4

Why Proportional Representation Could Make Things Worse

Richard H. Pildes

We have deep reservations about any proposal to replace our current system of single-member districts (SMDs) and first-past-the-post (FPTP) elections by amending federal law to permit or require states to use multimember districts (MMDs) to elect members of Congress. For proponents, the point of doing so would be to achieve proportional representation (PR) in the US House of Representatives.[1] In the fall of 2020, some 200 academics sent an open letter to Congress urging it to permit states to do so.[2] The Fair Representation Act,[3] introduced in the House in 2021, would, among other things, require states with two or more congressional districts to elect House members from MMDs using a form of PR based on ranked-choice voting (a system otherwise known as the single-transferrable vote [STV]).

The purpose of such proposals is to enable the creation of a House comprised of five or six political parties. To the extent that Chapter 3 might be read as encouraging such changes, we would not want our silence to be taken as an endorsement. We will refer here to proposals for MMDs for Congress as proposals for PR.

PR proponents argue that the hyperpolarized nature of our two-party system and the toxic, tribalistic political culture of our current era compel a shift to PR. Their proposal is thus a response to the specific nature of democratic politics in the United States today. The desire to find a silver bullet that would free us from a state of politics that few consider healthy is understandable. But we are concerned that the diagnosis that

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single-member districts and FPTP elections lie at the heart of America's descent into toxic politics may not be correct. More importantly, we worry that electing House members through PR could well make our political institutions even more dysfunctional. We also believe it is important to understand the concrete institutional details of what a shift to PR in the House would entail. The details are important, because looking closely at how PR would actually work in the United States reveals significant issues not readily apparent in more abstract debates about the merits of such proposals.

How PR Would Work for Congress: Threshold Issues

Proponents of MMDs for the House suggest that such districts should be designed to send five to seven members to Congress. This would require new federal legislation because current federal law requires single-member districts for Congress. One reason proponents argue for MMDs, rather than a more straightforward system of statewide PR, is their belief that Americans should be able to identify an individual representative as "their" representative; many people, particularly lower-income citizens, rely on congressional offices for assistance with Social Security or other public entitlements and benefits.

Under the system of MMDs proposed in the Fair Representation Act, a state such as North Carolina, with fourteen representatives, would be divided into three districts, two of which would elect five members and one of which would elect four. In the general election, ten or more candidates would presumably be on the ballot for the five seats in a five-member MMD. Currently, the average population of a congressional district is about 761,000 people. Under the proposed system, North Carolina would have two districts of 3.805 million people and one with 3.044 million. If the entire state were a single electoral district, there would be no natural and statutory connection between the state's fourteen house members and its nearly 11 million residents. Hence, the choice of MMDs rather than statewide PR is to enable residents to continue to feel connected to "their" representatives and hold them accountable. Whether either of those aims would be realistic in districts with 3 million people is an initial question.

Moreover, to make this system work, the method by which we vote would have to change in fairly substantial ways. Thus, one of the requirements reformers sometimes pair with the introduction of MMDs is ranked-choice voting (the single transferrable vote system mentioned

above). Voters rank as many of the ten or more candidates as they prefer. In a five-member MMD, any candidate who wins more than a sixth of the vote (close to 17 percent) is immediately elected. The seats that remain empty after this initial round are filled by winnowing down the rest of the field: the candidates with the fewest first-preference votes are eliminated and their votes are transferred to whichever candidate is ranked immediately below the eliminated candidate on each ballot, until five candidates have cleared the one-sixth-plus-one-vote threshold. In a seven-member MMD, the threshold for victory is one-eighth of the vote (12.5 percent) plus one. The fewer members elected from a district, the higher the minimal winning threshold.[4] Proponents believe an electoral system composed of moderately sized districts (say, of up to five members each) would generate a Congress of five or six parties, with perhaps a green party, a socialist party, and a moderate Democratic Party on the left and a religious party, a libertarian party, and a business-oriented Republican Party on the right.

Recognizing the informational burden this system would put on voters, PR proponents instead sometimes suggest using a party-list voting system. This system would even more dramatically change the way we vote. First, it would do away with primary elections for choosing a party's nominees. Instead, each party would choose, through whatever internal processes it preferred, a slate of candidates and rank order them on the ballot. Voters would then cast a single vote for their preferred party. In a "closed-list" system, voters could not vote for a specific candidate or alter the rank ordering of the candidates on the list. In a partially or fully "open-list" system, voters could vote for a specific candidate on the party-chosen list, which would also count as a vote for that party, or they could simply vote for a particular party without identifying any specific candidate. Under party-list PR, political parties receive a number of seats in the legislature proportionate to their vote share. While we might be sympathetic to a system in which parties regain more control over selecting their nominees, the shift to a list PR form of party-based voting would be a radical one in the American context.

