

Thomas Woodside

Dr. Hanson

APUSH F

23 March 2018

“Conscious of Receding Power”:

The Partisan Motivations Behind the Single-Member Districting Mandate of 1842

A fierce debate on congressional redistricting is taking place across the country, with the Supreme Court soon to hand down decisions on partisan gerrymandering. But at one point in our history, American leaders argued not just about how to draw districts, but whether to draw them at all.

For much of early American history, some states, particularly smaller ones, elected their representatives through at-large systems. In such systems, all of the state's representatives would be elected together from the state as a whole. For instance, if a state had seven seats in the House of Representatives, each party in the state would nominate seven candidates, each voter would get seven votes, and the seven candidates with the most votes would win.

Other states used varying combinations of the district and at-large systems. Some had districts but elected a few additional representatives at large. Others had districts with more than one representative; often, large cities were not divided and simply elected their representatives at large. The practice of districting or lack thereof was not regulated by the federal government and was left entirely to the states.

In 1842, however, Congress, with both houses controlled by the Whig party, moved to regulate congressional districting. Lawmakers advanced an amendment to the decennial apportionment bill requiring that all states adopt districts.¹ This single-member districting mandate ultimately passed both houses of Congress and was signed by President John Tyler before the elections of 1842.² The reasons for the passage of the mandate have been debated.

Dr. W. Mark Crain writes that incumbents are motivated to adopt single-member districts because they eliminate the possibility of incumbent-incumbent competition.³ Incumbents do not have to share a single-member district with other incumbents as they do in a multi-member district, and so would favor single-member districts to maximize their political outcomes.⁴ Crain thus applies economic theory to identify an incentive for incumbents to pass the mandate.

Dr. Stephen Calabrese argues that the majority party in Congress, as well as the party that holds the Presidency, tend to be “moderated” by the voters, especially during midterm elections, with the result of reducing the majority party’s power in the House of Representatives.⁵ In multi-member districts, Calabrese argues, elections usually end with one party having swept all of the seats for that district. Combined, these two effects mean that the majority party (in this case, the Whigs), had an incentive to mandate single-member districts because it would decrease the likelihood that they would lose their majority.⁶

The evidence reveals that incumbency was in fact a factor in the vote, and it is not surprising that some representatives were considering their own electoral prospects when voting for the bill. However, the majority of the evidence suggests that Whigs were mainly aiming to stem their losses in the election of 1842. The mandate fell disproportionately on Democratic states, and the few Whig states it did affect seemed likely to be lost to the Democrats anyway. With the mandate, Whigs stemmed their losses in states they held and improved their odds of picking up seats in other states. The Whigs’ own statements revealed their sense of urgency, fueled by Alabama’s switch to at-large elections in 1840, which had damaged the Whig party. Despite several legitimate reasons that the mandate could have been delayed, Whigs pressed on, insistent that the mandate was necessary for 1842. In passing the mandate, Whigs were aiming to protect their party’s seats from a Democratic wave in 1842 and attempting to maintain control of as much of the House as they could.

Single-Member Districts- An Incumbency Protection Device?

Historians such as W. Mark Crain have argued that single-member mandates protect incumbency because they prohibit competition between incumbents.⁷ In a district system, Crain observes, an incumbent never has to run against another incumbent, and competition is therefore less frequent.⁸

It is true that single-member districts produced competition less often than at-large systems. From 1790-1840, 9.2% of incumbents in single-member districts won more than 96% of the vote.⁹ In multi-member systems, only 5.1% ran at that level, a difference that is statistically significant.¹⁰ In addition, 78.8% of incumbents from single-member districts were reelected; only 75.3% from multi-member districts were, although that difference is not statistically significant.¹¹ Because of the incumbency benefits of single-member systems, it might be advantageous for elected representatives to attempt to expand the single-member system and prevent the expansion of the multi-member system.

