
Reading Between the Lines

Congressional and State Legislative Redistricting
their Reform in Iowa, Arizona and California
and Ideas for Change in New Jersey



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State legislative district boundaries
Northeast New Jersey (2001–11)



For Elbridge

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ABSTRACT

With the 2010 Census now underway, the periodic ritual of redrawing electoral boundaries in the United States is about to begin. Each state has its own method of redistricting, but their practical effects are the same. How district lines are drawn determines how voters are divided among congressional and state legislative districts. And how voters are divided can have significant consequences for political representation and empowerment. Because redistricting typically occurs only once every decade, these consequences can be long lasting.

The Eagleton Institute of Politics at Rutgers University has commissioned this study to further its mission of cultivating civic engagement. Accordingly, this study serves several purposes. First, to describe the redistricting process generally. Second, to compare the experiences of three states that have recently undertaken redistricting reform: Iowa, Arizona and California. Third, to critically examine New Jersey's redistricting process and the outcome of its post-2000 redistricting effort. Fourth, to outline areas of concern in New Jersey's process and propose ideas to address them.

Despite its use of extra-legislative commissions, redistricting in New Jersey occurs by a relatively partisan and insular deliberative process. Observable results of the most recent redistricting effort suggest that political interests are the primary concern of these commissions, while electoral competition, transparency and public participation in the process are lesser concerns. Several of the ideas for change presented in this study address these issues specifically.

Sustained advocacy by an informed citizenry is often the most effective path toward real change in our democracy. Accordingly, the overarching objective of this study is not to prescribe a specific remedy for New Jersey. Rather, it is to present information and analytical tools that will enable concerned citizens to form their own conclusions and participate meaningfully in the redistricting process and its improvement.

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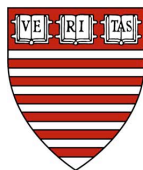
I am also tremendously grateful to my client, the Eagleton Institute of Politics at Rutgers University, particularly Ingrid Reed and John Weingart, for their input, patience and openness to my ideas.

Countless individuals helped me navigate the halls (real and electronic) of Iowa, Arizona, California, New Jersey and the United States government. Without them, I would have been lost. To the folks at the Census Bureau, OLS, NCSL, LSA, TRAC, IRC, the Arizona Commission on Appellate Court Appointments, and the California State Auditor: thank you.

Those involved in the delicate task of redistricting – as both decision-makers and reformers – deserve praise as well. The confluence of conflicting interests, priorities and pressures in this field truly is intense. Without the good faith effort of those responsible for redrawing the lines, and those seeking to improve the process of doing so, this study would have had little to say.

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CONCURRENT DEGREE STATEMENT

In order to unite the study of law and public policy, and in the spirit of interdisciplinary education, this paper is submitted in partial fulfillment of the requirements for the concurrent degree of Master in Public Policy and Juris Doctor. Specifically, this paper is intended to satisfy the Policy Analysis Exercise and Major Writing Credit requirements for these degrees, respectively.

Descriptions of these requirements, as of the concurrent degree date, are included in the Harvard Kennedy School PAE Guide for Students and Rule 1.4.2 of the Columbia Law School J.D. Degree. Relevant guidelines for crediting academic papers toward these requirements are included in Rule 2 of the Harvard Kennedy School Academic Code and Rule 1.4.3 of the Columbia Law School J.D. Degree.

This paper includes original research and analysis on policy and legal topics that meet or exceed the separate requirements of the Policy Analysis Exercise and Major Writing Credit. Accordingly, in the concurrent degree candidate's judgment, submission of this paper conforms to both institutions' rules governing the substance of these works and the crediting of an academic paper toward both requirements.

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EXECUTIVE SUMMARY

Redistricting is the act of redrawing election district boundaries. From the U.S. House of Representatives to state legislatures, county boards, municipal councils and other special purpose authorities, numerous public officials at all levels of American government are elected by voters residing in discrete districts. For a variety of reasons, the law requires that most election districts be redrawn periodically. Chief among these are the constitutional principles of one-person, one-vote and representation in proportion to population. As populations shift, districts must be adjusted to include substantially equal numbers of residents. With the 2010 U.S. Census now underway, the periodic ritual of redrawing electoral boundaries in the United States is about to begin.

This study specifically examines congressional and state legislative redistricting. Between now and 2012, all states will redraw their legislative districts. Additionally, those states that send more than one member to the U.S. House of Representatives will also redraw their congressional districts. States that hold off-year elections, including New Jersey, will redraw their legislative boundaries even sooner – by 2011.

Redistricting can have significant consequences for political representation and empowerment. The American system of government rewards only those candidates who attain a plurality of votes. All others – no matter how close the final tally – are losers. Accordingly, whether one is in a plurality or minority group within an election district can mean the difference between political representation and irrelevance.

In many states, the process of redistricting is controlled entirely by incumbent politicians, largely out of public view and with little public participation. Accordingly, those likely to be affected most by redistricting – ordinary citizens – generally have little awareness of the process and even less influence over it. One commentator, in a recent and oft-repeated assessment of redistricting, characterized the process as one where “lawmakers choose their voters.”¹ These choices are relatively permanent. Whereas the voters choose their representatives every two to four years, redistricting typically occurs only once every ten years.

PURPOSE OF STUDY

The Eagleton Institute of Politics at Rutgers University has commissioned this study to further its mission of cultivating civic engagement. Accordingly, this paper seeks to enhance

public understanding of redistricting and its significance in American government. It also seeks to provide the information and analytical tools necessary for concerned citizens to form their own conclusions and participate meaningfully in the redistricting process and its improvement. Specifically, this paper will —

First, describe the redistricting process generally: how it is done, the legal constraints and political considerations that apply, and how redistricting is often used to manipulate the outcomes of subsequent elections;

Second, compare the experiences of three states that have recently undertaken redistricting reform: Iowa, Arizona and California. These before-and-after illustrations will provide the reader with context needed to evaluate the process and substantive outcomes of districting after the 2010 Census;

Third, critically examine New Jersey's redistricting process and the outcome of its post-2000 redistricting effort. This critique will reveal that New Jersey's is a relatively partisan and insular process that may not serve political outsiders well, and

Fourth, outline areas of concern in New Jersey's process and propose several general ideas to address them. This study also proposes a framework for developing more specific ideas for change.

SUMMARY OF FINDINGS

Traditional Redistricting Creates Conflicts of Interest

The act of redistricting is distinct among political acts as having far-reaching and long-lasting consequences for an entire electorate. In most states, redistricting is done by the normal legislative process whereby incumbent legislators determine the boundaries of their own districts and those of their state's congressional delegation. This creates a conflict between the public interest and incumbents' political interest.

Extra-Legislative Redistricting Has Been Successful

To mitigate this conflict of interest, several states have shifted some or all redistricting authority to an extra-legislative body. This study examines three such states: Iowa, Arizona and California. In each case, reform was prompted by an earlier unhappy redistricting experience including legislative gridlock and legal challenge. Iowa's post-reform experience has been relatively smooth; Arizona's has been somewhat bumpier, but a recent state supreme court decision has cleared the way for a more uneventful experience after the 2010 census. Both states have been lauded for reaching politically independent results. Because California only recently adopted its reform, the outcome there remains unknown.

Redistricting in New Jersey is Partisan and Insular

Despite its use of extra-legislative commissions, redistricting in New Jersey occurs by a relatively partisan and insular process. With one exception, commissioners are chosen

exclusively by legislative and political party leaders. Of the twenty-four commissioners serving on the 2000–02 commissions, eighteen were current or recent political officials. Additionally, little public process is required of the commissions and therefore the public has very little insight or input into New Jersey’s redistricting process.

Politics is the Primary Concern of New Jersey’s Redistricting Commissions

Observable results of the most recent redistricting effort suggest that political interests are the primary concern of New Jersey’s commissions, while electoral competition is a lesser concern. Immediately after the current legislative map was adopted, the largest partisan shift in legislative seats occurred since the previous redistricting. Since then, only 6 percent of congressional races and 13 percent of legislative races have been won by 10 points or less.

There are Several Areas of Concern in New Jersey’s Redistricting Process

Based upon the findings above, several broad areas of concern in New Jersey’s redistricting process can be identified. These include —

Autonomy of Decision-Making. Are New Jersey’s commissions sufficiently independent of partisan influence to ensure sound decision-making?

Integrity of Decision-Making. Are New Jersey’s commissions guided by well-established principles and exposed to a sufficient diversity of facts, opinions and data to ensure sound decision-making?

Representative Outcomes. Does the redistricting process encourage moderation and bipartisan cooperation to ensure districts will accurately reflect the underlying population?

Democratic Outcomes. Does the redistricting process encourage public participation and a minimum level of electoral competition to ensure districts will elect representatives who are responsive to their constituents?

Several Changes Can Address These Concerns

To address these areas of concern, an analytical framework for change is proposed and several resulting ideas are presented, including —

1. Limiting the number of partisan redistricting commissioners
2. Designating a nonpartisan actor to select commissioners
3. Establishing general principles and criteria to guide commission decision-making
4. Restricting the availability of partisan data during commission deliberation
5. Encouraging bipartisan cooperation by resolving deadlock with a nonpartisan method known in advance
6. Requiring commissions to establish a minimum number of competitive districts
7. Requiring a full and open deliberative process

There are Legal, Political and Chronological Obstacles to Change

Whether one chooses to advocate any of the ideas above or others, there are significant hurdles to their adoption. Legal obstacles include state and federal case law that restricts the process and substance of redistricting. Political obstacles include the probable reluctance of state legislators to take action on any effort designed to diminish partisan influence over redistricting. Chronological obstacles include the practical reality that policy change takes time and the next round of redistricting begins shortly. Therefore, any changes intended to affect the 2010s redistricting round should be implemented informally. Formal and permanent changes should be considered well in advance of the 2020s redistricting round.

OUTLINE OF STUDY

National Perspective

This paper proceeds in several sections. Section 2 provides a general overview of the American redistricting process. Section 3 compares the experiences of three states that have recently undertaken redistricting reform: Iowa, Arizona and California.

New Jersey Perspective

Section 4 discusses New Jersey's redistricting process and the outcome of its post-2000 redistricting effort; Section 5 critically examines both subjects. Section 6 outlines areas of concern and proposes several general ideas to address them.

Limits and Conclusion

Section 7 discusses the various legal, political and chronological obstacles to changes in the redistricting process. Section 8 concludes this study with several final thoughts.

End Matter

Five Appendices, referred to throughout the text, present data on population equality, districting criteria, and redistricting authorities in each of the fifty states; provide a side-by-side comparison of significant redistricting characteristics of the four states examined in this study; and present a model redistricting reform bill, styled as a resolution of the Legislature of New Jersey and tailored to the civic landscape of that state. Detailed Bibliography and End Notes enable the reader to locate a wealth of additional information consulted in the course of this study.

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REDISTRICTING IN THE UNITED STATES

Redistricting is the process of redrawing political boundaries for a variety of purposes. First among these in the United States is representation in proportion to population. It is well settled as a matter of law, and of conventional wisdom, that elected officials represent people, not acres or trees. This principal has been roughly translated as one-person, one-vote; that is, the populations of electoral districts should be approximately equal.

As recently as the 1960s, however, the populations of congressional and state legislative districts within a single state varied considerably. Large disparities often resulted where political subdivisions – rather than their inhabitants – were treated as the fundamental elements of electoral representation. In New Hampshire, where every municipality once was entitled to at least one representative in the state Assembly, the proportion of representation varied by as much as 1000-to-1.² Consequently, residents of smaller districts were significantly over-represented relative to their large-district neighbors.

Following a series of landmark U.S. Supreme Court decisions, population equality among congressional and state legislative districts was largely achieved by the 1970s. Since then, the sophistication of redistricting techniques has increased tremendously, as more granular census data have combined with powerful technology, enabling modern mapmakers to simultaneously consider multiple interests in addition population. Of course, the abundance of available information can be used to serve a variety of ends, both for better and for worse. For example, many communities of interest can be identified with great accuracy, enabling mapmakers to consider the predominant characteristics of these areas when redrawing district lines. Thus, these communities may be intentionally kept intact or divided among multiple districts. Depending on the particular circumstances, the manipulation of district lines may reduce or enhance the community's political influence and ability to elect the candidate of its choice.

The practice of deliberately modifying district boundaries for political purposes – to enhance the electoral prospects of a minority group, political party, or incumbents generally – is commonly referred to as gerrymandering. Within broad limits imposed by law, gerrymandering is perfectly legal and widely practiced. Over time, certain “traditional” districting principles such as compactness and contiguity have developed in order to guide mapmakers, constrain their discretion, and establish objective criteria for those reviewing their work. These principles have been acknowledged by the courts, where they are frequently invoked

to defend challenged district maps. Many states now expressly permit, require or prohibit by law consideration of certain principles during the redistricting process.

This section proceeds with a discussion of the primary concern of modern redistricting – population equality – before turning to examine the traditional districting principles and the practice of gerrymandering. Each of these concerns will play a prominent role in the redistricting case studies that follow.

POPULATION EQUALITY

Before considering the substance of population equality, it is useful to define several metrics that are often cited to quantify population inequality.

Measuring Malapportionment. Since perfect population equality requires that all districts include precisely the same number of inhabitants, the ideal district population is simply the total population of a jurisdiction (usually a state) divided by its number of districts:

Equation 2A Ideal District Population

$$\text{Ideal District Population} = \frac{\text{Total Population of Jurisdiction}}{\text{Number of Districts in Jurisdiction}}$$

For example, if the illustrative State of Brunswick has 10 million residents and 20 districts, the ideal district population is 500,000 ($10,000,000 \div 20$). However, a state may be unable create districts of ideal size, perhaps due to mathematical impossibility or the presence of imposing natural boundaries. And, of course, a state may affirmatively choose not to create districts of ideal size for a variety of reasons. In each case, unequal populations will result. These deviations can be expressed in several ways. Absolute deviation measures the numerical difference between a district's population and the ideal district population and is expressed as a positive (+) or negative (–) deviation:

Equation 2B Absolute Population Deviation

$$\text{Absolute Deviation} = \text{Population of District} - \text{Ideal District Population}$$

Continuing the preceding example, if Brunswick's 1st District contains 550,000 people, its absolute deviation is + 50,000 ($550,000 - 500,000$). Similarly, relative deviation measures the proportional difference between a district's population and the ideal district population, and is also expressed as a positive (+) or negative (–) deviation:

Equation 2C
Relative Population Deviation

$$\text{Relative Deviation} = \frac{\text{Absolute Deviation}}{\text{Ideal District Population}}$$

Continuing the preceding example, the relative deviation of Brunswick's 1st District is + 10 percent ($50,000 \div 500,000$). Relative deviation is often a more useful measure than absolute deviation because it is expressed independent of a state's population and therefore can be compared across state lines. When considering malapportionment, other useful measures include average deviation: the arithmetic mean of all deviations (treating each as a positive number), which can be expressed in absolute or relative terms:

Equation 2D
Absolute Mean Population Deviation

$$\text{Absolute Mean Deviation} = \frac{\text{Sum of all Absolute Deviations in Jurisdiction}^*}{\text{Number of Districts in Jurisdiction}}$$

(* treating all deviations as positive numbers)

Equation 2E
Relative Mean Population Deviation

$$\text{Relative Mean Deviation} = \frac{\text{Sum of all Relative Deviations in Jurisdiction}^*}{\text{Number of Districts in Jurisdiction}}$$

(* treating all deviations as positive numbers)

A particularly useful metric is the total range of deviation, which is the difference between the largest and smallest deviations. This can also be expressed in absolute or relative terms. Total range of deviation is frequently cited in judicial decisions of redistricting cases. As discussed below, state legislative districting plans typically are upheld where the total range of relative deviation is less than 10 percent.

Equation 2F
Total Range of Absolute Population Deviation

$$\text{Total Range of Absolute Deviation} = \text{Greatest Positive Absolute Deviation in Jurisdiction} - \text{Greatest Negative Absolute Deviation in Jurisdiction}$$

Equation 2G
Total Range of Relative Population Deviation

Total Range of Relative Deviation	=	Greatest Positive Relative Deviation in Jurisdiction	–	Greatest Negative Relative Deviation in Jurisdiction
--------------------------------------	---	--	---	--

To conclude the preceding example, if Brunswick has 10 districts containing 550,000 people and 10 districts containing 450,000 people, the absolute (relative) mean deviation is 50,000 (10 percent) and the total range of absolute (relative) deviation is 100,000 (20 percent). Table 2A illustrates these measurements.

Table 2A
Population Equality Metrics
in the Illustrative State of Brunswick

District	Population	Absolute Deviation	Relative Deviation
1	550,000	50,000	10.0 %
.	.	.	.
10	550,000	50,000	10.0 %
11	450,000	– 50,000	– 10.0 %
.	.	.	.
20	450,000	– 50,000	– 10.0 %
Total	10,000,000		

Ideal Population	500,000
Absolute Mean Deviation	50,000
Relative Mean Deviation	10.0 %
Range of Absolute Deviation	100,000
Range of Relative Deviation	20.0 %

Standards of Population Equality. For much of this nation's history, population equality was the exception, not the rule. As personal mobility increased during the early twentieth century, however, the need for periodic adjustments became more pressing. But the status quo often served entrenched political interests well. After all, urban migration was on the rise and any move toward population-based districting threatened a fundamental shift in political power away from the country and into the city. With rural legislators firmly in control of many states' legislatures, both redistricting and reapportionment – the process of reallocating representatives among established constituencies – became irregular. Several states failed to do either for decades.³

Faced with political powerlessness and recalcitrant legislatures, citizens turned to the courts, which initially also refused to act. After more than a decade spent avoiding the “political thicket”⁴ by refusing to intervene in cases of severe malapportionment, the U.S. Supreme Court abruptly changed course in the early 1960s.⁵ In the landmark case of *Wesberry v. Sanders*, the Supreme Court held that congressional districts within a single state must contain the same number of persons “as nearly as is practicable.”⁶ In the Court’s opinion, the constitutional command that representatives be chosen “by the People of the several States”⁷ meant that “one man’s vote in a congressional election is to be worth as much as another’s.”⁸

The *Wesberry* Court was presented with congressional districts in Georgia that ranged in population from 823,680 to 272,154 – a ratio of more than 3-to-1.⁹ In essence, the Court observed, a vote cast in the smallest district was three times as significant as a vote cast in the largest district. Put another way, the representative from the largest district necessarily represented three times as many constituents as the representative from the smallest district.¹⁰

In the related case of *Reynolds v. Sims*, which considered population equality in the Alabama state legislature, the Supreme Court struck down a districting scheme in which each county of the state was entitled to one senator, much as each state of the United States is entitled to two U.S. Senators.¹¹ Due to this one-vote-per-county arrangement, district sizes ranged from 634,864 to 15,417 – a ratio of more than 41-to-1. Alabama state house districts were malapportioned for similar reasons, though not as severely.

In *Reynolds*, the Court relied on the Equal Protection Clause of the Fourteenth Amendment to require “substantially equal state legislative representation” in both houses of a bicameral state legislature.¹² Thus, there are two distinct standards of population equality: “strict equality” for congressional districts and a somewhat more lenient standard of “substantial equality” for state legislative districts (*see* Table 2B).

Since these early cases, the Supreme Court has sought to clarify the permissible range of population deviation under these standards. In 1969, the Court found that a 5.97 percent total range of deviation for congressional districts was not “as nearly as is practicable” because the state had not justified the need for such a large variance.¹³ Maintaining political or other interest-based communities by following municipal and county lines was deemed an insufficient justification.¹⁴ Fourteen years later, in the New Jersey case *Karcher v. Daggett*, the Court rejected a total range of less than 0.70 percent for congressional districts, principally because it was shown that a smaller deviation was possible and the state did not justify its decision to reject the alternative plan.¹⁵

Thus it appears that “as nearly as is practicable” means any population deviation – no matter how small – is unacceptable among congressional districts, absent a “legitimate state objective.”¹⁶ Among the objectives volunteered by the Court as possibly justifying “minor” deviations were “making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.”¹⁷ As discussed

below, these are among the “traditional” districting principles that guide modern redistricting. Since *Karcher*, courts have on several occasions affirmed that the strict population equality standard in congressional districts is strict indeed.¹⁸

The Supreme Court has been somewhat more accommodating of unequal population in state legislative districts. In a series of cases decided since the 1970s, the Court developed a 10 percent rule for permissible deviations.¹⁹ Typically, districting plans with a total range of deviation less than 10 percent were upheld, while those exceeding that threshold were rejected as unconstitutional.²⁰

As with minor population inequalities in congressional districts, deviations exceeding 10 percent in state legislative districts could be justified by a “rational state policy.”²¹ Despite this seemingly large loophole, in practice the Court has sanctioned only one such policy: ensuring the integrity of political subdivisions by respecting municipal and county boundaries.²² But even here, the Court has held a tight rein over the 10 percent rule, declining to make exceptions where it was shown that an alternative plan could serve the same policy with a smaller deviation.²³

In general, deviations above 10 percent are permitted only when representatives are apportioned among existing political subdivisions, rather than specially drawn legislative districts, and then only when the number of representatives significantly exceeds the number of subdivisions entitled to representation.²⁴ For example, a scheme in which eighteen members of a county government were apportioned among five municipalities, with an 11.9 percent total range of deviation was upheld because the Court found no “built-in bias tending to favor particular political interests or geographic areas.”²⁵

Since the standard of population equality among congressional districts is stricter than that of state legislative districts, any valid justification for deviation among the former is likely to be valid for the latter as well. Table 2B summarizes these standards, the maximum deviations allowed under them, and the state policies that may justify larger deviations. A summary of population equality in all states following the post-2000 redistricting is presented as Appendix A.