Several additional issues related to the mechanics of this system should be noted. One immediate problem is that twenty-one states, nearly half of them, have fewer than five representatives. If five representatives is the ideal number for each MMD—enabling the desired level of multiparty competition in all states—the introduction of PR would have to be paired with a massive expansion of the House (which has been set at 435 representatives since 1929). Seven states currently have

only one representative. To give those states five representatives, the House would need to have 2,175 members. Again, even PR proponents are not enamored of that much representation. They typically propose a House of 700 members, roughly the size of the lower chambers in Germany and the United Kingdom. At this size, the thirteen states that today have just one or two representatives would not be able to constitute a single five-member MMD. Thus, parties capable of crossing the electoral threshold with 17 percent of the vote in some states would not win a single seat in smaller states with that same 17 percent.

As noted above, new congressional legislation would be required to adopt any version of MMDs. But a critical question is whether any such legislation should merely permit states to shift to MMDs or require them to. While the Fair Representation Act mandates MMDs with PR for all states with multiple representatives, many reform proponents advocate permitting, but not requiring, states to use MMDs. This is surely a concession to political realities, for a shift even to voluntary use of MMDs would be a heavy political lift. But in a voluntary system, partisan calculations would undoubtedly shape legislative decisions about whether to shift to MMDs, along with calculations about the choices other states would be anticipated to make. The legislative majority in any one state would have to decide to weaken its power by shifting to MMDs without any guarantee that other states would do the same. State-by-state partisan calculations would drive those choices. Such dynamics are precisely why Congress concluded in 1842, and reaffirmed in 1967, that a uniform national requirement for congressional districts is required. The proposed system of MMDs for the House, then, would be unlikely to get off the ground or to remain stable unless Congress mandated it uniformly. That is most likely why the Fair Representation Act would require states to use MMDs for Congress.

Another question is whether MMDs would actually generate multiparty democracy in the United States. Senators and the president would continue to be elected as they currently are, given hardwired provisions of the Constitution. Because two-party competition will continue to dominate these higher offices, how many ambitious politicians would run under other party labels for the House?

In sum, under these proposals PR would concretely mean either a 700-member House of around six parties or a House closer to (or exactly) the current size with less proportionality, alongside two-party competition for the presidency and the Senate. Voters would choose among ten or so candidates in districts of around 2.4 million to 3.8 million people (about three to five times the size of current districts). For

a voting system, they would use STV or an open-list PR system for either one candidate or one political party. The practical range and nature of the changes required to implement such a system within the constraints of American institutions would be major considerations if Congress ever seriously debated requiring or permitting MMDs and PR.

Is the Diagnosis on Which PR Proposals Rest Accurate?

PR proponents argue that under the current SMD/winner-take-all electoral system for the House, two-party competition is responsible for the toxic "us-versus-them" political culture that has emerged. And these proponents maintain that a six-party Congress would encourage more compromise-oriented politics, rather than simply making legislation more difficult. Because no party would be likely to win an outright legislative majority, governing would require coalition building. Parties would purportedly recognize that they have to compromise to get anything done, and more extreme, uncompromising parties could be left on the margins of legislative work. Different coalitional majorities, so the theory goes, would be assembled for different issues. But forming a coalition without the party or parties of the political center would be difficult. With more parties, more viewpoints would have to be considered.

But there are good reasons to question whether PR proponents have the correct diagnosis: that FPTP elections are a primary cause of our current political disease. FPTP systems do tend to generate two-party politics (with some qualifications), but no other FPTP system is characterized by the toxic tribal politics and affective polarization that have come to characterize the United States.

In the United Kingdom, the birthplace of FPTP, politics have long been consensual, moderate, and pragmatic, despite major differences over policy. The Margaret Thatcher years saw intense conflict, but between then and Brexit, political scientists noted, "in contrast to American elites' policy polarization, British politics witnessed dramatic depolarization, that is, policy convergence between the elites of the two dominant political parties."[5] Brexit, of course, roiled British politics for half a decade after voters in 2016 approved the referendum to depart the European Union, but it was an existential issue that countries rarely confront. More importantly, Brexit did not entail tribal political conflict between the two major parties; both were internally riven over Brexit and related issues.

