"Now For a Clean Sweep!": Smiley v. Holm, Partisan Gerrymandering, and At-Large Congressional Elections

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NOTE

"NOW FOR A CLEAN SWEEP!":
SMILEY V. HOLM, PARTISAN GERRYMANDERING,
AND AT-LARGE CONGRESSIONAL ELECTIONS

Benedict J. Schweiger*

The 1930 Census reduced Minnesota's apportionment in the U.S. House of Representatives from ten to nine, requiring the state to draw new congressional districts. The Republican-led state legislature passed a gerrymandered redistricting bill in an attempt to insulate its nine incumbents in the state's delegation from the party's expected loss of the statewide popular vote to the insurgent Farmer-Labor Party. When the Farmer-Labor Governor, Floyd B. Olson, vetoed the redistricting bill, the legislature claimed the bill could take effect without the governor's signature. In Smiley v. Holm, the U.S. Supreme Court decided that the veto was effective and that because Minnesota therefore had no validly enacted congressional districts, it must elect all nine of its congressmen at-large. In the ensuing election, voters swept from power all but two of the sitting congressmen and reduced the Republicans from nine seats to three. This Note presents a historical case study of the events surrounding Smiley and the 1932 congressional elections in Minnesota and uses it to discuss the benefits and costs of at-large elections. It determines that in this case, the at-large elections effectively blocked countermajoritarian tactics in the 1932 and subsequent elections without some of the negative consequences usually ascribed to at-large elections.

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INTRODUCTION

Partisan gerrymandering is a serious contemporary concern, but it is not a new problem. Since at least 1811, when a newspaper editor invented the term to refer to a redistricting scheme by Massachusetts Governor Elbridge Gerry, political parties have used clever line-drawing to protect their incumbents and ensure that they are overrepresented in legislative bodies relative to their support in the electorate. In this way, parties attempt to maximize their power and retain it, even when a majority of the electorate turns against them.

Minnesota experienced this kind of gerrymandering in the early 1930s. After the onset of the Great Depression, the Republican Party—which had dominated state politics for decades—lost statewide public support to the Farmer-Labor Party. The Republicans responded by attempting to retain their lock on the state’s congressional delegation through the redistricting

1. J.W.D., HISTORY OF THE GERRYMANDER, 4-5 (Boston, 1892) ("For the purpose of securing a democratic representative an absurd and singular arrangement of towns in the county of Essex was made to compose a district. . . . [Painter Gilbert Stuart] took a pencil, and, with a few touches, added what might be supposed to represent claws. ‘There,’ said Stuart, ‘that will do for a Salamander.’ [Newspaper editor Benjamin] Russell, who was busy with his pen, looked up at the hideous figure, and exclaimed, ‘Salamander! call it Gerrymander.’") (quoting 2 JOSEPH T. BUCKINGHAM, SPECIMENS OF NEWSPAPER LITERATURE 91 (Boston, Redding & Co. 1852))).

2. In 1930s Minnesota, often neither major party could command an outright majority of votes. Instead, the Republican and Farmer-Labor Parties battled for pluralities, while Democrats and independent candidates received support from the balance of the electorate. Except where specified, this Note will treat "plurality" and "majority" situations alike and will treat the terms "countermajoritarian," "promajoritarian," and the like as inclusive of the related terms referring to pluralities, e.g., "counterpluralitarian," "propluralitarian."

process. The new Farmer-Labor governor vetoed the state legislature's redistricting plan. The legislature, however, argued that the federal Constitution excluded the governor from the redistricting process and that its plan was law.

In *Smiley v. Holm* the Supreme Court of the United States rejected the Minnesota Legislature's incumbent-insulating strategy and instead allowed the new party preferences of the state's voters to find immediate and dramatic expression. The Court upheld the governor's veto and ordered at-large elections for all nine of Minnesota's congressional seats should the state fail to validly adopt a plan. In the at-large elections that followed, voters swept from power all but two sitting congressmen and reduced the Republican delegation from nine seats out of ten to three out of nine. Rather than face at-large elections again in 1934, the Minnesota Republicans, still a majority in the state senate, agreed to a compromise redistricting bill that became law in 1933.

This Note presents a historical case study of the circumstances surrounding *Smiley* and the 1932 congressional elections in Minnesota and uses it to discuss the benefits and costs of at-large representation. In recent decades, courts have come to frequently criticize all forms of multimember representation, including representation at-large. In *Connor v. Finch*, the U.S. Supreme Court warned that "the practice of multimember districting can contribute to voter confusion, make legislative representatives more remote from their constituents, and tend to submerge electoral minorities and overrepresent electoral majorities." Other state and federal courts have expressed similar concerns. This Note evaluates the benefits of the Court's decision in *Smiley*—blocking a countermajoritarian gerrymander—and contrasts them with these concerns.

This Note demonstrates that the decision in *Smiley* foiled the countermajoritarian strategy of the gerrymandering party and altered the redistricting process so as to hinder such strategies in the future, without some of the negative consequences frequently ascribed to at-large elections. Part I provides a theoretical framework for discussing the countermajoritarian threat of partisan gerrymandering. It identifies desirable traits of a responsive electoral

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5. Id.
6. Id. at 71.
8. *Smiley*, 285 U.S. at 374-75. For an explanation of at-large representation and other districting schemes, see infra Part I.
10. Mayer, supra note 4, at 139.
system that partisan gerrymandering impedes and discusses factors in the redistricting process that influence the nature of the redistricting plan produced. Part II explains the political situation in Minnesota that created the controversy addressed in Smiley, describing its development from the ruling party's attempt to insulate its incumbents from predicted electoral defeat. Part III examines the consequences of the Supreme Court's decision, both for the 1932 elections and for the subsequent final negotiations over redistricting. It concludes that the at-large elections blocked the tactics of the gerrymandering party, protecting the state from capture by a ruling minority party. The elections did so without creating severe bias against the minority party and without provoking voter confusion, although they did fail to distribute the congressional delegation evenly throughout the state.

I. THEORETICAL FRAMEWORK

Redistricting outcomes are distinguishable from redistricting processes. Each seat in the House of Representatives represents a particular geographically defined group of citizens. That group of citizens determines who sits in that seat. Each seat might represent a distinct group of citizens ("single-member districts"), more than one seat might represent a larger group of citizens ("multi-member districts"), or each of the seats apportioned to a state might represent the entire state ("at-large representation"). The political mechanism by which a state determines which group of citizens each seat represents is its "redistricting process." The redistricting process then results in a districting plan that assigns particular seats to particular groups of citizens. This plan is the "redistricting outcome."

Smiley v. Holm dealt with both redistricting outcomes and redistricting processes. This Part discusses the two issues separately, providing a theoretical framework for analyzing each. The later Parts of this Note will use this framework to compare the gerrymandered plan defeated in Smiley, the at-large elections ordered by the Court, and the plan finally adopted in 1933. Section I.A elaborates a framework for evaluating redistricting outcomes based on their ability to represent the changing preferences of voters effectively and accurately. Section I.B discusses the process of redistricting and how procedural changes affect redistricting outcomes.

A. Evaluating Redistricting Outcomes

Scholars can plausibly judge a redistricting outcome by how well it produces representation that reflects the preferences of the people of that state. The framers established the U.S. House of Representatives to be the organ of the federal government most responsive to changes in public opinion. At the Constitutional Convention, James Wilson of Pennsylvania argued that the House of Representatives must be directly elected because "[t]he legisla-

13. For ease of terminology, this Note will refer to at-large representation as a form of "districting."
ture ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively.”

In *The Federalist No. 52*, James Madison agreed, explaining that the House of Representatives “should have an immediate dependence on, and an intimate sympathy with, the people.”

The House of Representatives “represents” the electorate of the United States in varied ways. An officeholder provides “descriptive” representation to the extent that she shares the demographic characteristics of her electorate. A preference for single-member districts enshrines one form of descriptive representation: a member of Congress “represents” her constituents when she is a member of the same narrowly-defined geographic community. Descriptive representation also often involves membership in the constituents’ racial or ethnic group. Scholars distinguish such “descriptive” representation from “substantive” representation, in which elected policymakers represent their constituents by pursuing the voters’ policy preferences. This Note primarily addresses substantive representation, examining districting systems based on their ability to represent the policy preferences of voters, with partisan affiliation serving as a proxy for policy preferences. This Note focuses on substantive representation because it is the interest that the problem of partisan gerrymandering most directly implicates: when parties use gerrymandering to gain disproportionate seat share, they are attempting to damage the substantive representational interest of their opponents’ supporters.

Assuming that party preferences can serve as a proxy for policy preferences, a state congressional delegation best vindicates the public’s substantive representational interest when the share of seats in the delegation held by each party is the same as the share of votes each party received statewide. This Note employs the two factors Gary Cox and Jonathan Katz identified to measure how well a redistricting outcome provides this type of representation. First, a set of districts will create a certain level of partisan bias, defined as “how much larger or smaller a party’s seat share is than its vote share.” An electoral system more accurately reflects popular sentiment

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15. The Federalist No. 52 (James Madison).
17. Id.
18. Id.
19. At-large election schemes also have important implications for descriptive representation. This Note will consider one such implication in Section III.B.2.
21. Id.
when its partisan bias is close to zero.\(^\text{22}\) Second, a set of districts will have more or less responsiveness, defined as “how much party seat shares respond to changes in vote shares.”\(^\text{23}\) An electoral system can more accurately reflect changes in popular opinion when its responsiveness is high.

