Authors’ Response to elj.2017.0461–Values and Validations: Proper Criteria for Comparing Standards for Packing Gerrymanders

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ABSTRACT

We explain why Eric McGhee’s criticisms of our effort to establish a standard for detecting packing gerrymanders sometimes misapprehends and other times misunderstands the proper evaluation criteria.

Keywords: gerrymander, vote dilution, efficiency gap

We appreciate Eric McGhee (McGhee 2017) taking time to comment on our article (Best et al. 2017), and we thank the editors for this opportunity to respond. In the interest of economy, we focus our attention on two points. McGhee misapprehends the conceptual, value-based premise of the analysis we undertook, and he misunderstands the elements and reasoning required to check the validity of proposed standards for identifying packing gerrymanders.

VALUES

McGhee mistakenly asserts we offer no definition of partisan gerrymandering which, in turn, leads him to think mistakenly that we use shifting value-based critiques of the five standards we evaluate. We expressly rely on Black’s Law Dictionary as quoted by Justice Scalia in Veith v. Jubelirer:

“[t]he practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give a political party an unfair advantage by diluting the opposition’s voting strength.”1

McGhee misapprehends the normative harm from gerrymandering that the definition implies. The fundamental action in the definition is the vote dilution that in turn leads to partisan advantage (and potentially to odd shapes). Vote dilution is also grounded in jurisprudence on voting rights (e.g., Thornburg v. Gingles2) and it is the Fourteenth Amendment claim made by the plaintiffs in Gill v. Whitford.3 In his critique, however, he wants to focus on the consequence of vote dilution, the unfair seat advantage one party enjoys.

This effort to redirect attention from the first-order effect (vote dilution) of a packing gerrymander to the second-order effect (unfair partisan seat advantage) causes trouble because it leads analysts from the relatively straightforward analytical issue of detecting vote dilution to the more uncertain terrain of defining an unfair translation of votes into seats. We have shown elsewhere

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2478 U.S. 30 (1986).
that concentrating on seat results rather than vote
dilution is a problem in and of itself (McDonald and Best 2015) and is a primary reason why polit-
cical science has made so little progress in provid-
ing a manageable and effective standard for the
courts (McDonald et al. 2017). The distinction be-
tween seat-denominated and vote-denominated
dicators is important. In the space afforded us
here, we cannot rearticulate all the reasons why
vote-denominated indicators of gerrymanders
are superior. Given McGhee’s criticisms, how-
ever, we repeat the central conclusion of our arti-
cle: all five standards we consider address vote
dilution in some way or another, but vote-
denominated standards more accurately identify
whether a jurisdiction was subjected to a harmful
gerrymander.

VALIDATION

McGhee criticizes our empirical analysis of state senate districts in North Carolina and Iowa in ways
that misunderstand the purpose of this exercise. Our
goal is to observe whether each of five standards “reliably” detects a gerrymander in a state where
one is suspected (North Carolina) and another state where one is not (Iowa). We do not interpret
the results yielded by each standard beyond whether they detect a gerrymander. In other words, this is a
straightforward effort to validate these standards on their own terms. McGhee’s objection that no
court would simply assume a state is gerrymandered or not is obviously correct, but it merely under-
scores the need to create a manageable and effective
standard.

Aside from using these two states as criterion
groups, McGhee also objects to using statewide
elections as opposed to state senate elections.
Three simple reasons stand behind our reliance on
statewide elections. First, legislative electoral com-
petition is endogenous to the lines drawn. Candidate
and campaign quality vary depending on where
the lines are drawn, including the important fact
that many districts go uncontested. Second, to eval-
uate gerrymandering at the time lines are proposed,
there is no sensible way of compiling the data
by rearranging legislative votes from prior legisla-
tive elections. Third, even after legislative elections have occurred, there is no sensible way to rearrange
the legislative votes to evaluate the extent, if any,
to which residential patterns contribute to vote
dilution.

In the context of validating these standards, ana-
lyzing statewide elections is especially advanta-
geous precisely for the reason McGhee objects to
them: the variety of outcomes in these contests.
Beyond the question of whether a standard correctly identifies North Carolina and Iowa, there is also
the matter of whether it consistently reaches the
same conclusion about the same set of districts
under varying electoral conditions. We believe—
and we are fairly certain that most others share
our view—that it should. That is, evidence of vote
dilution should be observable across a series of elec-
tions (excepting landslides). If not, this suggests
that the effects of gerrymandering are transitory
and easily undone by the voters.

When applied to North Carolina and Iowa, the
difference between the standards we consider is
stark. Three of the five, including McGhee’s effi-
ciency gap (EG), yield inconsistent (and unexpect-
ed) results for the same set of districts in different
elections. In the case of the efficiency gap, this in-
stability seems to be a matter of design (McGhee’s
response [2017]: “A plan can have a balanced or im-
balanced EG in one election but fall in or out of bal-
ance as vote shares rise and fall”). He is correct
about his own efficiency gap standard, and it is on
this basis that we question whether it effectively de-
tects gerrymanders. By contrast, both seat- and
vote-denominated symmetry standards reliably
identify gerrymandering in these states, but the
latter—the median-mean difference—is more man-
ageable by the criteria discussed by Justice Kennedy
in LULAC v. Perry.4

By adopting a straightforward, legally grounded,
and empirically practical definition of gerrymander-
ing and engaging in a conventional effort to validate
five proposed standards, we believe that our article
offers new insights into the project of creating a
manageable and effective standard for the courts
and fellow scholars.

REFERENCES

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