

## The Sweeping Changes of Clean Missouri: Issues of Redistricting Reform in Missouri

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On September 14, 2018, Cole County Circuit Judge Daniel Green ordered Amendment 1, called “Clean Missouri,” off of the November ballot for violating the Missouri constitutional rule emphasizing that initiatives can only cover one subject.<sup>1</sup> Subsequently, the Missouri Court of Appeals and the state Supreme Court placed the issue back on the ballot, illustrating the controversy and attention drawn by the Clean Missouri initiative. And while Clean Missouri advocates emphasize one idea—legislative ethics reform in Missouri—the changes it calls for are sweeping.

The Clean Missouri initiative, calling for reform in the areas of redistricting, campaign finance, legislative transparency, and lobbyists gifts, is the most recent of a general trend towards ethics reform in Missouri.<sup>2</sup> Following the successful, although legally challenged,<sup>3</sup> 2016 Missouri Initiative 2 that capped campaign donations to state legislative campaigns, Clean Missouri emphasizes transparency and fairness as its political goals. The Clean Missouri initiative has drawn a fair amount of attention, and contention, since it began gathering signatures in 2017. Clean Missouri and its supporters claim that the bill introduces much-needed reform to increase fairness and accountability, and to limit the influence of lobbyists and moneyed interests. Critics allege that it is designed to impede the legislature’s

constitutional role of drafting districts, and that it is redistricting reform packed with other reforms to make it seem more palatable.

Missouri, one of twenty-four states that allow for initiatives, has seen a number of major institutional and electoral reforms in recent years, including introducing campaign contribution limits and enacting voter identification laws in 2016. These voter-initiated changes, along with more traditional ethics changes proposed by the legislature, reflect a demand for increased political accountability. Yet, as attorney Dan Schnurbusch wrote, Missouri still has a reputation for “some of the weakest ethics and campaign finance laws in the nation.”<sup>4</sup>

Amendment 1 is designed to address a number of the issues that have frequently been associated with Jefferson City, especially issues of accountability, monetary influence, and lack of transparency.<sup>5</sup> Yet how effective would these reforms be in increasing political trust and responsiveness in the Show-Me State?

In this article, I briefly review the proposals of Amendment 1, and pay special attention to the issues of redistricting in Missouri. Although campaign finance reform and issues of lobbyist influence remain a salient issue in Missouri, as elsewhere in the United States, the issue of redistricting has drawn the most political attention and ire towards Clean Missouri, and thus this article examines contemporary issues with Missouri’s somewhat

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<sup>1</sup> Allison Kite, “Missouri Ethics Reform, Redistricting Initiative Tossed from November Ballot by Judge,” *Kansas City Star*, September 14, 2018, accessed September 20, 2018, <https://www.kansascity.com/news/politics-government/election/article218396050.html>.

<sup>2</sup> Rebekkah Stuteville, “Congressman Richard Bolling and Missouri Ethics Reform,” *Missouri Policy Journal* 5 (2017): 1–10.

<sup>3</sup> Kurt Erickson, “Appeals Court Says Missouri Campaign Finance Law Violates 1st Amendment,” *St. Louis Post-*

*Dispatch*, September 10, 2018, accessed September 20, 2018, [https://www.stltoday.com/news/local/govt-and-politics/appeals-court-says-missouri-campaign-finance-law-violates-st-amendment/article\\_b3ad1285-1a89-53fa-a10b-c224223838eb.html](https://www.stltoday.com/news/local/govt-and-politics/appeals-court-says-missouri-campaign-finance-law-violates-st-amendment/article_b3ad1285-1a89-53fa-a10b-c224223838eb.html).

<sup>4</sup> Dan Schnurbusch, “The Wild Mid-West: Missouri Ethics and Campaign Finance Under a Narrowed Corruption Regime,” *Missouri Law Review* 80 (2015): 1, 32.

<sup>5</sup> Filipe R. Campante and Quoc-Anh Do, “Isolated Capital Cities, Accountability, and Corruption: Evidence from US States,” *American Economic Review* 104, no. 8 (August 2014): 2456–81, <https://doi.org/10.1257/aer.104.8.2456>.

complex current system and places the potential reform into context.

### What is Missouri Amendment 1?

Missouri Amendment 1, also known as the Clean Missouri Initiative, is an initiative that would alter the Missouri constitution to address a number of political issues under the umbrella category of legislative ethics. The changes run the gamut from small modifications to existing law to potentially major shifts in the political environment of Missouri state legislative politics. Amendment 1 covers four areas: lobbying, campaign finance, public records, and redistricting.

Clean Missouri has placed prominent emphasis on the role of money and accountability in Missouri politics, and proposes new regulations on lobbying, campaign finance, and transparency in its campaign. In the area of lobbying, Amendment 1 has two provisions: first, it would require a two-year delay before legislators could become a registered, paid lobbyist; second, it would reduce lobbyists gifts to \$5,<sup>6</sup> sometimes referred to as the “cup of coffee rule.” Currently, lobbyist gifts are allowed to both the legislator and her friends or family. According to the Missouri Ethics Commission, while the individual gifts are small, and are primarily lunches and dinners, their cumulative value adds up. State representatives and their families received more \$87,386 in reported lobbyists gifts in 2018 alone, with state senators reporting another \$40,000 more. Members of the Missouri state legislature vary widely on their total accepted gifts, ranging from none to more than \$5,400.<sup>7</sup> The proposed changes put Missouri more in

line with contemporary lobbying regulation efforts both in the United States and cross-nationally.<sup>8</sup>