Table 2B
Legal Standards of Population Equality

	Congressional Districts	State Legislative Districts
Standard of Population Equality	Strict Equality “as nearly as is practicable”	Substantial Equality “substantially equal state legislative representation”
Original Source of Case Law	<i>Wesberry v. Sanders</i> 376 U.S. 1 (1964)	<i>Reynolds v. Sims</i> 377 U.S. 533 (1964)
Magnitude of Permissible Population Deviation	None, unless justified by “some legitimate state objective”	10 percent total range of deviation, unless justified by a “rational state policy”
Permissible Justifications for Population Deviation	1. Compactness 2. Respecting municipal boundaries 3. Preserving cores of prior districts 4. Avoiding contests between incumbent representatives	1. Providing representation to political subdivisions 2. Other permissible justifications for congressional districting
Other Considerations	No other plan that serves same objectives with a smaller deviation	1. No other plan that serves same policies with a smaller deviation 2. Cannot favor particular political interests or geographic areas

“TRADITIONAL” DISTRICTING PRINCIPLES

The rigid constitutional requirements of population equality among congressional and state legislative districts substantially limit the discretion of those responsible for redrawing their boundaries. Federal statutory law imposes additional restrictions. For example, Section 2 of the Voting Rights Act prohibits all voting qualifications and practices that result in “a denial or abridgement” of the right to vote on account of race, color or membership in a language minority group.²⁶ Under certain circumstances, this has been held to prohibit vote dilution either by “cracking” minority voters among several adjacent districts or by “packing” them into a single fewer districts.²⁷ These tactics, commonly used while gerrymandering, are discussed below.

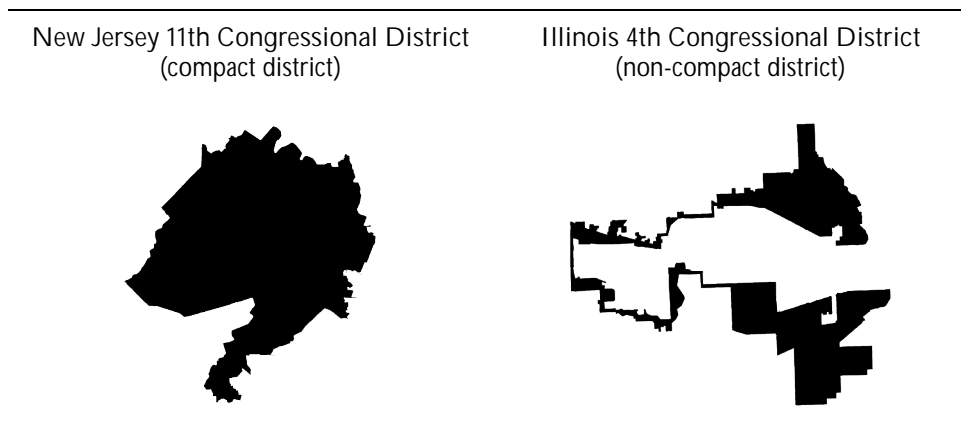
Even in the shadow of judicial and statutory law, much flexibility remains in the drawing of district boundaries. This next section discusses the “traditional” districting principles that have developed to guide mapmakers and constrain their discretion. These include —

1. Compactness²⁸
2. Contiguity²⁹
3. Respect for political subdivisions³⁰ and communities of interest³¹
4. Preserving cores of prior districts³²
5. Avoiding contests between incumbents³³

These principles have been explicitly acknowledged by the federal courts and frequently are invoked to defend challenged district maps. Many states expressly permit, require or prohibit by law the consideration of certain principles during the redistricting process. A summary of these characteristics is presented as Appendix B. Together with population equality, the traditional districting principles provide objective criteria with which to evaluate the merits of redistricting plans.

Compactness. Compactness refers to a district's geographic efficiency. A district shaped like a circle is compact; a district with several long tendrils is not. Two-thirds of states require that compactness be considered in legislative districting while only one-third requires compactness be considered in congressional districting (*see* Appendix B). Below are representative examples of relatively compact and non-compact congressional districts drawn after the 2000 census.

Figure 2A
Illustration of Compactness



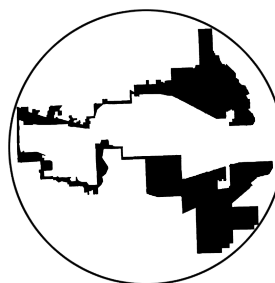
While there is no universally accepted standard of compactness (one typically knows it when she sees it), numerous quantitative measures have been developed. Among these is the Reock measure, which compares the area of a district with that of the smallest circle that can enclose it. Similarly, the Convex Hull measure compares the area of a district with that of the smallest convex polygon that can enclose it. These measures have a significant shortcoming in that they can score circular and horseshoe-shaped districts as being similarly compact. As shown below, New Jersey's 11th and Illinois's 4th districts can be circumscribed by a circle of similar size, even though the latter is obviously less compact.

Figure 2B
Reock Measure of Compactness

New Jersey 11th Congressional District
(Reock Measure)



Illinois 4th Congressional District
(Reock Measure)



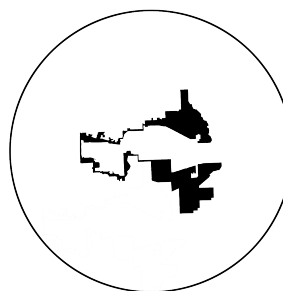
The Polsby-Popper measure avoids this problem by comparing the area of a district with that of a circle with the same perimeter. As shown below, districts with more tendrils will be compared with larger circles than more circular districts with the same geographic area.

Figure 2C
Polsby-Popper Measure of Compactness

New Jersey 11th Congressional District
(Polsby-Popper Measure)

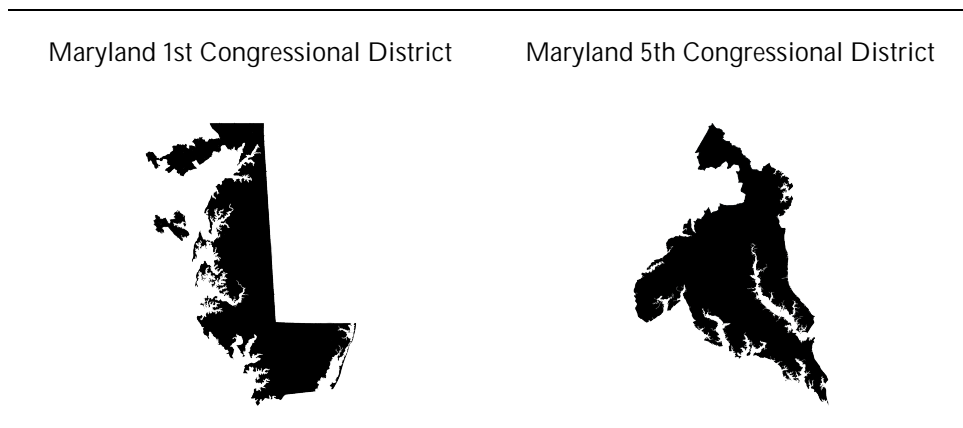


Illinois 4th Congressional District
(Polsby-Popper Measure)



But the utility of Polsby-Popper is also limited because all districts with irregular boundaries will score poorly by it, even when boundary irregularity has little to do with compactness in the conventional sense. For example, Maryland's 1st and 5th districts – both with significant frontage on the Chesapeake Bay and both illustrated below – appear relatively compact to the eye. But their highly irregular coastlines rank them as among the five least compact districts in the United States by this measure.

Figure 2D
Compact but Irregular Districts



Why is compactness important? The compactness of a district is a useful proxy for gerrymandering. For example, Illinois's 4th District was deliberately drawn to connect two remote Hispanic neighborhoods, while circumventing neighboring areas with a more heterogeneous population. In order to maintain the district's contiguity (the next traditional districting principle to be discussed below), these areas are connected by narrowly tracing Interstate 294, where nobody lives. The result is the non-compact horseshoe-shaped district illustrated in Figure 2A.

Overall, the benefits of compactness are mixed. On the one hand, a compact district means that neighbors are more likely to reside in the same electoral district. To the extent that neighbors share common interests, compact districts will preserve communities of like-minded individuals. Additionally, candidates and elected officials may be better able to represent residents of compact districts because there will be less need to travel long distances. On the other hand, most communities and neighborhoods do not develop into compact shapes. Artificial development patterns and natural features such as rivers, watersheds and mountain ranges may cause traditionally compact boundaries to cut across significant demographic lines.

Thus, it is important to view any particular measure of compactness as a guide only, and compactness itself as only one criterion for evaluating the shape of an electoral district. In a variety of contexts including partisan and racial gerrymanders, as well as vote dilution cases, courts generally have not required compactness as an end in and of itself, but instead have looked to its absence as a "signal that something may be amiss."³⁴

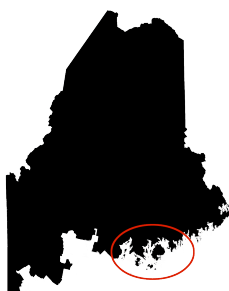
Contiguity. Contiguity means it is possible to reach any two parts of a district without exiting the district at any time. Though not required by the U.S. Constitution or federal law, contiguity is required by nearly all states as a consideration in legislative districting and about half of states in congressional districting (*see* Appendix B).

Water bodies frequently occasion the need for exceptions to the general rule of contiguity. For example, Maine's 2nd congressional district includes thousands of islands, most of which lie within a few miles of the mainland. Kentucky's 1st congressional district is also non-contiguous, due to the wandering Mississippi River that forms its western border. Both districts are illustrated below.

Figure 2E
Illustration of Non-Contiguity

Maine 2nd Congressional District

Kentucky 1st Congressional District



However, some “exceptions” seem less legitimate, perhaps because they seem less necessary. As illustrated below, New Jersey's 6th and 13th congressional districts both cross water in order to reach remote parts of the mainland. The 6th does so by crossing the Highlands-Sea Bright Bridge before tracing a narrow barrier island to reach Long Branch and Asbury Park. The 13th simply crosses the mile-wide Newark Bay to reach Bayonne. In both cases, adjacent district boundaries conceivably could have been altered to better maintain contiguity.

Figure 2F
Non-Contiguity in New Jersey

New Jersey 6th Congressional District

New Jersey 13th Congressional District



The benefits of contiguity are analogous to those of compactness, and they are similarly mixed. On the one hand, to the extent that communities are connected by land, electoral districts should be as well. Contiguity also checks the ability of mapmakers to gerrymander. On the other hand, “communities” that may be most easily represented – such as those comprising likeminded individuals who share demographic characteristics – may not be contiguous.

Respect for Political Subdivisions and Communities of Interest. Courts have recognized that preserving political boundaries and other communities of interest are valid considerations for redistricting, provided they are applied in a nondiscriminatory fashion.³⁵ Communities of interest have no precise definition, but generally include areas with shared political, social, or economic interests, or a particular racial or ethnic status.³⁶ These communities often coincide with political boundaries, as county and municipal residents frequently share government services, school districts and civic identity. Other communities of interest may be delineated by significant natural features such as mountain ranges, rivers and watersheds.

Of all the traditional districting criteria, this is perhaps the oldest. County- and municipal-unit districting was common until the 1960s and many of the early malapportionment cases arose from population inequalities created by strict adherence to political boundaries.³⁷ This criterion remains important today. Nearly all states allow it to be considered during the redistricting process (*see* Appendix B). In practice, states often will seek to minimize the number of split counties and municipalities, even at the expense of other criteria.

Preserving the integrity of communities with identifiable common interests serves a number of beneficial purposes. Representatives of more homogeneous districts may be better able to represent their constituents. Undivided communities of interest may find strength in numbers. This criterion offers logistical benefits as well. Politicians representing multiple counties or municipalities have more local officials to appease, parades to march in, and town halls to attend. Additionally, because elections typically are administered on a county-by-county or town-by-town basis, maintaining these boundaries reduces the complexity of running elections to a districted office.

Like compactness and contiguity, however, the principle of maintaining political and interest communities should not be considered in isolation. While it may limit the extent to which electoral districts can be gerrymandered, rigid obedience to political boundaries may reduce the quality of representation to the extent they do not adhere to other relevant demographic contours. Furthermore, communities of interest – unlike municipal and county lines – are subjective and difficult to delineate. Additionally, to the extent one values heterogeneity in democratic government, preserving political and interest community boundaries is unlikely to serve this end.

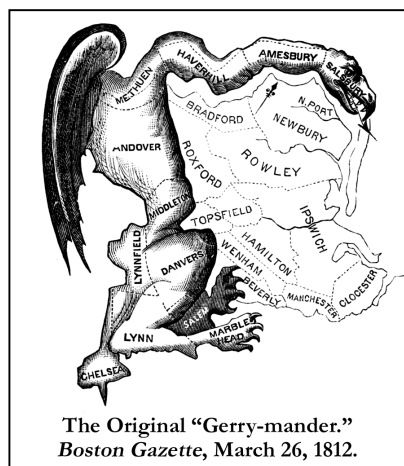
Preserving Cores of Prior Districts. While redistricting occurs at least once each decade, constituent affairs generally do not adhere to a particular timetable. To enhance the stability

of representation over time, courts have recognized the preservation of prior district cores as a legitimate interest in redistricting.³⁸ About one-fifth of the states permits or requires this principle to be considered in the districting process (*see* Appendix B). Like the criteria discussed above, this will guide mapmakers' pens and limit their ability to gerrymander districts.

Avoiding Contests between Incumbents. Courts have also recognized incumbent protection as a legitimate consideration for redistricting. However, the type of "protection" contemplated by this principle is quite narrow – limited to "[p]rotecting incumbents from contests with each other."³⁹ Because this principle is inherently more political than are the others, it may be subordinated to the other traditional districting criteria discussed above.⁴⁰ Like preserving district cores, protecting incumbent representatives may enhance the continuity of representation. But extreme measures to protect incumbents may be signs of more questionable partisan motives. As a result, only a few states require that this criterion be considered during redistricting and several states forbid it entirely.

GERRYMANDERING

Gerrymandering is the deliberate manipulation of district boundaries to enhance the electoral prospects of a particular political interest. Subject to the broad constraints of federal and state law discussed above, gerrymandering is perfectly legal. Thus, after satisfying population equality, the Voting Rights Act, and any other criteria mandated by state law, map-



makers generally are free to consider other interests such as a political party affiliation, minority group affiliation or incumbent status when redrawing district lines. State boundaries provide the only certain limits to how far or wide a district may travel. Thus, like compactness, gerrymanders have a certain know-it-when-you-see-it quality. Highly manipulated districts often appear in highly complex shapes.

The term *Gerrymander* (properly pronounced with a hard "g" as in *Gary*) was coined by the *Boston Gazette* in 1812 to describe a state legislative district drawn to favor then-Governor Elbridge Gerry's political party.⁴¹ One observer

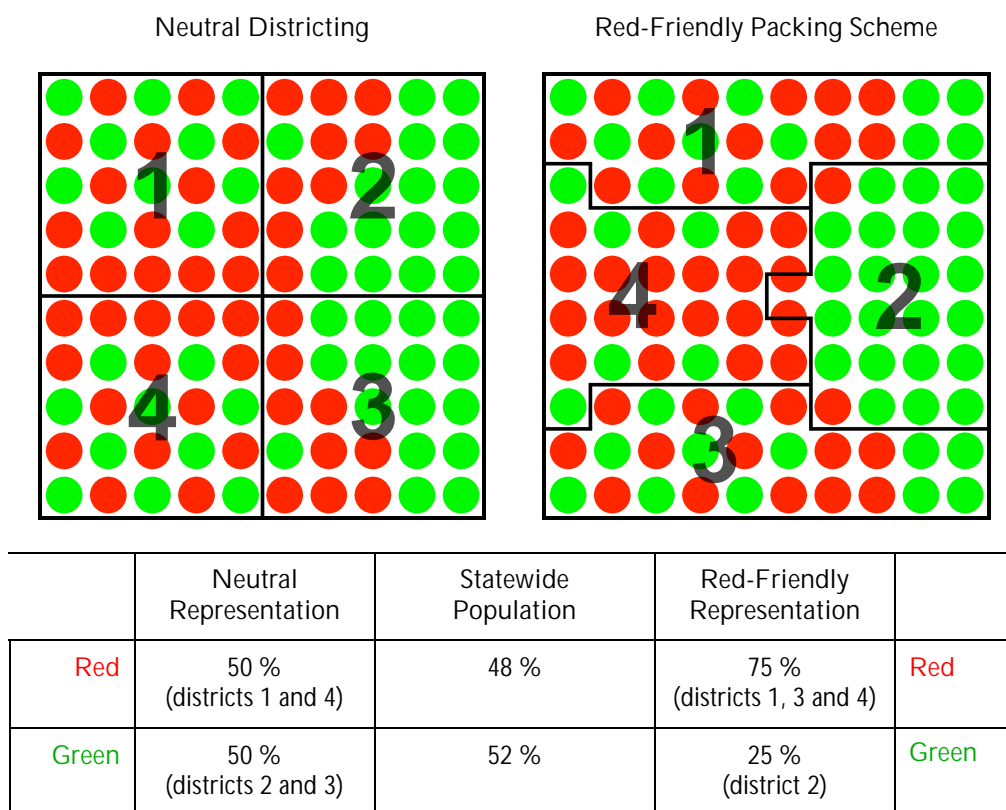
likened its shape to a salamander – "Gerry's salamander" – and today the metaphor is indispensable to the American political lexicon. Though certainly not the first example of a manipulated district line, this instance gained notoriety as Governor Gerry boldly sought a partisan edge in the nation's fledgling two-party system.

The detail and accuracy of demographic data now available permits a high degree of precision when predicting the electoral results of a particularly drawn district. This information can be – and often is – used to enhance the likelihood of particular electoral outcomes. In practice, gerrymandering can be accomplished using any one or a combination of several tactics including the packing and cracking of voters.

Packing occurs when individuals with similar expected voting behavior are deliberately concentrated into fewer districts. This can be done to either enhance or diminish a group's electoral strength. To the extent the packed voters vote as a block, their concentration enhances the likelihood their preferred candidate will be elected within the packed district. This tactic frequently is used to create "majority-minority" districts in which a minority-preferred candidate is more likely to be elected. However, when a group already is capable of electing its preferred candidates in multiple districts, packing can reach the opposite result by reducing political influence in the state at large. In the American winner-take-all system, candidates do not receive a bonus for winning in a landslide. By concentrating like-minded voters as supermajorities in fewer districts, rather than smaller majorities in multiple districts, they will be able to elect fewer of their preferred candidates.

District packing is illustrated below in Figure 2G, a hypothetical state comprised of only red voters and green voters. The latter – a bare majority of the electorate – are concentrated in the east. The left pane illustrates a neutral districting scheme, whereby both types of voters receive equal and nearly proportional representation. The right pane illustrates a red-friendly packing scheme, whereby green voters are concentrated in District 2. Consequently, green voters receive only one-quarter of the total representation, even though they compose slightly more than one-half of the electorate.

