

## A Comparative Law Review on the Election System of the U.S.A.: Regarding Entry Barriers for New Politicians

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### Abstract

*Although the proportion of newly-elected members of Korean National Assembly is higher than that of the U.S. beyond comparison, it does not mean that it is easier in Korea for newcomers to enter politics. In the U.S., there are no restrictions on the duration or expenses of election campaigns, which are regarded as an entry barrier for rising politicians; however, the winner-take-all single-member electorate system, primary election system, and gerrymandering, along with various incumbency factors, exist as entry barriers for political novices. Various incumbency factors and incumbency advantages combined with election system favorable to the serving members can also be seen as entry barriers for the coming politicians in Korea. This paper, by comparing and reviewing the majority representation system of U.S. congressional election and gerrymandering benefiting the serving members to the similar system in Korea, it suggests that the immaturity in party democratization and decentralization is becoming the entry barrier for new politicians.*

**Keywords:** *new politicians, election system, incumbency factors, gerrymandering, democratization of political parties<sup>1</sup>*

### 1. Introduction

The proportion of newly-elected members of Korean National Assembly is higher than that of the U.S. beyond comparison. In 2016, only eight among the 387 serving members of the House of Representatives failed to get reelected in the U.S. to show 98% of reelection rate [1]. However, the proportions of the newly-elected members of the 19th and 20th Korean National Assembly were both higher than 40%. In the U.S., there are no official restrictions for new politicians to enter the field; however, various features of the political and electoral systems in the U.S. make the entry harder for newcomers. Traditionally, what is meant by the phrase incumbency advantage is the benefits in elections enjoyed by an individual serving member, not by his or her political party [2]. This paper aims to review the majority representation system and the bipartisan gerrymandering favorable for serving members along with incumbency factors restricting the newly-elected politicians' chance of winning [3]; thus, it tries to suggest ways to improve the Korean election system by lowering the entry barriers of rising politicians in Korea which adopts the same majority representation system of the U.S. Although there are a number of pilot studies on the incumbency factors of the members of Korean National Assembly [4][5] and incumbency factors and gerrymandering in the

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<sup>1</sup> Article history:

Received (March 3, 2019), Review Result (April 4, 2019), Accepted (May 5, 2019)

U.S.[6][7][8][9], this paper is a comparative law review on how the majority representation system and redistricting serve as an entry barrier for rising politicians.

## **2. Review of U.S. and Korean election system as barriers for new politicians**

### **2.1. Comparing the Proportion of Newly-elected Members of Korean National Assembly and U.S. House of Representatives**

Although the proportion of newly-elected members of the 20th Korean National Assembly was reduced slightly from that of the 19th, analyzing the result of the general election on April 13th reveals that the number of newly-elected members are 132 among 300, composing 44% of the Assembly [10]. The number was 148 in the 19th general election (2012), comprising 49.3% of the Assembly. On the other hand, from 1946 to 2014, only 1.6% among the serving member who ran for the reelection failed in the primary and only 6% were defeated in the general election in the U.S [3]. The reelection rate of the senators fluctuated every year; while only 55% of the serving members got reelected in 1980, for example, the rate was far higher than that of the success rates of the serving members of the House of Representatives in 1982, 1990, and 2012. Despite some exceptions, the reelection rate increased roughly as time passed [3]. The reason for the above differences is not because the entry barrier for coming politicians in Korea is lower than that of the U.S. When classified into groups by the number of times getting elected, 1,172 among the 2,119 Assembly members of all time were elected only once, while 489 were elected twice and 458 three times. This shows that even after getting elected for the first time, the new politician has little possibility of getting reelected or even being nominated. Although Korean people in general are eager to defeat serving members in a way to bring them into political judgments, they are actually bringing down new politicians unintentionally. The high ratio of newly-elected members in Korean National Assembly can be said to be a top-down way of nomination resulting from the centralized political party system and the close alliance between the President and the party leaders [10]. Currently, Korea is running an election system combining the majority representation and proportional representation. Also, there are discussions under way between politicians to introduce Mixed Member Proportional representation system in electing National Assembly members. However, the votes for political parties are evaluated only for the 14 seats of the National Assembly, which does not comprise more than 17% of the seats; it makes the Korean election system to be a relative majority representation system [11].

### **2.2. The Majority Representation System and Gerrymandering as an Entry Barrier for New Politicians**

#### **2.2.1. The Primary System and the Majority Representation System Serving as Entry Barriers**

It's safe to say that the Republican Party and the Democratic Party, the two major political parties in the U.S., have divided and dominated the American politics since 1860s [12]. The way to elect federal and state lawmakers is based on the single-member electorate system where the candidate who earned the most votes from a certain district wins the election. Although some states require a majority vote, most of them decide the elected by the largest number [12]. Unlike the proportional representation system in Korea and Germany, the single-member electorate system allows only one party to turn out the elected in the given district. Therefore, under the single-member electorate system, a national party which has the popular preferences

along with administrative and financial abilities to win the largest votes in all of the districts is required, while candidates from minor political parties suffer disadvantages. So the winner-take-all election system in the U.S. makes it difficult for new political parties to win an election and exercise a certain amount of influence in the Houses [12]. Also, the eligibility for election varies from state to state. Some states require only a small cost for candidacy and allow basically everyone to run for the election. The other states demand a large some of money or a certain number of petitions for candidacy [3]. This winner-take-all majority representation system, along with the financial burdens imposed on the candidates and the petitions required, is favorable for the serving members rather than increasing the chance of a rising politician to win the election.