Low partisan bias and high responsiveness guarantee availability of two primary electoral mechanisms by which the voters in a polity exert control over government policy: determining partisan composition and unseating incumbents. First, the lower the partisan bias and the greater the responsiveness in the electoral system, the more readily a shift in preferences among voters can recast the composition of the legislature. This power allows voters to exert control over the government’s overall policy direction. They exercise this control most clearly during a realignment: a moment in which a majority-determining block of voters removes its support from a party that has consistently enjoyed that support for a significant period of time and shifts it to a new party.\(^\text{24}\) Second, high responsiveness allows voters to control government policy by holding individual representatives to account. This accountability has two faces: representatives “vote in accord with their constituents” because they want to be returned to office, and “voters punish a representative who votes against his or her district’s preferences.”\(^\text{25}\) Electoral accountability only works, however, in constituencies with competitive elections. Where one party is reliably dominant in a constituency, the representative must commit a proportionately larger transgression to lose an election because a larger number of partisans must defect. A high level of responsiveness therefore ensures popular control of government by maintaining incumbent vulnerability.

Partisan actors gerrymander to reduce responsiveness or to increase partisan bias.\(^\text{26}\) Frequently, a state will create districts so full of each incumbent’s partisans that all are secure from challenges arising outside his or her party. Such a “proincumbent”\(^\text{27}\) gerrymander may not have a large partisan bias, but it may be almost totally lacking in responsiveness. Even if a large group of voters changes its party preference, it may not be large enough in any one district to create a new partisan majority. The other major form of nonracial gerrymander is the “partisan” gerrymander,\(^\text{28}\) in which one party spreads its partisans so as to maximize the number of districts in

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\(^{22}\) See Robert S. Erikson, Malapportionment, Gerrymandering, and Party Fortunes in Congressional Elections, 66 AM. POL. SCI. REV. 1234, 1234 (1972) (“[O]ne reasonable standard of ‘fairness’ is that the party with the majority of the votes should also be the party with the majority of the seats.”).

\(^{23}\) Cox & Katz, supra note 20, at 31.


\(^{26}\) Cox & Katz, supra note 20, at 33.

\(^{27}\) Id. at 31.

\(^{28}\) Id.
which they can command a majority. The 1931 redistricting plan passed by the Minnesota Legislature—the subject of Smiley—was this type of plan. Such a plan, taken to the extreme, can create a situation where both partisan bias and responsiveness are high. Where a party has spread its supporters so thinly that its electoral majorities are small, it may control a much higher seat share than its vote share would indicate, but it may also be highly vulnerable to even small shifts in partisan preferences in the electorate. Part of the challenge of a successful partisan gerrymander is striking this balance: preserving as much partisan bias as possible while reducing responsiveness as much as possible.

At the time of Smiley, courts had not yet intervened to force parties to create congressional districts of equal population, allowing parties much greater ability to skew the electoral results than they possess today. Under the plan at issue in Smiley, the Farmer-Labor-dominated Fifth District, centered around Minneapolis, was fifty-one percent larger in population than the Republican-controlled First District in southern Minnesota. Taken to the extreme, a plan with districts of varying populations could theoretically have partisan bias so high and responsiveness so low that one party could receive nearly all of the seat share regardless of its vote share. In practice, public opinion exerts some limiting force on such excesses; in the Minnesota case, the large size differentials between districts created public pressure against the gerrymanderers even among their own partisans.

B. Evaluating the Redistricting Process

This Section discusses how changes in redistricting processes affect redistricting outcomes. Just as Section I.A argued that low partisan bias and high responsiveness make a redistricting outcome desirable, a redistricting process will be more desirable if it tends to produce such outcomes. This evaluation is important in examining the context and effects of Smiley, because its primary holding dealt with the mechanism of redistricting and not redistricting outcomes. The Court did not judge the Minnesota districting

29. Id. at 33.

30. Computers have recently made this task much easier. Vieth v. Jubelirer, 541 U.S. 267, 364 (2004) (Breyer, J., dissenting) ("The availability of enhanced computer technology allows the parties to redraw boundaries in ways that target individual neighborhoods and homes, carving out safe but slim victory margins in the maximum number of districts, with little risk of cutting their margins too thin."). At the time of Smiley, gerrymanderers did not have machines to do their dirty work for them.


32. State ex rel. Smiley v. Holm, 238 N.W. 494, 496 (Minn. 1931).

33. MAYER, supra note 4, at 71.

34. See Smiley v. Holm, 285 U.S. 355, 365 (1932) ("The question then is whether the provision of the Federal Constitution . . . invests the legislature with a particular authority . . . the definition of which imports a function different from that of lawgiver and thus renders inapplicable the conditions which attach to the making of state laws.").
plan by whether the substance of the plan was unconstitutional or otherwise unlawful, but rather by whether the state legislature created it in a legally permissible way. In doing so, the Court's decision had consequences for both of the important variables in a state redistricting process: (1) the formal decision-making structure and (2) the resulting plan should that structure fail to produce a plan.

The first important variable in a redistricting process is the role of various state actors, particularly the governor and the legislature, in the decision making. As an official elected statewide, the governor's partisan alignment will reflect that of the statewide electorate at the time of his last election. Thus, if the relevant state and federal constitutional provisions require the governor's signature before a redistricting plan can take effect, they add a promajoritarian bias to the redistricting process—the seat share of the governor's office is always 100% (there is only one governor), regardless of the precise vote share the governor received. The involvement of the legislature in the process, on the other hand, may introduce a countermajoritarian bias into the plan. The legislature, composed of members elected from local districts, may or may not reflect the partisan preferences of the statewide electorate, depending on the distribution of partisan voters among the legislative districts. Therefore, when the governor and legislature must undertake redistricting together, one would expect the outcome to be at least as favorable to the party commanding majority support in the electorate as it would be if the legislature were to undertake the process alone. If the redistricting process excludes the governor and the state legislature redistricts without her, however, one would expect to see a districting plan that reflects the partisan alignment of the legislature.

Likewise, redistricting outcomes depend on the reversionary plan: the plan that would take effect if the formal decision-making structure failed to produce a plan. The reversionary plan would take effect, for example, if "the governor and state legislature could not agree on a new plan." Reversionary plans are defined by applicable state and federal law, and can be either conservative or radical. "When the current plan was also the reversionary plan (or was the basis for that plan . . . ), we say that the reversion was conservative." Otherwise, the plan is radical. In a situation where both parties have power over the redistricting process, the party most likely to benefit from the reversionary plan is also likely to do proportionately better in the bargaining over redistricting. If a party expects to benefit from a court-ordered plan in the absence of agreement, it has little incentive to agree to anything less advantageous in negotiations with the opposing party.

35. Cox & Katz, supra note 20, at 25.
36. Id.
37. Id. (emphasis in original).
38. Id.
39. Id. at 26.
Finally, within any given redistricting process, the state of public opinion constrains the actors. Where the party controlling the process expects to receive a minority vote share in the next election, i.e., is the “weaker” party, one would expect it to attempt to create districts that would increase its partisan bias and reduce overall responsiveness. The “stronger” party will tend to want greater short-term responsiveness. If the weaker and stronger parties share the redistricting power, they must either reach a compromise or accept the reversionary plan. The limit of public tolerance for unorthodox or seemingly unfair plans also constrains political actors, as became evident in the partisan sparring both before and after the Court’s decision in Smiley.

II. THE POLITICS AND HISTORY OF SMILEY V. HOLM

This Part explains the emergence of Smiley from the attempts of a faltering ruling party to insulate its incumbents from predicted electoral defeat and presents historical evidence to support this explanation. Section II.A explains the partisan configuration of the state and its realignment away from the Republican Party and toward the Farmer-Labor Party beginning with the 1930 elections. Section II.B describes the Republican legislature’s attempt to minimize the responsiveness of the congressional elections and maximize Republican partisan bias, at first through a political confrontation with the governor and then by attempting to exclude him from the redistricting process entirely. Section II.C describes the litigation that resulted from this standoff and discusses its outcome.

A. Setting the Stage for a Realignment: The Politics of Minnesota Before 1931

Smiley arose at a time of political transition in Minnesota, as the new Farmer-Labor Party challenged the long dominance of the Republican Party. In the first decades of the twentieth century, economic changes in the state began to create discontent with Republican rule. In response, agrarian radicals from the Nonpartisan League joined with third-party advocates

40. Id. at 32.
41. Id. at 35.
43. Jennifer A. Delton, Making Minnesota Liberal 2 (2002). The Democratic Party, while present, was extremely weak, and was alternatively seen as “the party of treason” for its pro-Southern stance during the Civil War and as a party “dominated by a despised Irish Catholic minority.” Id.
44. Poor commodity prices led farmers to rally against “Twin City banks and terminal grain elevators,” Mayer, supra note 4, at 18, while urban areas saw an increase in radical labor organizing, Richard M. Valelly, Radicalism in the States: The Minnesota Farmer-Labor Party and the American Political Economy 28 (1989).
45. The Nonpartisan League began in North Dakota in 1915 as an attempt by former North Dakota Socialist Party activist Arthur Claude Townley to take over the state Republican Party from within. Valelly, supra note 44, at 17–18. It advocated “state ownership of terminal elevators, flour
within the State Federation of Labor to form the Farmer-Labor Party. This new party drew from "[t]wo major interests or sectors of the economy .... One was the Midwest farmers' cooperative movement .... The other major interest was the emerging organized labor movement in Minneapolis, St. Paul, and the Iron Range ...." During the 1920s, the Farmer-Labor Party made modest gains in Minnesota, gradually increasing its vote and seat shares in federal elections, but the Republican Party continued to dominate state government and the state's congressional delegation.

