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THE NEED FOR REDISTRICTING REFORM

HON. JOHN TANNER

OF TENNESSEE

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The SPEAKER pro tempore. Under the Speaker's announced policy of January 18, 2007, the gentleman from Tennessee (Mr. Tanner) is recognized for 60 minutes as the designee of the majority leader.

Mr. TANNER. I rarely take out a Special Order. I rarely speak about matters that have something other to do than the governance of our country, and tonight is no exception. I want to talk a little while tonight about something that affects every American, something we, unfortunately, pay little attention to, because it is not something that we recognize when we see it or realize what's happening as it's happening, and that has to do with our system of government and the way that the redistricting process as to how we elect Members of the United States House of Representatives has evolved through the years.

Gerrymandering has always been a problem, named for the gentleman from Massachusetts some 200 years ago, when district lines were first conceived and drawn. But really, the modern-day gerrymandering that I am going to talk a bit a little while tonight, began really in 1962 and, interestingly enough, it came to the Supreme Court from a case out of Tennessee, my home State. Let me give you a little summary, a history.

During the first half of the 20th century, Tennessee, along with many other traditionally rural States, experienced growth in urban areas,

along with a decline in the rural population. In the late 1950s, Tennessee continued to use election district boundaries set over 60 years before to elect members of its State legislature. These district boundaries no longer reflected the true distribution of the State's population.

By retaining the outdated election district boundaries, rural citizens were allotted a greater proportional representation than their counterparts in urban areas. The continued use of the outdated district boundaries eased the reelection of incumbent legislators and diluted the voting power of ethnic minorities and others living in urban areas. For example, the number of Memphis voters electing one State representative was 10 times the number of voters electing a representative in some rural districts in our State.

After serving in World War II, a gentleman named Charles Baker returned to his hometown of Millington, Tennessee, in our congressional district, which is a suburb of Memphis.

Baker entered politics and, in 1954, was elected chairman of the Shelby County Quarterly Court, a fiscal and legislative body that ran the affairs of Shelby County, Tennessee, which included Memphis.

Baker became frustrated with the lack of State revenues and attention paid to Memphis. Due to the use of outdated election district boundaries, Memphis was represented by half the

number of State legislators it rightfully deserved, based upon its population.

Baker brought a lawsuit against Joe Carr, Sr., who was then Tennessee's Secretary of State, requesting the State legislature redraw the election district boundaries to reflect the actual demographics of the State. In a 6-2 ruling in the case of *Baker v. Carr*, the United States Supreme Court held that Federal courts have the power to determine the constitutionality of a State's voting district.

In a decision delivered by *Baker v. Carr*, the court focused on the issues of whether the court could involve itself in an apportionment dispute, and in addressing this issue, the court held that apportionment was a Federal claim arising under the 14th amendment and therefore subject to judicial scrutiny by the courts. Additionally, the voters initiating this case had claimed that their votes were being arbitrarily impaired or debased.

The court's decision sidestepped the prior decision in *Colegrove* by distinguishing claims brought under the equal protection clause of the 14th amendment from those claims brought under the guarantee clause of article 4 of the Constitution.

The court returned the case to the district court for further actions pursuant to their instructions. I quote, "We conclude that the complaint's allegations of a denial of equal protection present a justiciable Constitution cause of action on which appellants are entitled a trial and decision. The right asserted is within the reach of judicial protection under the 14th amendment."

By holding that voters could challenge the constitutionality of electoral apportionment in Federal court, *Baker v. Carr* opened the doors of the Federal courts to a long line of apportionment cases. One year later, Justice Douglas extended the Baker ruling by establishing the so-called "one man, one vote" principle in *Gray v. Sanders* and, in 1964, in the case of *Wesberry v. Sanders*, extended that principle, further holding that, "as nearly as practicable, one man's vote in a congressional election is to be worth as much as another's." [Information from the Papers of Justice Tom C. Clark, Tarlton Law Library, The University of Texas School of Law.]

Madam Speaker, the system that we have after 40-plus years of the court turning over

electoral redistricting to the "ins" has resulted in a broken system, in the view of myself and Mr. Wamp, who couldn't be here tonight, from Chattanooga, and also on behalf of the Blue Dog Coalition, which has endorsed the legislation I am speaking about.

