Response to reviewers

Dear David, my co-author and I found the comments/suggestions of the reviewers, and your recommendations for how we might best go about a revision, extremely helpful. I am pleased to report that we have addressed in a thorough fashion the three main points raised by you and reviewers (see below), as well as dealing with a variety of minor points, like fixing some typos, and making a number of additional substantive improvements.

(1) The reviewers and you were in agreement that the paper needed to be cut dramatically. It is now more than 5,000 words shorter than it was.

(2) The reviewers and you were in agreement that the paper lacked a clear statement of exactly what it intended to achieve, and included too many disparate elements that didn’t hang all that well together.

(a) We have completely rewritten the abstract and the introduction to make the central goal of the paper explicit. The abstract, for example, now reads (in part):

The aim of this essay is to examine the implication of LWV for future partisan gerrymandering litigation. In particular, we look toward the applicability of the Pennsylvania court’s approach to other potential partisan gerrymandering challenges brought under state law, especially those in the twelve states whose state constitutions have provisions essentially identical to the one relied upon by the Pennsylvania Supreme Court, and in other states with closely related constitutional provisions. We pay particular attention to how the Court made use of the expert witness testimony in the case, relying on some of it, while rejecting or critiquing the applicability of other elements, since such a discussion can inform future state court litigation inspired by *LWV.* In our concluding discussion we contrast the criteria used to evaluate partisan gerrymandering by this court with those used by federal courts, and we look at how it may impact the decisions of legislators about line drawing in 2020.

(b) We have entirely deleted the previous third section of the paper, one that looked at empirical comparisons of the adopted plan with multiple other plans. Now we focus the new version of the paper entirely on the how the Court enunciated its legal test, and the implications of its line of legal reasoning for future partisan gerrymandering challenges, especially those that might involve state rather than federal law. However, we do provide a one paragraph summary of the main findings of the omitted section. We expect that the omitted section will become a separate research note to be submitted to a different journal, such as *Political Geography*.

(3) The reviewers both complained that the paper was not well organized. We have dealt with perhaps the major sign of this problem, namely where to put the section on empirical comparisons of multiple proposed remedial plans, by the simple expedient of deleting that section, and refocusing the paper more tightly. But there is another major change that we have made to deal with this issue in addition to the deletion of this section. We have now recombined much of the analysis in the last two sections of the old version of the paper, and in the discussion section of that version, in a very different way so as to improve the flow. This change required doing a lot of rewriting. In particular, the conclusion to the paper has been completely rewritten to emphasize what we now see as our three major claims. This has meant moving a fair amount of text from earlier, to avoid repetition.

In addition to these three major changes, we have a number of other important changes.

(4) We added language, updating the paper, to explain why the 2018 Supreme Court remand of *Gill v. Whitford*, and the district-specific test enunciated in that remand, make *LWV* far more important than it was before.

(5) We responded to one reviewer’s request to considerably expand the discussion of how (and which) state courts might draw on the LWV. Here we are able to draw on a new article, Elmendorf (2018), of which we were previously unaware.

(6) We added language explaining why our discussion of how the Pennsylvania courts explicating the expert witness testimony in the case was very relevant to future state court cases that draw on the LWV precedent, since one reviewer was not sure how well that discussion fit with the rest of the paper. We now note that:

Although the ruling explicitly states that the failure to satisfy good government criteria to a degree that cannot be attributed to chance or to the nature of the electoral geography in the state is sufficient to demonstrate unconstitutionality under Pennsylvania law, that ruling does not make such a finding a necessary condition for unconstitutionality, and we expect that a court’s judgment of when such a failure is egregious enough to be unconstitutional will be affected by other types of evidence presented at trial. In particular, in Pennsylvania, the evidence developed in the lower court about the political consequences of the adopted plan persuaded the court majority that “the 2011 Plan was a partisan gerrymander and that this gerrymander was extreme and durable. It was designed to dilute the votes of those who in prior elections voted for the party not in power in order to give the party in power a lasting electoral advantage. … On this record, it is clear that the 2011 Plan violates Article I, Section 5, since *a diluted vote is not an equal vote* (emphasis added).”

(7) We added language explaining why our discussion of how the Pennsylvania courts treated the expert witness testimony in the case was intended to be quite distinctive from the rampaging debate in the pages of ELJ pitting proponents of the mean minus median gap against proponents of the efficiency gap against proponents of other partisan disparity measures, and proponents of particular simulation methods against proponents of other simulation methods, etc. One of the reviewers was concerned that we had omitted one important citation to the literature in this recent debate, on simulation methods. We have now made clear why this citation (and many other recent methodological references) are not discussed. Although we do discuss the features of some metrics, we do so only in the context of how the Pennsylvania trial court responded to expert witness testimony at trial about them. If you felt that more references to the debates in the very recent academic literature were called for, of course we would be happy to provide them.

We think the changes you and the reviewers have suggested made this a much better (as well as a much shorter) paper. Given the general favorable reading of both reviewers, we hope that this new version, which addresses both their and your concerns, will find a home at *ELJ*. Of course, if there are still further changes needed we would be happy to provide them. We are both in agreement that *LWV* is an important case, and so the careful analytic treatment of it that we strived for should be a major contribution to the gerrymandering literature.

Regards

Bernie