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CHAMELEON CONGRESSIONAL DISTRICTS

DEREK T. MULLER*

INTRODUCTION

The United States Census Bureau counts the number of inhabitants in the United States every ten years.¹ That census leads to the allocation of seats in the House of Representatives based on the total population of each state.² And the states draw new congressional districts for the decade ahead, districts with equal numbers of inhabitants in them.³

These tasks are ostensibly simple and straightforward. They are designed for electing members to the House of Representatives. But congressional districts serve many other functions, electoral and non-electoral, which may operate below the surface—some of which are common knowledge if we only think about them and some of which we may be unaware of.

Congressional districts, then, are something of a chameleon. They take on a different hue depending on their context, from how political parties go about choosing a presidential nominee to how the military academies fill out their classes. This Essay reflects on some of the alternative roles congressional districts serve and whether they ought to serve such roles.

I. REAPPORTIONMENT AND REDISTRICTING

The Census Bureau enumerates the number of inhabitants in each state.⁴ Each state receives a number of representatives in Congress based on the number of inhabitants.⁵

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1. U.S. Census Bureau, *What Is The 2020 Census?*, U.S. Census 2020, <https://2020census.gov/en/what-is-2020-census.html> [<https://perma.cc/G8L7-85MU>] (last visited Mar. 1, 2020).

2. *Id.*

3. *Id.*

4. *See* U.S. CONST. art. I, § 2, cl. 3; *see also* Department of Commerce v. United States House of Representatives, 525 U.S. 316, 321 (1999).

5. *See* U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV.

Congressional districts are redrawn in each state after each census, and redistricting must take place subject to particular legal guidelines.⁶ First, congressional districts must comply with “one person, one vote,” which typically means an equal number of inhabitants in each district.⁷ One representative represents an equal number of constituents, and states typically draw districts based on equal population.⁸

Second, congressional districts must comply with the Voting Rights Act. In particular, Section 2 of the Voting Rights Act, as understood today, requires that districts, including congressional districts, be drawn to ensure that racial minority voters have the opportunity to elect the preferred candidate of their choice.⁹ But congressional districts also cannot be a racial gerrymander—that is, state legislatures cannot draw congressional districts so that race predominates the redistricting process.¹⁰

The Supreme Court has also concluded that the Constitution does not empower the federal judiciary to determine whether congressional districts have been drawn with excessive partisan intent.¹¹ But states may include additional criteria that congressional districts must meet, including avoiding excessive partisan gerrymanders. And the state-created independent redistricting commissions have particular guidelines to follow when drawing congressional districts.

In California, for instance, the state Constitution instructs the Citizens Redistricting Commission to draw congressional districts to “achieve population equality as nearly as is practicable,” to comply with the Voting Rights Act, to draw geographically contiguous districts, to minimize division of communities

6. *Who Draws the Maps? Legislative and Congressional Redistricting*, Brennan Center for Justice (Jan. 30, 2019), <https://www.brennancenter.org/our-work/research-reports/who-draws-maps-legislative-and-congressional-redistricting> [<https://perma.cc/Q29N-X4BU>].

7. See *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964); 2 U.S.C. § 2(a) (2018). See also Derek T. Muller, *Perpetuating “One Person, One Vote” Errors*, 39 HARV. J.L. & PUB. POL’Y 371, 382 (2016).

8. See *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016); Sanford Levinson, *One Person, One Vote: A Mantra in Need of Meaning*, 89 N.C. L. REV. 1269, 1270 (2002).

9. See Voting Rights Act Amendments of 1982, Pub. L. 97-205, 96 Stat. 131, 134, as codified at 52 U.S.C. § 10103(b) (2016). See also *Thornburg v. Gingles*, 478 U.S. 30, 63 (1986) (applying statute to state legislative districts).

10. See *Easley v. Cromartie*, 532 U.S. 234, 241–42 (2001); *Shaw v. Hunt*, 517 U.S. 899, 905 (1996); *Bush v. Vera*, 517 U.S. 952, 958 (1996); *Shaw v. Reno*, 509 U.S. 630, 649 (1993).