What we are concerned about is the rise of not only reapportionment based on party ideology and party lines, but it has given, with modern technology, the ability of the "ins," be they Republican or Democrats, to select their voters rather than their voters selecting them.

If one looks at the electoral map, one can only wonder how in the world could this come about, with lines going down highways and across bridges and every sort of conceivable spider web district, where the voters really have little input and almost no say in what districts they are in.

We have, by, in essence, turning over to the "ins," given rise to this completely understandable phenomenon. As a Democrat, it behooves me to give my next-door neighbor all my Republicans, and it behooves my next-door neighbor Republican to give me all of his or her Democrats, which means that both of us have a more secure seat and the voters are often completely left out of the mix.

There are many groups that are now looking at this and beginning to realize that the system is truly broken. And so let me just give you some statistics that may shock you about the lack of competitiveness in this Congress and in the Congresses to come if we don't fix it.

Increasingly, State legislators, for wholly understandable reasons and for their own political purposes and ours, are redrawing congressional lines even outside of the traditional 10-year cycle. If I live on Elm Street in any town in America and the "ins" redrew the seat, I could be put into a district that is 80 percent one party or the other, and, therefore, my vote has been effectively removed from me. I can't help the 80 percent. The 20 percent don't need me. And so my vote in a congressional election really doesn't matter any more.

Competition in congressional races has declined dramatically over the last 40-plus years. In 1946, just over 85 percent of incumbents were re-elected to the House of Representatives. In 2002 and 2004, close to 99 percent of incumbents

were re-elected. In 2004, only 22 contests in the entire country were decided by a margin of less than 10 percentage points. In 2002, 36 House contests were decided by a margin of less than 10 percentage points. Thirty-six. That is less than 10 percent of the House.

At the other end of the spectrum, 172 winning candidates in 2004 either had no major party opposition or had a margin of victory by at least 40 percentage points. According to Patrick Basham, a senior fellow at the Cato Institute, today, a healthy, unindicted incumbent in the House of Representatives stands a 99 percent chance of being re-elected. Something is wrong with a system where there is more turnover in the Soviet politburo than in this House.

Even looking at the 2006 midterm elections, which many have called a watershed, less than 10 percent of the seats in the House changed hands. Unfortunately, we know this: The less competitive the election, the less likely voters are to get involved.

The House of Representatives is a truly unique institution. It is the only political office that I know about where one cannot be appointed or one cannot accede to a seat in the case of a death or resignation. Every Member of the House of Representatives has to stand and be elected. That is why, when someone dies or resigns in the middle of a term, the seat stays vacant here until there is a special election.

One can be President without being elected. We know President Ford was. One can be a Governor, one can be a United States Senator. But only here does everyone have to be elected.

I believe political vulnerability is essential to the health of our House, and our current system does not allow that. As I said, advanced map drawing techniques allow politicians to select their voters instead of the voter selecting their leaders. When Members come here from these districts that have been gerrymandered, they are good people, but they have little incentive really to work across party lines in order to reach solutions. As a matter of fact, they have a disincentive, because if their district is skewed so heavily one way or the other, then the election is really in the party primaries, where barely more than a third of the people, in most instances, are the highly charged partisans, either Democrat or Republican.

And so if one comes here wanting to work across the aisle, one has to, as we might say in Tennessee, “watch one’s back,” because the highly charged partisans don’t like that.

When you have a situation like we have in America, where there is and must be a middle for all of us to come together and reach solutions, when that middle shrinks to the point where we cannot do that, then in a multi- everything society like ours, we are going to create polarization, and gridlock will then ensue. That, in part, is what is happening.

The other phenomenon is this drawing of congressional districts under a recent Supreme Court ruling any time one can get enough power in one State to do so.

Now, if one wants to conform to the one person-one vote rule based on a census, and then is allowed to draw lines based on that census 8 years later, all you have to go is go to an 8-year old phone book and try to call somebody. That, to me, makes no sense. But what happens here is a debasing of the voter influence and really a usurpation of the power of the people by politicians, of which I am one, and that is why I am trying to change it.

