The change of fortunes in the 2006 congressional elections appears, at first blush, a refutation of mounting concerns over the lack of competitiveness in districted elections in the United States. As the election approached, all the elements of an upsurge in seats held by the out-of-power Democrats seemed in place. The 2006 congressional elections occurred against a backdrop of a thin majority in the House, an off-year election with a President with historically low levels of popular support, a protracted and increasingly unpopular war, a difficult economic setting with highly visible spikes in oil prices, and—in short—the traditional hallmarks of changing partisan fortunes in the House.

Our aim in this Article is to urge a bit of caution before concluding that the system worked just as it should have and that our elections continue to properly ensure accountability of the elected to the electors. Even uncompetitive districts are at some level subject to shifts in voter preference. A district that is designed to be a safe district for an incumbent with 80% of the population of the incumbent’s party could be won by the opposing party were that party to receive 100% of the votes. Indeed, so long as there are elections, the voters can always override the designed outcomes. The question is the degree of difficulty faced by the party out-of-power in translating shifts in voter sympathies into actual changes in electoral fortunes. The issue for us is not whether at some extraordinary level of voter dissatisfaction incumbents can be displaced, but what are the obstacles that the party out-of-power must overcome, and how do those compare to the past. Our focus is on the House elections and how the hurdles faced by the out-of-power Democrats in 2006 compare to those faced by the party out-of-power in the post-World War II era.

Of course, no one doubts that incumbency has its rewards. Name-recognition, franked communications, gerrymandered districts, and privileged access to fund-raising all seem to help provide sinecure for our elected representatives. Yet, seemingly, if history is a guide, then the Democratic capture of control of the House in 2006 should have been ripe for
the picking. Our aim in this paper is to provide some empirical support for the proposition that the perfection of gerrymandering has provided to the incumbent officeholders an insulation from popular swings in approval or disapproval that makes it more difficult for any party to pick up seats, the opposition party clearly included. Obviously, our claim is not that a change of power cannot happen, only that it takes historic shifts in voter preferences for it to occur. In order to make this point, we examine how difficult it has been in the post-World War II era for the minority party to pick up the most vulnerable seats of the controlling party. Put most simply, we show that the Democratic Party gain of a majority of the seats in the House required an extraordinarily large shift in voter sentiment, particularly when one considers that the Democrats entered the elections facing a Republican majority of only fifteen seats.

To make this point we develop a congressional hazard model to test the responsiveness of Congress as an institution to shifts in popular electoral preferences. The key to this model, what we term an “insulation index,” is to examine the marginal districts held by the incumbent party to determine how large a switch in votes is necessary for control of those districts to change. We use the data from all elections since 1946 to assess historical trends and to compare the relative level of insulation of the current Congress against historical backdrops. What our analysis will show is that, despite relative overall national parity between the parties in the post-War period, the districts held by each party tend to be more firmly in their control than ever before. For example, the five most vulnerable seats held by the national majority party would have changed hands with only on average a 1.5% swing in each of the districts between 1946 and 2002. By contrast, it would have taken a swing of 3.3% of the two-party vote to change the five most vulnerable seats held by the Republicans after the 2004 elections into Democratic seats.

The insulation index is designed to measure the vulnerability of the marginal seats to a shift in voter preference. Thus, historically in the post-War period, a 1.5% increase in the minority party’s share of the two-party vote in the most vulnerable districts would have yielded five additional seats. In 2004, such a change in the minority party’s vote-share would have fallen far short of the shift in voter behavior needed to pick up five additional seats in Congress. To the extent that the incumbent party has a greater cushion from shifts in popular opinion translating into lost seats, we measure that party as enjoying greater insulation from electoral preferences.

Our presentation will proceed in two parts. In the first instance, we will present data, mostly not original to us, to show the general trend toward incumbent entrenchment through the redistricting process. These are largely data drawn at the national level, with a few state overviews added, to show the general picture of diminishing competition for congressional office and
the particular effect of redistricting in compounding the loss of electoral competition. The second part of the paper looks to district-specific election returns to measure the likelihood that shifts in voter preferences will actually yield changes in the composition of Congress. This is the original part of the paper in measuring (to our knowledge, for the first time) the likely effects of different levels of changes in voter preferences to electoral outcomes. Our conclusion emerges from these data and serves to corroborate the intuition that redistricting, as currently practiced, compounds the agency problem of Congress as an institution being increasingly insulated from the actual preferences of voters.1

II. THE IMPACT OF REDISTRICTING

Oddly, the debates on gerrymandering have started to have the feel of debates on global warming. The electoral world appears less competitive, much as each successive summer feels unusually warm. But in complex systems with many confounding variables, who can be sure of the cause?2 Perhaps redistricting has not attracted its Michael Crichton to weigh in among the nay-sayers, but something seems to have happened to make competitive congressional elections appear even more endangered than the polar ice caps.