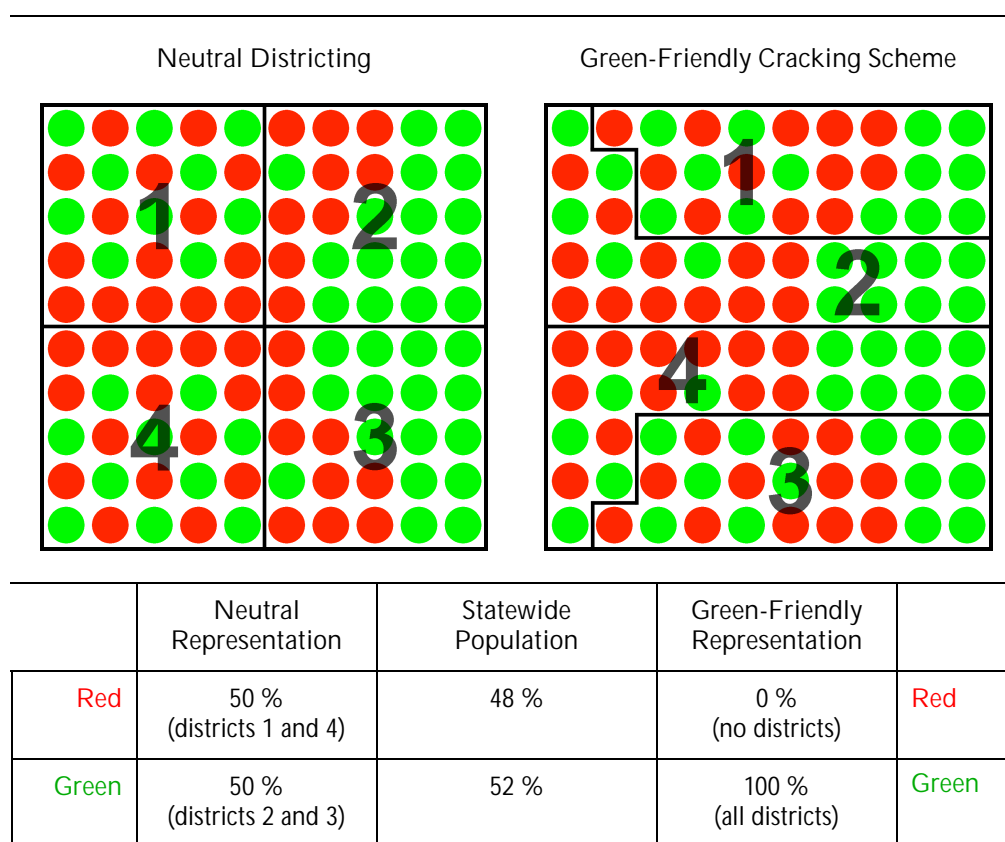
Figure 2G
Illustration of "Packing"



Cracking is the opposite of packing and occurs when individuals with similar expected voting behavior are deliberately distributed among additional districts. As with packing, this can be done to either enhance or diminish a group's electoral strength. Cracking dilutes electoral strength and diminishes the likelihood that like-minded voters can elect their preferred candidate within the cracked district. If like-minded voters compose a supermajority of voters in a district, cracking them among several districts may enable them to elect their preferred candidates in each, thereby enhancing their electoral influence in the state at large. If, however, like-minded voters compose only a bare majority of voters in a district, cracking them will reduce the likelihood they can elect any of their preferred candidates.

District cracking is illustrated below in Figure 2H, the same hypothetical in which green voters barely outnumber red voters. The left pane again illustrates a neutral districting scheme. But now the right pane illustrates a green-friendly cracking scheme, whereby green voters are spread evenly among all four districts. Consequently, green voters receive complete representation, even though they compose only a slight majority of the electorate. As with district packing, one group has gained disproportionate representation at the other's expense.

Figure 2H
Illustration of "Cracking"



Gerrymandering by packing or cracking can serve various ends. Partisan gerrymandering occurs when lines are manipulated to favor a particular political party. The extraordinary

mid-decade congressional redistricting in Texas – widely believed to have been motivated by partisan considerations⁴² – is one example of partisan gerrymandering. There, state legislators redrew district lines to exclude incumbents' homes from the cores of their previous districts and group multiple incumbents into a single district. The result was a new congressional map that strongly favored Republican candidates in the subsequent election.⁴³ Bipartisan (incumbent) gerrymandering occurs when lines are manipulated to favor incumbents generally, often without regard to party affiliation. The 2001 congressional redistricting in New Jersey – where parts of municipalities were transferred between adjacent competitive districts held by opposing parties, thereby making them safer – is one example of bipartisan gerrymandering.

Gerrymandering is not limited to manipulation of district lines on behalf of (or against) political parties, but may be practiced with respect to any identifiable group that may vote as a block including racial, ethnic, religious or language speaking groups. The practical effect of gerrymandering is to make districts intentionally safer for particular types of candidates.

While often criticized, gerrymandering can serve beneficial purposes. It can enhance minority representation by optimizing the proportion of minority voters in particular election districts. It can promote political stability by limiting the number of highly competitive districts in which turnover is likely. And it can protect incumbents by avoiding district boundaries that group multiple incumbents together. Taken to its extreme, however, gerrymandering can serve less desirable purposes. It may be used to lock in undue partisan advantage for a decade (often the purpose of partisan gerrymandering). Or it may be used to eliminate all serious electoral competition (often the purpose of incumbent gerrymandering). Or it may be used to weaken the electoral strength of particular interest groups (often the purpose of illegal racial gerrymandering).

Because the less desirable ends of gerrymandering are so easily practiced and often not realized until after elections are run in the manipulated districts, several states have altered their redistricting processes to limit this practice. Iowa, Arizona and California have each removed primary districting authority from their states' legislators, where it traditionally has resided. The next section compares the history of redistricting and its reform in these three states.

— 3 —

RECENT REDISTRICTING REFORMS

Primary redistricting responsibility falls to the states, which are guided and constrained by the laws and criteria discussed in Section 2. Each state may choose for itself a particular districting method and may choose different methods for congressional and state legislative redistricting. As a result, much variation exists among the states. Frequently, the process of redistricting is provided in the state's constitution, although this is not always the case. For example, Ohio's constitution details how state legislative districts are to be drawn, but is silent as to congressional districts.⁴⁴

In most states, the state legislature is primarily responsible for redistricting, typically through the normal legislative process. That is, redistricting is accomplished by enacting a law specifying boundaries for new congressional or legislative districts. Clearly, where state legislators are primarily responsible for redrawing the same districts from which they were elected (and may soon seek reelection), there exists a conflict of interest. The dominant party in the legislature may seek to cement its dominance for another ten years by redrawing lines in its favor (a partisan gerrymander). Alternatively, if neither of the major parties is dominant, both may agree to cooperate on redistricting by drawing lines that favor all incumbent legislators, regardless of party (a bipartisan gerrymander).

REDISTRICTING BY COMMISSION

To address this conflict of interest, several states have moved away from the Legislature-centric model of redistricting in favor of alternative methods. The most common alternative is the commission model, now used by several states including Arizona, California, Hawaii, Idaho, Montana, New Jersey and Washington. The details of these commissions vary widely, as do their independence from their states' legislatures and political party leaders. For example, Arizona's is among the more independent from state legislative and party officials. Responsible for both congressional and legislative redistricting, the Arizona commission consists of five members, no more than two from the same political party. Selection of its members involves the legislative and judicial branches of state government, as well as the commission itself; the executive branch calls the commission into session.⁴⁵

By contrast, New Jersey uses two separate commissions for congressional and legislative redistricting, and the membership of both is chosen directly by state legislative and/or party officials. Legislative commission members are appointed in equal number by the chairs of the state's major political parties. In the event of deadlock, the Chief Justice of the state su-

preme court selects an independent member.⁴⁶ Congressional commission members are appointed by the leaders of the state parties and the leaders and ranking minority members of both houses of the state legislature. A majority of the appointed members selects an independent chair; in the event of deadlock, the state supreme court chooses a plan.⁴⁷ Arizona's commission model is discussed below; New Jersey's is discussed in the next section.

In several other states where the legislature retains primary authority over redistricting, commissions are used in an advisory or backup capacity. For example, Vermont establishes an extra-legislative panel that recommends a districting plan to the state legislature, which is then free to enact it with or without changes, or to substitute an entirely different plan in its place.⁴⁸ In Connecticut, if the legislature fails to adopt a redistricting plan, a commission is appointed by legislative leaders to do the job instead.⁴⁹ A table of districting authorities by state is presented as Appendix C.

This section proceeds to describe the redistricting process in three states that have undertaken substantial reform in this area during the last thirty years. Iowa adopted reform by the usual legislative process while Arizona and California more recently adopted reform by citizen initiative. In each case, the reform effort resulted in a significant transfer of redistricting authority from the state legislature to an independent agency or commission. These descriptions illustrate the types of non legislative-centric redistricting methods in use today and will be contrasted with New Jersey's redistricting process in the following section. A side-by-side comparison of significant redistricting characteristics of Iowa, Arizona, California and New Jersey is presented as Appendix D.

IOWA: REFORM BY LEGISLATIVE ACTION (1980)

" *If any redistricting procedure should be viewed as exemplary, Iowa may be the best model for other states.* "

Iowa's process for drawing congressional and state legislative districts was recently described as among the nation's "cleanest and most democratic."⁵⁰ This was not always the case, however. Until the 1970 round of redistricting, the state legislature was primarily responsible for determining the number of members elected to each of its chambers, and for establishing its electoral districts. If the legislature failed act, the state supreme court would be called upon to do so.⁵¹

Previous Redistricting. In 1971, the legislature produced a state legislative districting plan with a 3.83 percent total range of deviation. The plan was challenged in court on the grounds that the district populations were not as nearly equal as practicable, that the legis-

* Paul Chesser, *Iowa Offers Redistricting Lessons*, CAROLINA JOURNAL ONLINE (Raleigh, N.C.), Jan. 23, 2004.

ture could have reduced the disparity further, and that the justifications for not doing so were political and therefore impermissible.⁵² The Iowa Supreme Court ultimately threw out the legislature's plan and substituted its own, which had a deviation of only 0.09 percent.⁵³

Legislative Reform – “House File 707.” In the wake of these events, and at the urging of the Iowa League of Women Voters, the state legislature in 1980 adopted House File 707, which substantially reformed its redistricting process and placed primary redistricting responsibility with the nonpartisan Legislative Service Bureau (LSA).⁵⁴ A limited, secondary role was accorded to a Temporary Redistricting Advisory Commission (TRAC) whose members are selected by legislative leaders of both major parties. Both the legislature and governor also retain roles, as any redistricting plan must proceed through the modified legislative process described below. The state supreme court plays a role only if the deadlock occurs. There are as many as four key steps in Iowa's reformed redistricting process.

First, once the U.S. Census data are released, the LSA has until April 1 to submit to the legislature a congressional and state legislative districting plan that conform to specific districting criteria described below. At the same time, a TRAC is appointed by the state's legislative leaders, with each of the majority and minority leaders of both legislative chambers selecting one member. The four appointees then select by majority vote a fifth member who serves as chair. The TRAC's role is limited to (1) advising the LSA on decisions for which there is “no clearly applicable guideline” in the redistricting law, (2) controlling what information the LSA may release publicly, before it has delivered a plan to the legislature, (3) holding at least three public hearings on a proposed districting plan and (4) reporting to the legislature a summary of the public input received and its conclusions based upon that input.⁵⁵ Once the TRAC has submitted its report, the legislature must approve or reject the plan without amendment.

Second, if the legislature fails to approve the first proposal, or if the governor vetoes it, the LSA must then submit a second plan that conforms to the legislature or governor's disapproval message and is consistent with the districting criteria described below. Once again, the legislature must approve or reject the plan without amendment. Third, if the legislature fails to approve the second proposal, or if the governor vetoes it, the LSA must then submit a third and final plan that conforms to the legislature or governor's disapproval message and is consistent with the districting criteria described below. Only during this third round is the proposal amendable and thus subject to the usual course of legislation.

Fourth, if the legislature fails to enact a legislative districting plan by September 15 – five and one-half months or more after the first proposal was submitted – the state supreme court must enact its own plan by December 31.⁵⁶ There is no comparable deadline for congressional districting plans. However, the state supreme court has original jurisdiction over all districting plans adopted into law, which probably includes congressional plans that the legislature has failed to redraw after a census.⁵⁷

The Iowa reforms also established specific districting criteria to guide the LSA's work. Among these are equality of population, respect for political subdivision boundaries, contiguity and compactness.⁵⁸ Two specific measures of compactness are provided, for the purpose of comparing alternative plans.⁵⁹ The reforms also prohibit the LSA from drawing districts to favor a political party or incumbents generally, or to augment or dilute the electoral strength of a racial or language minority. The LSA is specifically forbidden from considering incumbents' home addresses, the political affiliations of registered voters, previous election results and certain other demographic information when establishing districts.⁶⁰

Conclusion. Since Iowa's agency-based process has been in place, redistricting has encountered few problems. In 1981, the first round for which the new process was in place, the legislature enacted the LSA's third proposal without amendment. In 1991, the legislature enacted the LSA's first proposal. In 2001, the legislature enacted the LSA's second proposal. None of the post-reform plans has been challenged in court.⁶¹ The effects of Iowa's reform may be illustrated graphically as well.

Figure 3A
Iowa and Illinois Congressional Districts Compared

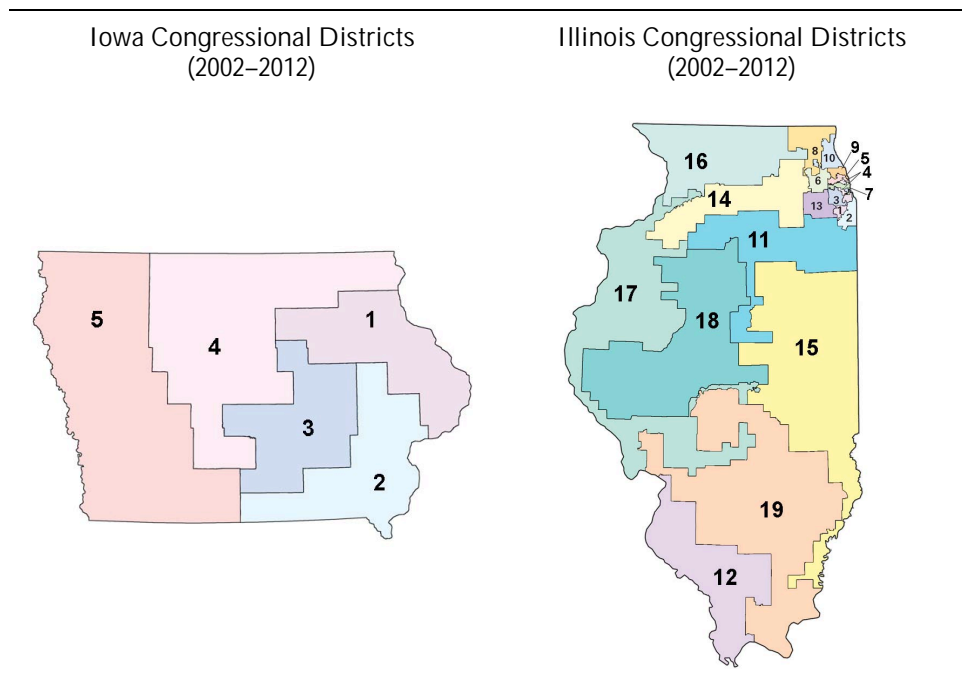


Figure 3A illustrates Iowa's congressional districts after the 2000 census alongside those of neighboring Illinois (Iowa's legislative districts, though more numerous, appear just as orderly). In Illinois, the primary authority for redistricting rests with the state legislature.

ARIZONA: REFORM BY BALLOT INITIATIVE (2000)

“ Whatever the reason, some Arizona political districts look like serpents on a map, squiggling here and stretching there, with no discernable geographic integrity or geometric symmetry. ”*

Like Iowa, reform efforts in Arizona were motivated by a particularly messy redistricting experience. Before 1990, the state legislature was primarily responsible for redrawing both congressional and state legislative boundaries through the normal legislative process. Unlike Iowa, however, Arizona has several geographic, demographic and historic features that complicate the districting process.

Figure 3B
Arizona 2nd Congressional District



Population distribution in Arizona is highly irregular due to large National Parks and Forests throughout the state and the dense urban areas of Phoenix and Tucson. Native American reservations occupy one-quarter of Arizona's land area, more than in any other state.⁶² Owing to historic tensions between the Hopi and the Navajo Native American tribes, and because the former's reservation is surrounded by the latter's, heroic feats of mapmaking are required to ensure compliance with state and federal redistricting law. Arizona's 2nd District, shown at left, illustrates this difficulty. The district's narrow neck follows the Colorado River eastward to include the Hopi reservation without including inhabited portions of the Navajo reservation.

Additionally, due to historic voting patterns and the large number of non-native English speaking residents, all voting-related changes – redistricting included – are subject to extraordinary scrutiny under the Voting Rights Act. In Arizona, this extra step is intended to protect minority language speakers – principally Native Americans and Hispanics – from being “effectively excluded from participation in the electoral process.”⁶³ Specifically, the U.S. Department of Justice must “preclear” a redistricting plan before it can take effect. To obtain preclearance, Arizona must demonstrate that a plan does not discriminate by race, color or minority language status. It is against this complex geographic, demographic and regulatory background that Arizona must redistrict every ten years.

* Pat Flannery, *Keeping Politics in Line: Gerrymandering Targeted*, THE ARIZONA REPUBLIC (Phoenix), Aug. 23, 2000, at 1.

Previous Redistricting. During the 1990 round, both the congressional and state legislative redistricting plans were challenged in court. A panel of federal judges ultimately drew a congressional map after the state's legislative chambers – each held by a different political party – failed to agree upon a single plan.⁶⁴

While the congressional case was pending, the legislature also struggled to agree upon a single legislative districting plan, provoking a separate legal action for intervention by the same federal court.⁶⁵ While the second case was pending, the legislature finally produced a plan in February 1992, less than seven months before the primary election. Because this plan was found to dilute the electoral power of Hispanic voters, the Justice Department announced in June it would not preclear the plan. With the primary election now only three months away, the legislature scrambled to enact a revised plan that conformed to the Justice Department's objections. It did so within six days. Finding an emergent need to have a districting plan – any districting plan – in place for the imminent election, the federal court allowed the revised map to stand for the 1992 election.⁶⁶ However, in August 1992, between the primary and general elections, the revised map was also rejected by the Justice Department. It was not until February 1994 – three years after the census – that a valid legislative district map was finally in place.

Proposition 106 – “Fair Districts, Fair Elections.” Following the 1990s experience, momentum grew to replace the legislative-centric redistricting procedure with a more independent system. The reform effort began with support from a Phoenix-area developer, but eventually gained mainstream support, with *The Arizona Republic* declaring, “[t]here is nothing more crucial to the future of this state than redistricting.”⁶⁷ The result was Proposition 106, entitled “Fair Districts, Fair Elections” and approved 56–44 percent by Arizona voters at the 2000 election.⁶⁸

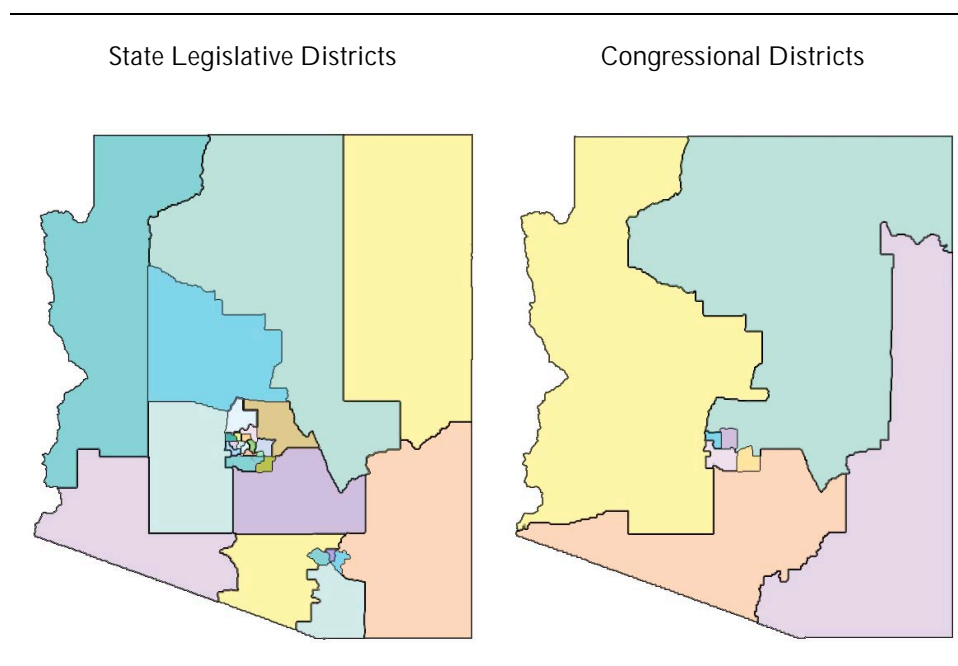
Proposition 106 was characterized by its sponsors as “ending the practice of gerrymandering and improving voter and candidate participation in elections.”⁶⁹ In practice, it removed primary redistricting responsibility from the state legislature and gave it to an Independent Redistricting Commission created by the initiative. Thus, Arizona's 2000 reform operated similarly to Iowa's 1980 reform in that both transferred authority from a legislature to an independent entity.