Under the area of campaign finance, Missouri Amendment 1 offers a minor change from the 2016 amendments. In addition to lowering the max donations to \$2,500 for the Missouri State Senate and \$2,000 for the Missouri State Assembly, Amendment 1 would not allow the Missouri legislature to pass laws that would allow for unlimited campaign donations. The current donation maximum for individuals is set at \$2,600 for all statewide offices, even with some challenges and limitations set on the original initiative.<sup>9</sup>

Under public record transparency, all legislative records, including legislative emails, would be public record, and thus apply these records to Missouri’s pre-existing “sunshine laws.”<sup>10</sup> Sunshine laws refer to citizen access to public documents, materials, and meetings. Although Missouri already has Sunshine Laws, and indeed was a relatively early enactor,<sup>11</sup> there have been recent attempts to give more teeth to the laws. In 2018, more than five bills have been introduced into the Missouri State Legislature in regards to the existent Sunshine Laws.<sup>12</sup> Clean Missouri would make additional public records open to Freedom of Information Act (FOIA) requests. Sunshine laws have recently risen to prominence in Missouri following controversies surrounding former Gov. Eric Greitens and his staff’s usage of text-message destroying apps in what was perceived as a ploy to avoid FOIA requests.<sup>13</sup>

Finally, Clean Missouri proposes to change the nature of redistricting in Missouri. Amendment 1 calls for the selection of a non-partisan state demographer,

<sup>6</sup> Missouri Secretary of State, “Missouri Initiative 2018-015,” accessed September 24, 2018, <https://www.sos.mo.gov/cmsimages/Elections/Petitions/2018-015.pdf>.

<sup>7</sup> Missouri Ethics Commission, “Lobbyist Expenses on Public Officials,” accessed September 24, 2018, [https://www.mec.mo.gov/MEC/Lobbying/LB14\\_PubOff.aspx](https://www.mec.mo.gov/MEC/Lobbying/LB14_PubOff.aspx).

<sup>8</sup> Bruce E. Cain and Lee Drutman, “Congressional Staff and the Revolving Door: The Impact of Regulatory Change,” *Election Law Journal: Rules, Politics, and Policy* 13, no. 1 (March 18, 2014): 27–44, accessed September 18, 2018, <https://doi.org/10.1089/elj.2013.0213>; and Craig Holman and William Luneburg, “Lobbying and Transparency: A Comparative Analysis of Regulatory Reform,” *Interest Groups*

& *Advocacy* 1, no. 1 (May 1, 2012): 75–104, accessed September 20, 2018, <https://doi.org/10.1057/iga.2012.4>.

<sup>9</sup> Erickson, “Appeals Court Says Missouri Campaign Finance Law Violates 1st Amendment.”

<sup>10</sup> *Ibid.*

<sup>11</sup> Schnurbusch, “The Wild Mid-West.”

<sup>12</sup> “Missouri Legislature Bill Tracker,” accessed September 24, 2018, <https://www.house.mo.gov/billcentral.aspx>.

<sup>13</sup> Joel Currier, “Greitens Used Message-Destroying App in Invasion of Privacy Case, St. Louis Prosecutor Alleges,” *St. Louis Post-Dispatch*, March 24, 2018, accessed September 24, 2018, [https://www.stltoday.com/news/local/crime-and-courts/greitens-used-message-destroying-app-in-invasion-of-privacy-case/article\\_b28075d8-89ef-520d-8a0c-6a17f4b124a3.html](https://www.stltoday.com/news/local/crime-and-courts/greitens-used-message-destroying-app-in-invasion-of-privacy-case/article_b28075d8-89ef-520d-8a0c-6a17f4b124a3.html).

who would present the maps to legislative commissions of the House and Senate. The state demographer candidates would be chosen by the Missouri state auditor, and the choice approved by the Missouri State Senate majority and minority leaders. The state demographer would emphasize, in order: equal apportionment, the 1965 voting rights act, efficiency, competitiveness, contiguity, existing political subdivisions, and compactness.<sup>14</sup> These issues shall be discussed in greater detail below.

Amendment 1 has received donations and endorsements from wide-ranging interests both within and outside of Missouri. Clean Missouri has been effective at raising money, receiving more than \$2 million in donations.<sup>15</sup> Although Clean Missouri has received endorsements from a number of conservative legislators and organizations, including former governor of California Arnold Schwarzenegger,<sup>16</sup> it has received the majority of its support from progressive organizations and individuals, including endorsements by the NAACP, Sierra Club, Planned Parenthood and, indirectly, the Open Society Policy Center, most prominently associated with George Soros.<sup>17</sup> This has been a source of contention over Clean Missouri's intent by challengers of the bill.<sup>18</sup> While a challenger organization, made up of primarily Republican

lawmakers, has formed *Missourians First*,<sup>19</sup> they have not yet begun raising donations or seeking endorsements, most likely waiting until the legal challenges are completed.