In the elections of 1930, voters significantly changed the partisan composition of state government in the Farmer-Labor Party's favor. For the first time, voters chose a Farmer-Labor candidate for governor. Farmer-Labor gubernatorial candidate Floyd B. Olson won a massive 57.1% majority compared to 35.0% for his Republican opponent, Ray Chase. Farmer-Laborites and their allies also won approximately one-third of the seats in the state legislature. This shift put the new party in a position to challenge Republican control over state policy, including redistricting.

The Republican leadership quickly solidified its control of the legislature and hence its control over the legislative agenda for the coming session. Because Minnesota elected state legislators on a nonpartisan basis, party leaders fought for control of each chamber by recruiting unaffiliated mem-

46. Between 1916 and 1919, about half of the state's industrial workforce became unionized, and by 1919, major victories by labor-backed candidates around the state persuaded the Minnesota State Federation of Labor to create an organization—the Working People's Nonpartisan Political League—to parallel the Nonpartisan League. Id. at 34-35.

47. GIESKE, supra note 3, at 45.

48. Id. at vii.

49. Farmer-Laborite Henrik Shipstead won election to the U.S. Senate in 1922, and throughout the 1920s voters elected a handful of Farmer-Laborites to the U.S. House of Representatives. Id. at 141; MAYER, supra note 4, at 24.

50. GIESKE, supra note 3, at 119.

51. Three factors deserve credit for creating the environment for Farmer-Labor victory. First, "[i]t was a depression year, without doubt an auspicious time for a party of protest." THEODORE C. BLEGEN, MINNESOTA: A HISTORY OF THE STATE 522-23 (1975). Second, charismatic gubernatorial candidate Floyd B. Olson assumed leadership of the party, moderating the party message while still promising change in the economic system. MAYER, supra note 4, at 44. Third, the Democratic Party chose not to contest the election, effectively supporting Olson. See GIESKE, supra note 3, at 140. The Democrats' nominal candidate, Edward Indrehus, did not campaign and received only 3.5% of the vote. Id. at 140, 162. After the election Olson appointed him to a position in the Rural Credit Bureau. Id. at 162. By 1930, the Democrats had not won a statewide or congressional race since 1918, when Carl C. Van Dyke was elected to Congress from the Fourth District. Id. at 47-48, 62-64, 75-76, 91, 105-06, 119-21, 138-39; see also Congress Heavily Republican, Gains in Both Houses, N.Y. TIMES, Nov. 3, 1920, at 1 (showing W.L. Carss, whom Gieske labeled a Democrat, winning as an independent).

52. GIESKE, supra note 3, at 140.

53. Id. at 146.
bers and moderates from other parties in an attempt to create a governing majority.44 "Fearful that new members of doubtful affiliation would join the Farmer Laborites to organize the house, [Republican leaders] called a caucusc for late November and dangled choice committee assignments before them as bait."55 Attending the caucus meant supporting Republican leadership of the chamber, and in all, 107 out of 131 members of the Minnesota House, including some Farmer-Laborites, attended.56 The Republicans then completed their lock on the legislature by changing senate rules to strip the Farmer-Labor lieutenant governor of his right to make senate committee assignments and organizing the chamber themselves.57

The 1931 legislative session, therefore, pitted a Republican-controlled legislature against the state's first Farmer-Labor governor.58 Understanding the potential for stalemate, Governor Olson avoided major confrontations with his opponents for most of the 1931 session, choosing moderate policy goals and "avoid[ing] the aggressive tactics for which he became famous in later years."59 However, in the closing days of the session, Olson clashed with the Republicans over three major pieces of legislation, vetoing all of them.60 The most contentious of these was the veto of a bill redrawing the state's congressional districts.

B. The Republican Gerrymander: Fighting to Hold Back the Realignment

In the conflict that led to Smiley, Republican legislative leaders attempted to secure their hold over the congressional delegation by manipulating redistricting outcomes and the redistricting process. They hoped to create districts with minimal responsiveness and maximum partisan bias in their favor. The Farmer-Labor Party hoped to put in place a system with promajoritarian partisan bias and high responsiveness, which would allow it to take full advantage of its predicted strong support in the electorate. But uncertainty over the decision-making structure for redistricting, the reversionary plan that would

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54. Mayer, supra note 4, at 58. Although parties could endorse and campaign for candidates, ballots did not list the party affiliations of candidates for the state legislature. As a result, voters elected many candidates without strong ties to any political party, and the leading factions sought their allegiance in the period between the election and the convening of the legislature. Id. ("Uncertainty as to the political affiliations of legislators opened the way for all sorts of political jobbery.").

55. Id. at 60.

56. Id.

57. Gieske, supra note 3, at 145; Mayer, supra note 4, at 61.

58. Gieske, supra note 3, at 145.

59. Mayer, supra note 4, at 67. In the subsequent session of the legislature in 1933, for example, "[f]our times he lashed his opponents mercilessly from the steps of the State Capitol, where impoverished farmers and workers gathered to protest the postponement of relief legislation." Id. at 120.

60. Id. at 70. In addition to the redistricting bill, Olson vetoed a metropolitan sewage disposal bill because he considered the allocation of costs to be unfair, and he vetoed a bill regulating trucking that he considered biased toward railroad interests. Id. at 71–76.
obtain in the case of a failure to pass a redistricting bill, and the political consequences of such a failure led each side to take actions that stymied the legislative process and brought the two sides into court.

Politically, redistricting was more intractable than other policy issues that divided Governor Olson and the legislature. First, the 1930 U.S. Census reduced Minnesota's apportionment in the U.S. House of Representatives from ten representatives to nine, forcing redistricting onto the state's agenda by invalidating the old districts.\(^6^1\) Second, while the two sides had been able to find mutually acceptable common ground on public works, securities regulation, and conservation,\(^6^2\) redistricting was a zero-sum game: any seat share gained by one party would be the other's loss.

Redistricting became a struggle over whether the new plan would allow the Farmer-Labor Party to translate its predicted majority vote share into a large seat share in the congressional delegation. The Republicans had much to lose in this struggle. Despite the strong turnout for Olson, the Republican Party had retained nine congressional seats in the 1930 election under the contemporary state districting map.\(^6^3\) As Farmer-Labor support grew, these seats began to look more and more precarious.

Uncertainty regarding the nature of the reversionary plan complicated negotiations between the parties. Neither the latest federal reapportionment act, passed in 1929,\(^6^4\) nor the previous act, passed in 1911,\(^6^5\) addressed what would happen in a state that lost representation and failed to redistrict. As early as February 20, 1931, Senator William Petersen, chairman of the Senate Reapportionment Committee, contacted Republican Attorney General Henry Benson, asking what would be the result "[i]f we do not re-district the state."\(^6^6\) Benson, unable to answer, put the question to Congressman Frank Clague in a letter, saying:

Various articles have appeared in the newspapers from time to time, and expressions of opinion have been voiced as to the result in case the present state legislature fails to redistrict the state. I am interested in knowing whether a situation has ever arisen in congress where a state legislature failed to redistrict the state. Was the state permitted to elect congressmen as large . . . ? Was there ever a case where the state elected more represen-

\(^{61}\) State ex rel. Smiley v. Holm, 238 N.W. 494, 496 (Minn. 1931). While traditionally each state redistricts after each decennial census, it was not required until the reapportionment revolution of the 1960s. Wesberry v. Sanders, 376 U.S. 1 (1964); see also Cox & Katz, supra note 20, at 12-13. Nothing prohibits a state from redistricting more frequently, although such mid-decade redistricting is rare. League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006).

\(^{62}\) Mayer, supra note 4, at 67.

\(^{63}\) Farmer-Labor Congressman Paul Kvale won the remaining seat in an eighty-one percent landslide in the Seventh District in western Minnesota. Gieske, supra note 3, at 138.

\(^{64}\) Act of June 18, 1929, ch. 28, 46 Stat. 21 (current version at 2 U.S.C. § 2a (2000)).


tatives in congress than were allowed it? And, if so, how did the house of representatives dispose of the matter?\(^{67}\)

William Tyler Page, clerk of the U.S. House of Representatives, believed that because the 1911 Act prescribed at-large elections for any new congressional seats if a state gained representation and thereafter failed to redistrict,\(^{68}\) at-large election of the entire delegation should be the result in the event of a decrease\(^{69}\)—a radical reversionary plan. Page told Attorney General Benson:

> It has been many years since the representation of any state has been reduced. But in such case, by the same token as in the case of an increase, failure to redistrict by the state legislature would result in all of the representatives from such state being elected at large.\(^{70}\)

One constituent proposed the novel solution of registering candidates in districts one through nine and permitting residents of the Tenth District to vote for any candidate in any of the first nine districts.\(^{71}\)

Although both sides agreed that voters would respond badly if the state failed to pass a plan during the legislature’s regular session and that they would also object to a special session, they disagreed about the political consequences should a court deem at-large elections to be the reversionary plan.\(^{72}\) The Republicans seemed convinced that running candidates at large would be unacceptable to voters. They were confident that Olson would not risk this outcome, especially because they believed that a veto of a redistricting plan “would be interpreted as a ‘defense of Minneapolis at the expense of rural districts.’”\(^{73}\) Accordingly, they attempted to use the specter of at-large elections to gain leverage against Olson.\(^{74}\) Olson, on the other hand, appears to have understood that at-large elections would be unpopular,\(^{75}\) but conventional wisdom held that such elections would work to the advantage of his party. Given the geographic concentration of Farmer-Labor strength, the promajoritarian partisan bias of at-large elections would allow the party to take full advantage of its expected statewide majority vote share in a way no feasible set of districts would.\(^{76}\) Furthermore, while the Farmer-Labor


\(^{68}\) Id.