So, we begin from the foundations of a claim that redistricting is at least correlated with a decline in competitiveness—certainly not an intended effect of the reapportionment revolution of the 1960s. The following figure, produced by Sam Hirsch, gives a sense of the distinct feature of the post-2000 redistricting relative to the three other redistrictings following the one-person, one-vote cases of the 1960s.3

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1 For the purposes of this paper, we focus on what is known as “swing ratio,” rather than “partisan bias”—two different characteristics of what is known as the “seats-votes curve.” We do not consider here whether the insulation effect we present helps one party or another, or the sources of that bias. For a discussion of that matter, see Bernard Grofman, William Koetzle & Thomas Brunell, An Integrated Perspective on the Three Potential Sources of Partisan Bias: Malapportionment, Turnout Differences, and the Geographic Distribution of Party Vote-Shares, 16 ELECTORAL STUD. 457 (1997).

2 There has long been a suggestion in the academic literature that the “optimal partisan” gerrymander differs from the “classic” gerrymander when parties are concerned about the long-term risk of electoral defeat. To the extent that some gerrymanders represent such risk-minimizations and others do not, the waters are muddied. Still, the general trend is impossible to ignore. See Guillermo Owen & Bernard Grofman, Optimal Partisan Gerrymandering, 7 POL. GEOGRAPHY Q. 5 (1988).

These data show a generally high rate of incumbent congressional re-election, with 95% of incumbents successfully retaining their seats. In the three post-reapportionment elections after Baker and Reynolds, however, that figure dropped to 91%, exactly what would be hoped for if redistricting served to shuffle the deck and allow for new challenges to emerge. In 2002, by contrast, the retention rate actually rose to 96% following redistricting—a significant reversal, even if the pool of observation is quite shallow.

The aberrant feature of post-2000 redistricting is all the more striking in light of the persistent decline in the overall competitiveness of congressional elections. Figure 2 shows the cyclical decline in districts in which the major party candidates are separated by five or ten percentage points or less (e.g., closer than or equal to 52.5% vs. 47.5% or 55% vs. 45%). The number of such races has declined markedly over time, although in years of major voter shifts, the number of competitive districts has restored somewhat. Prior to the 2000 round of redistricting, the decennial reapportionment typically restored some measure of competitiveness. Thus, whereas the 1992 redistricting opened up the anticipated competitiveness of the field, as reflected in Figure 2, the 2002 redistricting correlated with a reduced number of districts in play relative to 2000, and an increase in the number of “safe” districts to an historical high.

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Figure 2—Number of Competitive Congressional Races (1946–2004)

Figure 2 shows the total number of congressional races in each year decided by 5% or less, and the number decided by 10% or less. The dotted line is the number decided by 10% or less and the solid is 5% or less. In terms of total number of competitive races, whether defined as races decided by five points or less or a less competitive ten points or less, there has been an evident cyclical decline over the post-War period. Keep in mind that this figure depicts the total number of congressional seats decided by these margins, not percentages of congressional races. Whereas there is a mild uptick in competitive elections after each post-Census redistricting, the pattern after the 2000 Census is decidedly in the opposite direction. By the time we get to 2004, there are at most twenty-one seats that are competitive, even using a liberal definition of competitiveness.

Looking within individual states can at least raise the inference that the way in which redistricting is conducted contributes to the currently depressed levels of congressional competition. A contrast of Arkansas and Iowa provides a useful illustration. Following the post-2000 redistricting, not only did the margins of incumbent advantage increase in Arkansas, but the number of congressional races with both major parties running decreased. In other words, the effect of the redistricting was to put a number of districts sufficiently out of competition so as to dissuade any effort by the party out-of-power to even challenge the incumbent. By contrast, in Iowa, redistricting had no effect on the number of seats contested and brought down the average margin of victory in the five congressional districts. Unlike Arkansas and
most states, Iowa uses an independent commission to redistrict, rather than rely on political insiders.