Supporters of the proposal argue that these reforms address much-needed ethical issues at the heart of Jefferson City. And Missouri's government has frequently been associated with high levels of political influence by lobbyists, low regulations, and low accountability. Indeed, Missouri rarely ranks above the middle in evaluations of the state's political quality, ethics, and efficiency. In their *State Integrity Investigation*, the Center for Public Integrity ranked Missouri 26<sup>th</sup> in the nation on its governmental integrity, with an overall grade of D-.<sup>20</sup> The non-profit Sunlight Foundation gives Missouri a grade of C on lobbyist transparency, with no requirements for lobbyists to disclose spending under a certain threshold, their activity, or their earnings as a lobbyist.<sup>21</sup> Even after Amendment 2 in 2016, Missouri's \$2,600 donation limit for state legislative races sits at \$1,600 dollars higher than the national median.<sup>22</sup> Attempts to limit lobbyist gifts through policies at the state legislative level have consistently stalled in the Senate.<sup>23</sup> The ethics reforms proposed by Clean Missouri appear to be popular amongst voters and activists. Indeed, even the initiative

<sup>14</sup> Missouri Secretary of State, "Missouri Initiative 2018-015."

<sup>15</sup> "Missouri Amendment 1, Lobbying, Campaign Finance, and Redistricting Initiative (2018)," Ballotpedia, accessed September 20, 2018,

[https://ballotpedia.org/Missouri\\_Amendment\\_1,\\_Lobbying,\\_Campaign\\_Finance,\\_and\\_Redistricting\\_Initiative\\_\(2018\)](https://ballotpedia.org/Missouri_Amendment_1,_Lobbying,_Campaign_Finance,_and_Redistricting_Initiative_(2018)).

<sup>16</sup> Benjamin Peters, "Schwarzenegger Targets Gerrymandering for Termination, Pushes for Clean Missouri Support," *The Missouri Times*, September 7, 2018, accessed September 20, 2018, <https://themissouritimes.com/53530/schwarzenegger-targets-gerrymandering-for-termination-pushes-for-clean-missouri-support/>.

<sup>17</sup> Kevin McDermott, "Progressive Mega-Donor George Soros Bigfoots into Missouri Ballot Fight over Redistricting, Ethics," *St. Louis Post-Dispatch*, January 29, 2018, accessed September 20, 2018, [https://www.stltoday.com/news/local/govt-and-politics/progressive-mega-donor-george-soros-bigfoots-into-missouri-ballot-fight/article\\_e40db1e8-ca97-5b41-bee2-1a82bb1aa03c.html](https://www.stltoday.com/news/local/govt-and-politics/progressive-mega-donor-george-soros-bigfoots-into-missouri-ballot-fight/article_e40db1e8-ca97-5b41-bee2-1a82bb1aa03c.html).

<sup>18</sup> Jason Hancock, "Big Donations Flow to Group Trying to Change Missouri Government, Raising GOP Eyebrows," *The Kansas City Star*, January 24, 2018, accessed September 24, 2018, <https://www.kansascity.com/news/politics-government/article196347414.html>.

<sup>19</sup> "'Missourians First' Forms to Oppose 'Clean Missouri' Ballot Measure," *The Missouri Times*, July 26, 2018, accessed September 20, 2018, <https://themissouritimes.com/52669/missourians-first-forms-to-oppose-clean-missouri-ballot-measure/>.

<sup>20</sup> Erin Richey, "Missouri Gets D- Grade in 2015 State Integrity Investigation," *Center for Public Integrity*, November 9, 2015, accessed September 20, 2018, <https://www.publicintegrity.org/2015/11/09/18442/missouri-gets-d-grade-2015-state-integrity-investigation>.

<sup>21</sup> Jonah Hahn, "How Transparent Is Your State's Lobbying Disclosure?" *Sunlight Foundation*, August 12, 2015, accessed September 20, 2018, <https://sunlightfoundation.com/2015/08/12/how-transparent-is-your-states-lobbying-disclosure/>.

<sup>22</sup> National Conference of State Legislatures, "Campaign Contribution Limits: Overview," June 28, 2017, accessed September 20, 2018, <http://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx>.

<sup>23</sup> Austin Huguelet, "Lawmakers Say Lobbyist Gift Ban Will Likely Fail Again This Year in Missouri," *St. Louis Post-Dispatch*, April 24, 2017, accessed September 24, 2018, [https://www.stltoday.com/news/local/govt-and-politics/lawmakers-say-lobbyist-gift-ban-will-likely-fail-again-this/article\\_b469536d-bb34-5375-b202-35120c6d85d1.html](https://www.stltoday.com/news/local/govt-and-politics/lawmakers-say-lobbyist-gift-ban-will-likely-fail-again-this/article_b469536d-bb34-5375-b202-35120c6d85d1.html).

opponents have had little criticism for the proposed lobbying and finance reforms.

However, there are two major criticisms of the bill that have been levered by opponents of Amendment 1. The first critique is that the initiative violates the constitutional requirement that initiatives only cover a single subject, and only amend a single section of the constitution. In fact, Clay County Judge John Green did find that Amendment 1 was guilty of “logrolling,” i.e., bundling together several distinct issues in order to ensure their passage, although this finding was overturned by the Kansas City Court of Appeals.<sup>24</sup>

Yet for as much legal attention as the issues of complexity for the bill has drawn, the primary area of concern has focused on the issue of redistricting. Opponents of the bill have charged that Clean Missouri’s redistricting reform is a veiled effort to increase the number of democrats in the state legislature.<sup>25</sup> Others criticize the emphasis on competitiveness, worrying that it will lead to divisions of traditional geographic boundaries in Missouri.

Supporters of the bill argue that competitive districts are key to a transparent and effective legislature, and that the new office will increase both electoral accountability and the legitimacy of the redistricting enterprise. It is to the issue of redistricting that I now turn.