11. *Rucho v. Common Cause*, 138 S. Ct. 2484, 2506–07 (2019). *Accord Vieth v. Jubelirer*, 541 U.S. 267, 305 (2004) (plurality opinion) (opinion of Scalia, J.). See also Derek T. Muller, *Nonjudicial Solutions to Partisan Gerrymandering*, 62 HOWARD L.J. 791, 798 (2019); Yasmin Dawood, *Democracy and Dissent: Reconsidering the Judicial Review of the Political Sphere*, 63 SUP. CT. L. REV. 59, 74 (2013). Cf. Franita Tolson, *Partisan Gerrymandering as a Safeguard of Federalism*, 2010 UTAH L. REV. 859, 862 (describing role of state legislatures in drawing congressional districts).

of interest, and to encourage geographical compactness.¹² In Arizona, the state Constitution requires districts to have equal population to the extent practicable, geographically compact, respectful of “communities of interest,” “use visible geographic features” and governmental boundaries, and be “competitive districts” if practicable.¹³ Voters amended Florida’s Constitution in 2010 to forbid drawing congressional districts “with the intent to favor or disfavor a political party or an incumbent,” among other regulations.¹⁴

II. ADDITIONAL ROLES OF CONGRESSIONAL DISTRICTS

In short, there are many constitutional and statutory federal and state regimes all governing how to go about drawing congressional districts, often with an eye toward particular goals in the election of congressional representatives—equality, competitiveness, representativeness, and so on. Commentaries understandably focus on constituencies within districts and what political representation looks like from such districts.¹⁵ But these districts can serve many more functions than the purpose for which they have been drawn.

A. Presidential Electors and the Electoral College

Each state receives a number of presidential electors equal to the number of representatives and senators allocated to that state.¹⁶ Because the Constitution guarantees each state at least one representative and exactly two senators, each state receives at least three presidential electors.¹⁷ The District of Columbia receives presidential electors equal to the number of the smallest state’s delegation.¹⁸

Allocation of members of the House of Representatives varies from decade to decade depending on the results of the census.¹⁹ As a result, each state’s

12. CALIF. CONST., art. XXI, § 2(d), *amended by* Proposition 20, enacted as The Voters FIRST Act for Congress, 2010.

13. ARIZ. CONST. art. IV, pt. 2, § 1(14), *amended by* Proposition 106, enacted 2000. *See also* Bruce E. Cain, *Redistricting Commissions: A Better Political Buffer?*, 121 YALE L.J. 1808, 1812 (2012).

14. FLA. CONST. art. III, § 20, *amended by* Amendment 6, 2010.

15. *See, e.g.*, Guy-Uriel E. Charles & Luis E. Fuentes-Rohwer, *Dirty Thinking About Law & Democracy in Rucho v. Common Cause*, draft at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3462697 [<https://perma.cc/HZS2-G67A>]; ANDREW REHFELD, *THE CONCEPT OF CONSTITUENCY* 6–8 (2005).

16. U.S. CONST. art. II, § 1, cl. 2 (“Each State shall appoint . . . a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . .”).

17. U.S. CONST. art. I, § 2, cl. 3 (“each State shall have at Least one Representative”); art. I, § 3, cl. 1 (“The Senate of the United States shall be composed of two Senators from each State . . .”).

18. U.S. CONST. amend. XXIII.

19. U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV (“Representatives . . . shall be apportioned among the several States which may be included within this Union, according

number of presidential electors can increase or decrease from census to census. States are acutely aware of this effect and raise concerns about their influence in the Electoral College when the Census Bureau considers changes that might diminish that state's influence.²⁰

Of course, part of the fight among states stems from the fact that Congress has fixed the size of the House of Representatives at 435 members since 1911.²¹ That means states gain seats in the House only at the expense of other states losing seats. And that means gaining influence in the Electoral College only at the expense of other states.