The current leaders of both major British parties are again generally viewed as technocratic and pragmatic. Although the constituencies of the left and right parties in the United States and the United Kingdom share much in common—the same stark educational divide, the same rural/urban split—little in Britain resembles the affective polarization of the United States, despite policy conflicts. As a leading British political commentator put it in 2023, the United Kingdom is "Europe's haven of moderation."[6] Indeed, that commentator warned, "Those in the UK who campaign for proportional representation should view contemporary Europe as a warning, not a template."[7] The United Kingdom's most recent elections handed the governing reins to a modern left-of-center Labour Party.

Similarly, one hardly would view Canada, the other major Western democracy using FPTP elections, as afflicted by a toxic political culture of affective polarization akin to that of the United States. As a major comparative study concluded, the rise of affective polarization in the United States since the 1990s is "not part of a cross-national trend." In other Western democracies, affective polarization was fairly stable, and much lower than in the United States, during this period.[8]

If our system no longer produces moderate, pragmatic parties, we should ask what other institutional features of our elections or political culture could be causing FPTP to behave so differently. Likely candidates include unique aspects of the ways we organize our democratic process: our use of primary elections, our system of privately financed campaigns, and our presidential nomination process that denies elected party figures any formal role in choosing the parties' nominees—issues that other parts of this book address.

Chapter 3 offers data showing that affective polarization tends to be greater in countries with FPTP elections. But we do not find this data significant. No one thinks the United Kingdom, Canada, or Australia has anything like the affective polarization that currently characterizes the United States; nor is affective polarization a serious problem in those countries. Indeed, one study's general conclusion is that American affective polarization, while above average, is not even "exceptionally intense" in comparative perspective.[9]

Is the Cure Worse Than the Disease?

A major challenge that the United States and other Western democracies face is restoring faith in their ability to deliver effective gover-

nance on issues citizens care most about—and actually delivering that governance.[10] According to proponents of MMDs, this system would produce a five- or six-party House. Our major concern is that this fragmentation of parties would make the political process more, not less, dysfunctional. Given the depth of dissatisfaction with government today, this is a particularly pressing concern. When democratic governments fail to deal effectively with issues that matter most to voters, that failure can lead to distrust, alienation, withdrawal, anger, and resentment. Even worse, it can fuel desires for a strongman figure who promises to cut through the dysfunction and deliver where democratic governments have not.

The best place to examine how a five- or six-party Congress might function is in the PR democracies of western Europe. But the way these democracies have functioned over the last decade or so—the same period in which politics in the United States has become so much more divisive—is very different from how they functioned for most of the period from World War II until about ten years ago. For this reason, assessments of western European PR democracies from before this past decade are outdated and can be misleading.[11]

From World War II until around ten years ago, many of the PR democracies in Europe that are formally multiparty systems had functioned, in effect, as two-and-a-half-party systems.[12] Either one of the two large, dominant parties won an outright majority, or it governed with the support of one smaller party. This generated fairly stable and continuous government, even as control might shift from one of the two dominant parties to the other. The impression many have of how well PR worked in these countries might well be based on this long period of relatively stable politics.

But that era is now gone. Just as the last decade or so has brought continual dissatisfaction with government in the United States, it has brought continual dissatisfaction with government in western Europe. This in turn has generated turbulent politics across much of the continent, including the rise of "antisystem" politics and parties in many countries.[13]

Over the last decade, the long-stable two-and-a-half-party structure has collapsed in most of western Europe. The inability of governments to address their citizens' most pressing concerns has led to a hemorrhaging of support for the long-dominant European parties, such as Germany's center-right Christian Democrats and center-left Social Democrats. As a result, support for the major parties has fractured, and new insurgent parties of various ideologies have emerged while previously minor parties, some of them populist or more ideologically extreme,

have gained greater support. We are seeing in western Europe exactly the kind of splintering of those larger parties that PR advocates claim would be a virtue for the United States. Several of these systems, which functioned in effect as two-and-a-half-party systems for decades, have become five- or six-party systems.