## Missouri’s Current Redistrict Process and How it Compares

Gerrymandering is currently having its own political moment. In 2018, voters in five states including Missouri will vote on redistricting ballot measures.<sup>26</sup> High profile legal challenges to maps drawn in Pennsylvania, Maryland, North Carolina and Wisconsin have led to increased attention on the issue.<sup>27</sup> And discussions of the 2018 election have frequently featured the redistricting advantage Republicans hold for House elections.<sup>28</sup> Yet the issue of redistricting, and especially gerrymandering—i.e., redrawing districts to benefit a single party—has drawn attention and critique from the beginnings of the Republic, when, in 1810, Gov. Elbridge Gerry of Massachusetts famously drew an oddly shaped, salamander-like district for the electoral benefit of his party in 1810.<sup>29</sup>

Political scientists have frequently discussed the issues of redistricting and their effects on political outcomes. Both political scientists and legal scholars have long argued that gerrymandering plays a role on numerous political outcomes, including incumbency advantage, partisan control of the legislature, and minority representation,<sup>30</sup> although evidence suggests that the impact of redistricting is often overstated.<sup>31</sup> Yet the advent of computational analysis to aid in redistricting, beginning in the 1990s and advancing with the pace of technological innovation,<sup>32</sup> has led to increased efficiencies in partisan gerrymandering,

<sup>24</sup> Kite, “Missouri Ethics Reform, Redistricting Initiative Tossed from November Ballot.”

<sup>25</sup> “‘Missourians First’ Forms,” *The Missouri Times*.

<sup>26</sup> Alexis Farmer and Annie Lo, “Citizen and Legislative Efforts to Reform Redistricting in 2018,” *Brennan Center for Justice*, August 3, 2018, accessed September 24, 2018, <https://www.brennancenter.org/analysis/current-citizen-efforts-reform-redistricting>.

<sup>27</sup> Jonathan R. Cervas and Bernard Grofman, “Can State Courts Cure Partisan Gerrymandering: Lessons from *League of Women Voters v. Commonwealth of Pennsylvania* (2018),” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, April 22, 2018), <https://papers.ssrn.com/abstract=3181092>.

<sup>28</sup> Anthony J. McGann et al., *Gerrymandering in America: The House of Representatives, the Supreme Court, and the Future of Popular Sovereignty* (Cambridge University Press, 2016).

<sup>29</sup> Gary W. Cox and Johnathan N. Katz, *Elbridge Gerry’s Salamander: The Electoral Consequences of the*

*Reapportionment Revolution* (Cambridge: Cambridge University Press, 2002).

<sup>30</sup> Sheila Suess Kennedy, “Electoral Integrity: How Gerrymandering Matters,” *Public Integrity* 19, no. 3 (July 3, 2017): 265–73, accessed September 20, 2018, <https://doi.org/10.1080/10999922.2016.1225480>.

<sup>31</sup> John N. Friedman and Richard T. Holden, “The Rising Incumbent Reelection Rate: What’s Gerrymandering Got to Do With It?” *The Journal of Politics* 71, no. 2 (April 1, 2009): 593–611, accessed September 20, 2018, <https://doi.org/10.1017/S0022381609090483>; and Nolan McCarty, Keith T. Poole, and Howard Rosenthal, “Does Gerrymandering Cause Polarization?” *American Journal of Political Science* 53, no. 3 (July 1, 2009): 666–80, accessed September 20, 2018, <https://doi.org/10.1111/j.1540-5907.2009.00393.x>.

<sup>32</sup> Wendy K. Tam Cho, “Algorithms Can Foster a More Democratic Society,” *Nature* 558 (June 20, 2018), accessed September 20, 2018, <https://doi.org/10.1038/d41586-018-05498-y>.

and increased concerns about the impact on political outcomes.

Part of the controversy related to redistricting is the sheer variety of approaches to redistricting, which varies markedly across the states.<sup>33</sup> Although there is a fair amount of variation, we can categorize redistricting into roughly three strategies, which emphasize who controls drawing the district lines: legislative partisan control, bipartisan commissions, and non-partisan commissions or agencies.<sup>34</sup> The vast majority of states, thirty-seven, use legislatively drawn maps for their state legislatures, with the rest divided about evenly between bipartisan and nonpartisan commissions.<sup>35</sup> Although there are disagreements about the extensiveness of the effect,<sup>36</sup> non-partisan commissions are frequently associated with higher levels of compactness, competitiveness, and lower levels of partisan bias.<sup>37</sup> Bipartisan commissions, in general, fall somewhere in the middle. It is worth noting, though, that even non-partisan redistricting can be accused of political engineering, especially when trust is low across parties,<sup>38</sup> and that, under certain conditions, non-partisan commissions may still have partisan objectives.<sup>39</sup>

Missouri uses different redistricting conventions for US Congressional districts than for the Missouri State Legislature. The state legislature and state Senate are drawn by politically appointed commissions, and

would be best classified as having legislative bipartisan control. The governor appoints bipartisan commissions, from lists provided by the parties in the state House and state Senate. For the senate, each party provides a list of ten names, each having five members on the committee. For the house, two commission members are nominated from each congressional district. At least 70 percent of the commission must approve the plan, or the appellate court will have the responsibility of drawing the plan. By contrast, US Congressional districts are drawn by the legislature, and might be best categorized as having legislative partisan control. For new congressional districts, the newly proposed maps, drawn by legislative committees, are treated like any other bill, passed by the state legislature and reviewed by the governor.<sup>40</sup>

There have been challenges for both congressional and state legislative redistricting in the last two reapportionment cycles. In 2010, Gov. Jay Nixon vetoed the legislature's new Congressional district map, although this veto was overturned.<sup>41</sup> In the same cycle, the state Senate redistricting commission failed to reach an agreement, and the state appellate court, by law, had the responsibility to draw the districts. However, when that second map was found to be unconstitutional, a new gubernatorially-selected bipartisan commission was left scrambling to draw a map, finishing after election filing for the upcoming

<sup>33</sup> Jamie L. Carson and Michael H. Crespin, "The Effect of State Redistricting Methods on Electoral Competition in United States House of Representatives Races," *State Politics & Policy Quarterly* 4, no. 4 (December 1, 2004): 455–69, accessed September 20, 2018, <https://doi.org/10.1177/153244000400400406>.