States also have the choice of how to award presidential electors. Forty-eight states and the District of Columbia in all recent presidential elections have awarded their presidential electors on a "winner-take-all" basis, where the candidate who wins a plurality of the popular vote in the state wins all of the state's presidential electors.²² Most states do it this way because it maximizes the state's political leverage in the Electoral College.²³

Two states, however, operate differently. Maine and Nebraska award two electoral votes to the winner of the statewide popular vote, symbolic of two statewide senators.²⁴ The remaining electors—in recent years, two in Maine, three in Nebraska—are awarded to the winner of the plurality of the popular vote in each of the state's congressional districts.²⁵

In 2008, for instance, John McCain won four of Nebraska's electoral votes, but Barack Obama won one electoral vote in Nebraska's second congressional district, home of Omaha.²⁶ In 2016, Hillary Clinton won three of Maine's electoral votes, but Donald Trump won one electoral vote in Maine's second congressional district, home of the rural northern portion of the state.²⁷

to their respective Numbers . . . The actual Enumeration shall be made . . . within every subsequent term of ten Years . . .").

20. See, e.g., Brief of Government Respondents at 2–3, 13, 22, 62–63, *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019) (No. 18-966).

21. See Apportionment Act of 1911, Pub. L. 62-5, 37 Stat. 13 (creating a House of Representatives with 433 members, and two more members upon the entry of Arizona and New Mexico into the Union); Reapportionment Act of 1929, S. 312, 71st Cong. § 22 (1929) (calling for apportioning "the then existing number of Representatives among the several States", with brief exceptions increasing the size of the House upon the admission of Hawaii and Alaska as states).

22. 270 To Win, *Split Electors Vote in Maine and Nebraska*, 270towin.com, <https://www.270towin.com/content/split-electoral-votes-maine-and-nebraska/> [<https://perma.cc/WL59-WHVV>] (last visited Mar. 1, 2020).

23. See, e.g., John F. Banzhaf III, *One Man, 3.312 Votes: A Mathematical Analysis of the Electoral College*, 13 VILLANOVA L. REV. 303, 316–17 (1968).

24. 270 To Win, *supra* note 22.

25. *Id.*

26. *Election Results 2008*, N.Y. TIMES (Dec. 9, 2008), <https://www.nytimes.com/elections/2008/results/states/nebraska.html> [<https://perma.cc/T7RL-XCZL>].

27. *Election 2016, Maine Results*, N.Y. TIMES (Aug. 9, 2017), <https://www.nytimes.com/elections/2016/results/maine> [<https://perma.cc/8ENP-4SX8>].

Drawing congressional districts can affect how these presidential electoral votes are awarded. Granted, it's just two states. But the scheme does give a reason to wonder whether other states ought to follow—if the districts are drawn for congressional elections, it's unclear why one would stack presidential elector selection into those same districts.

Furthermore, some political parties choose the presidential electors who will ultimately cast votes in the Electoral College by congressional district.²⁸ This is a strange choice—if the election is not taking place by congressional district, why choose electors by district in states like Washington, Minnesota, and Colorado? These are not random states. Congressional precinct meetings of the Democratic Party took place in 2016 to choose presidential electors. In these meetings dominated by supporters of Bernie Sanders, local parties gathered to choose presidential electors.²⁹ And by the time the Electoral College met in December 2016, electors in each of these states tried to be faithless by voting for someone other than Democratic nominee Hillary Clinton, despite the fact that she carried the popular vote in that state—and in some cases, these electors successfully voted for someone else.³⁰ These electors had been chosen at localized party meetings at the congressional district level rather than through a statewide process or a process subject to national supervision.³¹

B. *Presidential Primaries and State Political Parties*

The Republican and Democratic Parties each hold a series of presidential primaries around the United States every four years to choose that party's presidential nominee. The elections are staggered across the country, and each state's format can vary—whether to hold a caucus or a primary, whether non-party members may participate, and so on.

Presidential primaries are formally elections to choose delegates to a national convention, and those delegates choose the presidential candidate.³²

28. *Demystifying the Electoral College*, American Bar Association (Jan. 7, 2020), https://www.americanbar.org/groups/public_education/Programs/19th-amendment-centennial/toolkit/demystifying-the-electoral-college/ [<https://perma.cc/QBV6-4CGK>].