In Arizona, a new Independent Redistricting Commission is constituted every decade as follows.⁷⁰ First, the nonpartisan Commission on Appellate Court Appointments – the body primarily responsible for choosing the state's judicial officers – nominates twenty-five qualified candidates: ten from each major political party and five from neither. Second, from this candidate pool, the four state legislative leaders each select one individual. Third, the four selected members then choose from the pool a fifth who is not registered to a political party already represented by the first four members. This person – presumably a political independent – serves as Commission chair. No more than two commissioners may be from the same county or political party. Individuals who have switched political parties or engaged in any of a number of political activities with the last three years are ineligible to serve. Com-

missioners who do serve become ineligible for Arizona public office and registration as a paid lobbyist during their Commission terms and for three years thereafter.⁷¹

Unlike Iowa, neither Arizona's governor nor legislature must approve the plan produced by the Commission. Instead, the Commission is guided only by the process and criteria specified in the state constitutional provisions added by Proposition 106.⁷² The Commission develops congressional and state legislative maps via a four-step process. First, the Commission begins by "creati[ng] districts of equal population in a grid-like pattern across the state." The initial grids created during the 2000s redistricting appear in Figure 3C.

Figure 3C
Arizona 2000s Initial Grid District Maps



Second, the Commission then makes adjustments to the initial grids to accommodate a variety of goals including (1) compliance with federal law, (2) equality of population, (3) compactness and contiguity, (4) respect for communities of interest, (5) respect for natural and political boundaries and (6) electoral competition. All but the first goal are qualified by "to the extent practicable" and pursuit of the final goal may not create a "significant detriment to the other goals."⁷³ Thus, it appears that compliance with federal law is paramount, while enhancing competition is mandatory but conditional.⁷⁴ Additionally, the Commission is specifically prohibited from considering candidates and incumbents' places of residence at any stage of the map making and may only consider party registration and historical voting data as a means to test for compliance with the goals listed above.

Third, once the Commission is satisfied that its maps have met these goals, it releases a draft for a public comment period of at least thirty days. The state legislature may also comment

officially by majority action or minority report. Fourth, following the comment period, the Commission establishes the final maps and submits them to the Justice Department for pre-clearance.

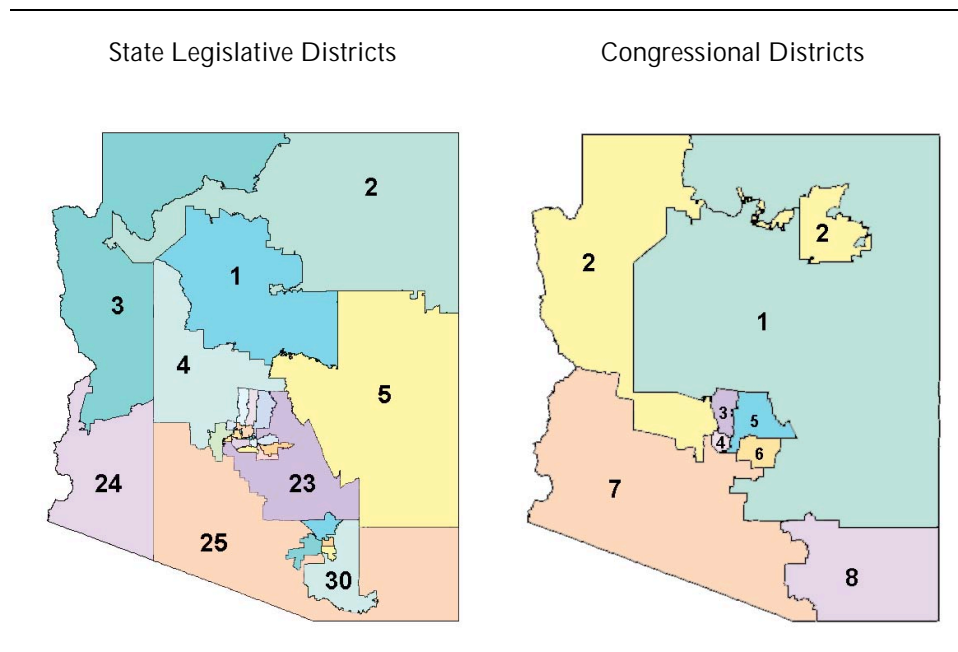
Proposition 106 also requires the state to make available “adequate office space” and funds necessary for “adequate redistricting expenses.”⁷⁵ While the state has nominal fiscal oversight authority, it is prohibited from using this authority to influence the Commission’s substantive redistricting decisions.⁷⁶

The first Independent Redistricting Commission (IRC) was established in 2001. While its congressional map was approved without issue, its state legislative map was the subject of protracted litigation during much of the Commission’s ten-year existence.⁷⁷ The IRC began its work in May 2001 and adopted its final congressional and state legislative district maps in November. The final maps were submitted for preclearance in January 2002. While the Justice Department did not object to the congressional plan, it denied preclearance to the legislative plan because it caused “a net loss of [districts] in which minority voters can effectively exercise their electoral franchise.”⁷⁸ With the primary election only months away, a federal court in Arizona agreed to allow emergency use of a slightly revised map for the 2002 elections.⁷⁹ The timing and emergent nature of the situation closely paralleled the 1992 experience.⁸⁰ A legislative map, precleared by the Justice Department, was finally adopted in August 2002 and first used in the 2004 elections.

While the various plans were under review at Justice in 2002, a lawsuit was brought in state court challenging the legislative plan on several grounds, including the Commission’s alleged failure to accommodate competitiveness, as required by Proposition 106.

After defending its work in state and federal court for seven years, the IRC won a significant victory in the Arizona Supreme Court. The question of whether the Commission adequately considered competitiveness when drawing legislative districts ultimately reduced to a question of how much deference courts should accord the IRC’s discretionary decision-making. Analogizing the Commission to a legislative body, the court concluded that redistricting plans should be given the same high level of deference as ordinary legislative enactments.⁸¹ That is, separation of powers prevented the court from looking beyond the IRC’s compliance with state and federal law. Because the court found the Commission had violated neither, it upheld the IRC’s legislative map, nearly seven years after its adoption.⁸² The final maps created during the 2000s redistricting appear in Figure 3D.

Figure 3D
Arizona 2000s Final District Maps



Conclusion. Though Arizona's first Independent Redistricting Commission spent most of its ten-year existence defending its work against legal challenge, the result of this effort may smooth the way for subsequent commissions. The Arizona Supreme Court's opinion made clear that where a decision was discretionary, the Commission's choice would remain undisturbed absent evidence of a constitutional or statutory violation. In other words, if future commissions follow the procedures provided by Proposition 106 and engage in the open, deliberative process it specifies, successfully challenging their substantive decisions in state court will be difficult. Perhaps the tallest hurdle before the 2011 Commission is securing preclearance by the Justice Department under the Voting Rights Act.

CALIFORNIA: REFORM BY BALLOT INITIATIVE (2008)

" Voters are supposed to choose their representatives, but in California, political parties choose their voters. That kind of power is destructive and inherently anti-democratic. "*

Until recently, redistricting of congressional and state legislative district lines in California was accomplished through the normal legislative process, with generally poor results.⁸³ Fol-

* Editorial, *Prop. 11 isn't perfect, but it would take some of the politics out of drawing legislative districts*, LOS ANGELES TIMES, Sep. 12, 2008, at A20.

Following the 1970 census, Republican Governor Ronald Reagan vetoed the Democratic legislature's districting plan, forcing judicial intervention and a court-ordered plan. Following the 1980 census, the first adopted plan was overturned by popular referendum after only one election cycle, forcing the legislature to adopt a second plan in late 1982. Following the 1990 census, the Republican governor and Democratic legislature deadlocked again, forcing another judicial intervention and court-ordered districting plan. In the recent history of California redistricting, only the post-2000 experience ended as intended: with the legislature and governor agreeing to a single plan on time, without needing to revisit the issue mid-decade.

Previous Attempts at Reform. While the elected officials deadlocked and judges intervened over the years, the voters made several attempts to reform the redistricting process by proposition, with little success until 2008.⁸⁴

In 1982, Proposition 14 proposed to create a bipartisan Commission of at least ten members, including four selected by current appellate court justices and three selected by each of the two largest political parties in the state. As many as four current legislators (two from each major party) could serve as commissioners. The Commission could directly adopt congressional and state legislative boundaries that met certain criteria including fair representation, equal population, compactness and respect for political boundaries. If the Commission were unable to adopt a plan, the state supreme court would be called upon to do so.⁸⁵ Proposition 14 was rejected by the voters 46–54.⁸⁶

In 1984, Proposition 39 proposed to create a bipartisan Commission of at least ten members, including eight former appellate court justices and two non-voting members selected by the Governor and a statewide official of a different political party. Like the failed 1982 proposition, the Commission could directly adopt congressional and state legislative boundaries that met certain criteria including equal population, competitiveness, compactness, contiguity and respect for political boundaries. Unlike the failed 1982 proposition, if the Commission were unable to adopt a plan, special procedures would be followed to randomly disqualify commissioners from participating until a voting majority could be attained.⁸⁷ Proposition 39 was rejected by the voters 45–55.⁸⁸

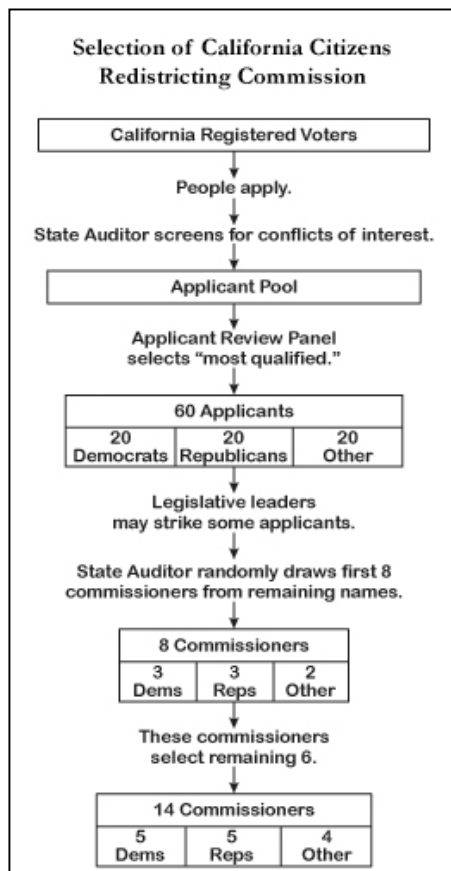
In 1990, Proposition 119 proposed to create a twelve-person, bipartisan Commission appointed by retired appellate judges. However, the Commission would not directly establish the congressional and state legislative boundaries. Instead, it would solicit plans from the public and select the one that best accommodated districting criteria specified in the proposition including equal population, fair and effective representation, no adverse affect on minority political influence, respect for political boundaries and competitiveness. If the Commission were unable to adopt a plan, a backup commission would be established.⁸⁹ Proposition 119 was rejected by the voters 36–64.⁹⁰

In 2005, Proposition 77 proposed to create a bipartisan, three-person panel of retired judges selected by legislative leaders from a larger pool of eligible retired judges. The panel could directly adopt congressional and state legislative boundaries that met certain criteria includ-

ing equal population, compliance with the Voting Rights Act, contiguity, respect for political boundaries and compactness. Once the panel adopted a plan, it would be automatically presented as a referendum for voter approval or rejection at the next general election. If approved, the plan would stand until the next decade; if rejected, a new panel would be established to begin the process anew. Any officials elected under the rejected plan would serve out their term of office.⁹¹ Proposition 77 was rejected by the voters 40–60.⁹²

Finally, in 2008, California voters approved Proposition 11, the “Voters FIRST Act,” by 51–49.⁹³ Proposition 11 amended the state’s constitution to shift primary responsibility for legislative redistricting from the legislature to a new Citizens Redistricting Commission. However, it left primary responsibility for congressional redistricting with the state legislature, but added several new criteria to guide its work in this area. Passage of Proposition 11 was hailed as “historic” in light of the history of failed reform efforts described above.⁹⁴

Proposition 11 – “Voters FIRST Act.” California’s Proposition 11 is substantially different from the four rejected propositions that preceded it, but share many similarities with Arizona’s Proposition 106.



Unlike its predecessors, Proposition 11 leaves primary responsibility for congressional redistricting with the state legislature; only state legislative redistricting is accomplished by commission. Similar to Arizona’s proposition, the California Commission is selected in several steps (shown at left), with only secondary involvement by state legislators.⁹⁵

Specifically, any registered California voter is eligible to apply for a position on the Commission. The State Auditor screens applicants for conflicts of interest and establishes a bipartisan Application Review Panel comprised of three independent auditors who are licensed by the state. These individuals then select the most qualified applicants according to their analytical skills, ability to be impartial, and “appreciation for California’s diverse demographics and geography.”⁹⁶ The Review Panel selects sixty applicants – twenty from each of the two major political parties and twenty from neither.

From this pool of sixty, the state’s four legislative leaders each “strike” up to two applicants from each subgroup, leaving a pool of at least thirty-six. From this rarified group, the State Auditor selects at random three applicants from each of the two major political parties and two applicants from neither party. The chosen ones then select two additional applicants from

those left in each of the three subpools. Together, these are the fourteen members of the California Citizens Redistricting Commission.

As of this writing (April 2010), the first phase of the application process is nearly complete. The State Auditor initially received 30,000 applications for the fourteen positions and nearly 25,000 applicants have been deemed “tentatively eligible” to continue in the application process. The Applicant Review Panel will choose the sixty-member pool by October 1 and the eight-person random drawing will occur by November 20. The eight initial members must then select the six additional members by December 31.

According to Proposition 11, the selection process is intended to promote a “diverse and qualified applicant pool”⁹⁷ and produce a commission “independent from legislative influence and reasonably representative” of the state.⁹⁸ To these ends, there is a retrospective ten-year disqualification for electoral candidates, office holders and appointees to state or federal office; party or campaign officials; registered lobbyists; paid congressional or state staffers; and large campaign contributors. There is also a ten-year prospective ban on holding elective public office and a five-year prospective ban on holding appointive office, working as paid legislative staff, or registering as a lobbyist.⁹⁹ Interestingly, commissioners are required to have voted in two of the three most recent statewide elections.¹⁰⁰ Together with the disqualifying criteria, this suggests that both political independence and civic engagement were considered by the proposition framers to be desirable commissioner qualities.

The Commission’s mandate is somewhat less complicated than its selection process. Legislative districts are to be drawn according to several criteria specified by the Proposition text including equal population, contiguity and compliance with state and federal laws. Political boundaries and communities of interest must be accommodated to the extent possible without violating the preceding criteria. Similarly, compactness must be considered “to the extent practicable” without conflicting with the preceding criteria.¹⁰¹

The Commission is required to conduct an “open and transparent process enabling full public consideration of and comment on the drawing of district lines.”¹⁰² Specifically, the Commission must hold public hearings both before drawing any maps and after proposed maps have been made available for public inspection.¹⁰³

The Commission must adopt a legislative district map on or before September 15 of years ending in one – at least eight and one-half months after the Commission is first assembled. Along with the adopted map, the Commission must report on how it complied with the districting criteria specified in the Proposition. Finally, the Commission’s map is subject to the state’s referendum process, whereby a successful petition drive can place the Commission’s maps on the ballot for voter approval or rejection.¹⁰⁴ If the Commission fails to adopt a map by the prescribed deadline, or if the voters reject a map by referendum, the state supreme court steps in to adopt its own map consistent with the Proposition requirements.¹⁰⁵

While the state legislature retains primary responsibility for congressional redistricting, Proposition 11 adds several substantive and procedural requirements that did not apply pre-

viously. The substantive requirements for congressional districting and legislative districting under current and pre-Proposition 11 law are illustrated in Table 3A. Additionally, the legislature is required to work with the Citizens Redistricting Commission to hold concurrent hearings and “ensure full public participation in the redistricting process.”¹⁰⁶

Table 3A
California Redistricting Requirements
Before and After Proposition 11

	All Districting Before Prop 11 <i>Former CAL. CONST. art. XXI, § 1</i>	Congressional Districting After Prop 11 <i>CAL. CONST. art. XXI, § 1</i>	Legislative Districting After Prop 11 <i>CAL. CONST. art. XXI, § 2(d)</i>
Reasonably Equal Population	X	X	X
Compliance with Federal Law	X	X	X
Contiguity	X	X	X
Respect for Political Boundaries *	X	X	X
Respect for Communities of Interest *		X	X
Compactness *		X	X
No Favoring or Discriminating Against Incumbent, Candidates or Parties			X

* To the extent possible without conflicting with criteria above.

Source: Author's analysis of Proposition 11.

Conclusion. While the full effect of Proposition 11 remains unknown as of this writing, it is clear that the post-2010 redistricting will be procedurally and substantively different than those preceding it. Proposition 11 has essentially created two parallel redistricting processes: one led by an independent commission, the other by the state legislature. Both are subject to a “full” public participation requirement and substantially enhanced districting criteria. Whether this bifurcated process will improve upon California’s checkered track record of redistricting also remains unknown. State legislators may still be able to draw congressional districts to suit their own needs, rather than those of their constituents. But with the Citizens Commission now in charge of state legislative redistricting, the public retains indirect control over those drawing congressional boundaries.

With the preceding examples in mind, this study proceeds to describe New Jersey redistricting process. A side-by-side comparison of significant redistricting characteristics of Iowa, Arizona, California and New Jersey is presented as Appendix D.

— 4 —

REDISTRICTING IN NEW JERSEY

Like all other states, New Jersey will redraw its congressional and state legislative boundaries following the 2010 census. Unlike most other states, redistricting in New Jersey is done not by an act of the state legislature, but rather by extra-legislative commissions. New Jersey's "Redistricting Commission" redraws congressional districts and its "Apportionment Commission" redraws state legislative districts. The provisions establishing these commissions and guiding their work are found in the state constitution.¹⁰⁷

PAST PRACTICE

Apportionment and Redistricting by Legislature. The evolution of apportionment and redistricting in New Jersey has been remarkable. Until the U.S. Supreme Court's reapportionment revolution in the 1960s (*see* Section 2), the proportion of representation varied widely throughout the state. At its peak in the 1920s, district populations in the General Assembly – New Jersey's lower legislative chamber – varied by more than 4-to-1.¹⁰⁸ Malapportionment was worse in the Senate, where district populations varied by more than 30-to-1.¹⁰⁹

Large population variances were due primarily to New Jersey's use of counties as indivisible units of representation. Until the 1960s, every county – no matter how sparsely populated – was entitled to one Senator and at least one representative in the General Assembly. Under this system, redistricting of legislative districts was unnecessary because county lines served as *de facto* district boundaries. Thus, the legislature needed only to periodically reapportion representatives among counties as their populations shifted.¹¹⁰ As urban migration accelerated during the early twentieth century, however, the one-county, one-vote system rewarded rural areas with representation that was disproportionate to their thinning populations.

New Jersey's experience with congressional districts was little better. These were unchanged for three decades until after the 1960 census, when the state received an additional congressional seat.¹¹¹ Thereafter, the state struggled to comply with one-person, one-vote. Both the 1970s and 1980s maps were initially rejected in court for excessive population variance.¹¹²

Redistricting by Commission. After the Supreme Court's 1964 decisions that congressional and state legislative district boundaries must be based primarily on population equality, New Jersey found itself with unconstitutional districts and no clear way to remedy the problem. The result was an extraordinary constitutional convention in 1966 that established new

criteria for drawing legislative districts and a commission to implement them. Congressional districts continued to be drawn by the legislature until the 1990s, when it created an ad hoc commission that was subsequently written into the state constitution as the New Jersey Redistricting Commission.

Though New Jersey's use of commissions takes the legislature out of the redistricting process, legislators may still play a role in their individual capacities. With one exception, members of both the Redistricting and Apportionment commissions are chosen directly and exclusively by New Jersey's legislative and political party leaders who enjoy almost unlimited discretion in their choices. During the 2000 round, several chose themselves. For obvious reasons, state legislators and party leaders generally have a strong interest in these Commissions' work and the prospective boundaries of legislative and congressional districts.

The process by which commissioners are selected in New Jersey differs substantially from those in Arizona and California, which disqualify legislators, party leaders, their staffs, lobbyists and others from serving. Additionally, in the latter states, legislators and party leaders play only a minor role – if any – in selecting commission members. Though the term “independent commission” is sometimes used to describe New Jersey's redistricting authorities,¹¹³ the term “politician commission” has also been used and may be more accurate.¹¹⁴

This section continues with a discussion of New Jersey's Redistricting and Apportionment commissions and their performance during the last redistricting round. The following sections present a framework for analyzing the redistricting process in New Jersey and specific ideas to consider for changing that process.

CONGRESSIONAL “REDISTRICTING COMMISSION”

Overview. New Jersey's congressional districts are redrawn every ten years by the thirteen-member New Jersey Redistricting Commission (“NJRC”), established in each year ending in one.¹¹⁵ Twelve members are chosen on or before June 15 by the state legislative leaders and major political party chairs as follows:

Table 4A
Appointing Authorities for the
New Jersey Redistricting Commission

2	President of state Senate
2	Speaker of state General Assembly
2	Minority Leader of state Senate
2	Minority Leader of state General Assembly
2	Chair of Democratic State Committee
2	Chair of Republican State Committee
12	Total Appointed Members *

* A majority of the twelve appointed members select a thirteenth, independent member who serves as chair.