\(^{69}\) Id.

\(^{70}\) Id.

\(^{71}\) Letter from C.L. Strom to Floyd B. Olson, Governor, State of Minn. (received Apr. 14, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, 111.F.18.2(F)).

\(^{72}\) Part III, infra, discusses the primary objections to at-large elections.


\(^{74}\) Id.


Party was popular, its congressional candidates would lack the name recognition and other advantages of incumbency enjoyed by the sitting Republican congressmen in their districts. But outside of those districts, the incumbents' reputations would count for much less, making them much more vulnerable to a Farmer-Labor challenge based on issues of statewide concern. One supporter advised Governor Olson:

It may be that it may look as if it will be harder for those of our boys who have made up their minds to run for congress, but to my mind I think the statewide proposition is an advantage. The Farmer-Labor men that will loom up for it are quite well advertised over the state and will get their share of support without a doubt.77

These divergent political calculations led to legislative brinksmanship. In their effort to exert maximum pressure on the governor, the Republicans delayed serious consideration of any redistricting plan until the closing days of the session. The conference committee dealing with reapportonment did not meet with Governor Olson until April 15, 1931,78 seven days before the legislature was to adjourn, not to meet again until 1933.79 The conference committee members presented a plan that attempted to shift the overall partisan bias of the congressional delegation in the Republicans' favor by expanding the size of, and increasing the win margins in, Farmer-Labor districts. It also attempted to insulate Republican incumbents and to reduce the responsiveness of the system by drawing Farmer-Labor districts with significantly greater populations than Republican districts and carving up the city of Minneapolis, a Farmer-Labor stronghold.80 The Farmer-Labor Leader complained that the Republican "scheme was to enlarge the Seventh Congressional District now represented by [Farmer-Labor member] Paul John Kvale so as to include a large percentage of the Farmer-Labor vote of the state and thereby eliminate this vote from having an influence in determining the election outcome in other congressional districts."81 Likewise, it argued that "the legislature proceeded to shape up districts in such a manner as to make the present congressmen safe, if possible."82

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77. Letter from Thomas Vollom, Justice of the Peace, Erskine, Minn., to Floyd B. Olson, Governor, State of Minn. (Apr. 15, 1932) (on file with the Minnesota Historical Society, 111.F.18.2(F)).
78. Olson to Offer Reapportioning Proposal Today, ST. PAUL PIONEER PRESS, Apr. 16, 1931, at 1.
79. See MINN. J. OF THE HOUSE, 1931, at 1582 (recording the adjournment of the House sine die on April 22, 1931).
80. Mayer, supra note 4, at 70; Roger V. Shumate, Minnesota's Congressional Election At Large, 27 AM. POL. SCI. REV. 58, 58 (1933) ("There can be little question that the bill was a gerrymander... The obvious purpose was to increase the representation of the rural part of the state over that of the urban, and to favor the Republican party at the expense of the Farmer-Labor party.").
81. Governor Floyd B. Olsen Vetoes Iniquitous Scheme For Redistricting State, FARMER-LABOR LEADER (St. Paul, Minn.), Apr. 30, 1931, at 3.
82. Henry G. Teigan, Governor Floyd B. Olson Vetoes Three Proposals: Redistricting, Drainage and So-Called Truck Bill, FARMER-LABOR LEADER (St. Paul, Minn.), Apr. 30, 1931, at 1.
Olson understood that the Republicans had reached too far, proposing districts so gerrymandered that he could reject the plan with public support and without facing criticism for unseemly partisanship. Rebuffing the members of the conference committee, Olson told them that “he favored redistricting on a basis which will make each district as nearly equal in population as possible.” He responded the next day with an entirely new map, one that moved several wards of Minneapolis into the Third Congressional District, displacing two counties into the Republican First. Although the Pioneer Press called the plan “a gerrymander of Minneapolis,” the districts in the governor’s plan were significantly more equal in population than in the Republican plan and crossed no county lines outside of Hennepin County, which was too large for one district.

The Republican leadership rejected the governor’s counteroffer and sent its own plan to the House and Senate for final passage on April 17. With only days left in the legislative session, a revised conference report passed the House with eighty-one votes. The Senate passed the measure the following Monday, the third-to-last day of the session. Although this plan differed slightly from the original Republican plan by moving one Minneapolis ward, it still drew districts with a strong pro-Republican partisan bias and minimal responsiveness. George Mayer notes that it:

deprieved Minneapolis of one of her two congressmen, and dumped her heavily Farmer Laborite Third and Tenth wards into the Seventh District, which habitually elected third-party congressmen. This unblushing gerrymander made the Seventh District so large that it stretched from the Dakota border to the heart of Minneapolis.

The Republicans still believed that if the legislature passed a redistricting bill, public opposition to at-large elections would force the governor to sign it. Under the subheading “Representatives Dare [Governor] to Allow Nine Candidates to Run at Large,” the Pioneer Press described the Republican strategy: “Hold up final reapportionment until the last day of the session with the belief that the Governor will not dare to veto a Conservative faction plan and force all Congressmen to run at large.” The paper’s editorial board agreed with this assessment, saying “no plan that conceivably may be drafted can possibly be so bad as no plan at all.” If the governor did veto

83. Olson to Offer Reapportioning Proposal Today, supra note 78.
84. Olson and Arens Disparity Noted in Redistricting, ST. PAUL PIONEER PRESS, Apr. 17, 1931, at 2.
85. Id.
86. Id.
88. Johnston, supra note 73.
89. Id.; Olson Vetoes District Plan, ST. PAUL PIONEER PRESS, Apr. 21, 1931, at 1.
90. Mayer, supra note 4, at 70.
91. Johnston, supra note 73.
the redistricting bill, the Republicans believed that "they would then be in
to position to demand that he call a special session to dispose of this legisla-
tion." 93

Defying expectations, Olson vetoed the bill the same day that the Senate
passed it. 94 At-large elections would work to the advantage of his party, so
long as the public blamed the legislature for causing them. In his veto mes-
sage, he declared, "The State of Minnesota must be redistricted, but that
redistricting should be based upon a fair division of population... To avoid
the confusion of having candidates for Congress from Minnesota running at
large I earnestly urge you to work out an equitable plan of reapportion-
ment." 95 Then, in a separate statement the same day, Olson also restated his
refusal to call a special session, saying, "There is no reason why the present
Legislature cannot solve the major problems before it at tonight's session. If
the Legislature cannot solve them at this session, there is no encouragement
for the hope that it may solve them at any special session." 96 He then restated
his demands on redistricting:

I have pointed out that the Legislature must take into consideration a divi-
sion of districts fair to the entire State. If this Legislature fails to pass a
new reapportionment bill, the question of Congressional redistricting is a
matter for the courts to decide. If the Congressmen of Minnesota are
forced to run at large, the blame lies entirely with a group within the Legis-
lature which blocked fair reapportionment measures. 97

As Olson hoped, the public held the legislature responsible for the im-
passe. Mayer reports that "[t]he veto won unanimous approval in urban
districts and even received some support in southern Minnesota, which
stood to profit by the [vetoed] reapportionment" plan. 98 The Pioneer Press
editorial page blamed the situation on the fact that "the Legislature would
rather play politics than heed the warning of Governor Olson as to the kind
of redistricting measure he would approve." 99 However, the paper still pre-
sented at-large elections as a worst-case scenario, saying "in that event there
will be no local representation at all, only representation of the State as a
whole. Districts which are complaining about trifling changes should con-
sider whether they would like such an alternative any better." 100

93. Johnston, supra note 73.
94. MINN. J. OF THE HOUSE, 1931, at 1448-49.
95. Letter from Floyd B. Olson, Governor, State of Minn., to Oscar A. Swenson, Speaker of
the House of Representatives, State of Minn. (Apr. 20, 1931) in MINN. J. OF THE HOUSE, 1931, at
1448-49.
96. Olson Vetoes Tri-Cities Sewage Bill, supra note 75.
97. 1d.
98. Mayer, supra note 4, at 71. Southern Minnesota tended to support Republican candi-
dates, and the legislature's redistricting plan created smaller districts in that part of the state.
100. 1d.
But rather than revise their plan, the Republicans responded with a novel attempt to change the redistricting process by removing the governor from the process entirely. On the same day as the veto, "Senator A.J. Rockne of Zumbrota branded the veto as ‘ineffective,’ ” because “[t]he Federal Constitution does not require that the redistricting should be done through any other source than by the Legislature and does not provide that the Governor have anything to do with the matter."\(^\text{101}\) This argument would form the basis of the legislature’s position in \textit{Smiley}. In the final hours of the session, the House of Representatives adopted this position, passing a resolution, moved by Representative Rodenberg, directing the Republican Secretary of State, Mike Holm, to record the redistricting plan without the governor’s signature.\(^\text{102}\) It declared,

\begin{quote}
Whereas, on the 18th day of April, 1931, the House of Representatives of the State of Minnesota duly passed H. F. No. 1456, a bill for an act to divide the State of Minnesota into nine Congressional Districts; and

Whereas, on the 20th day of April, 1931, said H. F. No. 1456 was duly passed by the Senate of the State of Minnesota ...