29. See Derek T. Muller, *Simplifying Presidential Primaries*, in *A BETTER CANDIDATE: IMPROVING THE PRESIDENTIAL NOMINATION PROCESS IN THE UNITED STATES* (Michael R. Dimino & Eugene Mazo eds.) (forthcoming).

30. See, e.g., *Baca v. Hickenlooper*, 935 F.3d 887, 901 (10th Cir. 2019); *In the Matter of Guerra*, 441 P.3d 807, 808, 817 (Wash. 2019); *Abdurrahman v. Dayton*, 903 F.3d 813, 815 (8th Cir. 2018).

31. *Electoral College: About the Electors*, NATIONAL ARCHIVE, <https://www.archives.gov/electoral-college/electors#selection> [<https://perma.cc/V9N5-YKTJ>] (last visited Mar. 1, 2020); *How Are Electors Chosen?*, Taegan Goddard's Electoral Vote Map, https://electoralvotemap.com/how-are-electors-chosen/#By_State_Party_Convention [<https://perma.cc/VPJ4-9YVE>] (last visited Mar. 1, 2020).

32. See, e.g., John C. Greer, *Rules Governing Presidential Primaries*, 48 J. OF POL. 1006 (1986).

That said, the delegates are typically pledged to support a particular candidate.³³ Republicans and Democrats have thousands of delegates who participate in the nominating convention.³⁴ The parties allocate delegates across the states and territories by specific factors, including the population of the state and the number of elected officials from that state.³⁵

Within each state, the parties offer different methods for winning electors. Some may occur on a winner-take-all basis;³⁶ in others, delegates are awarded in proportion to the popular vote that each candidate receives.³⁷ Another common feature is to award delegates to candidates based on the voting results of each congressional district.³⁸

There are understandable reasons to divide delegates by congressional district. Congressional districts ensure that winning candidates secure broader geographic support.³⁹ And delegates come from each congressional district regardless of the winning candidate,⁴⁰ which also ensures broad geographic representation from all parts of the state. And if each congressional district has roughly equal numbers of people, maybe it makes sense for delegates to be roughly evenly distributed, too.

33. Michael T. Morley, *Reforming the Contested Convention: Rethinking the Presidential Nomination Process*, 85 *FORDHAM L. REV.* 1073, 1094-95 (2016).

34. See, e.g., *Election 2016 – Republican Delegate Count*, REALCLEARPOLITICS, https://www.realclearpolitics.com/epolls/2016/president/republican_delegate_count.html [<https://perma.cc/55ZY-C9KF>] (last visited Jan. 11, 2020) (tracking 2,472 delegates for the 2016 Republican National Convention); *Election 2016 – Republican Delegate Count*, REALCLEARPOLITICS, https://www.realclearpolitics.com/epolls/2016/president/democratic_delegate_count.html [<https://perma.cc/6BJ3-MU4R>] (last visited Jan 11, 2020) (tracking 4,763 delegates for the 2016 Democratic National Convention).

35. See *Delegate Selection Materials For the 2016 Democratic National Convention*, DEMOCRATIC NAT'L COMM., I.F-H & Rule 8(A), https://www.demrulz.org/wp-content/files/12.15.14_2016_Delegate_Selection_Documents_Mailing_-_Rules_Call_Regs_Model_Plan_Checklist_12.15.14.pdf [<https://perma.cc/2XZG-PSNW>] (last visited Jan. 11, 2020); *The Rules of the Republican Party*, REPUBLICAN NAT'L COMM., Rule 14(a), https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf [<https://perma.cc/XZ5W-PMCT>] (last visited Jan. 11, 2020).

36. See RNC Rule 16(a)(1).

37. See *id.* See also DNC Rule 9(C)(1) (stating that membership on the State Party Committee is apportioned on the basis of population).

38. RNC Rule 16(c)(3)(i); DNC Rule 8(C).

39. See, e.g., RNC Rule 16(d)(9) (“Delegates and alternate delegates to the national convention representing congressional districts shall be residents of and qualified voters in said districts . . .”); Section DNC Rules Section III.A.4a & Rule 12.H (“A district-level delegate and alternate candidate may run for election only within the district in which he or she is registered to vote.”).