David Winston, who drew the House districts, for the Republicans in this case, after the 1990 United States census, said, “As a map maker, I can have more of an impact on an election than a campaign or the candidate. When I as a map maker have more of an impact on an election than the voters, the system is out of whack.”

Former Speaker of the House Newt Gingrich had this to say: “Democrats get to rip off the public in the States where they control and protect their incumbents, and we get to rip off the public in the States we control and protect our incumbents. So the public gets ripped off in both circumstances. In the long-run, that is a downward spiral of isolation.” That is former Speaker Gingrich.

David Broder, a well-respected columnist, said this about it: “At the founding of this Republic, House Members were given the shortest terms, half the length of the Presidents, one-third that of the Senators, to ensure that they would be sensitive to any shifts in public opinion. Now they have more job security than the Queen of England, and as little need to seek their subjects’ assent.”

Some States, to their credit, have tried to reform their redistricting systems, and have failed. California and Ohio are two of the most recent examples. Thirteen States have some form of independent commission or process that has a part in the drawing of the congressional map, and nearly half the States ban mid-decade redistricting. However, much more, in my view, needs to be done, and it will take Federal action.

The House of Representatives is a Federal office and article I, section 4 of the Constitution gives the Congress the ability to set parameters for election to the House. In fact, it is only fair that Members come from districts that are derived from using a uniform process.

The Campaign Legal Center, the League of Women Voters, the Council for Excellence in Government and other advisory groups have joined together with assistance from the Rockefeller Brothers Fund to form Americans for Redistricting Reform, which will hopefully raise awareness of the problem, promote solutions, and serve as a clearinghouse of information.

We have had a bill in, H.R. 543, that we have introduced that would mandate to the States that they must have in terms of the congressional seats, it doesn't matter, they can do anything with the State senate and State house seats that is constitutional, that they put in place an independent commission that will draw the congressional district lines once every 10 years after the census.

By the way, Mr. Speaker, I will include for the record Mr. Broder's article that was published in the Washington Post, and also an article by Gerald Hebert and David Vance on this subject.

I am not going to take the whole hour, but I wish people, our citizens, would realize what is happening to us. The Congress is acting, in my view, irrationally. We have not a parliamentary system, but a representative system, and yet, time and time again, we see votes in committee here in the House and on the board behind me, all the Democrats voting one way, all the Republicans voting another.

I am a Democrat from a southern rural district. It is not logical or rational for me to vote every time with urban Members or urban Members to vote with me just because we are Democrats. It also makes no sense for all the

Republicans to vote together in every way all the time.

You see the Centrist Caucus, a centrist body here, continuing to shrink, and, as it does, the polarization, and as Speaker Gingrich said, the isolation here becomes more palatable and it makes it far more difficult for us to actually reach solutions to the myriad of problems that face our country. I don't know how to fix it, other than to start where it begins, and that is at the drawing-of-congressional-districts process, because otherwise all of us here will be more sensitive to either the partisans on the left or the partisans on the right, rather than to the overall good of our country.

In this bill, Congressman Wamp and myself are asking people to give up an enormous amount of power. There are not many places where you can go and with your friends in the legislature sit down and draw a district that you can win without a whole lot of pushback really from anybody, but in collusion with the other party. When the Supreme Court turned it over to the "ins," they set up a system that after 40-something years results in exactly what we see.

So, Mr. Speaker, this bill is an attempt to bring some reason to the concept of congressional districts that have more of a community of interest than they do Democrat or Republican voters. I know I am speaking against myself, and I certainly don't mean for this to reflect on any Member here, because the Members are basically themselves victims of this system that has grown into being after 40-something years of congressional redistricting based on political considerations rather than community of interest and so forth. It makes no sense for someone on Elm Street at 301 to be in a different congressional district from someone on Elm Street that lives at 303. Most communities have legislative interests, not individuals, and that is what I am afraid we have become victimized by.

We will be talking some more about this in the future. I think you will see more and more articles written about it, because there is, in the view of many, a problem, a serious problem, that cannot be fixed until we address the core of it.

Mr. Speaker, I include for the Record the articles referred to earlier.