The appointing authorities are politically balanced and thus have always produced a precisely bipartisan commission, composed of Republicans and Democrats in equal number. The appointing authorities also have broad discretion in making their appointments. Only members of Congress and its employees are disqualified and “due consideration to geographic, ethnic and racial diversity” is the only substantive criterion.¹¹⁶ On or before July 15, the twelve appointees select a thirteenth, “independent member” who chairs the Commission. If the Commission cannot agree on a thirteenth member, one is chosen by the state supreme court. During the five years preceding her selection, the independent member must have resided in New Jersey and not held public or party office in the state. These additional criteria do not apply to the twelve appointed members, as is evident from Table 4B. Of the members of the 2001–02 Redistricting Commission, five were current or recent public officials and three were current or recent party officials.

Table 4B
Members of the 2001–02 New Jersey Redistricting Commission¹¹⁷

Member	Party	Affiliation	Appointing Authority
Alan Rosenthal (chair)	Independent	Rutgers University Professor	Majority of members below
Leonard Coleman	Republican	Former Cabinet Officer	Senate President
Elizabeth Randall	Republican	Former Assemblywoman and Cabinet Officer	Senate President
George Gilmore	Republican	Ocean County Republican Chair	Assembly Speaker
Gary Stuhltrager	Republican	State Assemblyman	Assembly Speaker
Dale Florio	Republican	Somerset County Republican Chair	Republican State Chair
Candace Straight	Republican	Republican Fundraiser	Republican State Chair
Lionel Kaplan	Democrat	Democratic Fundraiser	Senate Minority Leader
Dana Redd	Democrat	Camden Councilwoman	Senate Minority Leader
Zulima Farber	Democrat	Former State Public Advocate	Assembly Minority Leader
Frank Robinson	Democrat	Assembly Democrat Staff Director	Assembly Minority Leader
Karen Brown	Democrat	Passaic County Counsel's Office	Democratic State Chair
James Dugan	Democrat	Former Democratic State Chair	Democratic State Chair

The Commission is required to organize by the Wednesday after Labor Day (i.e., September 7, 2011) and to submit its final map by the third Tuesday of the following year (i.e., January 17, 2012), or three months after the census data are available, whichever is later. Thus, the time available for deliberation is approximately three months. During this period, the Commission must hold at least three public hearings “in different parts of the state” and an additional public meeting to adopt a final plan.¹¹⁸ All other meetings of the Commission may be closed to the public.¹¹⁹ Additionally, “subject to the constraints of time and convenience,” the Commission must “review” plans submitted by the public in writing, but is not otherwise required to acknowledge them in any way.¹²⁰ If the Commission cannot agree to a plan by the deadline, the state supreme court intervenes to select one of the two proposals receiving the greatest number of votes on the Commission.¹²¹ A timeline of the NJRC's work is illustrated in Figure 4A.

Figure 4A
New Jersey Congressional Redistricting Timeline (2011–12)¹²²

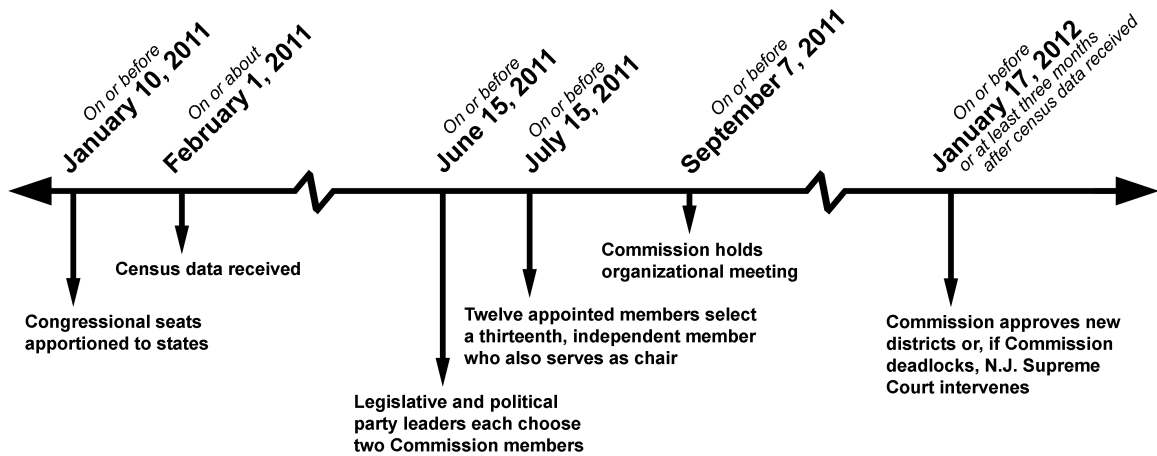
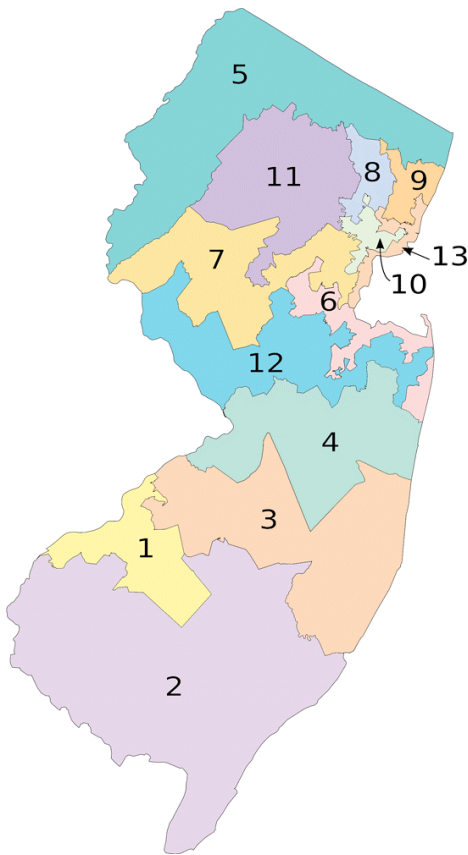


Figure 4B
New Jersey Congressional Districts
(2002–12)



The 2000s Experience. The 2001–02 NJRC unanimously approved a congressional map on October 26, 2001 – almost three months before the deadline. The plan was widely viewed as helping incumbent members of Congress keep their seats,¹²³ and was nearly identical to a proposed map drawn by the incumbents themselves several months earlier.¹²⁴

Proponents argued the plan would benefit New Jersey by increasing the seniority of its delegation, thereby enhancing its members' prospects for committee chairs and other perquisites.¹²⁵ Commission chair Alan Rosenthal described the commission's work product as "a politically fair plan" that would provide continuity for the state's voters. He added, "[r]oughly 90 percent of the people of New Jersey will be living in the same congressional district . . . and people might actually know who their congressman is."¹²⁶ Critics of the plan complained it was too kind to incumbents. In every congressional election since the map was adopted, all members of Congress from New Jersey seeking reelection have won.¹²⁷

Two districts drawn by the plan — the Sixth and Thirteenth — score particularly low by many measures of compactness and are arguably not contiguous.¹²⁸ A map of New Jersey's congressional districts drawn by the 2001 plan appears as Figure 4B.

LEGISLATIVE “APPORTIONMENT COMMISSION”

Overview. New Jersey’s legislative districts are redrawn every ten years by the ten-member New Jersey Apportionment Commission (“NJAC”) established in each year ending in zero.¹²⁹ The ten members are chosen on or before November 15 by the state’s major political party chairs as follows:

Table 4C
Appointing Authorities for the
New Jersey Apportionment Commission

5	Chair of Democratic State Committee
5	Chair of Republican State Committee
10	Total Appointed Members *

* If Commission deadlocks, the Chief Justice of the state Supreme Court selects an eleventh member.

The appointing authorities are politically balanced and thus have always produced a precisely bipartisan commission, composed of Republicans and Democrats in equal number. The appointing authorities also have nearly unlimited discretion in making their appointment. Appointments need only be made with “due consideration to the representation of geographical areas of the State.”¹³⁰ Of the members of the 2000–01 Apportionment Commission, listed in Table 4D, all ten were current public or party officials.

Table 4D
Members of the 2000–01 New Jersey Apportionment Commission¹³¹

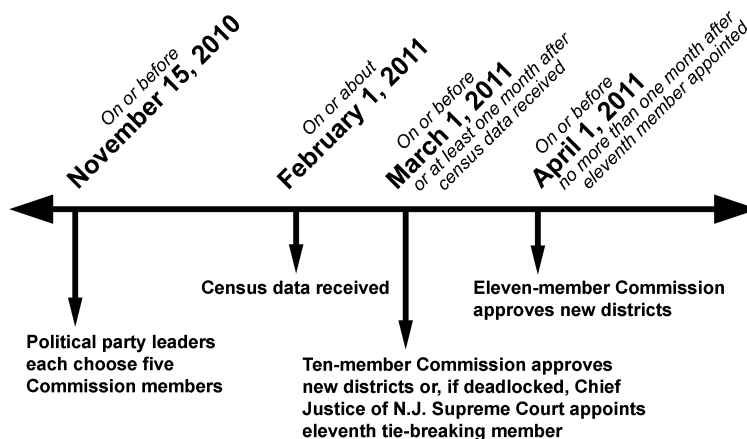
Member	Party	Affiliation	Appointing Authority
Larry Bartels (tiebreaker)	Independent	Princeton University Professor	Chief Justice of the state Supreme Court
Chuck Haytaian	Republican	Republican State Chair	Republican State Chair
John Bennett *	Republican	Senate Majority Leader	Republican State Chair
Jack Collins	Republican	Assembly Speaker	Republican State Chair
Glenn Paulsen	Republican	Burlington County Republican Chair	Republican State Chair
Lois Johnson	Republican	Morris County Republican Chair	Republican State Chair
Tom Giblin	Democrat	Democratic State Chair	Democratic State Chair
Richard Codey	Democrat	Senate Minority Leader	Democratic State Chair
Louis Greenwald	Democrat	Assembly Minority Leader	Democratic State Chair
Bonnie Watson Coleman	Democrat	State Assemblywomen	Democratic State Chair
Sonia Delgado	Democrat	Lobbyist	Democratic State Chair

* Bennett replaced Donald DiFrancesco when the latter became Governor in January 2001.

The Commission is required to approve a map of legislative districts by February 1, or one month after the census data are available, whichever is later.¹³² Unlike the congressional Redistricting Commission, the NJAC is not required to hold any public meetings, nor is it re-

quired to consider any proposals submitted by the public. In the event the Commission fails to approve a map by its deadline, the Chief Justice of the New Jersey Supreme Court chooses an eleventh, tiebreaking member of the Commission. The expanded Commission then has one additional month to complete its work.¹³³ A timeline of the NJAC's work is illustrated in Figure 4C.

Figure 4C
New Jersey Legislative Redistricting Timeline (2010–11)¹³⁴



The role of the public, tiebreaking member is not defined in the state constitution. Shortly after his second stint in this position, Princeton Professor Donald Stokes observed, “[t]he public member is not simply a ‘tie-breaker’ who is bound to choose between a set of boundaries that tilts toward one party and an alternative set that tilts toward the other.”¹³⁵ Such a limited role, he argued, “defeats the framers’ objective of eliminating party bias” in the legislative redistricting process by constraining the tiebreaker to a choice between two partisan plans.¹³⁶ Accordingly, to facilitate meaningful participation in commission deliberations, Stokes called for budgetary and staff support for the tiebreaker during subsequent redistricting rounds.¹³⁷ This would bring the role of legislative tiebreaker in line with its congressional counterpart, who not only chairs the congressional commission, but is also expected to participate substantively in its deliberations. However, a fully engaged neutral member may not be the best or only way to eliminate party bias in redistricting plans. An alternative to this arrangement is proposed in Section 6 below.

From “Apportionment” to Redistricting. Unlike the congressional Redistricting Commission, the NJAC’s mandate cannot be found in the state constitution alone. Following the 1966 constitutional convention called in response to the U.S. Supreme Court’s one-person, one-vote decisions, New Jersey initially retained county- and municipality-based districts. Forty Senate districts were to be composed of one or more whole, contiguous counties; eighty Assembly districts were to be nested within the Senate districts and could divide municipalities only where necessary to satisfy population equality, compactness and contiguity standards. The applicable standard of population equality was quite lenient, however; a total range of deviation up to 40 percent was allowed. Accordingly, the Commission’s districting discretion was quite limited and, as its name suggests, its primary duty was merely to *appor-*

tion Senate and Assembly members among the state's political subdivisions "as nearly as may be according to the number of their inhabitants."¹³⁸

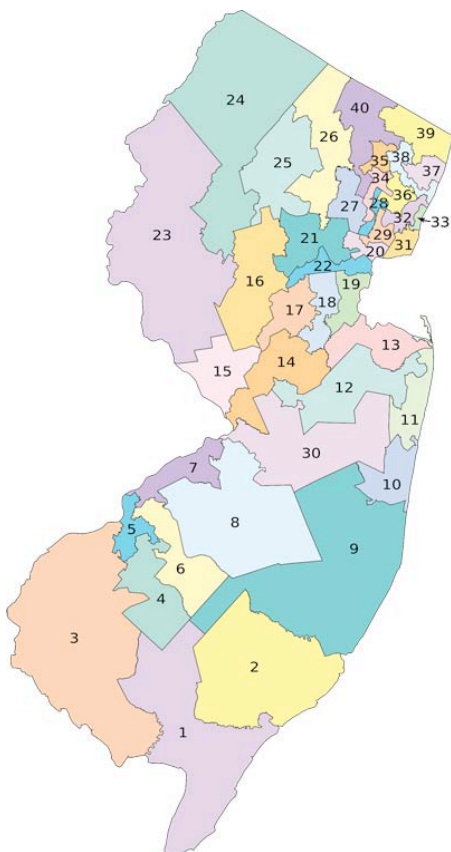
Though these provisions remain in New Jersey's constitution (at Article IV, Section 2), several have been rendered without effect. Following a series of New Jersey Supreme Court decisions interpreting the one-person, one-vote rule, it became clear that the degree of population equality required by the U.S. Constitution was substantially less than 40 percent and impossible to attain without crossing county and municipal lines.¹³⁹ Accordingly, redistricting has since replaced reapportionment as the primary task required after each census, rendering the "Apportionment Commission" a misnomer today. These events also produced the modern arrangement of forty legislative districts with equal population and each represented by one senator and two assembly members.¹⁴⁰ Courts still give weight to the constitution provisions specifying certain districting criteria: contiguity, compactness and respect for municipal boundaries, so long as population equality is obtained.¹⁴¹

The 2000s Experience. In 2001, the block-by-block data necessary to begin the redistricting process was not available until March 8. Thus, the deadline for adoption of a new plan was April 8 – thirty days later – and only days before the 2001 primary election filing deadline of April 12. Although not required to do so, the Commission held four public hearings around the state at which the commissioners received testimony but did not respond to questions.¹⁴² Much of the Commission's real work, however, was done out of the public view. Several members defended this practice. Commission chair and Princeton professor Larry Bartels himself observed "it would be very hard to make progress in this type of negotiation [in public]."¹⁴³ Assembly Speaker and commissioner Jack Collins added that privacy was necessary "because of the way you have to look at populations and the give and take in a political sense."

Ultimately, the ten-members NJAC failed to reach an agreement, just as each of its predecessor commissions had since 1981.¹⁴⁴ On March 28, the Commission formally declared it was deadlocked; three hours later, the state Chief Justice appointed Bartels as the Commission's eleventh, tiebreaking member.¹⁴⁵ To accommodate the delay, the state legislature postponed the primary election filing deadline by one week.¹⁴⁶

A final map was approved by a bare majority of commissioners on April 11, with Bartels joining the five Democrats; four of five Republican commissioners boycotted the final voting session.¹⁴⁷ Lawsuits ensued. Republicans challenged the plan on several grounds, including improper dilution of minority voting strength and racial gerrymandering.¹⁴⁸ Both complaints were ultimately unsuccessful.¹⁴⁹ In the meantime, after acknowledging the "extraordinary circumstances" and uncertainty surrounding the new districting plan, the legislature took the equally extraordinary step of postponing the primary election by three weeks.¹⁵⁰

Figure 4D
New Jersey Legislative Districts
(2001–11)



Republicans' legal and legislative¹⁵¹ discontent was mirrored by Democrats' political satisfaction. Senate Minority Leader and commissioner Richard Codey acknowledged the new map would be "clearly much better for the Democrats" and would enable his party to win back both houses of the state legislature.¹⁵² A map of New Jersey's legislative districts established by the 2001 plan appears as Figure 4D.

Codey's prediction proved accurate almost immediately. In the 2001 election – the first held under the new map – Republicans lost their majorities in both legislative houses for the first time in a decade. Democrats picked up twelve seats in the Assembly and four in the Senate as Republicans went from holding 60 percent of seats in the legislature to only 47 percent of seats.¹⁵³ While no single factor can fully explain such an abrupt shift in political power, the timing and trend have been unmistakable. Not since 1991 – immediately after the last redistricting – have so many legislative seats switched parties. Further, in almost every election since the 2001 map was adopted, Democratic majorities in both legislative chambers have increased.¹⁵⁴ After the 2009 elections, Republicans held only 42 percent of seats in the legislature.

The next section presents a general framework for evaluating the process of redistricting, with a specific focus on the outcomes produced by New Jersey's Redistricting and Apportionment commissions of 2000–02. This is followed by a discussion of specific ideas to consider for changing New Jersey's redistricting process 2011 and subsequent decades.

— 5 —

EVALUATING REDISTRICTING: POINTS TO CONSIDER

The next round of congressional and state legislative redistricting in most of the United States will occur in 2011–12. Because New Jersey holds off-year legislative elections (i.e., in 2009, 2011, etc.), the redistricting process there will begin even sooner – in late-2010. This section discusses several substantive and procedural considerations relevant to redistricting generally, to assist the reader in making an informed judgment about the strengths and weaknesses of a particular redistricting scheme. This section specifically applies these criteria to the 2000s redistricting outcomes in New Jersey.

Following this analysis, the next section suggests discrete areas in which to consider changes to the redistricting process, including ways to enhance meaningful public participation and input into the process. These suggestions are followed by a discussion of the various legal, political and chronological limitations relevant to any effort to change New Jersey's redistricting process in the 2010s and subsequent decades.

FRAMEWORK OF ANALYSIS

The redistricting cases discussed in Section 2 provide a useful starting point for evaluating a plan of congressional or state legislative districts. These cases established one-person, one-vote – equal population among districts – as a central tenet of American government. In time, courts have acknowledged other, “traditional” districting principles as relevant to whether a particular districting plan is legal. These include compactness, contiguity, respect for political boundaries and communities of interest, and avoiding contests between incumbents. Also relevant to any analysis are the substantive electoral outcomes that follow the adoption of a new districting plan. That is, whether a new map results in significant shifts in political power, fluctuations in electoral competition or turnover, and whether identifiable interest groups have been helped or harmed politically by the plan. Each of these criteria is considered below.

Of course, the redistricting process itself may influence the substantive outcomes of redistricting. Who draws the lines and – where redistricting commissions are concerned – who decides who draws the lines is important. Those in charge may have certain interests or priorities not shared by the public generally. Further, the information that mapmakers may or may not consider can determine which substantive interests are pursued effectively and which cannot be pursued at all. The manner of public participation and input may also have

an impact on both the information available to mapmakers and how they use it. Each of these factors is considered below.

Not all of the criteria discussed below are entirely compatible. Some may even directly conflict. When they do, subjective tradeoffs may be required. For example, compactness and strict population equality often require some disrespect for county and municipal boundaries. Deciding which lines to cross, how many and where are among the challenges routinely faced by redistricting authorities. Each of the redistricting methods surveyed in Section 3 acknowledge the inherent difficulty of these decisions by prioritizing certain criteria above others. For example, Arizona's redistricting law makes clear that compliance with federal law is the top priority. Electoral competition must be considered as well, but only where it does not create a "significant detriment to the other goals."¹⁵⁵ Similarly, in California, respect for political boundaries and compactness may be considered only to the extent that doing so does not conflict with the superordinate goals of equal population, compliance with federal law and contiguity.¹⁵⁶

SUBSTANTIVE CONSIDERATIONS

Equal Population. Equal population has been the touchstone of redistricting for nearly five decades. Before then, the populations of congressional and state legislative districts in a single state varied substantially. Extreme examples from the early 1960s include congressional districts in Michigan, which ranged from 177,431 to 802,994 persons,¹⁵⁷ and state legislative districts in Vermont, which ranged from 36 to 35,000 persons.¹⁵⁸ In New Jersey, where each of the twenty-one counties was represented by a single state Senator, districts ranged from 48,555 to 923,545 persons, a ratio of 19-to-1.¹⁵⁹

As discussed in Section 2, the modern standard of population equality varies by the type of district under consideration. Congressional districts must have equal population "as nearly as is practicable,"¹⁶⁰ while population among state legislative districts need only be "substantially equal."¹⁶¹ In both instances, greater deviations may be permitted, but only if justified by a particular state policy or objective, such as pursuit of traditional districting principles.