40. *Id.*

Close scrutiny reveals oddities.⁴¹ In 2016 in California, Democrats allocated between four and nine delegates per district, based on total population plus extra delegates in districts with more Democratic voters.⁴² The 13th District in Oakland, home of senior congressional representative Barbara Lee, had about 260,000 registered Democrats and received eight delegates.⁴³ That's one delegate per 32,500 eligible voters.⁴⁴ But some Orange County districts, like the 42nd and 50th, had 86,000 registered Democrats and received five delegates—or one delegate per 17,200 eligible voters.⁴⁵ Democrats in the San Francisco Bay area would have less power than Democrats in Orange County.

For Republicans, the results are reversed, and more dramatically. Republicans awarded three delegates to each district, regardless of party membership.⁴⁶ There were just 27,000 registered Republicans in the 13th, or one delegate for every 9000 eligible voters.⁴⁷ But in the 48th, in Orange County, there were more than 155,000 registered Republicans, one delegate per 51,000 voters.⁴⁸

This process seems unusual. If the point of the primary is to allow Republicans to choose the Republican nominee and Democrats the Democratic nominee, a system that gives more weight to places with fewer Republicans and Democrats seems backward. Indeed, Orange County (until 2018, at least) had a strong Republican congressional delegation,⁴⁹ while San Francisco is a home of key Democratic leaders.⁵⁰ Giving voters in those jurisdictions less power makes little sense. But congressional districts are so convenient. The state is chopped up into areas of equal population, covering the entire state.

41. Derek T. Muller, *Awarding Presidential Delegates by Congressional District is Unfair*, THE SACRAMENTO BEE (June, 6, 2016, 6:00 AM), <https://www.sacbee.com/opinion/op-ed/soap-box/article81725617.html> [https://perma.cc/C648-Q684] (last visited Jan. 11, 2020).

42. *Id.*; 2016 *Presidential Primaries, Caucuses, and Conventions*, THE GREEN PAPERS, <http://www.thegreenpapers.com/P16/CA-D> [https://perma.cc/84XE-GAQP] (last visited Jan. 11, 2020).

43. Muller, *supra* note 41.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Muller, *supra* note 41.

49. Adam Nagourney & Robert Gebeloff, *In Orange County, a Republican Fortress Turns Democratic*, N.Y. TIMES (Dec. 31, 2018), <https://www.nytimes.com/2018/12/31/us/orange-county-republicans-democrats-demographics.html> [https://perma.cc/X7SA-R6CQ] (last visited Feb. 1, 2020); REGISTRATION BY US CONGRESSIONAL DISTRICT, (May 23, 2016), <https://elections.cdn.sos.ca.gov/ror/15day-presprim-2016/congressional.pdf> [https://perma.cc/Z8C6-TJ7Y] (last visited Jan. 11, 2020).

50. REGISTRATION BY US CONGRESSIONAL DISTRICT, *supra* note 49.

C. *Ballot Access and Signature Gathering Requirements*

States have ballot access rules to determine which candidates are eligible to appear on the ballot. They also have rules that determine which citizen initiatives may appear on the ballot. Initiative proponents must secure signatures in a fixed period for the initiative to appear on the ballot. But some place geographic conditions on compiling signatures. Nevada, for instance, requires that ballot initiative proponents gather signatures from registered voters totaling at least ten percent of the votes cast in the previous general election in each of Nevada's congressional districts.⁵¹

Some states extend similar rules to candidates seeking ballot access. Virginia requires that presidential primary candidates secure signatures from at least 5000 registered voters, including at least 200 signatures from voters in each congressional district.⁵² New Mexico requires presidential nominating petitions for candidates of national political parties to submit petitions signed by registered voters in each congressional district totaling at least two percent of the total votes cast in each congressional district in the prior presidential election.⁵³ Louisiana requires independent presidential candidates to secure 5000 signatures from registered voters to appear on the ballot, including at least 500 signatures from each congressional district.⁵⁴ Michigan requires independent presidential candidates to secure 30,000 signatures, including at least 100 signatures from at least half of the state's congressional districts.⁵⁵

While candidates win statewide office with the most votes in the state, or voters can enact ballot measures with a statewide popular support, these signature requirements precondition ballot access on distinct expressions of regional support.