One of us (Richard H. Pildes) has extensively detailed the rise of these newly fragmented multiparty political systems in western Europe and Scandinavia and shown how dysfunctional many of these governments have become.[14] A standard summary measure of the fragmentation of a country's party system is the "effective number of parliamentary parties."[15] While this measure is based on a mathematical formula, it gives an intuitive sense of how many parties matter in a legislature for the purpose of assembling a majority. In FPTP systems, the number is generally under 3 (in the United States it is 2, and in parliamentary systems it tends to be 3; it is about 2.4 in the United Kingdom, 2.8 in Canada, and 3.2 in Australia). In most of Europe's PR systems, the effective number ranges from 5 to 7; in parliamentary Belgium, which has had chronic problems forming governments, it is nearly 10. In Germany, the number has risen from under 4 in 1990 (and 3 in the former West Germany) to 5.5 today.[16]

In general, the more fragmented party systems that have emerged in Europe have had at least three effects on governance that those who advocate adopting PR in the United States have underestimated. These effects need to be carefully considered before embracing the goal of a five- or six-party US House.

First, it now takes much longer to form a governing majority in European parliaments, as bargaining drags on for many months between the various parties and potential coalitional partners. Second, voters can lack a clear sense of the government and policies they are voting for, since coalitions between a number of parties are often cobbled together after elections and on terms not always foreseeable in advance. Elites bargain after elections to forge a governing majority (and hence policy), although sometimes these coalitional pairings are made clear to voters in advance. Such coalitions are also more likely to be ideologically incoherent, since the multiple parties that comprise them often have strongly divergent views on major issues.

Third, when these coalitional governments do manage to form, they are more fragile. The departure of one or more minor parties from the coalition can cause the government to collapse. This outcome has become more likely, since conflicting ideologies among multiparty coalitions can cause fissures that lead one or more to abandon the coali-

tion. As a result, some of these democracies have had to hold repeated national elections in an effort to find a governing majority. Others have lost votes of no confidence.

These developments are powerful signs of continual dissatisfaction with nearly all the PR governments of western Europe. Newly fragmented party systems in these countries reflect the strong frustrations of so many citizens with their governments' inability to deliver on issues they care about. And yet, at the same time, this fragmentation makes it even harder for governments to function effectively, since they are more divided, fragile, and difficult to form in the first place. Democratic governments in much of the West are now caught in this perverse dynamic. The prospect of importing these struggles to the United States should give pause to those advocating PR for the House.

To make the transformation of Europe's PR systems more concrete, consider the case of Germany, which until recently was considered a bastion of stability and good governance among European democracies. Since World War II, it had been a typical two-and-a-half-party system, with the traditionally large center-left party (the Social Democrats) and center-right party (the Christian Democrats) alternating in control of government. Between them, these parties regularly combined in the 1970s to receive over 90 percent of the vote.

But in recent years, Germany has splintered into a six-party system.[17] In the 2017 elections, the two previously dominant parties combined to receive just 53 percent of the vote,[18] and in 2021 they failed to achieve a combined majority. The votes these major parties shed were absorbed by smaller parties of various ideologies, such as the Alternative for Germany (AfD), the Free Democrats, the Greens, and the Left. After 2017, it took six months to form a government, the longest time since the creation of Germany's post–World War II democracy.[19]

Since its most recent elections, Germany has been governed by a three-party coalition for the first time. While that coalition has remained mostly united over Ukraine policy, the ideological conflicts between the three parties, particularly on domestic issues, have raised questions about whether even a three-party coalition can function effectively.[20] The coalition has proven highly unpopular, partly because the two smaller parties have been fiercely at odds.[21] Dissatisfaction with government in Germany remains extremely high; at the time of this writing, only 19 percent of people report being "satisfied" with the government.[22] Partly as a result, the hard-right AfD is currently the second-most popular party in Germany.[23] Commentators describe the country as "slipping further and further into crisis."[24]

Chapter 3 presents partial evidence suggesting that PR systems score well on expert assessments of "Good Governance" and "Government Effectiveness," as well as Freedom House's "Functioning of Government" measure. But these measures focus heavily on inputs to or general qualities of government, such as how transparent it is or how much corruption exists, rather than on how effectively government delivers policy solutions to pressing problems. We think the most meaningful evidence of how citizens feel about their governments is what economists call their "revealed preferences": the way they actually vote. And as voting patterns throughout western Europe demonstrate, citizens have been consistently dissatisfied with the performance of their governments and continually searching for new alternatives.