If this hypothesis were true, it is clear that representatives from single-member districts should be predisposed to vote for a mandate that protected those districts from potential changes. Representatives from multi-member districts might be more hesitant, because the disadvantages of political unpredictability that would come from a change might outweigh the benefits of districts. This effect was confirmed in the vote on the mandate in the House of Representatives, with representatives from single-member districts 4.6 times more likely to vote for the mandate.¹²

It might be expected that representatives who were more electorally vulnerable would be more likely to vote for the mandate if it would create or preserve districts that enhanced incumbency. Representatives who were not as electorally vulnerable would not have as much motivation to do so, because their electoral prospects would presumably not be significantly altered. However, that effect was not observed: the share of the vote a representative received in the election of 1840 did not have a significant relationship with the representative's vote on the mandate.¹³

It's likely that considerations of incumbency did play a role in the passage of the mandate. However, they were dwarfed by partisan factors.

The Timing of the Mandate and Whig Comments Suggest Partisan Motive

The mandating amendment was sponsored in the House Elections Committee by Horace Everett, a Whig from Vermont, a state with single-member districts.¹⁴ Even without the mandate,

Vermont was unlikely to switch to at-large representation because Whigs, who dominated in the state, favored single-member districts. For that reason, the mandate would probably not have altered Everett's reelection prospects. In remarks on the House floor, he downplayed the practical burden of the mandate, pointing out that only seven states did not already use the district system.¹⁵

Everett declined to mention, however, that of the seven states that used a general-ticket system, four, or 57%, had Democratic majorities.¹⁶ Of the nineteen states that did not use a general-ticket system, only four, or 21%, had Democratic majorities.¹⁷ The disproportionate effect of the mandate on Democratic-majority states meant that the associated costs of switching to districts would fall far more on Democrats. States with at-large elections had not been planning on districting, and doing so could wipe out incumbency advantages in which no currently elected Democrat lived in one of the new districts.

Whigs controlled two larger states with single-member districts: Georgia and New Jersey.¹⁸ They understood that in states with at-large elections, the majority party tended to win all of the seats from that state; in fact, in states with multi-member districts the majority won all of the seats 86% of the time, compared with only 27% of the time in states with single-member districts.¹⁹ As was typical, in 1842 the Whigs controlled all six seats in New Jersey.²⁰ However, they controlled only six of the nine seats in Georgia after a special election to replace Whig representatives who had resigned during their terms; Democrats had won all three vacant seats.²¹

The Whigs had received only 52.2% of the votes in Georgia in 1840, and 51.7% in New Jersey, making the two states both rank in the top three most competitive at the time.²² If Whigs lost those states, and their elections continued under the general-ticket system, Whigs stood to lose all twelve of their seats. If the states switched to single-member districts, Whigs might only lose five or six seats from those states, assuming they ran a reasonably close election.

Whigs revealed their fears about the election by repeatedly invoking “minority rights” as a great benefit of the district system. Some lawmakers on both sides of the Capitol argued that because single-member district systems allowed the minority to win some of a state’s seats, the people were better represented and the minority could be heard.²³ The best explanation for the Whigs’ championship of minority rights, even as they themselves were in the majority, was that they anticipated that they would soon be in the minority themselves. Solid data on popular opinion at the time is scarce, but it is probable that the Whigs sensed growing popular disapproval with their party, particularly after their losses in the Georgia special elections and elsewhere. It is unlikely that the Whigs failed to recognize at least a possibility of seat loss, particularly since Democrats later won just short of a super majority in the House.²⁴

Some Whig arguments were thinly veiled references to the Whig loss in Alabama, driven by the state’s adoption of the at-large system. Senators Jabez Huntington (W-CT) and John Kerr (W-MD) said that the mandate would eliminate “gerrymandering.”²⁵ Today, the term gerrymandering is usually used to refer to district boundaries drawn for partisan purposes. However, in referring to gerrymandering in at-large districts, Huntington and Kerr appeared to define it more broadly as any system that disenfranchised a particular party. Because states with at-large elections usually left one party with all of the seats, they argued that the system itself was a form of gerrymandering for the majority in a state. However, all but one state with at-large representation had adopted the system before 1828, before either major party was established, hardly a situation lending itself to that characterization.²⁶ In decrying “gerrymandering,” Huntington and Kerr drew attention to the only state in which that word was remotely plausible: Alabama.