**2.2.2. Bipartisan Gerrymandering Advantageous to the incumbents**

Generally, the right of redistricting belongs to the State Legislature. Sometimes the State Legislature suppresses competition in elections by redistricting favorably for the serving members of the two major parties; in other words, they sometimes redistrict to ensure safe number of seats for the two major political parties [3]. The gravest among recent examples can be found in California: redistricting bills from 2002 to 2010 approved by the Democratic and the Republican Parties left actually none competitive among 53 assembly districts. Only one of the 265 assembly districts experienced a replacement of political parties in the elections from 2002 to 2010. Californians made the constituencies demarcated by a Byzantine process (Citizens’ Committee takes the charge of redistricting without political considerations) by a Proposition(citizen’s lawmaking). Among the various restrictions during the redistricting for the 2012 election was prohibiting the Citizens’ Committee to consider the party registration statistics, aspects of voting, and current serving members. In effect, the demarcation by this Committee created about ten competitive seats potentially. However, given that the voters of California are reclining to the Democratic Party for the recent ten years, the seats won by the Democratic Party and the seats before and after the demarcation of constituencies by the Citizens’ Committee were not different; the increase in the number of competitive districts were entirely favorable to the Democratic Party. In this way, the bipartisan gerrymandering to reduce competition became favorable to the serving members.

**2.3. Korean Single-Member Electorate System, Limited Proportional Representation System, and Redistricting as Entry Barriers for New Politicians**

In Korea, where a limited version of the proportional representation system is under way, the single-member majority representation system serves as an entry barrier for coming politicians along with various restrictions in the election campaigns. While the duration and methods of election campaign are excessively restricted, routine political and legislative activities of serving members are permitted even though these cannot but affect election; this, in effect, hinders the new politicians’ chance in challenging current members [13]. Also, the immaturity in the democratization and decentralization of political parties also serve as entry barriers for rising politicians [13] as it is shown in the Table 1 [14].

Table 1. Types of Nomination in the 20th General Election

	Primary Election	Others	Total
Saenuri Party	140(56.45%)	108(43.55%)	248(100%)
Democratic Party	56(23.93%)	178(76.07%)	234(100%)

The People's Party	32(18.71%)	139(81.29%)	171(100%)
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\* Kim and Park, "Determinants of Candidates' Winning in the 20th General Election", 21st Century Political Science Review 26. 2., 2016. p.58, <Table 2>

Also, Korea has an independent institution called Constituency Demarcation Committee for the National Assembly Members (Public Official Election Act, Article 24). Public Official Election Act adopts legalism in demarcating constituencies by defining the establishment and operation of the Committee to demarcate constituencies fairly according to a set of objective standards when demarcating constituencies for National Assembly members and City/Do council members (Public Official Election Act, Article 24, 24-2, 24-3, 25, and 26). The Committee is installed under the Central Election Management Committee and excludes National Assembly members and members of political parties (including people who were members of political parties for the past year from the date of the Committee's installation) from its membership for the neutrality and fairness of the demarcation; also, City/Do council members and members of political parties cannot be a member of the City/Do Constituency Demarcation Committee. However, ignoring the agreement on excluding party recommendations to ensure the Committee's independency, the ruling and the opposition parties allowed themselves to exercise rights to consent or veto to a certain candidate recommended by all levels of society through the Special Committee of Political Reformation; as a result, the Demarcation Committee was imposed politicality of the ruling party and the opposition party by 4:4 proportion [15]. Therefore, an improvement is needed for the Demarcation Committee to operate independently. Also, the standards for demarcating constituencies should be defined clearly in the law for the Committee to refer to when redistricting. The Constitutional Court, in its judicial precedents, ruled that if the intention of the state power and the substantial discriminatory effect against voters of a certain area are obvious by proving that the voters of a certain area lost their opportunities to participate in the political procedures due to arbitrary demarcation or that they are being deprived of the possibility of electing the candidates they support, that is, if the case falls into the category of gerrymandering, the redistricting is beyond legislative discretion and a breach of the constitution [16][17]; it also ruled that, without special unavoidable circumstances in considering the social, geographical, historical, economic, and administrative relations and the zone of life, whether the adjacent areas compose one constituency should be the basic principle in deciding gerrymandering [17]. However, there have been no cases found unconstitutional due to gerrymandering until now [18][19][20].

### 3. Conclusion

Although there are no restrictions on the duration and expenses of election campaigns in the U.S., the winner-take-all single-member electorate system, primary election system, and gerrymandering, along with various incumbency factors, exist as entry barriers for political novices. In Korea, a number of incumbency factors and advantages combined with the immature democratization and decentralization of political parties and the election system favorable for serving members function as entry barriers for rising politicians. Considering the undemocratic party leaders and the President's influence on nominating candidates, even if it is not possible for the serving members to redistrict the current constituencies favorable to themselves, it is essential to reform the majority representation based on single-member electorate system by introducing Mixed Member Proportional representation while improving the unnecessary restrictions on election campaigns serving as an entry barrier for coming politicians.

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