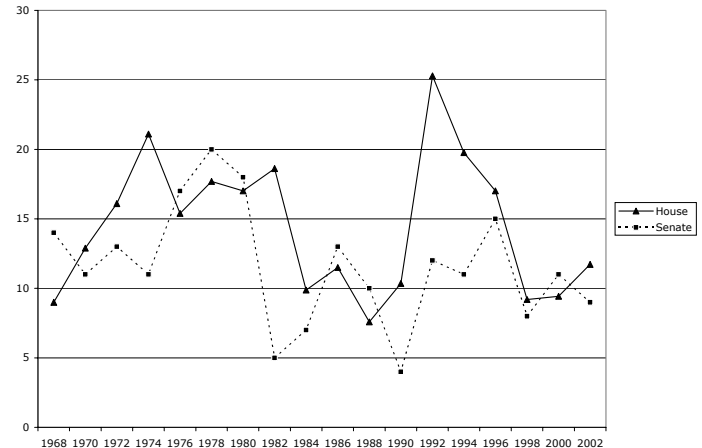
Elections to the Senate and the House of Representatives occur every two years, but only one-third of all Senate seats are up for election at any one time. That is because Senators serve for six-year terms whose beginning points are divided evenly into three classes. Each class stands for election together.

The purpose of staggering Senate elections was to maintain stability of membership. If a wave of political passion were to sweep the country, the people could replace the entire House of Representatives in one fell swoop. However, two-thirds of all Senators would be guaranteed to survive the onslaught and continue in office. This serves as a means of stability in at least one chamber of the legislature.

Thus, in any given election cycle, two-thirds of Senate seats are off the table due to the staggered terms of Senators. In recent decades, a similar or greater percentage of House seats has been off the table due to lack of competitiveness. As a result, there generally has been little difference in the turnover rate for the Senate and the House. Figure 1 shows the turnover rates for both the House and Senate from 1968-2002<sup>3</sup>. In most years, the two are very close. Moreover, most of the years in which the House turnover rate is substantially higher than that of the Senate fall at the beginning of a redistricting cycle (i.e. a year ending in "2"). In these years, the turnover rate is raised artificially by the movement of districts between states to reflect changes in their relative populations. This creates new, open districts in some states and forces two incumbents into the same district in others. Also, because incumbents suddenly find themselves representing a new set of voters, some of their electoral advantage is lost. Figure 1 also shows that, in the following election cycle (i.e., a year ending in "4"), the turnover rate in the House moves closer to the Senate level, and the two converge for the remainder of the decade. Thus, it appears that redistricting and other factors that have created

such an enormous incumbency advantage in the House of Representatives that they have offset the Senate's constitutionally staggered terms as a protection against popular revolt.

Figure 1: House and Senate Turnover Rates, 1968-2002



### Indirect Election and Term Length

The U.S. Constitution originally called for the indirect election of Senators. Senators were to be chosen not by popular election but by state legislatures. The purpose of this provision was to make the Senate a chamber of the states and to create additional distance between Senators and their constituents. In 1913, the states ratified the Seventeenth Amendment to the Constitution, which required the direct popular election of Senators. Consequently, one layer of armor that the framers placed around the Senate has already been removed.

Another means by which the framers protected Senators from popular opinion was by giving them longer terms than those of U.S. Representatives. A Senator was to serve for six years before seeking reelection while a Member of Congress would face reelection every two years. Making House Members face the voters more frequently would require them to keep in close touch with the views of their constituents, whereas Senators would have more freedom to act as they thought best.

<sup>3</sup> Ornstein, Mann, and Malbin (2002) exclude turnover caused by the midterm death or resignation of a Senator or House Member. While this serves to avoid double counting in some instances, it excludes some changes that should be included. Thus, these turnover rates may be slightly understated in some instances.

While state legislatures were taken out of the process of selecting Senators nearly a century ago, their role in selecting House Members has grown. True, the House is very proud of the fact that its Members can only be elected by the people--a pride that has been on display in the recent debate over how Congress would continue in the event of the simultaneous death of a large portion of the House. Nonetheless, state legislatures play an important role. They do not choose the Members but, through redistricting, they increasingly choose which party will represent which seat.<sup>4</sup>

Redistricting has the secondary effect of extending the de facto term of House Members

**Table 1: Percentage of Seats Held By One Party for Entire Decade**

<i>Election Cycle</i>	<b>House</b>	<b>Senate</b>
1972-1980	66%	54%
1982-1990	84%	76%
1992-2000	74%	70%

to ten years. Each decade the lines are redrawn and most districts are created to be safe for a particular party. The person elected immediately after redistricting, therefore, can hold the seat for the entire decade if she wishes.