Equal population ensures proportional representation – the same number of persons-per-representative across districts. This may be desirable for a number of reasons. First, from a constituent services perspective, each person's share of her representative's energies and effort is theoretically the same. Residents of Vermont's 36-person district probably received substantially more attention from their representative than those of Vermont's 35,000-person district, for no other reason than their place of residence. Second, from a republican perspective, each person receives the same amount of influence in the legislative branch. Vermont's 36-person legislator had the same voting power – the same ability to influence the course of legislation – as the 35,000-person representative. Third, from a democratic perspective, each person's vote is given roughly the same weight. The likelihood of casting a deciding vote in a 36-person district is significantly higher than it is in a 35,000-person district.

However, equal population is a crude equalizer. Many other factors affect one's access, influence and importance in American government. The 35,000-person representative might have an army of constituent servants working around the clock. Or she might hold a powerful committee chair. Or her district might be so hotly competitive that even a single vote could decide the outcome. Additionally, population equality may disserve other legitimate interests by necessitating the division of political subdivisions and other communities of interest. In areas with irregular distributions of population, sprawling districts may be required to achieve precise numerical parity.

There is also the question of what population to consider. Should transient residents such as students, prisoners and active duty military personnel be included? Illegal aliens and non-citizens? Counting all residents is the broadest and most commonly used measure. But in 1966, the U.S. Supreme Court upheld a state legislative redistricting plan in Hawaii that counted only registered voters.¹⁶² There the Court was swayed by the large number of tourists and armed forces distorting the state's demography. Counting only registered voters would equalize the weight of each vote, but not each voter's access and influence; residents of high registration areas would benefit from having fewer uncoun- ted, non-registered voters in their district.

Following the 2000s redistricting, population among New Jersey congressional districts was almost exactly equal. The average population deviation was zero and the maximum deviation was one person – a mere 0.000002 percent of the ideal district size of 647,258 persons. Because New Jersey's total population as revealed by the 2000 census was not evenly divisible by the number of congressional seats apportioned to the state, greater equality was mathematically impossible. Average deviation among New Jersey's state legislative districts was 3,899 and the total range of deviation was 16,495 persons – 1.85 and 7.84 percent, respectively, of the ideal district size of 210,359 persons.¹⁶³ Though substantially greater than the congressional districts, these deviations fall within the 10 percent safe harbor established by the Supreme Court.

Compactness. Compactness refers to a district's shape. Circular districts are generally considered compact while sprawling districts with numerous tendrils generally are not considered compact. Highly compact districts have several benefits. First, they are less likely to separate neighbors into different districts. This may better preserve communities of shared interest and encourage strength among likeminded individuals in their greater number. Second, they may enhance representation by reducing the distance representatives must travel across their districts. Long trips between far-flung points of a sprawling district probably are not the most productive uses of a representative's time. Third, they limit the opportunity for gerrymandering. There may be fewer ways to discriminate against a disfavored group where aesthetic geometry is concerned.

Of course, compactness often is in the eye of the beholder. As discussed in Section 2, no single objective measure suffices to describe the merit of a district's shape. Unlike population equality, which is precisely defined, compactness is a matter of degree. The point at

which a district is no longer compact is subjective and may turn on other elements of a districting plan. Additionally, because geographic and demographic contours do not always evolve in concentric circles, compact districts may artificially divide areas that might be better off united in the same district.

Following the 2000s redistricting, New Jersey's congressional districts were not particularly compact. Most standard measures place the average compactness of New Jersey's districts in the bottom quintile, relative to other states' districts for the same office.¹⁶⁴ Indeed, two of New Jersey's congressional districts – the Sixth and Thirteenth – are among the top ten least compact congressional districts in the country.¹⁶⁵ New Jersey's legislative districts fare somewhat better – their average compactness was merely in the bottom half, relative to other states' legislative districts.¹⁶⁶

While a less compact district may signal a gerrymandered district, this is not necessarily the case. None of the standard measures of compactness can account for the various natural and political boundaries that can compel irregularly shaped districts. For instance, New Jersey has the highest density of municipalities in the nation. To preserve municipal boundaries, complex shapes are required. This is one possible explanation for the low compactness scores of New Jersey's state legislative districts (*see* inside front cover).¹⁶⁷

Contiguity. In a contiguous district, it is possible to reach any two parts without exiting the district at any point. The merits of contiguity are analogous to those of compactness. Contiguous districts may enhance representation by preserving communities of shared interests and minimizing the distance representatives must travel to reach opposite ends of the district. Contiguous districts also limit the opportunity for gerrymandering. It is more difficult to pack members of a disfavored group when they are geographically separated by members of another group. On the other hand, if packing is necessary to satisfy another districting requirement, such as preserving minority voting strength, contiguity and compactness will be at odds where districts must travel long distances to enclose a sufficient number of minority voters.

Contiguity normally is easier to determine than compactness; districts in one piece are contiguous. However, water bodies can muddy this otherwise clear distinction. For instance, the contiguity of New Jersey's Sixth and Thirteen congressional districts – illustrated in Figure 2F – is questionable. The former crosses the Highlands-Sea Bright Bridge and traces a narrow barrier island to reach several coastal towns; the latter simply crosses the mile-wide Newark Bay to reach the Democratic bastion of Bayonne. While these districts meet the technical definition of contiguous (one need not leave the district to travel across it), a floatation device may be necessary. New Jersey's legislative districts are all contiguous.

Respect for Political Boundaries and Communities of Interest. While political boundaries are easy to identify and generally uncontested, communities of interest are often more subjective. Such communities may be defined as an area of shared political, social or economic interest, or as an area predominantly populated by a particular race or ethnicity.¹⁶⁸

Significant natural features such as rivers, watersheds and mountain ranges may delineate areas of shared interests. Locating these communities, and determining how competing communities should be weighed against each other in the redistricting process, are among the challenges routinely faced by redistricting authorities.

Because elections typically are administered at the county or municipal level, maintaining these political boundaries may simplify the corresponding administrative burden. Preserving communities of interest may also enhance representation by creating districts of like-minded individuals. A community may be better off as a majority in one district than as a minority split among multiple districts.

On the other hand, municipal lines may not correspond to other important demographic contours. Preserving both political communities and other areas of common interest is not possible where their boundaries diverge. The subjective nature of common interest communities means that any effort to preserve them in the redistricting process may also be used to cloak an ulterior motive. For example, maintaining an urban “community of interest” may also serve to pack Democratic-leaning voters into fewer districts, thereby limiting the number of Democratic representatives elected.

New Jersey’s legislative districts split only two of the state’s 566 municipalities (Newark and Jersey City), both of which are split three ways.¹⁶⁹ While splits are necessary in both cases because the population of each municipality exceeds the ideal population per legislative district, three-way splits are not strictly necessary to achieve the required degree of population equality.¹⁷⁰ New Jersey’s congressional districts split twenty-nine – about 5 percent – of the state’s municipalities, two of which (Linden and Jersey City) are split among three congressional districts.¹⁷¹

Whether the maps preserve communities of interest is more difficult to say. In their legal challenge, the Republican plaintiffs claimed the state legislative map “totally ignored the traditional redistricting principle of ‘community of interest’ when constructing [one of the two split districts].”¹⁷² This was not winning argument.¹⁷³

Electoral Consequences. How electoral districts are drawn clearly has a direct effect on the electoral consequences in those districts. In fact, the primary goal of gerrymandering frequently is to influence future election results in a particular way. As discussed in Section 2, partisan gerrymandering occurs when lines are drawn to favor a particular political party. Bipartisan or incumbent gerrymandering occurs when lines are drawn to benefit incumbents, regardless of political party. New Jersey’s congressional and state legislative maps in the 2000s illustrate both types of gerrymandering.

The congressional districting plan was widely considered an incumbent-friendly, bipartisan gerrymander.¹⁷⁴ In fact, members of the New Jersey congressional delegation themselves drew an early draft of the plan that was ultimately approved by the New Jersey Redistricting

Commission.¹⁷⁵ As reported in *The New York Times*, the few changes that were made by the Commission were “minor” and in response to public criticism that the original plan was “too kind” to incumbents.¹⁷⁶

Subsequent election results revealed just how incumbent-friendly the revised plan was. In 2000, the last election under the previous map, three out of thirteen congressional races were won by fewer than twenty points, a common measure of competitiveness. In 2002, the first election under the new map, only one race met this standard of competition.¹⁷⁷ As Table 5A shows, no seats changed parties that year. In every congressional election held using this map, every incumbent seeking reelection has won.¹⁷⁸ By comparison, the Democrats lost one seat after the 1992 redistricting.

Table 5A
Partisan Shift and Competition in New Jersey
Congressional Seats After the 1992 and 2002 Redistricting

		2000 Election (old map)	2002 Election (new map)	Change
Post-2002 Redistricting	Democratic Seats (13 seats total)	7	7	+ 0
	Competitive Races (margin ≤ 20 points)	3	1	– 2

		1990 Election (old map)	1992 Election (new map)	Change
Post-1992 Redistricting	Democratic Seats (13 seats total)	8	7	– 1
	Competitive Races (margin ≤ 20 points)	5	4	– 1

Source: Author’s analysis of elections data.

The state legislative districting plan was widely perceived as helping only one party – the Democrats – at the other’s expense, a hallmark of partisan gerrymandering.¹⁷⁹ The map was approved by a bare majority of the New Jersey Apportionment Commission – the five Democrats and the Commission’s tiebreaking member. Four of the Commission’s five Republican members boycotted the meeting at which a final vote was taken.¹⁸⁰

Subsequent election results revealed the extent to which the new plan favored Democrats. In 2000–01, the last legislative session under the old map, Democrats held forty-eight of the legislature’s 120 seats and a minority of seats in both chambers. In 2002–03, the first legislative session under the new map, Democrats held sixty-four seats – a net gain of sixteen – and a minority of seats in neither chamber.¹⁸¹ By comparison, an even larger swing occurred

after the 1990s redistricting. Between 1990 and 1992, Republicans picked up thirty-two seats – more than one-quarter of all seats – in the state legislature. Interestingly, despite these significant shifts in political power, the level of electoral competition did not change significantly, as shown in Table 5B. Both before and after adoption of the new maps, roughly one-third of races were won by fewer than twenty points.¹⁸²

Table 5B
Partisan Shift and Competition in New Jersey
Legislature Seats after 1991 and 2001 Redistricting

		1997/9 Elections (old map)	2001 Election (new map)	Change
Post-2000s Redistricting	Democratic Seats (120 seats total)	48	64	+ 16
	Competitive Races (margin \leq 20 points)	27	26	– 1

		1987/9 Elections (old map)	1991 Election (new map)	Change
Post-1990s Redistricting	Democratic Seats (120 seats total)	67	35	– 32
	Competitive Races (margin \leq 20 points)	31	36	+ 5

Source: Author's analysis of elections data.

Of course, no single factor can fully explain these results, which should be considered in their broader political context. The early 1990s was a difficult time for New Jersey Democrats, who suffered tremendously as the party in power during the intra-state tax revolt of 1990–91. The pro-Democratic swing in the early 2000s is more difficult to explain, but may also have been caused in part by dissatisfaction with the party in power. Nonetheless, the timing of these shifts is unmistakable; at no other times since the 1980s have so many legislative seats switched parties than in the elections immediately following redistricting. Furthermore, the trend since 2001 map was adopted is also unambiguous. In every legislative session since then – save one – the Democratic majorities in both legislative chambers have increased.¹⁸³ In the last ten years, Republicans have gone from holding 60 percent to only 42 percent of seats in the legislature.

Another way to consider the electoral consequences of redistricting is to compare the proportion of voters registered with a party to the proportion of seats won by that party. For example, if New Jerseyans were registered as Democrats and Republicans in equal number, a perfectly representative legislature would include an equal number of Democratic and Republican members. Of course, this assumes that the large number of unaffiliated voters in New Jersey – nearly half of the state's registered voters – is also evenly divided between the

major parties.¹⁸⁴ In 2009, Democrats comprised 62.4 percent of affiliated voters and held 61.5 percent and 58.3 percent of congressional and legislative seats, respectively. Thus, by this measure, New Jersey Democrats were slightly underrepresented in both Congress and the state legislature (*see* Table 5C).

Table 5C
Partisan Share of Seats Compared to
Partisan Voter Affiliation in 2009

	Congress	State Legislature
Democratic Seats Won (% of total)	61.5	58.3
Democratic Statewide Affiliates (% of total)	62.4	62.4
Difference	– 0.9	– 4.1

(Positive differences favor Democrats)

Yet another way to consider the electoral consequences of redistricting is to compare the proportion of votes cast for a party with the proportion of seats won by that party. A large disparity is a strong indication that gerrymandering has occurred. For example, if Democrats receive 60 percent of the aggregate vote in all districts, but win only 40 percent of seats, the districting scheme is biased in favor of Republicans. Of course, the existence of a large disparity does not prove intent to gerrymander, only the occurrence of an outcome typical of gerrymandering: election results that do not accurately reflect voters' preferences.

In 2000, the last congressional election under the old map, Democrats received 51.3 percent of votes statewide and won 53.8 percent (7 out of 13) seats. In 2002, the first congressional election under the new map, Democrats received 52.4 percent of votes statewide and again won 53.8 percent (7 out of 13) seats. The disparity between aggregate vote share and seats won was less than 3 percent in both cases. In fact, due to the discrete number of congressional seats apportioned to New Jersey, a lesser difference was mathematically impossible. These data, and for comparison purposes, those from the 1990s appear in Table 5D. Since the congressional Redistricting Commission was created in the 1990s, the disparity between aggregate vote share and seats won has generally been less than 5.0 percent.¹⁸⁵

In 1997/9, the last legislative elections under the old map, Democrats received 48.9 percent of the vote statewide and won only 40.0 percent (48 out of 120) seats.¹⁸⁶ In 2001, the first legislative election under the new map, Democrats received 52.7 percent of the vote statewide and won 53.3 percent (64 out of 120) seats. The disparity between aggregate vote share and seats won was 8.9 percent against the Democrats under the old map and 0.6 percent in

favor of the Democrats under the new map. Greater mathematical parity could have been achieved in 2001 only if Democrats had won one fewer seat. These data, and for comparison purposes, those from the 1990s appear in Table 5D.

Table 5D
Congressional and Legislative Seats Won Compared to Vote Share
in New Jersey Before and After the 1990s and 2000s Redistricting

		Congress		State Legislature	
		2000 Election (old map)	2002 Election (new map)	1997/9 Elections (old map)	2001 Election (new map)
Post-2000s Redistricting	Democratic Seats Won (% of total)	53.8	53.8	40.0	53.3
	Democratic Statewide Vote Share (% of total)	51.3	52.4	48.9	52.7
	Difference	+ 2.5	+ 1.4	– 8.9	+ 0.6

		1990 Election (old map)	1992 Election (new map)	1987/9 Elections (old map)	1991 Election (new map)
Post-1990s Redistricting	Democratic Seats Won (% of total)	61.5	53.8	55.8	29.2
	Democratic Statewide Vote Share (% of total)	45.1	45.5	52.4	42.1
	Difference	+ 16.4	+ 8.3	+ 3.4	– 12.9

(Positive differences favor Democrats)

Unlike the seats won and party registration metrics discussed earlier, the vote share/seats won data account for broader political trends. If one party falls out of favor, it should earn fewer votes statewide. In a neutral districting scheme, this should translate into fewer seats won. On the other hand, a politically biased districting scheme should deliver proportionally more seats to the favored party, relative to its aggregate share of the vote. Establishing a systematic relationship between these variables was the primary goal professed by the 2001 commission's neutral eleventh member.¹⁸⁷

The data in Table 5D indicate a neutral congressional districting scheme both before and after the 2001–02 redistricting. By contrast, Democrats were overrepresented before the 1991–92 redistricting, a disparity that was reduced – but not eliminated – after the 1990 redistricting. The legislative data are more striking. The pre-2000 districting scheme was biased toward Republicans until the 2000–01 redistricting, after which it favored neither party. The opposite shift occurred in 1990–91, when the districting scheme went from neutral to pro-Republican.

Thus, despite the substantial shift in legislative seats held by Democrats after 2001, this effectively corrected a districting scheme that had been pro-Republican, as measured by the gap between statewide vote share and seats won. In fact, for all of the 1990s, Democrats won substantially smaller proportions of legislative seats than votes statewide.¹⁸⁸ Since the 2000s map has been in place, however, the gap has widened from near-parity in 2001 to a decisive pro-Democratic 9.4 percent in 2007/9.¹⁸⁹ Similarly, the congressional map bias has grown from 1.4 percent in 2002 to 5.9 percent after the 2008 election, in both cases pro-Democratic (*see* Table 5E).

Table 5E
Disparity between Congressional and Legislative Seats Won and
Vote Share in New Jersey after the 2000s Redistricting and Today

	Post-2000s Redistricting	Post-2007/9 Elections
Congress	+ 1.4 %	+ 5.9 %
State Legislature	+ 0.6 %	+ 9.4 %

(Positive numbers favor Democrats)

These gradual, pro-Democratic trends may be the result of intentional gerrymandering, chance shifts in population since the 2000 census, or – more likely – a combination of both. Regardless of the cause, Democrats have a clear advantage under the current congressional and legislative maps. With the 2010–12 redistricting only months away, Republicans soon will have an opportunity to reconcile the disparity between partisan vote share and partisan representation.¹⁹⁰

PROCEDURAL CONSIDERATIONS

Who (or What) Draws the Lines. Redistricting can also be evaluated on its procedural merits. In most states, the state legislature has primary redistricting authority. Forty-four states' legislatures draw congressional lines and thirty-seven states' legislatures draw state legislative lines (*see* Table 5F).¹⁹¹ New Jersey is one of only six states that utilize commissions to draw both congressional and state legislative district lines. A full listing of districting authorities by state is presented as Appendix C.

Table 5F
Entities with Primary Redistricting
Authority in the Fifty States

	Congressional Districts	State Legislative Districts
Legislature	44	37
Commission	6	13

The choice of what entity is responsible for redistricting dictates the process by which new lines are drawn. When legislatures are responsible, redistricting typically occurs via the normal legislative process: a bill defining new district boundaries is approved by both legislative chambers and signed by the governor. When commissions are responsible, the process varies widely. In New Jersey, the two redistricting commissions approve their respective plans by simple majority vote. Thus, as few as six or seven individuals can redraw legislative and congressional lines, respectively.

Not all commissions are created equal, nor are they all equally independent of legislator influence. With one exception, New Jersey's commissions are appointed exclusively by the state's legislative and political party leaders and there are few restrictions on who can serve. The appointing authorities can – and frequently do – appoint themselves. Though “independent commission” is sometimes used to characterize New Jersey's redistricting authorities,¹⁹² this more accurately describes commissions – such as Arizona and California's – that only tangentially involve political leaders. Where they play a more direct role, as they do in New Jersey, the term “politician commission” has also been used and may be more accurate.¹⁹³ Who chooses the commission members will influence the mix of interests considered by the commission. Politician commissioners are likely to be as loyal to politicians as independent commissioners are to a broader audience.

Where redistricting is subject to the ordinary legislative process, the same political considerations bearing upon ordinary legislation may also bear upon redistricting. Thus, legislators may seek to secure their own reelection by strategically altering their district boundaries. Parties in power may seek to cement their dominance for a decade by strategically packing or cracking voters throughout the state. Jockeying for political advantage in the legislative process is, of course, quite common and gross politicking is normally checked by a public official's need to stand for reelection. Redistricting may be a special case, however, because the very act of shifting district lines can alter the likelihood of rejection at the polls. Thus, a party in control of state government may at once overreach in the redistricting process and shield its members from the political consequences of doing so.

When state government is politically divided, political lockup by redistricting is less likely to occur. Even still, it is useful to consider whether a legislature is well positioned to consider the full range of interests implicated by the redistricting process. Elected officials may not share the same priorities as the general public. Certain public interests – such as greater elec-

toral competition – may directly conflict with legislators’ interest in being reelected. If this is the case, the legislative process may produce a districting scheme that is suboptimal from the public’s point of view.

On the other hand, redistricting is an inherently political process in which the decision-maker must make compromises and trade-off legitimate interests. Legislators who are familiar with their constituencies and politically accountable to them may be better suited than independent commissioners to make these types of decisions.

The experiences of several states’ discussed in Section 3 suggest there is cause for concern that deadlock, delay and litigation may result when legislatures attempt to redraw congressional or legislative district lines. But New Jersey’s experience in the 2000s demonstrated that the commission model alone does not guarantee success.

How the Lines are Drawn. A successful redistricting also depends on how the lines are drawn. Specific steps required of the redistricting authority will serve to both guide its work and limit its flexibility, thereby narrowing the range of possible outcomes. Arizona’s constitution, for example, requires the Independent Redistricting Commission to begin by drawing “districts of equal population in a grid-like pattern across the state.”¹⁹⁴ From this preliminary map, adjustments may be made to accommodate specific goals including compliance with federal law, compactness, respect for communities of interest and political boundaries, and electoral competition.¹⁹⁵ Thus, Arizona begins with a baseline of compact districts and alterations are limited to those justified as advancing one or more of the enumerated goals.