In 1840, Alabama had switched to at-large elections, and the Whigs, who had previously held two of its five seats, lost both of them.²⁷ Senator John Crittenden (W-KY) explicitly voiced his frustration: “Did not the state of Alabama, a few years ago, make changes for party purposes... with

success?”²⁸ In doing so, he suggested that one of his reasons for voting for the mandate was to prevent Democratic power grabs like those in Alabama, and potentially even gain back the seats Whigs had lost in the state.

Partisanship Explains Most of the Vote On the Mandate

On May 3, 1842, the amendment containing the mandate was approved the House of Representatives, 101-99.²⁹ Several factors were analyzed for their capacity to explain the votes of individual representatives.

Some congressmen believed that when smaller states adopted the general-ticket system, larger states would comparatively have less power than they should.³⁰ Sen. John Crittenden (W-KY) claimed that dynamic would necessarily force all states to adopt the at-large system, which would allow a tyranny of large states.³¹ States with multi-member systems did tend to be smaller: states that used them in 1840 had five representatives on average, compared with fourteen for states with single-member systems.³² However, representatives from larger states were not significantly more likely to vote for the mandate, suggesting that state size was not a major consideration in the vote.³³

There were regional factors in the vote’s passage; representatives from the North were 7.5 times more likely to vote for the mandate than those from the South.³⁴ George Houston (D-AL) criticized the mandate as stoking conflicts between the state and federal governments: “Suppose a state should refuse to obey this order...would the States Rights gentlemen vote for a ‘force bill’ in regard to her?”³⁵ The Southern opposition appears to have been a reflection of the growing distrust of federal intervention in the South at the time, and Houston’s comments aimed to stoke fear that the mandate could result in a conflict similar to Nullification Crisis. However, the division between North and South was not huge, and could not explain considerable differences between votes of representatives from the same state.

By far the largest factor in predicting the vote was party membership. Other factors controlled for, Whigs were 139 times more likely to vote for the mandate than Democrats.³⁶ 98 (84%) of 116

Whigs voting voted for the mandate.³⁷ Only 3 (3.5%) of 83 Democrats voting did so.³⁸ The sheer size of the relationship suggests that the major factor in the vote was not incumbency, state size, or regional interest, but party.

Single-member districts tended to help the majority party maintain control, even isolated from specific considerations in 1842. From 1790-1840, the majority party in states with single-member systems typically lost 12% of its seats in the next election; in multi-member systems, that figure was 18%.³⁹ The difference is not statistically significant, but it may still have been visible to Whig lawmakers at the time. Knowing that the majority tended to lose seats, but less so in single-member districts, Whigs would have seen the mandate as a way to possibly stem their losses.

Several Proposed Delays or Modifications Were Rejected by Whigs

In the Senate, Democratic lawmakers proposed several amendments to the mandate. Each was defeated, mainly by Whigs, suggesting they were in a hurry to cement their advantage in the election of 1842.

The first amendment proposed to delay the implementation of the mandate until after the election of the 28th Congress in 1842.⁴⁰ Some senators, such as Alfred Cuthbert (D-MD), argued that the Whigs should delay the mandate so as to avoid suspicion that they were making changes for partisan purposes.⁴¹ In addition, being deliberated in June, only months before many elections would be held, the delay would have allowed states far more time to comply.⁴² However, the amendment was defeated, 22-25, mostly on party lines.⁴³

A second amendment was similar, but delayed the mandate only for Missouri, Mississippi, Georgia, and Maine.⁴⁴ With the exception of Maine, all were already using at-large systems. In Maine, the legislature, not planning to meet again before the Congressional election, had passed a law districting the state if it were granted eight, nine, or ten representatives.⁴⁵ However, it was only going to be granted seven under the new apportionment, and its law specified that in that case a general-ticket

system would be used.⁴⁶ The exemption did not include all states with at-large systems, leaving out Alabama, New Hampshire, and New Jersey. The amendment failed, 22-24.⁴⁷