In the spirit of healthy skepticism, we offer Table 4.1, which presents the percentile scores on three often-used World Bank measures of governance quality—government effectiveness, control of corruption, and rule of law—for two sets of seven advanced industrial democracies: one predominantly majoritarian with an average effective number of parties of 2.49, and the other PR (and for the most part, highly proportional) with an average effective number of parties of 6.37.[25] As is apparent from the table, there is virtually no difference in the average quality of governance for the two systems. The majoritarian systems

Table 4.1 Governance Quality, Majoritarian and PR Systems, 2022 Percentile Scores

Country	Number of Effective Parties	Government Effectiveness	Control of Corruption	Rule of Law
Australia	3.15	93	95	91
Canada	2.76	94	93	93
United Kingdom	2.39	86	93	89
United States	2.0	87	83	89
Japan	2.69	96	91	92
Korea	2.09	90	77	85
Taiwan	2.38	91	83	87
Majoritarian Average	*2.49*	*91*	*88*	*89*
Belgium	9.7	85	89	88
Denmark	7.24	98	100	100
Germany	5.51	88	96	92
Israel	6.51	85	79	81
Netherlands	7.03	95	97	93
Spain	3.44	78	75	77
Sweden	5.18	95	98	94
Proportional Average	*6.37*	*89*	*91*	*89*

actually have the edge in government effectiveness with an average percentile rank of 91, compared to 89 for the PR systems; the PR systems do a bit better in controlling corruption (91 to 88); and the two systems have the same average percentile scores on rule of law (89).[26]

To be sure, the challenge of party fragmentation is greater in parliamentary systems than it would be in the American presidential system. In the United States, the government's existence wouldn't depend on a majority coalition. Nonetheless, a majority would have to be forged to elect a Speaker of the House and determine how committees would be structured.

The western European experience over the last decade or so is critical to understand because it illustrates the range of difficulties associated with putting together majority coalitions in systems with five or six political parties—and also puts to rest the notion that PR systems there are working smoothly and producing effective government with widespread public satisfaction.[27] Moreover, PR systems have always made it more likely that more extreme minority parties will gain representation. One way PR systems have contained that threat is by forging an agreement among major parties not to go into coalition with extremists (known as a "cordon sanitaire"). Yet that approach has widely broken down (though not in France), as these parties have grown in support through PR and coalitions have become dependent on more extreme parties to govern.[28]

The US party system is already fragmented. Even without a multiparty system, the Democrats and the Republicans are both sharply divided internally, particularly in recent years on the Republican side. These internal factional disputes, despite being confined within the two-party system, have already made governing substantially more difficult. Yet, as riven by conflict as the two major parties are at the moment, at least their quarrels take place within the two-party system, in which fellow party members have strong incentives to pull together.

Imagine if each party were split, as PR advocates would prefer, into three parties, generating a six-party Congress. First, there would be the issue of electing a Speaker of the House, through a majority vote of the whole chamber. This is not equivalent to forming a government in a parliamentary system, but it would be similar to forming a majority for the purpose of legislating. Now envision having to cobble together majority coalitions on specific policy issues in the likely event that no one party controls the chamber. Under these circumstances, each party would be incentivized to try to expand its base of support by making strategic judgments about whether being part of a majority coalition or refusing

to go along on specific issues would be more likely to improve its electoral prospects. Each party would likely have its own red lines on what compromises it would refuse to make, lest it undermine its appeal to core supporters.

In addition to the possibility that such an arrangement could make Congress even more dysfunctional, at least two other potential drawbacks of the way multiparty systems function must be considered. First, as Frances Rosenbluth and Ian Shapiro document in *Responsible Parties: Saving Democracy from Itself*,[29] a significant cost of cobbling together governing majorities, particularly amid party proliferation, is that doing so frequently requires buying off smaller parties with policy concessions (or the provision of legislative pork, as in Brazil). Smaller parties represent, by definition, smaller segments of the electorate. Buying their support with policy concessions typically weakens aggregate social welfare, since their demands usually lack majority support. Voters also often perceive these payoffs to smaller parties as a form of vote buying, which fuels a sense that the political system is corrupt. A degree of this does take place in a two-party system, where parties must sometimes logroll between their factions, but the policy price is typically lower because these factions still retain a shared interest in the party's success. Rosenbluth and Shapiro's book is an extended analysis of why systems with two strong political parties (or two stable political coalitions in unfragmented PR systems) are more likely to enhance social welfare than fragmented PR systems of five or six parties.

A second consequence of PR is that it enables voters to remain ensconced in much smaller, ideologically narrow parties than in a two-party system. Committed environmentalists can silo themselves in a green party; other voters, in a socialist party or evangelical party, and so on. Voters can therefore remain more purist in their party affiliations and have to compromise less on the candidates for whom they vote. The process of negotiating, compromising, and bargaining among competing interests takes place largely among party leaders, after elections (or when party coalitions are formed in advance). This is an elite-driven practice of democracy.