From *Roll Call*, July 29, 2008
“Redistricting Must Be Fixed Before Census”
By J. Gerald Hebert and David G. Vance)

Partisan abuse of redistricting is one of Congress’ dirtiest little Secrets. The outrage over partisan gerrymanders fades well before the next census rolls around, and this travesty of our democracy never gets addressed.

Backroom deals by both parties have produced bulletproof districts from Florida to California, fueling voter apathy and undermining our democracy. Elections are determined before the voters ever have the chance to go to the polls.

Tonight, Rep. John Tanner (D-Tenn.) and other Members will take to the House floor to draw attention to the abuses of the redistricting process. Last week, Tanner and Rep. Zach Wamp (R-Tenn.) introduced H.Res. 1365, advocating the use of nonpartisan redistricting commissions to draw Congressional districts. This resolution, and an earlier bill to revamp the process, will not endear these Members to many of their colleagues sitting in completely safe districts, virtually assured of reelection after re-election.

With redistricting abuses on the rise, the public is becoming increasingly aware of the problem. Our organization, the Campaign Legal Center, along with the League of Women Voters, the Council for Excellence in Government and a diverse group of advisory organizations, have founded a new organization called Americans for Redistricting Reform. With financial assistance from the Rockefeller Brothers Fund, the goal of Americans for Redistricting Reform will be to raise awareness of the problem, promote solutions and serve as a clearinghouse of information and networking. More information can be found on americansforredistrictingreform.org.

Our organizations see the launch of this group as vitally important work, as our nation prepares for the upcoming 2010 Census and another round of redistricting, one that will surely be marked by gross partisan gerrymandering unless there is reform of the redistricting process.

Redistricting abuses may have evolved into more of an exact science, but the practice is nearly as old as districts themselves. The term “gerrymandering” dates back to 1812, when a partisan redistricting in Massachusetts resulted in

a district that one newspaper editor observed looked like a salamander and dubbed it a “Gerrymander” after the state’s governor, Elbridge Gerry. Since that time, gerrymanders have taken different forms. Parties have used racial gerrymandering to dilute minority voting strength, partisan gerrymandering to solidify one-party control, and bipartisan gerrymandering to protect Representatives from both parties.

The post-2000 redistricting cycle saw unprecedented efforts to use redistricting for partisan purposes. Technological advances made it possible to calibrate districts using election data with even greater precision. The result was that the 2002 elections produced the fewest ousted incumbents ever--only four Members were voted out of office. Historically, post-redistricting elections have generally been more competitive because the drawing of new lines mitigates incumbents’ advantage by introducing them to a new group of voters. The 2000 redistricting round had the opposite effect.

As redistricting has become ever more clinical, moderates from both parties have been driven from Congress in droves. In 2002, one of us saw our Representative voted out of office after 16 years as a result of a redistricting in Maryland designed for just that purpose. Rep. Connie Morella was a moderate Republican, popular with colleagues from both parties, who would cross the aisle and her party’s leadership. In order to pass common-sense legislation for the good of her constituents and the Nation. As moderates like Morella have disappeared from the halls of Congress, the partisan gridlock has sunk deeper roots into Capitol Hill to the detriment of our democracy.

Even after the initial round of redistricting following the 2000 Census, partisans in some states used mid-decade redistricting, or re-redistricting, to further advance partisan goals. A handful of states attempted to redraw existing, valid district lines. Absent a court order invalidating a redistricting plan, there is unlikely any other purpose that motivates a mid-decade redistricting other than partisan gain.

Make no mistake, when politicians engage in extreme partisan gerrymandering, it is the voters who suffer. In the case of Texas’ mid-decade redistricting, in which one of us represented most

of the Congressional delegation's Democrats, the Republican Party gained seats in the short term but the state lost critical seniority when the Democrats regained the majority in the House.

Texas Democrats who lost their seats in the gerrymander led by then-Rep. Tom DeLay (R-Texas) would likely have been holding vast power in Congress today, such as Martin Frost, who could be chairing the Rules Committee; Charlie Stenholm, Agriculture; Jim Turner, Homeland Security; and Max Sandlin, a Ways and Means Subcommittee. The junior Republicans from Texas who replaced those powerful incumbents have very little influence in the House. DeLay's scorched-earth policy on re-redistricting left citizens of the Lone Star State holding the bag.