**Figure 3—Races with Both Main Parties in Arkansas and Iowa**

Beyond the scope of this paper, but nonetheless interesting, is the correlation between the lack of competitive elections and the polarization of Congress. The effect of single-party control of a congressional district is to transform a two-stage equilibrium into a one-stage game. In simple terms, because of the need to appeal to the median voter, candidates tend to position themselves as close to the center of the electorate as they credibly can. This
is the basic insight about first-past-the-post elections taken from the work of Hotelling,6 Downs,7 Duverger,8 and many others. The parties do not simply collapse into the middle, however, because of the two-stage feature of American elections, as identified by Aldrich9 and others. Thus, as the familiar refrain goes, Republicans run to the right in the primaries, Democrats to the left, and then both try to converge on the center for the general election. The effect of a district dominated by a single party, either because there is no real competition or because the other party does not even try to field a credible and resourced candidate, is to eliminate the second stage of the equilibrium.

III. THE INSULATED CONGRESS

We now turn to the effect that the drop in competition has had on the responsiveness of Congress as an institution to American voter preferences. Our inquiry here is to ask how likely is a change in voter preferences away from the majority party to result in the minority party gaining seats or even taking control of the Congress. In the first instance, of course, the likelihood of taking power depends on who gets the votes. Regardless of how insulated the Congress might be, a party with 40% of the vote nationally should not readily be expected to take control of Congress if it increased its national share to 42% or even 45%. It is instructive to note here, however, just how close the margins between the two major parties have been in the post-War period.

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8 See Maurice Duverger, Political Parties: Their Organization and Activity in the Modern State (Barbara North & North, trans., Wiley & Sons 2d ed. 1959).
Figure 5—Republican and Democratic Congressional Vote-Share, (1946–2004)

Figure 5 shows the share of the two-party vote won by each of the major parties from 1946 to 2004, measured as a percentage of aggregate congressional vote. Despite the major realignments that have occurred since World War II, especially the realignment of the South away from Democratic hegemony, the share of the national vote has been remarkably stable. Except for a couple of blips around the Johnson landslide of 1964 and the fallout from Watergate, the parties have remained within shouting distance of each other throughout this period. Even the ballooning of Democratic support following the Goldwater candidacy and the Nixon resignation quickly flattened out. Thus, in the first instance, we would expect as a result of the closeness of overall voter preferences for the two major parties—depending on national distribution of voter support—that swings in voter preferences should result in some changes in the size of the majority party’s advantage in seats.

Second, much depends on the size of voter swings from year to year. The vulnerability of a congressional majority should depend not only on how close the parties are overall, but on the size of yearly voter swings. Figure 6 shows the swing in aggregate vote-share between the parties from one election to the next from 1946 to 2004. What we find is that on average the voter swings in the post-War period seem to be sufficient to reach the spread
between the parties. Certainly in years of significant dissatisfaction with one of the parties, swings can reach above 5%, well above the thin margins that separate the parties at present.

*Figure 6—Election Year Vote-Share Swing (1946–2004)*

The heart of our analysis is presented in the figures that follow. We determine the hypothetical seat gains for different swings in vote-shares by taking each congressional district, removing the actual aggregate vote-swing for that election, and incrementally adding vote-share to the minority party. After each value of vote-increment, we examine whether or not the minority party would win each district and determine the swing in vote-share required to produce different levels of shifts in seats. For instance, we report the aggregate vote shift needed to give the minority party an additional five seats, ten seats, and so on. The data unmistakably show a shoring up of support for the most marginal districts in the wake of the 2002 reapportionment and redistricting. The clearest indication is that between 1946 and 1998 the party out-of-power would have required an average gain of 1.5% of the vote to pick up five additional seats and 2.3% to pick up an additional ten seats. These are thin margins corresponding to the presence of competitive districts. By contrast, in 2004, the Democrats would have needed to pick up 4.9% to gain five seats and 5.7% to pick up ten seats. Even in watershed years in which one party surged in popular support at the expense of the other (1946, 1964 and 1994, for example), the buffer in the most at-
risk districts was decidedly thinner. The summary totals for all elections since 1946 are presented in the Appendix. Figure 7 gives the overview of the expanding margins in the most at-risk seats, reflecting the insulation of incumbent power from electoral challenge.