Mandatory districting criteria also serve to guide and constrain a redistricting authority. California’s commission must consider population equality, contiguity, political boundaries and compactness when redrawing its state legislative lines. By considering these principles first, there is likely to be less leeway to accommodate others such as partisan gain and incumbent protection.

Limiting the scope of information available to a redistricting authority is yet another way to influence its work. Iowa’s nonpartisan Legislative Services Agency is specifically forbidden from considering certain data such as incumbents’ home addresses, the political affiliations of registered voters, previous election results and certain other demographics.¹⁹⁶ These data are particularly susceptible to uses that are inconsistent with traditional districting criteria.

Compared to Arizona, California and Iowa, New Jersey has a fairly unrestricted redistricting process. Both the congressional Redistricting Commission and legislative Apportionment Commission may consider any data it wishes and each may arrange the process of its work however it chooses. There are no enumerated criteria for congressional lines (though compliance with federal statutory and case law is required). Legislative districts must be “composed of contiguous territory, as nearly compact and equal in the number of their inhabitants

as possible.”¹⁹⁷ A further condition that municipalities not be divided more than necessary to achieve equal population has been rendered obsolete by the state supreme court.¹⁹⁸

Public Participation and Transparency. Redistricting has broad implications for representative government and political empowerment. The amount of public participation and transparency required by the process is another important procedural consideration. Iowa requires disclosure of draft district maps before public hearings are held around the state.¹⁹⁹ These hearings, in turn must occur before the maps may be considered by the legislature for final approval. Arizona requires that all meetings of its Independent Redistricting Commission be open to the public with at least forty-eight hours’ notice and that the Commission publish draft maps and accept public comment for at least thirty days.²⁰⁰ Only then may the commission establish the final boundaries.

California’s public participation and transparency provisions are even stronger. Its Citizens Redistricting Commission is required to conduct “an open hearing process” that includes broad “public input and deliberation” both before the commission draws any maps and after their public display.²⁰¹ The Commission is specifically required to accept public comment for at least fourteen days following the display of any proposed map. Additionally, all “records of the commission pertaining to redistricting and all data considered by the commission” are considered public records that must be published in a manner that ensures “immediate and widespread public access.”²⁰² Finally, commission members and staff may not communicate with anyone else on redistricting matters outside of a public hearing.²⁰³

By contrast, New Jersey requires very little public participation and transparency in the redistricting process. The congressional Redistricting Commission must hold three public meetings “in different parts of the state” (the purposes of which are not specified) in addition to its meeting to adopt a final plan.²⁰⁴ All other meetings of the Commission may be closed to the public.²⁰⁵ Additionally, “subject to the constraints of time and convenience,” the Commission must “review” any plans submitted by the public in writing, but is not required to respond in any way.²⁰⁶ No public process is required of the legislative Apportionment Commission.

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REDISTRICTING CHANGE: IDEAS TO CONSIDER

New Jersey is notable for being one of only six states that utilize the commission model for both congressional and legislative redistricting. The practical effects of this model, as implemented in New Jersey, are considered in this section. These results suggest several discrete areas of concern in the redistricting process including the autonomy and integrity of decision-making and the representative and democratic consequences of redistricting outcomes. In light of these concerns, this section also suggests concrete ways that these issues can be addressed.

AREAS OF CONCERN

Since the commission model was adopted for legislative redistricting in 1966, the Apportionment Commission has deadlocked every decade, save one, requiring appointment of an eleventh tiebreaking member. More often than not, the Commission's work has been challenged in court. The most recent Apportionment Commission of 2001 endured both partisan deadlock and multiple legal challenges, in addition to allegations of political retribution.²⁰⁷ Despite these challenges, the map produced by the 2001 Commission featured contiguous (though not particularly compact) districts of reasonably equal population that divided a minimum number of municipalities.

Since the commission model was adopted for congressional redistricting in 1991, the Redistricting Commission's experience has proven less dramatic than its legislative counterpart's. The 1992 and 2002 commission maps both were enacted without serious challenge, though the former was criticized for lack of compactness and the latter for lack of competitiveness.²⁰⁸

Autonomy of Decision-Making. Notwithstanding its use of extra-legislative commissions, New Jersey's redistricting process remains partisan and insular. With one exception (the tie-breaking member of the congressional Redistricting Commission), commissioners are selected exclusively by the state's legislative and political party leaders. Of their twenty-four members, the 2000s commissions included eighteen current or recent public and political party officials. This may explain why the incumbent congressional delegation had significant influence over the final congressional map and why there has been little turnover and competition in congressional races since the 1990s.²⁰⁹

Partisan influence over the current legislative map is also apparent. In the sessions immediately before and after the 2000s redistricting, Democrats gained sixteen seats in the legislature. This was the largest swing since the previous redistricting, when Republicans gained thirty-two seats. That legislative redistricting is orchestrated by political figures and consistently has had significant political consequences suggests that political motives figure prominently in the process. Just how prominently can only be guessed, however, since the commission holds few open meetings and produces few written records of its deliberations.

Nevertheless, some partisanship in the redistricting process may be beneficial. Redistricting is an inherently political process. Elected and party officials are likely to be intimately familiar with an area's demographic contours and elected officials are at least tacitly accountable to their constituents. But when these individuals are responsible for redrawing districts, there is likely also to be a conflict of interest. Including nonpartisan individuals on redistricting commissions may alleviate these concerns and improve commission autonomy.

Integrity of Decision-Making. Reasonable minds will disagree over the extent to which particular political values should be considered and compromised in the redistricting process. Accordingly, the identity of the reasonable minds involved in the work of redistricting is important. The composition of a redistricting authority will determine which interests are brought to the table and how they are integrated into a final map. The information made available to decision-makers and the steps they must take to consider these data will also affect the decision-making process.

New Jersey's commissions have only one type of member and few principles or procedures guiding their work. They also provide for very limited public participation. Accordingly, the information reaching the commissions is essentially limited to partisan sources, use of this information is virtually unrestricted, and the lack of transparency makes it difficult to determine how a map was produced. Providing additional structure and guidance to redistricting commissions may improve the quality and integrity of their decision-making process.

Representative Outcomes. Since the 2000s maps were adopted, Democrats have become increasingly overrepresented, as measured by the gap between statewide vote share and seats won. Democrats have held or increased their majorities in both legislative chambers, despite declining statewide vote share. In the 2009–10 session, Democrats held 58.3 percent of seats after earning only 49.0 percent – a minority – of votes in the most recent legislative elections, and only 44.9 percent of votes in the most recent gubernatorial election.²¹⁰ In other words, more people voted for candidates of a different party than the one currently in charge of both legislative chambers. Democrats are also overrepresented in the state's congressional delegation, though to a lesser extent. After the 2008 election, Democrats held 61.5 percent of seats after earning only 55.6 percent of the vote.

Whether these trends are by chance or the result of mapmakers' educated guessing is unknown. But as the technology involved in redistricting continues to improve, enabling more precise redrawing of district lines, the ability of redistricting authorities to forecast population shifts

for partisan purposes will improve as well. Encouraging commissioners to cooperate and compromise to reach a politically unbiased districting scheme may increase the likelihood of a representative redistricting outcome.

Democratic Outcomes. The insider environment of redistricting may also explain the low levels of competition and turnover among congressional and legislative offices in New Jersey. These effects often accompany gerrymanders where districts are drawn to secure electoral advantage for a particular party or incumbents generally. In the modern era of legislative professionalism, which has resulted in significantly longer stints in office, the danger of losing an election is a powerful incentive. Where the prospects of reelection are artificially enhanced by engineering politically safe districts, long-term incumbents' may become detached from their constituents.

Additionally, the rise of safe districts may exacerbate polarization and hyper-partisanship, as voters in politically homogeneous districts tend to elect more extreme candidates. Incumbents in these districts will have little incentive to move toward the ideological center and seek compromise with members of the other party. Instead, facing an artificially polarized electorate, these members may move away from the center, to ward off potential primary challenges.

Low competition and turnover do have positive aspects. Because Congress and the New Jersey Legislature operate on a seniority system, constituents stand to benefit as their representative's length of service increases. Long-term incumbents are also better acquainted with their districts and have greater opportunity to hone their constituent services operation. Over time, voters will also better know their representatives. The longer they remain in office, the greater their seniority and familiarity among constituents will become.

The challenge facing redistricting authorities is deciding how to balance these benefits against their attendant drawbacks. Opening the redistricting process to meaningful public participation would assist redistricting authorities in striking these balances by encouraging a broad range of input that may moderate the ideological consequences of redistricting. Especially where the interests of all voters are concerned, as they are here, more information may produce a more democratic outcome.

FRAMEWORK FOR CHANGE

Ideas that address these areas of concern, including those presented below, can be categorized as affecting the process or substance of redistricting, and as requiring limited or extensive adjustment to the current system. Substantive change concerns the inputs into the redistricting process. By contrast, process change concerns the nature of the redistricting authority itself and the steps it must take to complete its work. Examples of both types are presented in Table 6A.

Table 6A
Examples of Process and
Substantive Redistricting Change

Process	Authority	Who or what redraws district lines?
	Selection	Who selects the redistricting authority's members?
	Procedure	What specific steps may, must, or must not the redistricting authority take, and in what order?
Substance	Principles	What general principles should guide the redistricting process?
	Information	What data may, must, or must not be considered?
	Interests	What interests may, must, or must not be accommodated?

Of course, neither type of change is mutually exclusive. Substantive change will often implicate process concerns, and vice versa. A requirement that the redistricting authority take steps to receive public input may also require substantive consideration of that input. Similarly, prohibiting consideration of certain data may require the redistricting authority to limit its exposure to individuals who may provide that information.

When considering any type of policy change, the question of how much is necessary often arises. In the redistricting context, change might range from very limited – essentially maintaining the status quo – to extensive and wholesale. The appropriate amount of change often depends on a number of factors including degree of perceived inadequacy in the current system and the various political, legal and practical considerations that limit what changes can be made.

The formality and permanence of any change should be considered as well. Informal changes, such as those done by mutual consent of the parties involved, will be easier to attain procedurally and on short notice. Formal changes, such as those done by statute or constitutional amendment, require legislative action that may not be feasible on short notice, or forthcoming where partisan interests are affected, as they are in the redistricting process. However, formal changes are more easily made permanent, binding and legally enforceable.

Examples of redistricting changes by their extent (limited and extensive), type (process and substance), subject matter, formality and permanence are shown in Table 6B. The following pages elaborate several of these examples.

Reading Between the Lines
Congressional and State Legislative Redistricting

Table 6B
Examples of Redistricting Changes by Extent, Type,
Subject Matter, Formality and Permanence of Change

Extent	Type	Subject Matter	Example	Informal	Formal (Temporary)	Formal (Permanent)
LIMITED	PROCESS	Authority	Number of partisan commissioners limited	1) Mutual agreement by parties 2) Upfront and public agreement by parties	3) Written agreement by parties 4) Statute with sunset provision 5) Constitutional amendment with sunset provision	6) Statute 7) Constitutional amendment
		Selection	Appointing authorities delegate selection of some commissioners to nonpartisan actor			
		Procedure	Deadlock broken by mechanism that incentivizes bipartisan cooperation, such as final offer arbitration			
	SUBSTANCE	Principles	Criteria established to guide commissions' deliberation			
		Information	Commissioners prohibited from considering partisan data during early stages of work			
		Interests	Commission required to respond to public input received			
EXTENSIVE	PROCESS	Authority	Only nonpartisans eligible to serve as commissioner			
		Selection	Commission members selected exclusively by nonpartisan actor in a nonpartisan process			
		Procedure	Deliberative process enabling public consideration of, and comment upon, districting proposals required			
	SUBSTANCE	Principles	Detailed criteria established and prioritized; commissions required to explain how its map satisfies each			
		Information	Commissioners prohibited from considering partisan data during any stage of work, except to test for legal compliance			
		Interests	Commission required to respond to public input received and explain why reasonable proposals were not adopted			

IDEAS FOR IMPROVEMENT

Specific ideas for changes to improve the redistricting process are presented below, followed by a discussion of the likely hurdles to their adoption.

Improving Autonomy of Decision-Making. Certain functions of American government have been deemed too critical or susceptible to corruption to be left to the normal political process. So federal judges receive life tenure and the Federal Reserve has almost unfettered discretion over monetary policy. Redistricting decisions, with their long-term political consequences and susceptibility of abuse, may be better made outside the more changeable political process. The ideas below address this point.

Idea 1

Limit the Number of Partisan Redistricting Commissioners

Currently, partisan actors can fill all but one seat on each redistricting commission. This change would reduce this number and dedicate seats to nonpartisan individuals – those who have not recently held elected or other political office.

Informally, the appointing authorities might each agree to reserve a specific number of their picks for nonpartisan actors. More formal change likely would require amending the state constitution, which specifies the number of picks made by each appointing authority.

This limitation would result in redistricting commissions that would include additional political outsiders who may be receptive to a wider range of interests and concerns than political insiders.

Idea 2

Designate a Nonpartisan Actor to Select Commissioners

With only one exception, commissioners are currently selected exclusively by legislative and political party leaders. This change would remove primary selection authority from these partisan individuals and give it to another, nonpartisan entity.

Arizona has authorized its nonpartisan Commission on Appellate Court Appointments to nominate individuals who are subsequently confirmed by the state's legislative leaders. California relies on its State Auditor to administer a competitive application process that produces a pool of candidates from which state legislative leaders may strike a limited number. Iowa authorizes its nonpartisan Legislative Services Agency to propose a districting plan to the legislature for approval without amendment.

By analogy, New Jersey might authorize an ad hoc judicial branch committee, the Election Law Enforcement Commission, or the nonpartisan Division of Elections to play a role in selecting members of the redistricting commissions. A more comprehensive version of this change could make this role a primary one and establish a competitive selection process – like Arizona and California's – that emphasizes political independence and other merit- or skills-based criteria.

Informally, the appointing authorities might each agree to an ad hoc selection process that includes one or more of these nonpartisan entities. More formal change likely would require amending the state constitution, which specifies that the state's legislative and political party leaders select commissioners.

This designation would result in a more open and less partisan selection process that could result in greater political independence and merit-based selection of redistricting commissioners.

Due to the ubiquity of politics in society, complete political independence in redistricting is probably impossible. Nor is it necessarily desirable. Used appropriately, political knowledge can be an asset to this inherently political process. Thus, the ideas above do not seek to remove politics from redistricting entirely, only to establish a role for apolitical players in order to enhance the independence of New Jersey's redistricting commissions.

Improving Integrity of Decision-Making. Because there are nearly unlimited ways to draw lines on a map, specific guidelines can have a significant impact on redistricting outcomes particularly where, as in New Jersey, redistricting commissions have almost unfettered discretion. Guidelines can take the form of general principles that steer the commissions' work or specific criteria that must be satisfied before a map may be adopted. If necessary, these requirements can be enforced by limiting the types of data available to commissioners during the deliberative process. The ideas below address these points.

**Idea
3**

Establish General Principles and Criteria to Guide Commission Decision-Making

Currently, the legislative Apportionment Commission must create districts that are "composed of contiguous territory, as nearly compact and equal in the number of their inhabitants as possible."²¹¹ The congressional Redistricting Commission is guided by no explicit criteria. This change would establish additional principles and criteria to guide the commissions' work.

Appropriate criteria may include any of the traditional districting criteria: compactness, contiguity, preservation of political subdivisions and other communities of interest, preservation of cores of prior districts, and avoiding contests between incumbents.

To enhance their directional value, these criteria can be prioritized, thereby assisting the commissions in their inevitable mission to reconcile conflicts among them. Additionally, these criteria may be combined with procedural changes, such as reporting requirements, to ensure they are faithfully applied in the manner intended.

Informally, commissioners might agree to adopt a list of principles and criteria, to publish them, and to issue a report with their proposed map explaining how they were applied. More formal change for the legislative Apportionment Commission likely would require amending the state constitution, which already specifies criteria

for that commission to consider. Because there are no constitutional criteria specified for the congressional Redistricting Commission, change by statute may suffice.

These criteria would provide the commissions with a framework within which to approach their task. They would also provide observers with means to evaluate both the commissions' approach to redistricting in general, and specifically how their work product measures up to them.

**Idea
4**

Restrict the Availability of Partisan Data during Commission Deliberation

Currently, both commissions may consider any data they choose – including partisan data – during all stages of the redistricting process. This change would limit consideration of certain types of data during some or all of the commissions' work.

Certain information such as incumbents' home addresses, the political affiliations of registered voters and previous election results may serve no other purpose than to engineer districts for partisan purposes. Accordingly, these data might be excluded from the commissions' consideration, at least during the formative stages of their work. Arizona, for example, allows its commission to consider partisan data only after a map has been drawn, and then only to test for compliance with specific redistricting criteria.

Conversely, commissioners may be required in the early stages of its work to consider certain other information deemed especially important, such as political boundaries and locations of identifiable communities of interest.

Informally, commissioners might agree to shun or require consideration of certain information. Because there are no constitutional limits or requirements regarding what information is considered, change by statute may suffice to create a more formal change.

Specifying what information commissioners may, must and must not consider could help the commissions deemphasize certain interests while emphasizing others during the redistricting process.

The absence of guidelines in the redistricting process may invite improper motivations or interests into the complex and subjective decisions that must be made. The ideas above would set standards and limits on the analytical steps involved in redistricting, in order to improve the integrity of the commissions' decision-making process.

Improving Representative Outcomes. Each of the preceding ideas may secure more accurate representation through the redistricting process by diversifying commission membership and improving the decision-making process. In addition, the procedure by which deadlocks are to be broken, if known in advance, can encourage cooperation among commissioners that may lead to a more moderate and representative districting scheme.

**Idea
5**

Encourage Bipartisan Cooperation by Resolving Deadlock with a Nonpartisan Method Known in Advance

Currently, deadlock on the legislative Apportionment Commission is resolved by the state Chief Justice's appointment of a tiebreaking member, increasing the total number of commissioners to an odd number. Deadlock on the congressional Redistricting Commission is broken by a majority of justices on the state Supreme Court. This change would make the former legislative model look more like the latter congressional model by announcing the identity of the tiebreaking member before a deadlock occurs.

On the congressional commission, deadlock is resolved by a neutral arbiter: the state Supreme Court. Specifically, the Court is constitutionally required to select one plan from among two submitted by the Commission that is deemed to conform "most closely to the requirements of the Constitution and laws of the United States."²¹² Because only one plan can be selected, this will encourage the factions to moderate their plans to make it more likely theirs will be the one. If one side fails to moderate its plan sufficiently, it risks total loss when the other's is adopted.

By contrast, resolution of deadlock on the legislative commission is unpredictable because it turns on the identity of a single person: the tiebreaking member. Thus, where a faction on the commission is able to maintain member discipline, there will be little incentive to cooperate until the tiebreaker is known. Only then will it be in the faction's interests to compromise. However, because of the state's off-year election cycle, by the time the tiebreaker is appointed, it is often too late for effective compromise.

Informally, the state Chief Justice might simply indicate in advance whom he intends to select as the tiebreaking members. More formally, this would require amending the state constitution, which specifies when the appointment is to be made official.

A more extensive variation of this change would require the tiebreaking members to choose among competing plans, just as the state Supreme Court does in the event of deadlock on the congressional commission. Another variation would designate the tiebreaker as a panel of individuals, rather than a single person, that must choose among competing plans.

These changes would encourage commission factions to cooperate and develop more moderate plans, in anticipation of an all-or-nothing decision by a neutral tiebreaker.

If redistricting commissioners know they either must reach agreement amongst themselves or risk an adverse decision by a neutral arbiter, they will be incentivized to cooperate in order to avoid deadlock altogether. In the event that deadlock does occur, they will be incentivized to moderate their position in order to increase the probability of a favorable outcome. In either scenario, a more moderate districting plan is likely to result that. In turn, this may lead to a more representative outcome. The idea above would establish these incentives.

Improving Democratic Outcomes. A redistricting authority may be required to take certain steps in a particular order. For example, Arizona's commission must first draw districts of equal population in a grid-like manner, before making adjustments to accommodate specific goals. This anchoring and adjustment method technique mapmakers to prioritize particular interests. The two ideas below are a small subset of what is possible in this regard. Both have as their goal the improvement of citizens' relationship to their government.

**Idea
6**

Require Commissions to Establish a Minimum Number of Competitive Districts

Currently, electoral competition is not an established criterion for either of New Jersey's redistricting commissions. It is therefore not surprising that only 6 percent of congressional races and 13 percent of legislative races under the current maps have been won by 10 points or less. This change would require the commissions to consider electoral competition and create a minimum number of competitive districts.