<sup>34</sup> Seth E. Masket, Jonathan Winburn, and Gerald C. Wright, "The Gerrymanderers Are Coming! Legislative Redistricting Won't Affect Competition or Polarization Much, No Matter Who Does It," *PS: Political Science & Politics* 45, no. 1 (January 2012): 39–43, accessed September 19, 2018, <https://doi.org/10.1017/S1049096511001703>.

<sup>35</sup> Justin Levitt, "All About Redistricting—Missouri," accessed September 24, 2018, <http://redistricting.ils.edu/states-MO.php>.

<sup>36</sup> Masket, Winburn, and Wright, "The Gerrymanderers Are Coming!"

<sup>37</sup> Harry Basehart and John Comer, "Partisan and Incumbent Effects in State Legislative Redistricting," *Legislative Studies Quarterly* 16, no. 1 (1991): 65–79, accessed September 19, 2018, <https://doi.org/10.2307/439967>; and Carson and Crespin, "The Effect of State Redistricting Methods;" and Michael P. McDonald, "A Comparative Analysis of Redistricting

Institutions in the United States, 2001–02," *State Politics & Policy Quarterly* 4, no. 4 (December 1, 2004): 371–95, accessed September 19, 2018, <https://doi.org/10.1177/153244000400400402>.

<sup>38</sup> D. J. Rossiter, R. J. Johnston, and C. J. Pattie, "The Partisan Impacts of Non-Partisan Redistricting: Northern Ireland 1993–95," *Transactions of the Institute of British Geographers* 23, no. 4 (December 1, 1998): 455–80, accessed September 10, 2018, <https://doi.org/10.1111/j.0020-2754.1998.00455.x>.

<sup>39</sup> Federico Estévez, Eric Magar, and Guillermo Rosas, "Partisanship in Non-Partisan Electoral Agencies and Democratic Compliance: Evidence from Mexico's Federal Electoral Institute," *Electoral Studies* 27, no. 2 (June 1, 2008): 257–71, accessed September 10, 2018, <https://doi.org/10.1016/j.electstud.2007.11.013>.

<sup>40</sup> Levitt, "All About Redistricting—Missouri;" and Missouri Office of Administration, "Missouri Redistricting—General Information," February 14, 2013, accessed September 20, 2018, <https://oa.mo.gov/budget-planning/redistricting-office/general-information>.

<sup>41</sup> Levitt, "All About Redistricting—Missouri."

2012 election had begun.<sup>42</sup> Ten years prior in 2000, after failing to reach an agreement, the state judiciary stepped in to draw the new lines. In both cases, the bipartisan commission failed to successfully complete an accepted map, primarily based on issues of compactness or dividing politically relevant populations.<sup>43</sup> Similar issues, and reliance on judicial intervention, have been characteristics of Missouri redistricting since the 1970s.

### How Biased Are Missouri's Legislative Districts?

Given the history of contention, it is worthwhile to consider how much Missouri falls into the category of "partisan gerrymandering." Part of the challenge in analyzing this question is the difference between congressional and state legislative redistricting plans. Most scholarly attention has focused on redistricting for Congressional races, where Missouri's partisan legislative schema functions, rather than at the state legislative level, which uses a bipartisan commission, the subject of Amendment 1's change. However, congressional outcomes are still a useful starting place, and Missouri, as is the case for many of the other metrics of ethics reforms, falls somewhere in the middle. According to the Electoral Integrity Project, which uses expert surveys to evaluate the quality of elections within a state, Missouri is ranked twenty-sixth on its overall election integrity, and on the bias of the boundaries, ranked thirtieth.<sup>44</sup> Among experts, there is a clear if muted perception of bias.

However, actual evidence of partisan gerrymandering for Missouri's eight congressional seats is more mixed. According to the Brennan Center, Missouri's congressional districts exhibit moderate skew across

three measures of gerrymandering, always below the threshold of two Congressional seats, although the non-partisan group Planscore assigns the Missouri plan a much higher level of skew.<sup>45</sup> The Princeton Gerrymandering Project demonstrates that Republican and Democratic candidates win with about the same vote share (69 percent versus 70.1 percent), rather than one party winning with slim majorities, demonstrating limited partisan gerrymandering.<sup>46</sup> At the Congressional level then, we have limited evidence that partisan gerrymandering is greatly shaping electoral outcomes directly.