Now, Therefore, Be It Resolved, That the Chief Clerk of the House be and he is hereby directed to deposit for filing with the Secretary of State the enrolled copy of said H. F. No. 1456, said bill to become and remain part of the permanent records of the office of the Secretary of State.\(^\text{103}\)
\end{quote}

The motion passed sixty-three to thirty-four,\(^\text{104}\) with many members not voting.\(^\text{105}\)

\textbf{C. The Litigation and Its Outcome}

Legal action began almost immediately after the legislature adjourned. The dispute centered around two essential questions: (1) What was the redistricting process? Did the governor have the authority to veto the redistricting plan, thereby preventing it from taking effect, or did the legislature have the authority to act independently under a direct delegation of power from the U.S. Constitution? (2) What was the reversionary plan? Would at-large elections be the result if the redistricting plan was not in effect? The U.S. Supreme Court took the pro-Farmer-Labor position on both questions, confirming the governor’s role in the redistricting process and establishing at-large elections as the reversionary plan.\(^\text{106}\)

\(^{101}\) \textit{Olson Vetoes District Plan, supra} note 89.

\(^{102}\) \textit{H.R. Res., 47th Legis. Sess. (Minn. 1931) in Minn. J. of the House, 1931, at 1581.}

\(^{103}\) \textit{Id.}

\(^{104}\) \textit{Id.}

\(^{105}\) \textit{Id.}

\(^{106}\) \textit{See Mayer, supra} note 4, at 60 (indicating that there were 131 members of the House at the time).

\(^{106}\) \textit{Smiley v. Holm, 285 U.S. 355 (1932).}
Following the adjournment of the legislature, Secretary of State Mike Holm abided by the order of the legislature and began implementing the vetoed plan, accepting filings from candidates to run in each of the nine new congressional districts, while refusing to accept filings for candidates wishing to run at large. 107 One of the refused candidates, Emil Holmes of Hennepin County, quickly secured a district court order requiring Holm “to show cause . . . why he should not accept and file” Holmes’s affidavit for election to the office of congressman at large. 108 At the same time, W. Yale Smiley, an attorney from Minneapolis, was seeking an injunction to prevent Holm from accepting filings for election to represent any congressional district. 109

Both Holm and Smiley turned to Republican Attorney General Henry Benson for assistance. Holm notified Benson of the order from the Hennepin County district court 110 and sought advice on the legal status of the legislature’s redistricting act. 111 Benson gave him little help, responding:

You ask first whether you should file [the vetoed plan]. . . . [I]n our opinion, it is proper that it be filed in your office.

You next ask if it should be given a chapter number and made a part of the laws of 1931. In our opinion it should not. In the absence of the approval of the governor, or passage over his veto as provided by the constitution, it is not a law of the state. Its status can be only that of a joint resolution of the two houses of the legislature.

. . . .

This opinion is confined to the specific questions asked by you, and we express no opinion as to the validity or effect of this measure. 112

Benson was even more dismissive of Smiley. Smiley had asked Benson to:

[Re]quest of the Supreme Court of the State of Minnesota, a writ directed to Mike Holm, Secretary of State, commanding him to return any and all filings for the office of congressman which designate a congressional district [and] enjoining him from receiving any filings for the office of congressman which designate a congressional district. 113

Benson responded that his job was to represent the state—and therefore Holm—in this matter, and that the law furnished Smiley “ample authority

107. Petition ¶ 54-55, State ex rel Smiley v. Holm (Minn. Dist. Ct., May 4, 1931) (on file with the Minnesota Historical Society, Governor, Miscellaneous Records 110.1.17.4F Box 1).
109. Petition, supra note 107, ¶ 68-70.
110. Letter from Henry N. Benson to W. Yale Smiley, supra note 108.
112. Id.
... to present the question referred to in [his] letter either to the supreme court or the district court."

Smiley sued for an injunction in Ramsey County District Court before Judge Gustavus Loevinger. He argued that the governor was appropriately involved in the decision-making process of redistricting, and the redistricting bill had not come into effect due to the governor’s veto. He cited the Minnesota Constitution, which states “Every order, resolution, or vote requiring the concurrence of the two houses ... shall be presented to the Governor for his signature and before the same shall take effect shall be approved by him ...” The state district court held in favor of Holm, and Smiley appealed to the state supreme court.

The Minnesota Supreme Court affirmed the lower court’s decision, adopting the Republican position that the U.S. Constitution gave the power to redistrict to the legislature alone, and therefore the governor’s veto was a nullity and the redistricting plan was effective. The court noted that when ratifying constitutional amendments, the state legislature was not required to submit its opinion to the governor. In these situations it “does not act in the discharge of its legislative duties as the lawmaking body, but does act for and in behalf of and as representative of the people of the state, under the power conferred by ... the Federal Constitution.” Just as in the amendment process, the court said, in the redistricting process under Article I, Section 4 “[t]he Governor’s veto has no relation to such matters; that power pertains, under the state Constitution, exclusively to state affairs.” The court also dismissed the plaintiffs’ observation that reapportionment had always previously been submitted to the governor for his signature or veto, saying “since the matter here involved arises out of the Federal Constitution and its meaning is so clear ... there is no room for the application of the doctrine of practical construction.”

Reaction to the Minnesota Supreme Court’s ruling was muted. The following day’s Pioneer Press noted that “State officials, including Governor

114.  Id.

115.  Petition, supra note 107, ¶ 61–62. Smiley also argued that even had the bill not been voided by the veto, it must be invalid because it violated the provisions of the 1911 Reapportionment Act requiring that districts be composed of compact territory and contain approximately an equal number of people. Id. ¶ 58–60, 65–66. The Minnesota Supreme Court responded that the 1911 Reapportionment Act, with its requirements of compactness, contiguity, and equal population, had been “replaced by subsequent law” (i.e., the 1929 Reapportionment Act) and “was no longer upon the scene.” State ex rel. Smiley v. Holm, 238 N.W. 494, 497 (1931). The U.S. Supreme Court declined to address this issue. Smiley v. Holm, 285 U.S. 355, 375 (1932).

116.  Petition, supra note 107, ¶ 47.

117.  Smiley, 238 N.W. at 496. The opinion of the state district court was not published in a reporter.

118.  See id. at 499.

119.  Id.

120.  Id.

121.  Id. at 500. Although Black’s defines “practical construction” as “[a]n interpretation given at or near the time when a writing was prepared,” BLACK’S LAW DICTIONARY 332 (8th ed. 2004), the court seems to use the term to mean construction in accord with established practice.
Olson, declined... to comment.122 It also relayed the opinions of Smiley, Republican Congressman W.I. Nolan of Minneapolis, and State Representative John Weeks, one of the attorneys for the petitioners, that a U.S. Supreme Court decision would ultimately be required to lay the matter to rest.123 Nevertheless, the paper's editorial page expressed great relief that what it had previously termed the "Reapportionment Chaos"124 was at an end. It declared the Court's decision "welcome throughout the greater part of Minnesota" and declared that "[t]he law and public convenience fortunately coincide."125 Under a contrary ruling, the paper declared, "a condition of great confusion would exist, and a special session of the Legislature would probably be unavoidable."126 There can be no doubt that Governor Olson and his partisans did not feel the same sense of relief, and Smiley appealed his case to the U.S. Supreme Court.

The U.S. Supreme Court reversed the Minnesota Supreme Court in an 8–0 decision.127 Justice Hughes, writing for the Court, concluded that because redistricting is lawmaking (in a way that ratifying constitutional amendments is not), the legislature must act through the normal legislative channels provided in its state constitution, namely subject to gubernatorial veto.128 The Court then determined that in the absence of a valid districting plan, a state must elect its congressmen at large to prevent the state from being left without representation entirely.129 Yet rather than grounding its holding in any statute, the Court presented the remedy of at-large elections as the necessary consequence of constitutional structure:

Where, as in the case of Minnesota, the number of representatives has been decreased... existing districts are not at all adapted to the new apportionment. It follows that in such a case, unless and until new districts are created, all representatives allotted to the State must be elected by the State at large. That would be required, in the absence of a redistricting act, in order to afford the representation to which the State is constitutionally entitled, and the general provisions of the Act of 1911 cannot be regarded as intended to have a different import.130

Following the ruling in Smiley, the Court made summary decisions in two companion cases, ordering at-large elections in New York and Missouri,

123. Id.
126. Id.
127. Smiley v. Holm, 285 U.S. 355 (1932). Justice Cardozo recused himself because he had rendered a decision on one of the companion cases. Krock, supra note 76.
129. Id. at 374–75.
130. Id.
both states in which the legislature had similarly refused to recognize the governor’s ability to veto redistricting legislation.131

Immediately after the ruling in *Smiley*, many commentators argued that because no state law authorized at-large elections, Minnesota could not proceed without a special session of the legislature to pass one. While Congress had authorized states to conduct at-large elections in certain circumstances in the past,132 no congressional statute provided for at-large elections in Minnesota in 1932. Furthermore, Minnesota had no state election law to govern such a contest. Before the Court handed down its decision in *Smiley*, the *Pioneer Press* noted that “[t]here is also an opinion that no legal authority exists for [at-large congressional elections] . . . . If that is true, the only solution . . . would be to elect ten congressmen [from the old districts] and let the House of Representatives seat nine of them.”133 Indeed, the Attorney General seemed convinced that this was the case. Before the litigation began, he had told Senator William L. Petersen, the chairman of the Senate Reapportionment Committee, “[W]e have no law which authorizes the election of representatives in congress at large, and it is doubtful whether the secretary of state would be authorized to receive filings for congress for election at large.”134 Even after the Supreme Court ruling, Benson continued to claim that as long as “there is no state machinery for congressional candidates to run at large,” Secretary of State Holm could not accept such filings.135 This confusion left the papers discussing a wide variety of options, including the option favored by the *Pioneer Press*: that Congress itself intervene and draw districts for Minnesota.136 Some proposed that if Congress were to do so, Minnesota could hold a special election early in 1933 after the legislature convened and Governor Olson and the Republicans reached a compromise.137

In the end, however, the Supreme Court decision proved the final battle in securing at-large elections for the 1932 congressional contest. Holm accepted petitions for candidates running at large.138 Each party held a statewide primary, where each voter chose her top nine candidates. The top nine vote-getters from each party then advanced to the general election, where again each voter chose her top nine candidates for the nine seats.