D. *Miscellaneous Congressional District Rules*

Finally, there are a series of what I describe as "miscellaneous" congressional district rules. These do not neatly fit into the categories above, and they run across many categories.

Consider the military academies in the United States. Nominations to the United States Military Academy, United States Naval Academy, and United States Air Force Academy include several allocations to each state and congressional district.⁵⁶ Positions at each academy are guaranteed five from each congressional district, as nominated by the representative from the

51. NEV. CONST. art. 19, § 2; NEV. REV. STAT. §§ 295.012, 293.069 (2019); *Angle v. Miller*, 673 F.3d 1122, 1126–27 (9th Cir. 2012).

52. VA. CODE § 24.2-545 (2019).

53. N.M. STAT. § 1-15A-6 (2019).

54. LA. REV. STAT. §§ 18:1254(C), 18:465(C)(1) (2019).

55. MICH. COMP. L. § 168.590b (2020).

56. *See* 10 U.S.C. §§ 9442, 8454, 7442 (2020).

district.⁵⁷ Or consider the Depository Library Act of 1962, which requires at least two library depositories in each congressional district for government publications.⁵⁸

A state might create a governing body built upon congressional districts. For instance, the Tennessee state schoolboard is an appointive body of nine members, one from each congressional district, plus an ex officio member and a student representative.⁵⁹

States might award collegiate scholarships by congressional district. In Connecticut, the CHET scholarship is divided among the State's five congressional districts.⁶⁰ Fifteen scholarships are given to high school seniors and freshmen in each district.⁶¹ In Missouri, the Women Legislators of Missouri award one collegiate scholarship to a graduating high school senior in each of the State's eight congressional districts.⁶² A scholarship award might not even be codified in a statute—it could simply be a rule of thumb a non-profit entity creates.

III. THE CONGRESSIONAL DISTRICT AS CHAMELEON

One would be hard-pressed to view the primary purpose of drawing of congressional districts as anything but the drawing of districts to elect members to Congress. Still, these congressional districts can shape the selection of presidential primary delegates, presidential electors, ballot initiatives, ballot access rules, the composition of the military academies, and even college scholarships. Congressional districts, then, can function like a chameleon—take a given law, or even a non-legal practice like a scholarship award, and the congressional district is there, with the hue to fit whatever regime may govern.

Why use the congressional district for so many purposes? The single most compelling reason is to ensure geographic diversity of areas of equal population. Congressional districts are non-overlapping, single-member districts that embrace the entirety of the geography of a state. Districts are drawn every ten years with equal populations residing with them. This means that a state might be divided into a few or several equal-sized regions. Unlike state, county, or

57. *Id.*

58. *See* 44 U.S.C. §§ 1901–05 (2020).

59. TENN. CODE § 49-1-301(a)(1) (2020); *see* Tennessee State Board of Education, *Board Members*, TN.gov, <https://www.tn.gov/sbe/about-us/board-members.html> [<https://perma.cc/YC7B-9YB7>] (last visited Jan. 11, 2020).

60. *Official Rules: CHET Advance Scholarship 2018-2019 School Year*, CHET, <https://www.chetadvance.com/documents/2018-2019-CHET-Advance-Rules-FINAL.pdf> [<https://perma.cc/MPN4-ZG4D>] (last visited Jan. 11, 2020).

61. *Id.*

62. Alisha Shurr, *Women Legislators of Missouri Raise \$10K for Scholarships*, THE MISSOURI TIMES, (Mar. 1, 2019), <https://themissouritimes.com/57759/women-legislators-of-missouri-raise-10k-for-scholarships/> [<https://perma.cc/CA75-22SG>] (last visited Jan. 11, 2020).

municipal boundaries, congressional districts are regularly altered in shape and size to adjust for changes in the population.

Ensuring that each member of Congress gets to nominate members to the military academies is more than a nice perk for each member of the House. It guarantees broad geographic diversity of our nation's military officers.⁶³ Tennessee's appointive school board ensures that its membership hales from across the state and that each member represents roughly equal numbers of constituents.