The story remains relatively similar at the state legislative level. One critical measure of gerrymandering is the efficiency gap, initially proposed by Nicholas Stephanopoulos and Eric McGhee, as an evaluation of the degree of wasted votes.<sup>47</sup> Efficiency gap attempts to capture the common gerrymandering strategies of "packing," i.e., drawing supermajority districts of opposition party supporters, and "cracking," i.e., ensuring opposition party supporters vote share is diluted across many districts.<sup>48</sup> The efficiency gap considers both excess votes needed to win a seat (above 50 percent +1) and votes towards candidates that do not win. The difference between excess votes and losing votes is divided by the total number of votes to calculate the efficiency gap. According to analyses done by the Associated Press, the Missouri State Legislature has an efficiency gap of 5 percent, which, while higher than twenty-three other states, does not cross the 8 percent threshold established as a partisan gerrymander, and indeed, is just 1 percent higher than

<sup>42</sup> Scott Lauck, "Missouri Officials Must Quickly Redraw Senate Districts," *Missouri Lawyers Weekly*, January 23, 2012, accessed September 20, 2018,

<https://molawyersmedia.com/2012/01/23/missouri-officials-must-quickly-redraw-senate-districts/>; and Levitt, "All About Redistricting—Missouri."

<sup>43</sup> Levitt, "All About Redistricting—Missouri."

<sup>44</sup> Pippa Norris, Holly Ann Garnett, and Max Groemping, "Perceptions of Electoral Integrity: The 2016 American Presidential Election," Electoral Integrity Project: Why Elections Fail and What We Can Do About It (University of Sydney, 2017), accessed September 20, 2018, <https://www.electoralintegrityproject.com/pei-us-2016/>. The survey asked fourteen Missouri politics experts to rate district boundaries based on bias against one party, incumbency bias, and impartiality. Out of a possible score of one hundred,

Missouri's score, at thirty, falls well below the highest observed score, which is Iowa with a score of seventy-three, but is also well above the lowest scoring state, North Carolina, at a seven.

<sup>45</sup> Laura Royden and Michael Li, *Extreme Maps* (New York, NY: Brennan Center for Justice, New York University School of Law, 2017) accessed September 20, 2018, [https://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16\\_0.pdf](https://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16_0.pdf).

<sup>46</sup> "Princeton Gerrymandering Project," accessed September 24, 2018, <http://gerrymander.princeton.edu/tests/>.

<sup>47</sup> Nicholas O. Stephanopoulos and Eric M. McGhee, "Partisan Gerrymandering and the Efficiency Gap," *University of Chicago Law Review* 82 (2015): 831–900.

<sup>48</sup> *Ibid.*

the average.<sup>49</sup> Nor does the state consistently demonstrate a lopsided victory for one side at the district level, with Democrats winning by an average of 88 percent versus 85 percent for Republicans. However, Simon Jackman, in his report for the plaintiffs in *Whitford v. Nichol*, the court case brought against the Wisconsin reapportionment plan, finds that the 2014 plan was clearly skewed towards the Republicans, with an efficiency gap above 10 percent,<sup>50</sup> a result replicated by the non-profit Planscore organization.<sup>51</sup> Taken together, the results indicate that, while there is evidence of partisan bias in Missouri, the extensiveness is much more open to interpretation.

By contrast, on the issue of uncontested and non-competitive elections, the data paints a very clear picture. Missouri has quite a high number of uncontested seats, and that number is growing over time. According to the Associated Press, more than 60 percent of voters cast a vote for an uncontested state legislative election;<sup>52</sup> since 2004, between 25 percent to more than 65 percent of races that were uncontested.<sup>53</sup> Uncontested elections are driven by two institutional features: non-competitive districts and term limits. Given that gerrymandering contributes to uncompetitive districts, the number of uncontested elections can be directly linked to

redistricting decisions.<sup>54</sup> Even in contested elections, few elections could truly be described as competitive. In the 2016 election, only three of the seventeen races for state Senate and seven of the 157 state House seats were decided with a gap of less than 10 percent.<sup>55</sup> If Missouri districts are drawn to limit competitiveness for incumbent parties, either through incumbent engineering or natural gerrymandering, then challengers may be simply unwilling to mount a campaign they perceive as doomed to fail, and this may have a deleterious effect on electoral competition, leaving voters with no choice and little efficacy.

The decline in competitive elections, and the increase in uncontested ones, is strongly associated with a number of negative outcomes. Elected representatives in uncompetitive elections tend to be much less legislatively active than those who face re-election threats;<sup>56</sup> when faced with the combination of uncompetitive elections and term limits, Missouri state legislators have much less incentive to be responsive to their constituency's demands.<sup>57</sup> Additionally, as competitiveness decreases, voters have less of an ability to punish poorly performing or corrupt political representatives, and thus fear of re-election acts as a poor guarantor of good behavior.<sup>58</sup> Add to this that non-competitive elections lower

<sup>49</sup> Samuel Wang, "Partisan Gerrymandering Across the 50 States," *Princeton Election Consortium* (blog), July 16, 2017, accessed September 20, 2018, <http://election.princeton.edu/2017/07/16/partisan-gerrymandering-across-the-50-states/>.

<sup>50</sup> Simon Jackman, "Assessing the Wisconsin State Legislative Districting Plan," *Whitford v. Nichol* Expert Report, July 7, 2015, accessed September 20, 2018, [http://www.campaignlegalcenter.org/sites/default/files/Jackman-WHITFORD%20V.%20NICHOL-Report\\_0.pdf](http://www.campaignlegalcenter.org/sites/default/files/Jackman-WHITFORD%20V.%20NICHOL-Report_0.pdf).

<sup>51</sup> "PlanScore: Missouri," accessed September 24, 2018, <https://planscore.org/missouri>. Planscore, a non-profit expert-driven analysis of redistricting, finds that Missouri's current plan displays a 9 percent efficiency gap. Additionally, Planscore demonstrates skews in two other common measures of gerrymandering, mean-median difference, and partisan bias.