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137. *E.g.*, Letter from Arthur N. Jacobs to Floyd B. Olson, Governor, State of Minn. (Jan. 13, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson’s Admin. 111.F.18.2(F)).

138. Neither Benson nor anyone else appears to have challenged Holm’s acceptance of at-large candidacies in court.
Those candidates with the highest statewide totals became the Minnesota congressional delegation.

III. EVALUATING THE REMEDY: THE CONSEQUENCES OF THE AT-LARGE ELECTIONS

This Part examines the effect of the Court's decision to order at-large elections and concludes that the judgment blocked the gerrymandering party's countermajoritarian maneuvers, without producing some of the negative consequences usually ascribed to at-large elections. Section III.A compares the responsiveness demonstrated by the at-large system and the partisan bias of the results with the responsiveness and partisan bias of the vetoed districting plan. It also investigates the effect of the decision on subsequent redistricting outcomes. It shows that in both the 1932 elections and in the subsequent redistricting, the decision of the Court effectively defeated the countermajoritarian efforts of the Republican Party, while political factors prevented dramatic promajoritarian partisan bias—a major concern associated with at-large elections. Section III.B considers two other major concerns frequently expressed about at-large elections and concludes that in this case, concerns that the process would create voter confusion proved unfounded but that the results bore out concerns about underrepresentation of small sectional interests.

A. Consequences for Substantive Representation

This Section demonstrates that Smiley limited the negative consequences of partisan gerrymanders in two ways. First, Section III.A.1 argues that it created a redistricting outcome that replaced the predicted low responsiveness and high partisan bias of the Republican plan with an at-large system that generated little partisan bias and high responsiveness. This outcome allowed the Farmer-Labor Party to swiftly express the state's new partisan alignment in Congress. Moreover, the elections demonstrated little of the underrepresentation of minority parties that many courts expect to result from at-large elections. Second, Section III.A.2 argues that Smiley limited countermajoritarian partisan gerrymandering in future elections by changing the redistricting process: Smiley confirmed the availability of the gubernatorial veto and established at-large elections as the reversionary outcome. At the same time, political factors limited the potential for promajoritarian gerrymandering.

139. E.g., Connor v. Finch, 431 U.S. 407, 415 (1977) ("[T]he practice of multimember districting can contribute to voter confusion [see infra Section III.B.1], make legislative representatives more remote from their constituents [see infra Section III.B.2], and tend to submerge electoral minorities and overrepresent electoral majorities [see infra Section III.A].").

140. The state senate was not up for election in 1932, so it was still under Republican control. Mayer, supra note 4, at 117. Farmer-Laborites had captured a plurality of the seats in the state house of representatives, and they crafted a governing coalition that included a group of Democrats and progressive Republicans. Gieske, supra note 3, at 169.
1. Redistricting Outcomes: The 1932 Congressional Elections

*Smiley* replaced a Republican plan designed for high prominority partisan bias and low responsiveness with an at-large system that demonstrated low promajoritarian partisan bias and high responsiveness. Section III.A.1.a explains the opinions of commentators who universally predicted a much higher level of promajoritarian partisan bias. Section III.A.1.b discusses the actual results of the election, arguing that the actual partisan bias was lower than expected because voters chose individual candidates rather than party slates.

a. The Predicted Results: High Responsiveness, High Partisan Bias

At-large elections seemed destined to create massive partisan bias\(^1\) in favor of the majority party, expected to be the Farmer-Labor Party. In an at-large system in a three-way race where all voters vote a straight party ticket, a party garnering only 34% of the vote could win 100% of the seat share, for a partisan bias of 66%. Likewise, an at-large system has the ability to demonstrate dramatic responsiveness: theoretically, given straight ticket voting in a three-party system, a party with a 33% vote share and a 0% seat share could gain 100% seat share while gaining only 1% additional vote share.

Commentators all believed that the partisan bias and responsiveness of the system would benefit the governor’s party. The *New York Times* noted that “[i]n an at large election . . . the Governor’s party—the Farmer-Labor—is expected here to elect six or seven of its nominees.”\(^2\) The *Pioneer Press* went even further, predicting “either a clean sweep . . . or at least heavy inroads.”\(^3\) A supporter who sent Governor Olson a hand-scrawled letter agreed, saying, “I for my part and many with me is [sic] opposed to an extra session this time . . . . If elected at large we Farmer Labor may gain by it.”\(^4\)

Commentators generally accepted this Farmer-Labor advantage, however, as the just desserts of the gerrymandering Republicans in the legislature. The *Minneapolis Tribune* declared that it was “poetic justice” for the Republican Party and “[t]he Penalty for Gerrymandering.”\(^5\) One constituent wrote, “these birds that build their nest for personal gain should be forced to sit in it.”\(^6\) Another wrote, “[t]hey mixed their medicine, let them

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141. See supra text accompanying note 18.
142. Krock, supra note 76.
143. Alfred D. Stedman, Solons Talk of Union for Race at Large, ST. PAUL PIONEER PRESS, Apr. 12, 1932, at 1.
144. Letter from John C. Sjolander to Floyd B. Olson, Governor, State of Minn. (Apr. 18, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson’s Admin. 111.F.18.2(F)).
146. Letter from G.S. Walker to Floyd B. Olson, Governor, State of Minn. (Apr. 19, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson’s Admin. 111.F.18.2(F)).
take it.' A third, who demonstrated a keen and heartfelt sense of the importance of responsiveness in elections, declared that the legislative leadership

had the opportunity at the previous session to straighten out that thing and they deliberately refused to do it, thinking that they would get you in a hole. . . . [L]et the Minnesota delegation in Congress be turned loose and let the whole State shoot at them once and they won't feel so cocky. 148

The Farmer-Labor Party explicitly sought to use the new system to its advantage. Under the title "Now For a Clean Sweep!" the Farmer-Labor Leader called upon its readers and candidates to "go down the line for each other and for the ticket as a whole." 149 Such party discipline was required, the newspaper explained, "[t]o counteract the influence of the Republican press and also of the money bags, which are always made available to the Republicans." 150 Days before the election, the paper put it even more bluntly, saying "In voting for the candidates of the Minnesota Farmer-Labor party it is not necessary that you familiarize yourself with all the names of the candidates. The thing to keep in mind is that the candidates of the Minnesota Farmer-Labor Party are so designated on the ballot." 151

b. The Results of the 1932 Elections: Low Promajoritarian Bias and High Responsiveness

Expectations of high partisan bias were not borne out by the election results. The at-large elections that were the redistricting outcome created by Smiley resulted in heightened responsiveness, but only a small amount of promajoritarian bias. The elections, therefore, allowed the changing preferences of the Minnesota electorate to sweep the former ruling party and its standard-bearers from power without severely overrepresenting the new ruling party.

When all votes were in, the results showed only minor partisan bias compared to the highest possible bias of 66%. The Farmer-Labor Party garnered 38% of the popular vote and 56% of the seat share, 152 for a partisan bias of 18%. The Republicans suffered a negative partisan bias, but only

147. Letter from George F. Gage to Floyd B. Olson, Governor, State of Minn. (Apr. 13, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson's Admin. 111.F.18.2(F)).

148. Letter from A.U. Ricke to Floyd B. Olson, Governor, State of Minn. (Apr. 13, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson's Admin. 111.F.18.2(F)).


150. Id.


152. See 1932 Election Results, supra note 9 (providing raw data from 1932 elections).
slightly, winning a vote share of 36% and a seat share of 33%. The Democrats suffered the greatest negative partisan bias, winning a vote share of 25% but a seat share of only 11%. To the extent that the Democratic and Farmer-Labor Parties functioned as a coalition on the federal level, the partisan bias of the at-large elections vanished almost entirely: together they received 64% of the vote and 67% of the seats. One cannot determine precisely what the vote and seat shares might have been had the state enacted the Republican districting plan. But assuming similar vote shares and that the Republicans would have succeeded in preserving a majority of seats for their partisans, the partisan bias would have been worse than under the at-large system.