A third amendment was proposed, which delayed the mandate but only for states currently using the general-ticket system.⁴⁸ The effective difference between the first amendment proposed and this one was that the former would still allow states to switch to the general-ticket system for 1842, and allowed states like New York and Pennsylvania to maintain their single-district systems for their large cities, while the latter would have disallowed those practices for 1842 (while still delaying districting of at-large states). This modified measure drew support from Richard Bayard (W-DE), who had opposed the first, and an abstention from Isaac Bates (W-MA), but was still defeated 23-23.⁴⁹

A fourth amendment was proposed by Thomas Benton (D-MO). He explained that the election in Missouri would take place on July 4th, less than a month after the present date of June 8th.⁵⁰ He pointed out that the Governor of Missouri would not be able to receive notification of the bill in time to postpone the election, and so Missouri could not be expected to comply with the mandate.⁵¹ He moved the following amendment:

“Provided, That in any State where it shall be impossible, for want of time, to district the State before the first election for Representatives, then, and in that case, this section shall not apply to such State until the second election of Representatives under this act.”⁵²

Richard Bayard argued with the language, saying that “impossibility” was too abstract a concept to be used.⁵³ In doing so, he gave reasonable cover to the Whigs, allowing them to again reject a measure (21-24) that appeared common sense given the context of states like Missouri.⁵⁴

The uncompromising position of Whigs on the several amendments suggested that the main aim of their proposal was the 1842 election. If they were merely aiming to better the electoral system of the nation, they would have allowed a delay of the mandate, particularly given the proximity of some elections. Their refusal to pass temporary exemptions for certain states, particularly states that couldn't

comply, damaged the prospects of a successful implementation of the mandate. For instance, if Missouri truly could not modify its system in time for its election, then it would technically be violating the law, and its representatives would need to be denied their seats, a situation which would inevitably create conflict. Whigs' disregard for the possibility of such an outcome suggests that their goal was a last-ditch attempt to improve their electoral prospects as much as possible.

Conclusion

Early in the districting debate, William Payne, a young Democratic Representative from Alabama, called out the partisan motivations of the Whigs and suggested their plan would not work:

“Could it be possible that the party which so recently swept over this land like a whirlwind, is dissatisfied with its position? Were they conscious of receding power, and was this an attempt to perpetuate it? ... their attempt would be futile ...”⁵⁵

Unfortunately for the Whigs, Payne appeared to be right on both counts.

The districting mandate failed miserably, at least in its goal of helping the Whigs in the 1842 elections. The first blow was delivered when President John Tyler called the measure unconstitutional, even while signing it.⁵⁶

Despite its passage, many states simply refused to obey the mandate. Georgia continued to use an at-large system, and chose eight Democrats to represent it.⁵⁷ Missouri, whose representatives had complained could not comply with the bill for lack of time, elected five Democrats at-large.⁵⁸ Mississippi and New Hampshire both stuck with at-large representation, each electing four Democrats.⁵⁹ Only three states that had previously used at-large elections actually complied with the mandate. Whigs successfully took back one of the seats in Alabama.⁶⁰ Through the district system, Whigs in New Jersey held on to one seat they otherwise would probably have lost.⁶¹ Despite districting, they lost both of their seats in Rhode Island to the Law and Order Party.⁶² Before the 1842 election, Whigs controlled twelve of twenty-nine seats in states that they intended the mandate to affect.⁶³ Afterwards, they held just two.⁶⁴

Whigs attempted to deny seats to representatives elected at large when they arrived in 1843. But the new Democratic majority chose to seat them anyway and declared the original law unconstitutional.⁶⁵

After the initial controversy, the law was not taken seriously, and many states continued to use at-large elections. In 1872, after thirty years and a Civil War, Alabama was back in the union and back to at-large elections, with two of its eight seats elected at-large.⁶⁶

The failure of the Whigs proves just how fickle electoral systems can be. Though they may have seen, correctly, that a mandate could have improved their electoral chances, their rush to implement it contributed to the noncompliance of the very states the Whigs most needed to district. The Whigs ultimately lost not because of electoral systems but because of a widespread wave of support for Democrats; a flimsy districting mandate could not do much to stop that wave.

However, despite missing its intended target, the mandate did have long term political impacts. Starting in 1842, but not finishing for many years, all of the states in the union eventually adopted the single-member district system. Today, not much thought is given to a system which now seems integral to our government, though it was once an idea fraught with controversy.