<sup>52</sup> David A. Lieb, "AP Analysis Shows More Unopposed Missouri Races, GOP Edge," *AP News*, June 25, 2017, accessed September 24, 2018, <https://www.apnews.com/aaacba54b957450e9d0f79255d204c9c>.

<sup>53</sup> Jackman, "Assessing the Wisconsin State Legislative Districting Plan." Jackman's measure of the efficiency gap includes uncontested elections; however, many measures exclude them.

<sup>54</sup> William M. Salka, "Term Limits and Electoral Competition: An Analysis of California Legislative Races," *State & Local Government Review* 37, no. 2 (2005): 116–26; and Seth E. Masket and Jeffrey B. Lewis, "A Return to Normalcy? Revisiting the Effects of Term Limits on Competitiveness and Spending in California Assembly Elections," *State Politics & Policy Quarterly* 7, no. 1 (March 1, 2007): 20–38, accessed September 20, 2018, <https://doi.org/10.1177/153244000700700102>.

<sup>55</sup> Missouri Secretary of State, "State of Missouri—Election Archives-General Election 2018," November 8, 2016, accessed September 20, 2018, <https://enrarchives.sos.mo.gov/enrnet/default.aspx?eid=750003949>.

<sup>56</sup> David M. Konisky and Michiko Ueda, "The Effects of Uncontested Elections on Legislator Performance," *Legislative Studies Quarterly* 36, no. 2 (May 1, 2011): 199–229, accessed September 20, 2018, <https://doi.org/10.1111/j.1939-9162.2011.00011.x>.

<sup>57</sup> Masket and Lewis, "A Return to Normalcy?"

<sup>58</sup> Petra Schleiter and Alisa M Voznaya, "Party System Competitiveness and Corruption," *Party Politics* 20, no. 5 (September 1, 2014): 675–86, accessed September 20, 2018, <https://doi.org/10.1177/1354068812448690>.

turnout, since voters feel little incentive to participate.<sup>59</sup> In Missouri, with a combination of sunshine laws that do not apply to individual legislators, short term limits, a capitol city far from the major population areas<sup>60</sup>—all of which contribute to low voter information—the lack of competitive elections may create a perfect storm of poor behavior.<sup>61</sup>

### **The Clean Missouri Redistricting Plan**

The Clean Missouri redistricting plan is fairly unique. Clean Missouri calls for the appointment of an independent state demographer, who will have primary responsibility for drawing state district lines. This is, as far as I am aware, the only state that would leave the drawing of the districts to a single individual; in general, most non-partisan based reforms have selected multi-person commissions instead. The new state demographer will be appointed from a list of candidates provided by the state auditor, an elected office, based on approval by the majority and minority leaders in the Missouri State Senate.<sup>62</sup> The demographer would draw proposed maps, to be evaluated and approved by the existing bipartisan commissions, who would have the ability to alter the maps, as long as they fit the newly established redistricting criterion, and these changes receive 70 percent of the commission's approval. Absent changes or agreement, the demographer's plan would be enacted. Essentially, the Clean Missouri plan adds an ostensibly non-partisan actor to the existing bipartisan state plan of redistricting.

Would changing to a non-partisan actor have an impact on the way Missouri's districts are drawn? While non-partisan commissions are frequently associated with less partisan bias, it is worth noting

that bipartisan commissions have similar outcomes.<sup>63</sup> As noted above, Missouri's existing use of a bipartisan commission means that, while we might expect some changes, they may be on the margins. And although non-partisan commissions do lead to some evidence of positive changes, they are not strongly associated with a decline in non-competitive elections.<sup>64</sup> Additionally, while the process for choosing the state demographer is based on a bipartisan group of officials, by the nature of elected officials, two-thirds of the deciding body will share a partisan preference, meaning that, even with bipartisan constraint, there are some concerns about whether the state demographer will truly be politically neutral.<sup>65</sup> Importantly, however, given the issues that the commissions have consistently faced in reaching consensus, the addition of an external agent, in this case the state demographer, along with a clearer plan on how to deal with disagreement, may allow for a greater chance of the state commission reaching an agreement, and help to avoid long delays as seen during the 2010 election cycle.

Along with changing who is responsible for drawing district lines, Amendment 1 changes how the lines are drawn. Previously, issues of compactness, contiguity, and preserving state county lines were the primary criterion of the redistricting commission, along with the criterion of the Voting Rights Act (VRA) of 1964, which forbids the diminution of minority votes.<sup>66</sup> Amendment 1 adds new criterion, and a newly emphasized hierarchy, to Missouri districts. Along with complying with equal population, first, Amendment 1 would enshrine the VRA into Missouri law. These proposed changes are already part of Missouri redistricting criteria, and would not result in any major political changes.

<sup>59</sup> Robert W. Jackman, "Political Institutions and Voter Turnout in the Industrial Democracies," *The American Political Science Review* 81, no. 2 (June 1987): 405–23, accessed September 20, 2018, <https://doi.org/10.2307/1961959>.

<sup>60</sup> Campante and Do, "Isolated Capital Cities, Accountability, and Corruption."

<sup>61</sup> Ibid.

<sup>62</sup> In the case where the majority and minority leader cannot agree on a candidate, each will remove one-third of the candidates proposed by the state auditor, after which the demographer will be chosen randomly from the remaining list.