In this case, split-ticket voting prevented the winner-take-all result one might fear from at-large elections. Had voters not split their tickets, but cast all of their votes for one party, one party would have received 100% of the seats. So although the Farmer-Labor Party won 38% of total votes cast for all candidates, it did not get all of the votes of 38% of the people, but rather less than all of the votes from more than 38% of the voters. This result seems to indicate that voters possessed a desire, despite the prodding of the Farmer-Labor Party, to get to know the candidates and vote for them as individuals. This characteristic mitigated the threat of promajoritarian partisan bias.

The elections also showed impressive responsiveness. The Farmer-Labor Party’s vote share increased only 2.1%, from 35.7% in 1930 to 37.8% in 1932, but its seat share increased from only 10% to a majority of 56%. The Republicans, by contrast, suffered an 18.6% decline in their vote share and a corresponding 57% drop in their seat share. The Democrats’ vote share rose by 16.4% and their seat share rose by 11%.

Incumbents proved extremely vulnerable in the at-large elections. Voters returned only two out of the ten incumbent congressmen to office. Of the

153. See id. (providing raw data from 1932 elections).
154. See id. (providing raw data from 1932 elections).
155. See Krock, supra note 76 ("The ... at-large Congressional elections may also be responsible for giving the Democrats a working majority in the next Congress because of the expected victory of so many Farmer-Laborites in Minnesota."). For more about the relationship between the Farmer-Labor Party and Roosevelt in 1932, see GIESKE, supra note 3, at 160–62. For a discussion of the relationship between New Deal policy and Farmer-Labor Party fortunes, see VALELLY, supra note 44, at 83–118.
156. See 1932 Election Results, supra note 9 (providing raw data from 1932 elections).
157. Shumate, supra note 80, at 61 ("That many split ballots were cast is made evident by comparing the votes of some of the candidates.").
158. See 1932 Election Results, supra note 9 (providing raw data from 1932 elections); 1930 Election Results, supra note 9 (providing raw data from 1930 elections).
159. See 1932 Election Results, supra note 9 (providing raw data from 1932 elections); 1930 Election Results, supra note 9 (providing raw data from 1930 elections).
160. See 1932 Election Results, supra note 9 (providing raw data from 1932 elections); 1930 Election Results, supra note 9 (providing raw data from 1930 elections).
161. See 1932 Election Results, supra note 9; 1930 Election Results, supra note 9.
nine incumbent Republican congressmen, voters returned only one to office. These losses are due in large part simply to the partisan affiliation of the incumbents. But they likely also resulted from the fact that while many of the incumbents had developed reputations only in their own districts, several of the candidates in the at-large elections had, or were able to develop, strong statewide reputations.

2. Redistricting Processes: Bargaining over Future Redistricting

The Supreme Court’s imposition of at-large elections was not just important in 1932; it had a lasting impact on redistricting that likely stretched beyond Minnesota. By imposing a radical reversionary outcome and ensuring the governor’s role in the process, the Supreme Court made structural changes to the redistricting process that shifted bargaining over redistricting in a promajoritarian direction. However, political factors limited the ability of any single party to exploit these structural advantages. Forced to negotiate with the governor and faced with the prospect of another at-large election, the Republicans readily accepted a Farmer-Labor redistricting plan. But public opposition to gerrymandering and at-large elections prevented the governor from insisting on a plan that could deliver to his party the benefits that otherwise would have been available given his strong negotiating position.

The Supreme Court infused a promajoritarian bias into the redistricting process in two ways. First, it confirmed the governor’s role within the process. Because the governor is elected statewide, he directly reflects the preferences of the majority of the state’s citizens in a way that the legislature may not. Without the involvement of Governor Olson, the legislature would have simply enacted the gerrymandered plan it had passed. The very point of this plan was to preserve Republican majority in the congressional delegation despite an expected loss of the popular vote, an outcome that would rely on high partisan bias and a minimal level of responsiveness.

Second, the Court infused majoritarianism into the redistricting process by establishing at-large elections as the reversionary outcome that would take effect when a state had no valid districting plan. Barring other considerations, once all parties understood that at-large elections would be the default, the party expecting to receive the majority support in the electorate would have no incentive to accept a redistricting plan that would give it less seat share than it would expect in an at-large election. When the Minnesota Legislature reconvened in 1933, the prospect that another deadlock would

162. See 1932 Election Results, supra note 9; 1930 Election Results, supra note 9.
163. Shumate, supra note 80, at 62.
164. Id.
166. Id. at 374–75. At-large elections are no longer the reversionary plan. Today, courts supply districts when the political process fails to draw them. See, e.g., Branch v. Smith, 538 U.S. 254, 269–72 (2003).
lead to the repetition of at-large elections ensured Olson a much stronger bargaining position. The Republicans "disliked the Farmer Labor version of congressional reapportionment but accepted it rather than face another election of representatives at large."\(^{167}\)

As with at-large elections themselves, elections conducted with districts created with at-large elections as the reversionary plan leave open the possibility of promajority partisan bias. However, a redistricting process with gubernatorial involvement and at-large elections as the reversionary outcome would have long-term responsiveness. A new party gaining majority support in the electorate would be able to capture the governor's office, and from there bargain for districts reflective of its strength. It would bargain from a strong position, knowing it could always default to at-large elections, where it would do well.

By contrast, the Court could have determined that until a state government agrees on how to elect its congressmen, it simply is without representation in Congress. Such a "no representation" reversionary outcome would have radically and antidemocratically reshaped the bargaining process over redistricting. Almost certainly, the prospect of such an outcome would have been extremely unpopular politically, compelling Governor Olson to call a special session of the legislature and reenter negotiations with the Republicans. Because either party would have the power to stymie the redistricting process, either could theoretically have resisted any plan that would tip the partisan balance of the congressional delegation to the other party. This incentive to hold out would tend to drive the bargaining process toward a plan allocating power equally between the two parties, regardless of their vote shares. Such a plan would contain a partisan bias in favor of the "weaker" party and would be calculated to minimize responsiveness, weakening the ability of voters to toss out one party en masse and replace it with the other.

Yet, despite the fact that the Farmer-Labor Party was able to enact the redistricting plan it proposed, the plan failed to deliver any promajoritarian benefits to the Farmer-Labor Party. When the congressional seats came up for election again in 1934, the party again won the most votes, but the plan left the Farmer-Labor vote heavily concentrated in the Third, Seventh, and Ninth Congressional Districts, whereas the Republican vote was more widely dispersed.\(^{168}\) The Republicans received 37% of the statewide vote, while the Farmer-Labor Party received a plurality of 37.9%,\(^{169}\) yet the Republicans took five of the nine congressional seats and the Farmer-Labor Party took only three.\(^{170}\)

\(^{167}\) Mayer, supra note 4, at 139; see also H.F. 722, 1933 Minn. Leg., Reg. Sess. (providing the final reapportionment of Minnesota into nine Congressional districts).

\(^{168}\) See State Canvassing Bd., Minn. Office of the Sec'y of State, General Election Report (1934) [hereinafter 1934 Election Results] (providing raw data from 1934 elections).

\(^{169}\) See id. (providing raw data from 1934 elections).

\(^{170}\) Id.
The Farmer-Labor Party's failure to enact a promajoritarian plan, despite its structural advantages, likely resulted from a set of political constraints. First, the at-large elections were not popular, apparently due to the loss of descriptive representation discussed in Section III.B.2. In 1931 and 1932, Olson had been able to take advantage of the at-large elections while blaming the Republicans for their occurrence. But he would likely have been unwilling to drive too hard of a bargain and risk taking the blame himself should at-large elections result again. Second, the public response against the 1931 Republican plan showed that the Minnesota electorate had a low tolerance for gerrymandering. After seizing the moral high ground on the issue in 1931, Olson likely did not want the public to see him engaging in the same tactics. Given that the plan adopted in 1933 had many similarities with the plan Olson had presented in 1931, Olson may have exposed himself to charges of hypocrisy had he driven too hard for a more favorable plan.

In addition to these political constraints, the 1933 redistricting plan may also have served the Farmer-Labor Party so poorly because Farmer-Labor negotiators simply miscalculated, believing that the plan would be more beneficial to their partisans than it ultimately was. Although in 1933 "[t]he new second district seem[ed] almost made to order for [Farmer-Labor] Congressman Henry Arens," Arens lost the seat to Democratic candidate Elmer Ryan. Likewise, over strenuous Republican opposition, the 1933 redistricting bill moved Magnus Johnson, the Farmer-Labor congressman with the strongest statewide popularity, into the Sixth District to challenge Republican Congressman Harold Knutson. Yet Knutson managed to defeat

171. E.g., Editorial, supra note 42 ("After one experiment with an election of congressmen at large, it is not likely that Minnesota would care to try it again.").
172. See supra text accompanying note 97.
173. Mayer, supra note 4, at 70–71.
174. The Minneapolis Journal approvingly noted:

The [1933] congressional apportionment, largely a farmer-labor job, is more equal in district populations, and less of a gerrymander, than the late lamented act of 1931, which was framed mainly by republicans.

... This year's molding of congressional districts is a pretty good working out of the problem. On the map the districts look as compact as can be expected and, in addition, have similarity of economic interest. . . .