Two sets of statistics bear this out. Table 1 shows the percentage of seats in the House of Representatives that were controlled by a single party during each of the last three redistricting cycles. The 1970s redistricting led to 68 percent of the seats being represented by a single party for the full decade. That number rose to 84 percent for the 1980s. It declined to 74 percent for the 1990s, mostly as a result of

<sup>4</sup> A few states have formed bipartisan or nonpartisan commissions to draw new district boundaries. However, most states create and adopt new maps through the normal legislative process.

the 1994 tidal wave that yielded a 52-seat gain for House Republicans, switching party control of the chamber. When we compare these results to comparable ones for the Senate, we find that the Senate has somewhat more party turnover.<sup>5</sup> We can therefore conclude that, while state legislatures do not choose House Members, they do have an important say over which party will represent a district. In this era of party polarization, that is a substantial influence.

Nonetheless, we can only argue that House Members have a de facto ten-year term if it is also true that they face little intra-party competition for their seats. Given the importance of seniority in allocating power in the House, local parties rarely throw out an incumbent in a primary. To do so lessens the district's national clout. Consequently, the average number of incumbents who have lost party primaries since 1972, excluding redistricting years, is only 3.2.<sup>6</sup> Once a House Member has won a newly-drawn district, he has a greater than 99-percent chance of being renominated. We can, therefore, safely conclude that a large majority of Members of the House do not have to worry about being renominated and reelected once they win an election immediately following redistricting. In effect, most House Members have ten-year terms.

**Number of Constituents**

The final constitutional difference between Senate and House elections is the fact that Senators represent an entire state whereas House Members represent only a portion of the

<sup>5</sup> Because Senators represent the entire state, the redistricting cycle has no impact on them. We use that time period in our assessment of the Senate solely to make the measure comparable to that of the House.

<sup>6</sup> The average number of incumbents defeated in primaries in the years 1972, 1982, 1992, and 2002 is 11.75.

state.<sup>7</sup> By giving Senators a broader constituency, the framers forced them to look out for the interest of the state as a whole, not for some narrower segment of the population. Because House districts are more homogeneous than states, we would expect there to be more differentiation in the views of Representatives than we would find in the Senate. Districts are more distinctive than states, so House Members' viewpoints should be more distinctive than those of Senators.

Beginning in the early 1990s, scholars chronicled (Rohde 1991) and measured (Poole and Rosenthal 1997) the growing polarization of the House of Representatives. Roll call analysis showed that the two parties in the House were growing increasingly unified and were opposing each other more frequently. Thus, the distribution of ideologies in the House has become bipolar--conservative Republicans voting alike, liberal Democrats voting alike, with nothing in between. While the trend in the Senate has been similar, it has not been quite so pronounced.

How could this happen when House Members represent smaller districts? If they are representing the views of their constituents, there should be less party homogeneity in the House than in the Senate. The answer lies in the lack of electoral competition. Most House Members do not have to worry about reelection so they have a great deal of freedom in their voting decisions. The lack of competition in general elections allows them to limit their considerations to the views of their own partisans. This accounts for the polarization. Similarly, since they have little concern about a primary defeat, most are free to vote the party line on a wide variety of issues as they try to advance in the House

<sup>7</sup> This, of course, does not apply to the seven states whose populations are so small that they elect a single at-large Representative to the House.

hierarchy. The lack of competitiveness in House races has allowed party leaders to create cohesive voting blocs despite the distinctiveness of their members' individual districts.

### Concluding Thoughts

The electoral system that the framers created to protect Senators from the public has been recreated in the House of Representatives. The lack of competition in House elections serves as a coat of armor at least as thick as the one that the Constitution gives to Senators. House and Senate turnover rates are usually similar. Most House Members now have a de facto ten-year term. Non-competitive elections have weakened the link between constituent views and legislative votes. Thus, when we examine the institutional differences between the House and the Senate, we must look beyond the manner of election to the two chambers. We must instead look at their rules and cultures. The Senate has rules that enable individual Senators to slow down the legislative process despite the popular passions of the moment. Moreover, the culture of individualism in the Senate encourages Senators to act independently of their parties and of their constituents. After all, the framers wanted the Senate to stand guard against a powerful President, a runaway House, and a passionate public. Nonetheless, the lack of competitive elections resulting from modern redistricting practices has severely weakened the House of Representatives' claim to the title "The People's House."

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