Partisan abuse of redistricting is a shameful blot on our democracy. Politicians have absolutely no business choosing their voters. In a true democracy, voters must choose their politicians. In the 110th Congress, two bills, H.R. 543 and H.R. 2248, have been introduced to overhaul the Nation's redistricting process, but both have been referred to a subcommittee where they have yet to see the light of day. At the very least, Speaker Nancy Pelosi (D-Calif.) and Minority Leader John Boehner (R-Ohio) owe it to the Nation to see that hearings are held on these bills. The system must be changed, and hearings are the first step.

The 2010 Census is just around the corner with partisan gerrymanders close at its heels. If we don't move quickly, the train will have left the station yet again and Congress will feign dismay and continue to talk about the need to fix the system the next time around.

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From *The Washington Post*, June 26, 2008

"Voting's Neglected Scandal"

By David S. Broder

When Barack Obama decided last week to throw off the constraints on campaign spending that go with the acceptance of public financing, he was rightly criticized for rigging the system in his favor.

That was a predictable response. For the better part of four decades, the media and public interest groups have focused on campaign

spending as the most serious distorting force in our elections.

Meanwhile, they have paid much less attention to what may well be a larger problem: the way that district lines are drawn to create safe seats for one party or the other, in effect denying voters any choice of representation.

It is not a new problem. The original gerrymander was a creation of 18th-century Massachusetts, and since then, politicians have been using ever more sophisticated tools to rig the game. With computer technology, their ability to design districts that meet the legal requirement for equal population while guaranteeing their fellow partisans easy passage into office has never been greater.

In 2002 and 2006, the most recent off-year elections, about nine out of 10 congressional districts were won by more than 10 percentage points--a clear sign that the game had been rigged when the lines were drawn in the state legislatures. In the first of those years, only eight incumbents lost; in the second, only 21.

As scholars have pointed out, the scarcity of real competition in nearly all districts has many consequences--all of them bad. It makes legislators less responsive to public opinion, since they are in effect safe from challenge in November. It shifts the competition from the general election to the primary, where candidates of more extreme views can hope to attract support from passionately ideological voters and exploit the low turnouts typical of those primaries.

Gerrymandered, one-party districts tend to send highly partisan representatives to the House or the legislature, contributing to the gridlock in government that is so distasteful to voters.

These are familiar complaints in academic and journalistic circles. And this week, another count was added to the indictment with a report from the Democratic Leadership Council titled "Gerrymandering the Vote."

It makes the point that these rigged districts have the effect of suppressing the vote.

The numbers are startling. In both 2002 and 2006, voter turnout in districts where the winner received at least 80 percent of the votes struggled to reach 125,000. Turnout in the districts where the margin was 20 percent or less exceeded 200,000.

If there were some other device that was reducing voter turnout by almost 40 percent, you could be sure it would be the chief target for reformers. The ballot anomalies and the “voter suppression” tactics that marked the Florida election of 2000 affected far fewer people than that.

The study by the DLC’s Marc Dunkelman found big variations among the states in the competitiveness of their House districts. The average margin in Massachusetts in 2006 was almost 75 percent. Next door in New Hampshire, it was under 5 percent.

Dunkelman calculated the potential turnout increase for individual states, if their district lines were redrawn to emphasize competitiveness. The gains ranged as high as 59 percent for Louisiana and 49 percent for New York. Other states that

could experience much higher participation with redrawn districts include West Virginia, Virginia, California, North Carolina, Alabama, New Jersey, Mississippi, Georgia, Hawaii and New Mexico.

Dunkelman estimates that competitive districts might attract 3 million more voters in California and almost 2 million more in New York. Overall, 11 million more Americans might show up at the polls, decreasing our chronically low voting participation rates.

How to change the lines? Two states--Iowa and Washington--have instituted nonpartisan or bipartisan redistricting systems, and they have been rewarded with much more competitive House races. So it can be done.

But the politicians are unlikely to do it on their own. Only if the voters demand reform is there a chance it will come.