Charles B. Cheney, Minnesota Politics, Minneapolis J., Apr. 8, 1933, at 4.
175. Compare Olson and Arens Disparity Noted in Redistricting, supra note 84 (providing map of Olson's proposed districts), with Mike Holm, Minn. Sec'y of State, Map of Congressional Districts of Minnesota, 1933 (on file with the Minnesota Historical Society, Minnesota State Archives, 112.B.19.4(F)).
177. 1934 Election Results, supra note 168.
Johnson by over 10,000 votes. And in the Eighth District, Farmer-Labor Congressman F.H. Shoemaker ran as an independent against the party’s endorsed candidate, A.J. Winterquist. As a result, Republican Congressman William Pittenger won in that district with less than 40,000 votes, compared to over 25,000 each for Shoemaker and Winterquist. If Farmer-Labor negotiators had expected to win any or all of these seats, they would have believed the plan to be more promajoritarian than it turned out to be.

B. Other Concerns with At-Large Elections

Although the at-large elections did not demonstrate severe partisan bias, critics of multimember representation raise other concerns as well. This Section examines whether the results of the 1932 congressional elections in Minnesota exhibited two other concerns with at-large elections. Section III.B.1 examines concerns that the at-large elections would lead to voter confusion, and concludes these concerns were unfounded. Section III.B.2 concludes, however, that concerns that the at-large elections would lead to underrepresentation of small sectional interests were well-founded, potentially affecting negatively the descriptive representational interests of those communities.

1. Voter Confusion

Although courts have frequently expressed concern that at-large elections create voter confusion, the experience of Minnesota in 1932 offers no evidence for the validity of this concern. Before the elections took place, however, many in the state argued that the large number of names on the ballot would prevent voters from making an informed choice. The Pioneer Press declared that “Minnesota is about to see more politics and in many respects, worse politics, than this state ever knew existed.” Paul Kvale, the only incumbent Farmer-Labor congressman, agreed, sending a telegram to Governor Olson saying,

I feel profoundly convinced that any additional cost to [the] state of effecting satisfactory reapportionment would be eminently [sic] justified in view of the great importance to voters of the state of having election intelligently and honestly conducted.... Can any impartial and reasonably

179. 1934 Election Results, supra note 168
180. Id.
181. Id.
182. For example, in Legislature v. Reinecke, the California Supreme Court declared that it would draw districts rather than permit at-large elections for California’s five new congressional seats because at-large elections would “impede the casting of informed ballots” by “increasing the choices confronting the electorate from the candidates for one to the candidates for six congressional seats.” Legislature v. Reinecke, 492 P.2d 385, 390 (Cal. 1972); see also Connor v. Finch, 431 U.S. 407, 415 (1977); Larios v. Cox, 306 F. Supp. 2d 1214, 1218 (N.D. Ga. 2004); Gorin v. Karpan, 775 F. Supp. 1430, 1447 n.23 (D. Wyo. 1991).
183. Editorial, supra note 136, at 5.
capable observer predict even a fair opportunity for exercise of deliberate judgment by any but a very few voters . . . . If conducted at large I can foresee irreparable damage to principles which you have always fought splendidly for and which have meant much to many other leaders in our preservation of clean and honest and intelligent voting in the State of Minnesota. I venture to predict that if election is held at large and if certain groups see possibility of controlling nine elected representatives through expenditure of pooled finances and energies we will see in Minnesota such a debauch of advertising[,] speaking[,] broadcasting[,] and other activities as the state has not witnessed in its history.184

Republican Congressman William Pittenger noted Congressman Kvale’s opposition to at-large elections, despite the benefit of such elections to the Farmer-Labor Party. He sent a telegram labeled “Confidential” to an ally whom he urged to visit the governor and lobby for a special session to pass a new redistricting bill before the election.185 The Pioneer Press published Congressman Kvale’s concerns that “a primary campaign with possibly 25 or 30 candidates for Congress in each party would reduce the elective process to a farce. The chances of obtaining the most able among such a horde of candidates would be very slight indeed.”186

Secretary of State Holm shared the concern over manageability and suggested simplifying the process by eliminating the need for a primary. He called upon the parties to endorse a slate of nine candidates at their state conventions. This would “dissuade many office seekers from filing since they would realize the futility of seeking the nomination.”187 Many in the parties supported this idea, but it failed. The Republicans declined to endorse a slate, fearful of a convention pitting established congressmen against more popular challengers.188 The Democratic Party divided into two conventions, one of liberals supporting Olson and Democratic presidential candidate Franklin D. Roosevelt against another of moderates supporting Al Smith for president and calling for a strong Democratic gubernatorial candidate. The champions of the two Democratic conventions then faced each other in the primary.189 The Farmer-Labor Party left its decision to its Executive Committee, which also declined to endorse a slate.190 In all, twenty Democrats, thirty-two Republicans, and thirty-five Farmer-Laborites filed in

184. Telegram from Paul John Kvale, U.S. Representative, State of Minn., to Floyd B. Olson, Governor, State of Minn. (Apr. 11, 1932) (on file with the Minnesota Historical Society, Governor Misc. Records 110.1.17.4(R)).

185. Telegram from William A. Pittenger, U.S. Representative, State of Minn., to Henry L. Morin (Apr. 14, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson’s Admin. 111.F.18.2(F)).

186. Editorial, supra note 124.


189. GIESKE, supra note 3, at 157.

190. Johnston, supra note 135.
the primary. The large number of candidates cluttered the primary ballot, and the general election ballot was not much better. A sample general election ballot for Hennepin County, published in the Minneapolis Tribune, showed nearly a quarter of the space devoted to the congressional race, with twenty-seven members of the major parties, three Communists nominated by petition, and space for nine write-in candidates.

Yet despite these concerns, voter confusion appears to have been minimal. No public sources reported election irregularities, and the level of split-ticket voting in the general election suggests that voters knew enough about the candidates to choose them as individuals. Likewise, no news reports suggested that voter confusion tainted the victory of the Farmer-Labor candidates. The only complication reported by the newspapers was that the public did not learn of the final result for over a week because only a small number of votes separated the candidates in positions seven through ten.

2. Underrepresentation of Minority Interests

The Minnesota experience does, however, lend credence to another concern regarding at-large elections: they frustrate the ability of minority groups to elect one of their own to Congress, thus impinging on their descriptive representational interests. In Minnesota's 1932 elections, people from the less populous northern part of the state raised this complaint, arguing that at-large elections would be biased toward candidates from the Twin Cities. Senator Charles Adams of Duluth feared that "to elect congressmen at large is unfair to the sitting congressmen and to the people of the existing congressional districts.... The tendency will be to select as congressmen the best known candidates residing in the three large cities [Minneapolis, Saint Paul, and Duluth]." A representative of the Clearwater Farm Bureau argued that "if the congressmen are elected at large, that the agricultural sections, especially the northern section, will suffer." The Mankato Free Press declared at-large elections "a serious menace to the agricultural districts of the state" and predicted that "a majority if not the entire congressional delegation" might come from the Twin Cities. And one angry constituent complained to

191. GIESKE, supra note 3, at 162.
192. Complete List of Candidates to Be Voted On In Hennepin County, MINNEAPOLIS TRIB., Nov. 6, 1932, at 3.
194. See generally, e.g., Susan Welch, The Impact of At-Large Election on the Representation of Blacks and Hispanics, 52 J. Pol. 1050, 1050 (1990) ("The finding that at-large systems make 'fair' minority representation difficult if not impossible is at the heart of challenges to the at-large system.").
196. Letter from Herbert V. Anderson, President, Clearwater County Farm Bureau, to A.J. Olson (Apr. 22, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson's Admin. 111.F.18.2(F)).
197. Editorial, It is Your Duty, Governor, MANKATO FREE PRESS, Apr. 12, 1932, at 1.
Governor Olson, "[T]he big interests that center in Minneapolis are likely, by much expenditures of money, to nominate the candidates on both tickets and leave us farmers without much of a chance for representation. You better call a special session of the legislature and have it fixed up."  

The results of Minnesota's at-large elections validated these concerns: although several of the new congressmen hailed from rural areas in the southern part of the state, residents of northern Minnesota, constituting a majority of the state's land area, had no representatives in Congress. The Minneapolis Journal noted that "the entire state delegation in the next congress will come from the lower third of the state. . . . It gives Minneapolis three congressmen, the old third district three, the seventh district two, and Anoka, in the old tenth district, one."  

The Minneapolis Tribune ran a map of the state, with the homes of leaders in the congressional race, showing none further north than St. Cloud. Thus, the at-large elections did not serve well the descriptive representational interest people in northern Minnesota might have had in seeing one of their own serve in Congress.

CONCLUSION

Following the 1930 Census, the Republican majority in the Minnesota Legislature attempted to bypass the governor and enact a countermajoritarian redistricting plan to protect Republican congressional incumbents from their predicted defeats. In Smiley v. Holm, the U.S. Supreme Court guaranteed the governor's role in the redistricting process and established at-large elections as the reversionary plan that would take effect if the state failed to enact an alternative plan. This decision effectively limited the ability of a political party to use the redistricting process to increase partisan bias and limit responsiveness to protect its seat share from the contrary wishes of the electorate. The decision similarly ensured that future bargains over redistricting would not result in countermajoritarian gerrymanders. And although the 1932 at-large elections left the citizens of large areas of the state without local representation, political circumstances in Minnesota ensured that the elections did not cause the two other major concerns courts frequently associate with at-large elections: promajoritarian partisan bias and voter confusion.

198. Letter from O.T. Davids to Floyd B. Olson, Governor, State of Minn. (Apr. 18, 1932) (on file with the Minnesota Historical Society, Minnesota State Archives, Gov. Olson's Admin. 111.F.18.2(F)).