Figure 7—Expanding Margins in At-Risk Seats

We recognize that this chart is not necessarily self-defining. We have taken the average of races for every decade from the 1940s through the 1990s, though the last column represents only the year 2004, and the 1940s column represents only the post-War elections. We have depicted the competitiveness of the districts on a color spectrum running from white to black. The purest white indicates seats that have less than a roughly 2% margin\textsuperscript{10} separating the incumbent from the loser in the last election, meaning a pickup of one percentage point would tip the election. The seats turn dark grey at the 5% margin, when the incumbent won by more than ten percentage points. The vertical axis represents the first five most vulnerable seats in the hands of the party controlling Congress, followed by the next five, and rising to the level of competitiveness at the thirtieth seat. Allowing black to generally stand for well insulated seats, what one finds is that historically the black shading does not emerge until the thirty seat level, if at all. By contrast, in 2004, the black shading begins even at the most marginal of the incumbent party’s seats.

\textsuperscript{10} The actual margin for white is less than 2.0775%.
In our view, this chart provides a visual confirmation of the loss of accountability of Congress to shifts in voter preferences. It is not that the party out of power cannot gain control of Congress. That ultimately is a product of how the votes are cast. Were the Democrats to win 100% of the vote, to take the absurd extreme, they would of course recapture the Congress—and in its entirety to boot. Rather, the insulation effect is felt in the real world in which swings in voter preferences generally stay below the 5% level in all but the most extraordinary election years. Yet the effect of the redistricting insulation is to require a mobilization of voters at what are, in effect, historic high water marks in order to shake things up in Congress. Our claim is not that this is impossible, just that the power of the gerrymander has been used to build up the electoral flood walls so that only a significant storm surge of popular opinion can have any discernible effect.

IV. LIMITATIONS, METHODOLOGICAL AND OTHERWISE

At some point in all elections, either a party commands enough votes to win power, or it does not. Absent outright fraud, there is invariably a limit to how much voting power may be enhanced beyond what the raw votes will allow. And so too is there a limit to what can be gotten by shoring up potentially marginal districts against partisan challenge, what we consider to be the paradoxical consequence of the insulation effect. Somehow or other, the party in power can only make do with the actual number of votes it receives. The protection of all incumbents requires a redistribution of voters in such a way that the percentage of safe votes is decreased in other districts. This is a simple matter of arithmetic. To add votes to marginal seats, the votes have to come from somewhere, assuming no overall increase in support for the party in power. Thus, it is interesting to compare the margins in 2004 to those in 1966 and 1980, two years that had roughly comparable disparities between the shares of the overall two-party vote garnered by the parties.

Our initial focus was on the effect of gerrymandering. In 2004, it would have taken a 6.0% shift in the two-party vote towards the Democrats for them to win the closest fifteen seats. In 1966, a shift of only 3.1% would have given the minority party an additional fifteen seats, and in 1980, a shift of only 2.2% in the two-party vote would have been required for the minority party to pick up fifteen seats.
This means that even with the same vote distributions between majority and minority party, the burden on the minority party to pick up an additional fifteen seats is much greater in 2004. The secondary effect is also significant. Our model would predict that if the out-party (the Democrats) were to pick up 6%, the result in 2006 would be a switch in partisan control of the House. By contrast, a 6% swing in the two-party vote in 1966 resulted in a Republican gain of forty-seven seats, but it was not enough to give them control of the House. In 1980, a 6.1% increase in the share of the Republican vote would have given them an additional forty-four seats. The effect of gerrymandering districts is not to raise the burden of picking up any new seats, but to increase the likelihood that the effect of a significant upswing in support, should such an upswing occur, will be a tidal surge in congressional seats gained.

It is possible to capture the effects by comparing the seats and votes swing effect for two years: 1980 and 2004. In Figure 9 we show how total seats in 1980 would have changed corresponding to hypothetical vote changes ranging from 0 to 30%. We see a fairly smooth line—each share of aggregate vote picked up by the minority party would have been predictably translated to additional seats in an almost linear fashion. In the same Figure, we show the relationship between seats and votes predicted for 2004. Here we see a different shape to the distribution: small changes in the aggregate
vote-share would have produced almost no changes in the distribution of seats. However, once the change in vote-shares reaches 6% we see a very steep rise in the relationship between votes and seats that does not taper off until beyond the 350 seat mark. This S-shaped curve is what we would expect from the decreasing number of close districts, and the corresponding increase in safe incumbent districts. The curve accurately reflects the difficulty of getting over the insulation hurdle. Once over the hurdle, however, the gains are swift and the plateau is reached more quickly. Imagine the limiting case of this: consider a world where all districts have a normal vote of either 60% majority party or 60% minority party. The only way the minority party would pick up votes is if it went from 40% of the vote to 60% of the vote in districts held by the majority party. A swing of 20% of the vote seems unlikely. But were it to occur, the minority party would sit on a knife-edge situation where a 19% swing could give it no additional seats, and a 21% swing could give it over 200 additional seats.