In FPTP elections, by contrast, more of that process takes place among voters themselves; in deciding whether to support Bernie Sanders or Joe Biden in a Democratic primary, for example, a socialist voter has incentives to take into account which candidate has the broadest electoral appeal and would thus be more competitive in the general election. Much of the motivation for adopting PR among advocates is to end our tribalistic politics, but would enabling voters

to sort themselves into narrower, more ideologically "pure" parties really diminish tribalism?

This chapter is not meant as a comprehensive critique of proposals for a PR House. It is intended merely to express our skepticism and to raise the major concerns we have about such a change. Any consideration of a shift to MMDs for the House must contend with the range and magnitude of the changes that would need to accompany this shift, including to the connection between representatives and constituents, to the size of the House, and to the way we vote. In addition, to the extent the principal justification for this transformation is that our FPTP election system is the primary cause of our current tribalistic and toxic political culture, we have doubts about that claim. Most fundamentally, we are concerned, based partly on the experience of Western democracies over the last decade or so, that a five- or six-party House would make the political process even more dysfunctional than it has been in recent years. Because inability to deliver effective government is driving the current crisis of democracy, we would not support a shift to MMDs and PR for Congress absent a convincing demonstration that such a shift would make the political process function more effectively rather than, as we fear, making it even more difficult for government to deliver on the issues citizens care most urgently about.

States are free to adopt MMDs and PR for their state legislatures, subject to compliance with federal constitutional requirements and statutory ones, such as the Voting Rights Act. If there is to be experimentation with such systems, they should begin at the state level.

To ease toxic polarization at the national level, we believe there is greater promise in replacing the traditional party primary with all-candidate, nonparty primaries (as outlined in Chapter 5), combined with various forms of instant-runoff voting (as discussed in Chapter 2). The traditional party primary makes it too easy for extreme or factional candidates to win office even when they lack the support of electoral majorities. These reforms to the structure of primaries and voting rules would enhance the prospects of candidates who do have majority support among the general electorate. These reforms also represent a more incremental, state-by-state approach and hence embody a more prudential form of experimentation. They might or might not substantially reduce polarization and extremism, but they also do not pose the risk that PR does of a national change that might make Congress more dysfunctional and would be difficult to undo. And in contrast to PR, these reforms might realistically be adopted by more US states in the coming decade. Whatever PR's merits, there is little practical prospect of the

system becoming our method for electing members of Congress anytime soon. For those who believe the need for political reform is urgent to diminish extremism and polarization in our national politics, we cannot afford to wait for the day Congress might adopt PR, even if that were a desirable reform path.

An Additional Note on "Self-Districting" by Edward B. Foley

My views on proportional representation lie between those expressed in Chapters 3 and 4. I am skeptical that PR can be a panacea in the United States for the problems of polarization and extremism. Because neither the Senate nor the presidency is susceptible to PR, and even the House of Representatives is only partially susceptible to it since twenty-one states have four or fewer representatives, I believe that the most effective way to combat polarization and extremism will be through the adoption of nonpartisan primaries of the type now used in Alaska and California and a general election conducted according to a "Condorcet-consistent" method (as described in Chapter 2).

Nonetheless, I'm not as wary of PR as the contributors to Chapter 4 are. I believe it would be very valuable for states to experiment with various forms of PR for at least one of their legislative chambers. With states serving as they are supposed to as laboratories of democracy, the nation as a whole can beneficially learn from this experimentation. Even with respect to the US House of Representatives, I am not averse to experimenting with PR, although I would not support a federal statute to mandate PR.

Instead, I would encourage states to consider adopting a form of PR that I call "self-districting" in which voters themselves choose their district for purposes of representation. Because it is consistent with the single-member district requirement of current federal law, self-districting would not require any congressional legislation. States already have the power under Article I, § 4 of the Constitution to adopt this form of PR for their delegations to the House if they wish.

Moreover, I believe that self-districting is the form of PR most consistent with traditional American electoral practices and thus would be most agreeable to Americans if proposed as a ballot initiative. In a self-districting system, each voter would be a resident of a single specific congressional district, which would be represented by a single representative in the House. Thus, self-districting preserves the direct con-

stituent-representative relationship that is so important to Americans, including for reasons of constituent service. Moreover, in a self-districting system, each voter in a regular general election gets to vote for which of several candidates on the ballot they want to be their representative. Consequently, self-districting also preserves the direct electoral connection between voters and their chosen representative that is so important to Americans' understanding of self-government.