In 2010, after a wave election, Republicans set out to draw the boundaries of congressional districts in their favor. The maps they drew succeeded in keeping many more Republicans in power than might have been expected otherwise. But without the Whigs, the Republicans may not have had lines to draw at all.

The Democrats may have won back the House in 1842. But it is the Whigs who are getting the last laugh.

Appendix A: a note on the preparation of the electoral returns data

The book above was originally in hardcover format, but was converted to digital format in the following way:

1. The pages of the book were cut out, and the book was scanned.
2. The scanned files were submitted to an online text-detection software.
3. I wrote a program to convert the text files to tabular files.

The results of standard elections were fully parsed, as well as runoff elections (several states required runoffs if no candidates won 50% of the vote). Special elections were not parsed, due to inconsistent formatting of the Special Elections section. For the data presented in Documents 1 and 2, all data from 1788-1841 was used, but no data after 1841.

If a representative running for Congress had previously won election to the previous congress in the same district of the same state, the representative is considered an incumbent. Seniority is defined as the number of elections the representative had previously won within the same district.

Appendix B: A model of the vote on the mandate

Variables used:

state_size, the number of representatives from the representative's state in the 1840 elections.

is_whig, a binary variable that is true if the representative was a Whig in 1840.

vote_percentage, the percentage of the vote the representative won in 1840.

from_multi_member, a binary variable that is true if the representative was elected in 1840 from a district with multiple representatives.

is_south, a binary variable that is true if the representative was from the South (Alabama, Arkansas, Georgia, Kentucky, Louisiana, Maryland, Mississippi (neither of whose representatives were voting), Missouri, North Carolina, South Carolina, Tennessee, or Virginia)

is_west, a binary variable that is true if the representative was from the West (Arkansas, Louisiana, Missouri, Ohio, Kentucky, Tennessee, Alabama, Indiana, or Illinois)

is_committee_member, a binary variable that is true if the representative was a member of the Elections Committee.

is_state_majority, a binary variable that is true if the representative's party affiliation was the same as the majority of representatives from his state.

seniority, the number of elections in 1840 and earlier won by the representative in the same district he represented in 1842.

A logistic regression was run to predict votes (yes/no) on the mandating amendment. The results are as follows:

Coefficients:

	Estimate	Std. Error	z value	Pr(> z) sig.	odds ratio
(Intercept)	-2.602146	1.629571	-1.597	0.11030	0.074114358
state_size	-0.022295	0.026071	-0.855	0.39245	0.977951696
is_whig	4.932673	0.724268	6.811	9.72e-12 ***	138.7498955
vote_percentage	0.008697	0.019131	0.455	0.64941	1.008734928
from_multi_member	-1.528961	0.697767	-2.191	0.02844 *	0.216760764
is_south	-2.020298	0.618501	-3.266	0.00109 **	0.132615939
is_west	-0.608552	0.640454	-0.950	0.34202	0.544138211
is_committee_member	1.787630	1.253325	1.426	0.15378	5.975274271
is_state_majority	0.523707	0.743401	0.704	0.48114	1.688274497
seniority	0.103494	0.195831	0.528	0.59716	1.109039139

Signif. Codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Appendix C: Text of the Districting Mandate

Sec. 2. And be it further enacted, That in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory, equal in number to the number of Representatives to which said State may be entitled; no one district electing more than one Representative.