Figure 9—Total Seats Gained v. Aggregate Swing in Vote-Share, 1980 v. 2004

A more difficult challenge is presented by the untested assumption in our data that national voter trends translate into comparable swings in the marginal districts. There is no reason in principle why, for example, a
Democratic pickup of 1% nationally could not be surgically confined to Republican at-risk districts. For now, this assumption remains to be tested.

However, corroboration of our estimates can be found by comparing the predicted seat gain from the voting patterns in any year in which the minority party gains votes to the actual number of seats the minority party gained. If the minority party’s gains translate into seats at the rate predicted by assuming a uniform vote swing across districts, this would be confirmation that our assumption is benign. The predicted and actual seat shares are correlated at .99 for the period from 1952 to 2004. Thus, our uniform swing assumption does not seem to lead us astray in making predictions about the impact of swings in the aggregate vote-share on party shares of actual seats. Table 1 lists the predicted and actual values of seats won in those years in which the minority party gained votes.

<table>
<thead>
<tr>
<th>Year</th>
<th>Aggregate Swing</th>
<th>Predicted Minority Seats</th>
<th>Minority Seats Actually Won</th>
</tr>
</thead>
<tbody>
<tr>
<td>1946</td>
<td>6.4</td>
<td>239</td>
<td>246</td>
</tr>
<tr>
<td>1948</td>
<td>7.9</td>
<td>254</td>
<td>263</td>
</tr>
<tr>
<td>1950</td>
<td>3.2</td>
<td>191</td>
<td>199</td>
</tr>
<tr>
<td>1954</td>
<td>2.6</td>
<td>227</td>
<td>232</td>
</tr>
<tr>
<td>1956</td>
<td>1.6</td>
<td>201</td>
<td>201</td>
</tr>
<tr>
<td>1960</td>
<td>1.2</td>
<td>174</td>
<td>174</td>
</tr>
<tr>
<td>1966</td>
<td>6.0</td>
<td>187</td>
<td>187</td>
</tr>
<tr>
<td>1968</td>
<td>0.4</td>
<td>192</td>
<td>192</td>
</tr>
<tr>
<td>1976</td>
<td>1.3</td>
<td>141</td>
<td>143</td>
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<td>1978</td>
<td>2.7</td>
<td>153</td>
<td>158</td>
</tr>
<tr>
<td>1980</td>
<td>3.2</td>
<td>186</td>
<td>192</td>
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<td>3.5</td>
<td>176</td>
<td>182</td>
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<tr>
<td>1988</td>
<td>1</td>
<td>168</td>
<td>175</td>
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<td>1994</td>
<td>6.3</td>
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<td>1996</td>
<td>3.4</td>
<td>210</td>
<td>207</td>
</tr>
<tr>
<td>2004</td>
<td>0.7</td>
<td>202</td>
<td>202</td>
</tr>
</tbody>
</table>

Correlation: 0.99

For most years, our methodology predicts fairly well the actual result of a pick-up in votes by the party out-of-power. There is little reason to think that, across the broad spectrum of the electorate, rising tides do not lift all
boats, both in districts held firmly by the party in power and in the contested districts as well.

V. CONCLUSION

This paper relies on a straightforward presentation of election data over the past sixty years. We make no grand assumptions in our analysis. Our conclusion is that the decrease in contested elections has the effect of insulating incumbent officeholders from changes in voter preferences. The effect we identify does not mean that officeholders are invulnerable to any changes in voter preferences. Thus, the Democratic sweep in the 2006 congressional elections, with aggregate vote-share swings at historic high water marks of about 7%, had the effect of shifting control of Congress. Rather, our claim is only that gerrymandering has contributed to making this more difficult as more traditional swings in voter preference would likely have little or no effect on the partisan composition of the House. Our further conclusion is that, to the extent that elected officials are insulated from accountability by more robust electoral margins, the agency costs grow. By any reasonable measure, agents who have less to fear from oversight will act in their own interests and will feel freer to disregard the will of their principals. That too is a cost of having increasingly insulated elected representatives. An insulated Congress is one that becomes increasingly inattentive to the preferences of the electorate. The fact that it requires a shift in voter sentiment of historic proportions to cause a small change in partisan distribution of House seats shows how far we have strayed from the simple idea that elections are supposed to provide a check on the government by offering a meaningful threat to remove legislators from office in ordinary, not just extraordinary, times.
Insert Appendix here (pg. 2) (in landscape layout)