<sup>63</sup> McDonald, "A Comparative Analysis of Redistricting Institutions in the United States, 2001–02;" and Carson and

Crespin, "The Effect of State Redistricting Methods on Electoral Competition."

<sup>64</sup> James B Cottrill, "The Effects of Non-Legislative Approaches to Redistricting on Competition in Congressional Elections," *Polity* 44, no. 1 (January 1, 2012): 32–50, accessed September 20, 2018, <https://doi.org/10.1057/pol.2011.14>.

<sup>65</sup> Estévez, Magar, and Rosas, "Partisanship in Non-Partisan Electoral Agencies and Democratic Compliance;" and Rossiter, Johnston, and Pattie, "The Partisan Impacts of Non-Partisan Redistricting."

<sup>66</sup> Levitt, "All About Redistricting—Missouri."



However, a new addition to redistricting criteria, Amendment 1 would then prize partisan fairness and competitiveness. Building from recent court cases and social scientific evaluations, partisan fairness would be measured by using the efficiency gap.<sup>67</sup> Competitiveness would be measured using partisan-bias or partisan-symmetry, as formulated by Gary King and Bernard Grofman, wherein simulations would determine that wasted votes would not be biased towards one party.<sup>68</sup> Once again, as far as I am aware, the Clean Missouri plan is unique in emphasizing both partisan fairness and competitiveness as criterion for evaluation, and certainly unique in their primacy of place. Only following these criterion would contiguity, existing political boundaries, and compactness be considered.

It is challenging to say the degree to which the state demographer will be able to consider all of these factors when making her recommendations to the commission. Given the distribution of the population of Missouri, especially minority communities, and the requirements of the Voting Rights Act, for areas around St. Louis and Kansas City, the demographer may be quite limited in the lines she can draw.<sup>69</sup> While areas around Columbia and in suburban areas may allow for some increased competitiveness, in general, as cities and rural areas become increasingly partisan, districts gerrymander naturally, and even complex computational measures cannot create competitiveness out of near unanimity.<sup>70</sup> In addition, there are concerns about the efficiency gap as an effective measure of electoral competition, since it cannot account for certain election or context specific patterns.<sup>71</sup> To be clear, this does not mean we should

expect zero change in the number of competitive districts; however, once again, changes are likely to be marginal and measured, rather than drastic and partisan.

For all that the direct effects will likely be moderate, this does not mean that redistricting reform will have no effect on Missouri politics. Redistricting reform will not, on its own, turn a red state blue, make most districts competitive, moderate political parties, or eliminate partisan gridlock. But by creating a new system of organization, Amendment 1 may make strides to increase trust in the political system by opening the system to voters and demonstrating that reform can occur.<sup>72</sup> In an era of rapidly declining political trust and efficacy, any strides that can combat this decline must be viewed in a positive light.<sup>73</sup>

What will be critical to the success of Amendment 1 in returning trust to Jefferson City is managing expectations. Following electoral system reform in the 1990s in Japan, New Zealand, and Italy, many voters were left disappointed at the limited changes, and became more disenchanted with the existing system of government as a result. This decline in system support came from unmanaged expectations—expecting more from electoral reform than it could deliver.<sup>74</sup> If Missourians have clear expectations about what can, and importantly, cannot be created from redistricting outcomes alone, then the reduction of partisan gerrymandering, along with other ethics reform, may help to clean the tarnished image of legislative politics in Missouri today.

<sup>67</sup> Stephanopoulos and McGhee, “Partisan Gerrymandering and the Efficiency Gap.”

<sup>68</sup> Bernard Grofman and Gary King, “The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after *LULAC v. Perry*,” *Election Law Journal: Rules, Politics, and Policy* 6, no. 1 (February 13, 2007): 2–35, accessed September 20, 2018, <https://doi.org/10.1089/elj.2006.6002>.

<sup>69</sup> Will Schmitt, “Analysis: Missouri’s Political Map Favors Republicans but Falls Short of Gerrymandering,” *Springfield News-Leader*, June 25, 2017, accessed September 24, 2018, <https://www.news-leader.com/story/news/politics/elections/2017/06/25/analysis-missouris-political-map-favors-republicans-but-falls-short-gerrymandering/411644001/>.

<sup>70</sup> Alan Abramowitz, Brad Alexander, and Matthew Gunning, “Don’t Blame Redistricting for Uncompetitive Elections,” *PS: Political Science & Politics* 39, no. 1 (January 2006): 87–90,

accessed September 20, 2018,

<https://doi.org/10.1017/S1049096506060185>.

<sup>71</sup> Mira Bernstein and Moon Duchin, “A Formula Goes to Court: Partisan Gerrymandering and the Efficiency Gap,” May 30, 2017, accessed September 20, 2018, <https://arxiv.org/abs/1705.10812>.

<sup>72</sup> James Cottrill, “Non-Legislative Redistricting and the Public Trust: The Indirect Benefits of Electoral Reform” (Midwest Political Science Association Annual Conference, Palmer House Hotel, Chicago, IL, 2012).

<sup>73</sup> Marc J. Hetherington, “The Political Relevance of Political Trust,” *American Political Science Review* 92, no. 4 (December 1998): 791–808, accessed September 20, 2018, <https://doi.org/10.2307/2586304>.

<sup>74</sup> Ethan Scheiner, “Does Electoral System Reform Work? Electoral System Lessons from Reforms of the 1990s,” *Annual Review of Political Science* 11 (2008): 161–81.