What makes self-districting a form of PR is the method by which voters choose what electoral constituency, or district, they wish to be represented in. Because each self-selected constituency must have an equal number of voters, in order to comply with the constitutional principle of "one person, one vote," a constituency that attracts enough voters through the self-selection process for two or more districts will be allocated the number of districts that is in proportion to its share of the state's citizen voting-age population. If a state implements a self-districting system, political parties will compete for the allegiance of citizens in the state, just as they would in any other form of PR system, and these parties would control a share of seats in proportion to their share of the votes.

I have discussed the details of the self-districting system elsewhere, both in longer and shorter works.[30] I need not repeat those details here. Readers of this book interested in learning those details can find those other texts online (free of charge).

To be clear, I do not propose self-districting as a remedy for polarization or extremism. But I do not believe this system would exacerbate those problems in the United States, especially if a Condorcet-compliant form of ranked-choice voting were used to elect the single representative from each district. While it is foreseeable that a party espousing extremist views, such as election-denialist authoritarianism, would win a share of seats in a self-districting system—as it likely would under any districting system when a majority of voters in some districts hold such views—an extremist party could not gain control of Congress as long as these extremist views did not become the majority position statewide in any state (or at least not in a majority of congressional districts nationwide).

The benefits of a self-districting system, as I see it, lie in other features. First and foremost, self-districting entirely eliminates the problem of partisan gerrymandering because voters, and not the government, determine what districts the voters are in. In a self-districting system, the political parties are downstream, not upstream, of the districting system—or, if one prefers, the parties are servants of the districting choices

made by voters, not the masters of the districting choices to which the voters must be supplicants.

Second, and almost as important, self-districting eliminates the difficult role that race currently plays in US districting decisions. In a self-districting system, the voters themselves decide whether they wish to make race a factor in their own districting decisions. And because this is a personal, not a governmental choice, it raises none of the constitutional difficulties that race-based districting by the government does. Moreover, because voters are empowered to make this choice themselves, they can avoid the problem of race-based vote dilution: if they wish, members of racial minorities can guarantee themselves a number of seats in proportion to their share of the population.

Finally, self-districting is in keeping with the American tradition of personal autonomy and individual empowerment. The American spirit of self-government is to let citizens control their own destinies insofar as possible. Self-districting is the method of districting that does this to the maximum extent feasible. Thus, I would encourage states to pursue PR and, in doing so, to consider self-districting as the form most suitable for the United States.

Notes

1. The material in this statement consists of excerpts taken from Richard H. Pildes, "Skepticism About Proportional Representation for Congress," *Illinois Law Review* (forthcoming 2024).

2. Scholars for Redistricting Reform, "Letter to Congress on Ending Single Member Congressional Districts and Adopting Proportional Representation," *Medium*, September 19, 2022.

3. "H.R. 3863—Fair Representation Act, 117th Congress (2021–2022)," Congress.gov.

4. There are two different methods for establishing the election threshold under STV. The Hare formula makes the election quota total votes/total seats. If this approach were used, the minimal threshold would be 20 percent in a five-member district. The Droop formula makes the quota total votes/(total seats + 1) + 1. For various reasons, most experts consider the Droop method the better one, and the STV systems in use in other countries use the Droop quota. Dylan Difford, "Hare vs Droop: How to Set the Quota Under STV," Electoral Reform Society, August 10, 2021. For five seats, the Droop method means dividing the number of votes by one-sixth (or 16.6 percent), then adding one to the total. That's where the 17 percent figure derives from. For an explanation and demonstration of this process for a general audience, see "How Proportional RCV Works," at "Proportional RCV Information," FairVote.

5. James Adams, Jane Green, and Caitlin Milazzo, "Has the British Public Depolarized Along with Political Elites," *Comparative Political Studies* 4, no. 4 (2012): 507–530.

6. Janan Ganesh, "Britain Is Europe's Haven from the Hard Right," *Financial Times*, October 3, 2023.

7. Janan Ganesh, "Britain Is Europe's Haven from the Hard Right," *Financial Times*, October 3, 2023.

8. See Levi Boxell, Matthew Gentzkow, and Jesse M. Shapiro, "Cross-Country Trends in Affective Polarization," *Review of Economics and Statistics*, January 25, 2022, 1–60.