- 1 *House Journal*, 27th Cong., 2nd sess., 3 May 1842, 779-780. See Appendix C.
- 2 "The 1842 Apportionment Act," Fairvote.
- 3 W. Mark Crain, "On the Structure and Stability of Political Markets," *Journal of Political Economy* 85, no. 4 (August 1977), 831.
- 4 Ibid.
- 5 Stephen Calabrese, "An Explanation of the Continuing Federal Government Mandate of Single-Member Congressional Districts," *Public Choice* 130, no. 1/2 (January 2007), 31.
- 6 Ibid.
- 7 Crain, "Political Markets," 831.
- 8 Ibid.
- 9 Michael J. Dubin, *United States Congressional Elections, 1788-1997: The Official Results of the Elections of the 1st through 105th Congresses* (Jefferson, North Carolina; McFarland & Company, 1998), 1-132.
- 10 Ibid.
- 11 Ibid.
- 12 *House Journal*, 779-780; Dubin, *Congressional Elections*, 126-132.
- 13 Ibid.
- 14 "27th Congress > House > Vote 506," Voteview, UCLA Department of Political Science; Dubin, 128.
- 15 27th Cong., 2nd sess., *Congressional Globe* 464.
- 16 Dubin, *Congressional Elections*, 126-132.
- 17 Ibid.
- 18 Ibid.
- 19 Ibid., 1-132.
- 20 Ibid., 127.
- 21 Ibid., 126, 130-131.

Bibliography

- 22 Ibid., 126-132.
- 23 *Congressional Globe* 448, 556, 562. Whigs making this claim included Representative Thomas Arnold of Tennessee and Senators Jabez Huntington of Connecticut and John Henderson of Vermont.
- 24 Dubin, *Congressional Elections*, 132-138.
- 25 *Congressional Globe* 556, 584.
- 26 Dubin, *Congressional Elections*, 97-102.
- 27 Dubin, *Congressional Elections*, 122, 128.
- 28 *Congressional Globe* 567.
- 29 *House Journal*, 779-780.
- 30 *Congressional Globe* 448.
- 31 *Congressional Globe* 567.
- 32 Dubin, *Congressional Elections*, 126-132.
- 33 *House Journal*, 779-780; Dubin, *Congressional Elections*, 126-132.
- 34 *House Journal*, 779-780; Dubin, *Congressional Elections*, 126-132. “South” is defined as Alabama, Arkansas, Georgia, Kentucky, Louisiana, Maryland, Mississippi (neither of whose representatives were voting), Missouri, North Carolina, South Carolina, Tennessee, and Virginia. “North” is defined as Connecticut, Delaware, Illinois, Indiana, Massachusetts, Michigan (whose representative was not voting), New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.
- 35 *Congressional Globe* 448.
- 36 *House Journal*, 779-780; Dubin, *Congressional Elections*, 126-132. Other factors controlled for included vote percentage in the 1840 election, district status, region (East/West and North/South), elections committee membership, state majority status, and seniority. See Appendix B.
- 37 Voteview.
- 38 Ibid.
- 39 Dubin, *Congressional Elections*, 1-132.
- 40 *Congressional Globe* 601.
- 41 Ibid., 590-591.

42 Dubin, *Congressional Elections*, 132-137.

43 *Congressional Globe* 601.

44 Ibid., 602.

45 Ibid., 590.

46 Ibid.

47 Ibid., 602.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Ibid.

54 Ibid.

55 Ibid., 453.

56 Fairvote.

57 Dubin, *Congressional Elections*, 132.

58 Ibid., 133.

59 Ibid., 134.

60 Ibid., 133.

61 Ibid., 134.

62 Ibid., 135.

63 Ibid., 126-132.

64 Ibid., 132-137.

65 Fairvote.

66 Dubin, *Congressional Elections*, 223.

Primary Sources

“27th Congress > House > Vote 506,” Voteview, UCLA Department of Political Science.

U.S. Congress. *Congressional Globe*. 27th Cong., 2nd sess., 1842.

Dubin, Michael J. *United States Congressional Elections, 1788-1997: The Official Results of the Elections of the 1st through 105th Congresses*. Jefferson, North Carolina: McFarland & Company, 1998.

House Journal. 27th Cong., 2nd sess., 3 May 1842, 779-780.

Secondary Sources

Calabrese, Stephen. “An Explanation of the Continuing Federal Government Mandate of Single-Member Congressional Districts.” *Public Choice* 130, no. 1/2 (January 2007): 23-40. JSTOR

Crain, W. Mark. “On the Structure and Stability of Political Markets.” *Journal of Political Economy* 85, no. 4 (Aug., 1977): 829-842. JSTOR.

Tertiary Source (for background information in Conclusion and Introduction)

“The 1842 Apportionment Act.” Fairvote.