Signature-gathering requirements can also advance similar state interests. Before a ballot measure can appear on the ballot, the state may want to guarantee that there is at least mild breadth of geographic support for the measure before it appears on the ballot. The same holds true to ensure that serious candidates secure ballot access. In today's age of "one person, one vote," the dominant view is that elections ought to occur through a single constituency. Weighing voters' influence based upon their geographic diversity is often disfavored. Even so, states continue to express preferences for breadth of support through these congressional district signature requirements.

Presidential primary rules that center on congressional districts also advance similar preferences for geographic breadth of support. Those rules can also encourage local party-building at the congressional level, which could translate into party success in federal elections. But as currently constituted, such rules may distort the presidential selection process. If party delegates are awarded per congressional district without accounting for the disparities of party members across congressional districts, as the California example above shows, the congressional districts with the greatest party loyalty may be the ones with the least influence in the presidential primary.

The disparities across congressional districts aren't just limited to different partisan makeups. Districts are drawn based on total population because of the dominate theory that legislators represent roughly equal numbers of constituents.⁶⁴ Districts are not drawn to divide registered voters equally, or to divide other subpopulations. That might mean some districts have far more younger residents than others. That, in turn, could distort opportunities for military academy service or to secure college scholarships. Given two equal-sized districts, but one with far more young families graduating far more high school students each year, competition will be fiercer in that district despite it being equal in size to other districts. Maybe those disparities are too inconsequential, or maybe this is simply the most efficient way to ensure

63. See R. Eric Petersen & Sarah J. Eckman, *Congressional Nominations to U.S. Service Academies: An Overview and Resource for Outreach and Management*, CONGRESSIONAL RESEARCH SERVICE (April 13, 2017), <https://fas.org/sgp/crs/misc/RL33213.pdf> [<https://perma.cc/DZU4-W8E7>] (last visited Jan. 11, 2020).

64. See Levinson, *supra* note 8, at 1281.

geographic diversity. But it's worth acknowledging the potential weakness of using congressional districts for such diverse purposes.

Using the congressional district as a site to choose a presidential elector to fill out a party's slate is also an odd choice. It might ensure geographic diversity in presidential electors. But surely, electors' loyalty to the party's nominee seems a far more important trait. There is nothing particularly localized about slates of presidential electors, typically awarded on a winner-take-all basis, anyway. And given the mostly ministerial role of presidential electors, loyalty rather than local judgment would seem preferable.

Finally, partisan gerrymandering might make chameleon congressional districts less desirable. If state legislatures draw congressional districts to entrench the interests of one party over another, that could spill over to other contexts. It might advantage political partisans in the selection of military academy members, or it could make securing signatures on certain measures or candidate petitions in some congressional districts more challenging.

Of course, developing feasible alternatives may not be terribly practical. Congressional districts are simple and convenient ways of parceling geography into equal units of population. True, there might be more high school graduates in some districts than others, or more Republicans than Democrats, or more pro-initiative rather than anti-initiative on particular topics. But maybe these are not so systematically problematic that we ought to abolish our system of using congressional districts for many purposes.

Two domains of the chameleon congressional district, however, merit reconsideration. The first is the use of congressional districts in the awarding of presidential primary delegates. Parties—particularly the Republican Party, which gives *no* additional weight to districts with greater numbers of Republican voters—ought to more seriously weigh delegate allocation based on party membership in a jurisdiction. Districts with more registered voters for that party, or who cast more votes for that party in the previous election, should have more delegates than those with fewer. That, in turn, gives the most party-faithful districts a greater say in the presidential selection process.

Second, parties should end the party's naming of presidential electors within congressional districts. Electors should be selected with greater party oversight or on a statewide basis. That would reduce the likelihood of highly localized processes leading to the selection of electors who are unlikely to be faithful in casting a vote for the party's nominee.

In the end, state legislatures and redistricting commissions will redraw congressional districts after the 2020 census. But redrawing them will alter far more than the composition of the House of Representatives. And when they redistrict, legislators ought to think more seriously about how their redistricting can affect many other regimes in the United States.