9. Noam Gidron, James Adams, and Will Horne, *American Affective Polarization in Comparative Perspective* (Cambridge: Cambridge University Press, 2020), 70.

10. See Richard H. Pildes, "The Neglected Value of Effective Government," NYU School of Law, Public Law Research Paper No. 23-51, *University of Chicago Legal Forum* 2023, article 8 (2024): 185–210.

11. For example, the references in Chapter 3 to how well these systems satisfy median voter preferences all date to well before the past decade.

12. Alan Siaroff, "Two-and-a-Half-Party Systems and the Comparative Role of the 'Half,'" *Party Politics* 9, no. 3 (2003): 267–290.

13. Jonathan Hopkin, *Anti-system Politics* (Cambridge: Cambridge University Press, 2022), 3 (describing the rise of a "xenophobic Right and the anti-capitalist Left as part of a common global trend: anti-system politics").

14. See Richard H. Pildes, "Political Fragmentation in the Democracies of the West," *Brigham Young University Journal of Public Law* 37 (2023): 209–245; Richard H. Pildes, "Democracies in the Age of Fragmentation," *California Law Review* 110 (2022): 2051–2092.

15. "Effective Number of Parties," Wikipedia.

16. Aiko Wagner, "Party System Change in Eastern and Western Germany Between Convergence and Dissimilarity," *German Politics* 32 (2023); "Effective Number of Parties," Wikipedia.

17. Unless otherwise noted, the facts in this paragraph are taken from Richard H. Pildes, "Political Fragmentation in the Democracies of the West," *Brigham Young University Journal of Public Law* 37 (2023): 217.

18. Stefan Wagstyl, Guy Chazan, and Tobias Buck, "Merkel Wins Fourth Term but Far-Right Populists Make Gains," *Financial Times*, September 25, 2017.

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20. "What Lies Ahead for Germany's Coalition Government," *Rane*, December 23, 2022; Sarah Marsh, "German Coalition, Beset by Crises, Could Get More Fractious After Vote," *Reuters*, October 10, 2022.

21. Rebecca Staudenmaier and Sabine Kinkartz, "Satisfaction in German Government Plummets," *DW*, September 1, 2023; see also Joseph de Weck, "Germany Is No Longer Exceptional," *The Atlantic*, July 22, 2023: "The three parties in Scholz's ruling coalition . . . squabble over everything, including whether to ban gas heating systems, how to deal with China, and whether to raise the child-benefits system. The result is neither calm nor order, at a time when inflation and the energy crisis are already destabilizing life in Germany."

22. Rebecca Staudenmaier and Sabine Kinkartz, "Satisfaction in German Government Plummets," *DW*, September 1, 2023.

23. Rebecca Staudenmaier and Sabine Kinkartz, "Satisfaction in German Government Plummets," *DW*, September 1, 2023.

24. Rebecca Staudenmaier and Sabine Kinkartz, "Satisfaction in German Government Plummets," *DW*, September 1, 2023.

25. One could quibble with the case selection, but even though Japan, Korea and Taiwan have PR components to their electoral systems, they function in mainly majoritarian fashion, as their low effective number of parties indicates, and the Australian lower house of parliament is single-member-district (using RCV). The seven PR systems include two of the most successful Scandinavian countries, so we are not trying to bias the sample.

26. Data on the percentile rankings come from the World Bank's Worldwide Governance Indicators; "Effective Number of Parties," Wikipedia.

27. Despite survey data showing voters in these countries responding with significant levels of satisfaction with government see "Democracy," at https://europa.eu/eurobarometer/surveys/detail/2966), the actual revealed behavior of these voters in elections shows continual dissatisfaction, which has driven the rise of new, insurgent parties and rapid decline in support of the traditional major parties and coalitions.

28. Martin Sandbu, "Europe's Cordon Sanitaire Against the Far Right May Not Work," *Financial Times*, June 30, 2024.

29. Ian Shapiro and Frances Rosenbluth, *Responsible Parties: Saving Democracy from Itself* (New Haven, CT: Yale University Press, 2018).

30. Edward B. Foley, "Self-Districting: The Ultimate Antidote to Gerrymandering," *Kentucky Law Journal* 111 (2023): 693, https://dx.doi.org/10.2139/ssrn.4328642; Edward B. Foley, "Self-Districting Solves the Problem of the Supreme Court's South Carolina Case," *Common Ground Democracy*, May 24, 2024.