To reduce the possibility that this requirement is misused, this change could include a method of designating which districts are to be made competitive. The system used to select districts eligible for participation in the 2007 Clean Elections pilot project is one possible starting point. There, a nonpartisan entity nominated several moderately competitive districts based upon recent election results. The criteria used to make this determination were objective and public.²¹³ Final selection was made by the state political party chairs.

By analogy, the redistricting commissions could delegate the nomination of districts to a nonpartisan entity such as the Office of Legislative Services. Once nominations have been made, the commissions could then choose the districts it will redraw as competitive. This change could also specify the minimum number of districts to be made competitive and how "competitive" is defined.

Informally, commissioners might simply agree to such an arrangement. More formal change for the legislative Apportionment Commission likely would require amending the state constitution, which already specifies criteria for that commission to consider. Because there are no constitutional criteria specified for the congressional Redistricting Commission, change by statute may suffice.

This requirement would add electoral competition to the list of criteria to be considered by the redistricting commissions by requiring that a minimum number of competitive districts be drawn.

Redistricting is among the few political acts certain to have a pervasive and lasting effect on the political system. With broad consequences for representative government and political empowerment, transparency and opportunity for effective public input are important. Transparency means the research, analysis and deliberative stages of redistricting are open to public view. Effective public participation means that interested non-members of the redistricting authority can give input at each stage, in a manner likely to inform the final result.

A number of states include specific requirements for transparency and public participation in their redistricting processes. Table 6C summarizes several of these provisions.

Table 6C
Provisions Requiring Transparency and Public
Participation in Redistricting in Several States

State	Process
Idaho	Ten programmed computers available in libraries around the state. Residents (with help from trained librarians) can draw and submit their own maps. Six-member bipartisan commission holds hearings and considers the submissions. Commission is under no obligation to use these maps, but the commission meetings are open to the public.
Nevada	Two computers in government buildings in Carson City and Las Vegas for the public to suggest redistricting changes.
New York	Map is drawn privately by legislative staff but is available for public review and comment before the legislature adopts it.
Pennsylvania	Five-member commission drafts a map that is published in newspapers around the state. Public can comment within the following 30 days and the commission has another 30 days to revise the map.
Virginia	Legislature holds five public hearings on a proposed map that is available for online viewing. Legislature then votes in public to adopt the final plan.

In light of these examples, and those of Iowa, Arizona and California discussed in Section 2, the idea below addresses the issue of public participation in New Jersey's redistricting process.

**Idea
7**

Require a Full and Open Deliberative Process

Currently, New Jersey requires very little public participation and transparency in the redistricting process. The congressional Redistricting Commission must hold three public meetings “in different parts of the state” (the purposes of which are not specified) in addition to its meeting to adopt a final plan.²¹⁴ All other meetings of the Commission may be closed to the public.²¹⁵ Additionally, “subject to the constraints of time and convenience,” the Commission must “review” any plans submitted by the public in writing, but is not required to respond in any way.²¹⁶ No public process is required of the legislative Apportionment Commission. This change would establish a process of robust and open deliberation.

Specifically, the public process could enable full public consideration of, and comment upon, the drawing of district lines. Elements of this process could include:

- (1) Public access to all data available for commission consideration, in a form easy to manipulate using consumer-grade computing hardware and commercially available software.

- (2) Multiple public hearings subject to notice in a manner likely to reach all interested state residents, with promotion of the redistricting process utilizing multiple media including traditional outlets (e.g., print, radio and television) and emerging technologies (e.g., blogs, wikis and social networks).
- (3) Public display of draft maps for a period sufficient to allow meaningful consideration and comment, and multiple avenues by which the public may submit comments. The commissions could also be required to consider and respond substantively to all reasonable input provided by the public.
- (4) Opportunities for public input before the commissions draw any maps and hearings following the drawing and display of any commission maps.

Informally, the commissioners might simply agree to such an arrangement. More formal change likely would require amending the state constitution, which specifies the process each redistricting commission must follow.

This requirement would include a full and open deliberative process as part of the congressional and state legislative districting processes.

An open deliberative process in which the public is given the opportunity to participate meaningfully would have several benefits. First, it would raise general awareness about redistricting, how it is done, and its effects on representative government and political empowerment. Second, it would enable citizens to play a direct role in a process that affects them directly. Third, it would provide the redistricting authorities with a wealth of additional information about how their work is perceived and how it may affect various individuals and communities of interest. Fourth, it would enhance transparency and require redistricting authorities to justify their decisions in full view of the public.

A model redistricting reform bill incorporating many of the Ideas for Reform discussed above is presented as Appendix E.

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OBSTACLES TO REDISTRICTING CHANGE

The ideas presented in Section 6 exemplify the types of changes that can be made to the redistricting process in order to address the areas of concern identified in this paper. Whether one chooses to advocate any of these ideas or different ones, there are significant hurdles to their adoption. This section briefly outlines a few of these obstacles including relevant legal requirements, political realities and practical constraints based upon how little time remains until the next round of redistricting begins.

LEGAL

Relevant legal considerations include federal and state judicial decisions prohibiting voting discrimination²¹⁷ and requiring population equality.²¹⁸ Any changes to the redistricting process must not impede the commissions' ability to abide by these requirements. Additionally, out of the population equality case law have developed a series of judicially defined principles that may be used to justify otherwise suspect districting plans.²¹⁹ These include —

1. Compactness²²⁰
2. Contiguity²²¹
3. Respect for political subdivisions²²² and communities of interest²²³
4. Preserving cores of prior districts²²⁴
5. Avoiding contests between incumbents²²⁵

Any changes to the redistricting process should bear in mind that these criteria are looked upon favorably by the courts and have gained wide acceptance among the fifty states (see Appendix B). Redistricting changes that uphold these interests are likely to be viewed as more acceptable and mainstream. These criteria are detailed in Section 2.

POLITICAL

Relevant political considerations include the reality that any changes to the current redistricting processes must be agreed to by the commissions themselves, or by the state legislature. New Jersey does not permit any form of direct democracy such as the initiative or referendum. Thus, any effort designed to diminish partisan influence over redistricting must first navigate an inherently partisan legislative process. Under these circumstances, changes will

be difficult to enact, particularly where their target is an institution on which legislators' future political prospects may depend.

CHRONOLOGICAL

The legislative redistricting process begins on or before November 15, 2010; the congressional districting process begins on or before June 15, 2011. This brevity in time is perhaps the most significant constraint limiting any changes intended to affect the upcoming redistricting cycle.

All of the ideas presented in Section 6 could be implemented for the upcoming cycle, if done by informal means, such as mutual agreement of the parties concerned. Changes requiring an act of the legislature are feasible in the amount of time remaining, but only if action is taken quickly. While in an emergency the legislature can enact a law almost immediately, the normal legislative process is substantially slower.

Changes requiring constitutional amendment probably cannot be implemented for the upcoming cycle. Because New Jersey does not permit citizen-initiated constitutional amendments, these must begin with legislative action. The amendment process requires twenty days' notice before an amendment proceeds through a mandatory public hearing process, a super-majority vote by the legislature, and then a three-month publication period in news outlets around the state.²²⁶

While changes to the upcoming redistricting cycle that require a constitutional amendment are probably impossible, the extensive process entailed in changing the state constitution suggests that any formal and permanent changes should be considered well in advance of the next redistricting cycle.

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CONCLUDING THOUGHTS

Congressional and state legislative redistricting have significant consequences for representative government and political empowerment. Because redistricting typically occurs only once every ten years, these consequences are long lasting. Those responsible for redrawing the lines have considerable ability to affect the political and democratic landscape of their state.

Though New Jersey uses extra-legislative commissions to redraw its congressional and legislative boundaries, results of the 2001–02 redistricting cycle suggest that legislators and other political figures retain significant influence in the process. This study has examined how this influence has manifested itself as an insular and partisan process. Observable affects of recent redistricting have included sudden shifts in legislative seats, but otherwise low levels of competition and incumbent turnover.

This analysis leads to several areas of concern in New Jersey's redistricting process, specifically the autonomy and integrity of decision-making and the representative and democratic consequences of redistricting outcomes. In light of these concerns, this study also has presented a series ideas for change that address them.

However, any ideas for change are likely to encounter significant obstacles to their enactment. These constraints, taken together, substantially reduce the scope of changes that may be implemented in time for the 2011–12 redistricting. However, recommendations that cannot be acted upon for this cycle may form the basis of longer-term reform efforts that must begin long before the decennial redistricting process begins.

If the examples of Iowa, Arizona and California demonstrate anything, it is that sustained advocacy by an informed citizenry is often the most effective path toward real change in our democracy. Accordingly, the overarching objective of this study has not been to prescribe a specific remedy for New Jersey. Rather, it has been to present information and analytical tools that will enable concerned citizens to form their own conclusions and participate meaningfully in the redistricting process and its improvement.

— Appendix A —

POPULATION EQUALITY OF DISTRICTS IN THE FIFTY STATES AFTER THE 2000 CENSUS

State	State House		State Senate		Congressional		
	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	People Overall Range
Alabama	42,353	9.93 %	127,060	9.73 %	635,300	0.00 %	0
Alaska	15,673	9.96 %	31,346	9.32 %	n/a	n/a	n/a
Arizona	171,021	3.79 %	171,021	3.79 %	641,329	0.00 %	0
Arkansas	26,734	9.87 %	76,383	9.81 %	668,350	0.04 %	303
California	423,395	0.00 %	846,791	0.00 %	639,088	0.00 %	1
Colorado	66,173	4.88 %	122,863	4.95 %	614,465	0.00 %	2
Connecticut	22,553	9.20 %	94,599	8.03 %	681,113	0.00 %	0
Delaware	19,112	9.98 %	37,314	9.96 %	n/a	n/a	n/a
Florida	133,186	2.79 %	399,559	0.03 %	639,295	0.00 %	1
Georgia	45,480	1.96 %	146,187	1.94 %	629,727	0.10 %	72
Hawaii	22,883	20.10 %	46,579	38.90 %	605,769	0.32 %	1,899
Idaho	36,970	9.70 %	36,970	9.70 %	646,977	0.60 %	3,595
Illinois	105,248	0.00 %	210,496	0.00 %	653,647	0.00 %	0
Indiana	60,805	1.92 %	121,610	3.80 %	675,609	0.02 %	102
Iowa	29,263	1.89 %	58,526	1.46 %	585,265	0.02 %	134
Kansas	21,378	9.95 %	66,806	9.27 %	672,105	0.00 %	33
Kentucky	40,418	10.00 %	106,362	9.53 %	673,628	0.00 %	2
Louisiana	42,561	9.88 %	114,589	9.95 %	638,425	0.04 %	240
Maine	8,443	9.33 %	36,426	3.57 %	637,462	0.00 %	23
Maryland	37,564	9.89 %	112,691	9.91 %	662,061	0.00 %	2

Reading Between the Lines
Congressional and State Legislative Redistricting

State	State House		State Senate		Congressional		
	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	People Overall Range
Massachusetts	39,682	9.68 %	158,727	9.33 %	634,910	0.39 %	2,476
Michigan	90,350	9.92 %	261,538	9.92 %	662,563	0.00 %	1
Minnesota	36,713	1.56 %	73,425	1.35 %	614,935	0.00 %	1
Mississippi	23,317	9.98 %	54,705	9.30 %	711,165	0.00 %	10
Missouri	34,326	6.08 %	164,565	6.81 %	621,690	0.00 %	1
Montana	9,022	9.85 %	18,044	9.82 %	n/a	n/a	n/a
Nebraska	n/a	n/a	34,924	9.21 %	570,421	0.00 %	0
Nevada	47,578	1.97 %	95,155	9.91 %	666,086	0.00 %	6
New Hampshire	3,089	9.26 %	51,491	9.50 %	617,893	0.10 %	636
New Jersey	210,359	7.84 %	210,359	7.84 %	647,257	0.00 %	1
New Mexico	25,986	9.70 %	43,311	9.60 %	606,349	0.03 %	166
New York	126,510	9.43 %	306,072	9.78 %	654,360	0.00 %	1
North Carolina	67,078	9.98 %	160,986	9.96 %	619,178	0.00 %	1
North Dakota	13,664	10.00 %	13,664	10.00 %	n/a	n/a	n/a
Ohio	114,678	12.46 %	344,035	8.81 %	630,730	0.00 %	0
Oklahoma	34,165	2.05 %	71,889	4.71 %	690,131	0.00 %	1
Oregon	57,023	1.90 %	114,047	1.77 %	684,280	0.00 %	1
Pennsylvania	60,498	5.54 %	245,621	3.98 %	646,371	0.00 %	1
Rhode Island	13,978	9.88 %	27,587	9.91 %	524,160	0.00 %	6
South Carolina	32,355	4.99 %	87,218	9.87 %	668,669	0.00 %	2
South Dakota	21,567	9.69 %	21,567	9.69 %	n/a	n/a	n/a
Tennessee	57,467	9.99 %	172,402	9.98 %	632,143	0.00 %	5
Texas	139,012	9.74 %	672,639	9.71 %	651,619	0.00 %	1
Utah	29,776	8.00 %	77,006	7.02 %	744,390	0.00 %	1
Vermont	4,059	18.99 %	20,234	14.28 %	n/a	n/a	n/a

Reading Between the Lines
Congressional and State Legislative Redistricting

State	State House		State Senate		Congressional		
	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	People Overall Range
Virginia	70,785	3.90 %	176,963	4.00 %	643,501	0.00 %	38
Washington	120,288	0.30 %	120,288	0.30 %	654,902	0.00 %	7
West Virginia	18,083	9.98 %	106,374	10.92 %	602,781	0.22 %	1,313
Wisconsin	54,179	1.60 %	162,536	0.98 %	670,459	0.00 %	5
Wyoming	8,230	9.81 %	16,459	9.51 %	n/a	n/a	n/a

50-State Summary	State House		State Senate		Congressional		
	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range	People Overall Range
Median	37,564	9.68 %	106,368	9.33 %	643,501	0.00 %	2
Mean	59,899	7.53 %	140,960	7.83 %	643,501	0.04 %	258
Minimum	3,089	0.00 %	13,664	0.00 %	524,160	0.00 %	0
Maximum	423,395	20.10 %	846,791	38.90 %	744,390	0.60 %	3,595

Source: adapted from National Conference of State Legislatures, *Redistricting Law 2010*, Table 3.

Reading Between the Lines
Congressional and State Legislative Redistricting

— Appendix B —

DISTRICTING CRITERIA IN THE FIFTY STATES AFTER THE 2000 CENSUS

LEGEND		
C = Required in congressional plans	(C) = Permitted in congressional plans	⊘ = Prohibited in congressional plans
L = Required in legislative plans	(L) = Permitted in legislative plans	⊘ = Prohibited in legislative plans

State	Compact	Contiguous	Preserve Political Subdivisions	Preserve Communities of Interest	Preserve Cores of Prior Districts	Protect Incumbents	Voting Rights Act
Alabama	C , L	C , L	C , L	C , L	C , L	--	C , L
Alaska	L	L	L	L	--	--	--
Arkansas	--	--	C , L	--	C , L	(C),(L)	C , L
Arizona	C , L	C , L	C , L	C , L	--	⊘ , ⊘	C , L
California	C , L	C , L	C , L	C , L	--	⊘	C , L
Colorado	L	L	L	L	--	--	L
Connecticut	--	L	L	--	--	--	--
Delaware	--	L	--	--	--	⊘	--
Florida	--	L	--	--	--	--	--
Georgia	--	C , L	C , L	--	C , L	(C),(L)	C , L
Hawaii	L	L	L	L	--	⊘	--
Idaho	C , L	C , L	C , L	C , L	--	⊘ , ⊘	C , L
Illinois	L	L	--	--	--	--	--
Indiana	--	L	--	--	--	--	--
Iowa	C , L	C , L	C , L	--	--	⊘ , ⊘	C , L

Reading Between the Lines
Congressional and State Legislative Redistricting

LEGEND		
C = Required in congressional plans	(C) = Permitted in congressional plans	⊘ = Prohibited in congressional plans
L = Required in legislative plans	(L) = Permitted in legislative plans	⊘ = Prohibited in legislative plans

State	Compact	Contiguous	Preserve Political Subdivisions	Preserve Communities of Interest	Preserve Cores of Prior Districts	Protect Incumbents	Voting Rights Act
Kansas	C , L	C , L	C , L	C , L	L	⊘	L
Kentucky	--	C	C	C	C	--	C
Louisiana	--	L	L	--	L	--	--
Maine	L	L	L	--	--	--	--
Maryland	L	C , L	L	--	(C),(L)	(C),(L)	C , L
Massachusetts	--	L	L	--	--	--	--
Michigan	C , L	C , L	C , L	--	--	--	C
Minnesota	C , L	C , L	C , L	C , L	--	--	C , L
Mississippi	L	C , L	L	--	--	--	C , L
Missouri	C , L	C , L	L	L	L	--	L
Montana	L	L	L	--	--	⊘	L
Nebraska	C , L	C , L	C , L	--	--	⊘ , ⊘	C , L
Nevada	C , L	L	C , L	L	--	--	C , L
New Hampshire	--	L	L	--	--	--	--
New Jersey	L	L	L	--	--	--	--
New Mexico	C , L	C , L	C , L	C , L	(C),(L)	(C),(L)	C , L
New York	L	L	L	--	--	--	--
North Carolina	--	C , L	C , L	--	C	(C)	C , L
North Dakota	L	L	L	--	--	--	--
Ohio	L	L	L	--	--	--	--
Oklahoma	L	L	L	L	--	--	--
Oregon	--	C , L	C , L	C , L	--	⊘ , ⊘	C , L
Pennsylvania	L	L	L	--	--	--	--
Rhode Island	L	--	--	--	--	--	--
South Carolina	C , L	C , L	C , L	C , L	C , L	(C),(L)	C , L

Reading Between the Lines
Congressional and State Legislative Redistricting

LEGEND		
C = Required in congressional plans	(C) = Permitted in congressional plans	⊘ = Prohibited in congressional plans
L = Required in legislative plans	(L) = Permitted in legislative plans	⊘ = Prohibited in legislative plans

State	Compact	Contiguous	Preserve Political Subdivisions	Preserve Communities of Interest	Preserve Cores of Prior Districts	Protect Incumbents	Voting Rights Act
South Dakota	L	L	L	L	--	--	L
Tennessee	--	L	L	--	--	--	L
Texas	--	L	L	--	--	--	--
Utah	C , L	C , L	--	--	--	--	--
Vermont	L	L	L	L	--	--	(L)
Virginia	C , L	C , L	(C),(L)	(C),(L)	(C),(L)	(C),(L)	C , L
Washington	C , L	C , L	C , L	C , L	--	⊘	--
West Virginia	C , L	C , L	C , L	--	--	--	--
Wisconsin	L	L	L	--	--	--	--
Wyoming	C , L	C , L	C , L	L	--	⊘	L

50-State Summary	Compact	Contiguous	Preserve Political Subdivisions	Preserve Communities of Interest	Preserve Cores of Prior Districts	Protect Incumbents	Voting Rights Act
C	17	22	19	10	6	--	18
L	36	47	43	19	7	--	24
(C)	--	--	1	1	3	7	--
(L)	--	--	1	1	3	6	1
⊘	--	--	--	--	--	5	--
⊘	--	--	--	--	--	12	--

Source: adapted from National Conference of State Legislatures, *Redistricting Law 2010*, Table 8.

— Appendix C —

REDISTRICTING AUTHORITIES IN THE FIFTY STATES

State	Congressional Districts	State Legislative Districts
Alabama	Legislature	Legislature
Alaska	Legislature	Commission
Arizona	Commission	Commission
Arkansas	Legislature	Commission
California	Legislature	Commission
Colorado	Legislature	Commission
Connecticut * ‡	Legislature	Legislature
Delaware	Legislature	Legislature
Florida	Legislature	Legislature
Georgia	Legislature	Legislature
Hawaii	Commission	Commission
Idaho	Commission	Commission
Illinois ‡	Legislature	Legislature
Indiana *	Legislature	Legislature
Iowa * ‡	Legislature	Legislature
Kansas	Legislature	Legislature
Kentucky	Legislature	Legislature
Louisiana	Legislature	Legislature
Maine * ‡	Legislature	Legislature
Maryland	Legislature	Legislature
Massachusetts	Legislature	Legislature
Michigan	Legislature	Legislature
Minnesota	Legislature	Legislature
Mississippi ‡	Legislature	Legislature
Missouri	Legislature	Commission
Montana	Commission	Commission
Nebraska	Legislature	Legislature
Nevada	Legislature	Legislature
New Hampshire	Legislature	Legislature
New Jersey	Commission	Commission
New Mexico	Legislature	Legislature
New York * ‡	Legislature	Legislature
North Carolina	Legislature	Legislature
North Dakota	Legislature	Legislature
Ohio	Legislature	Commission

State	Congressional Districts	State Legislative Districts
Oklahoma ‡	Legislature	Legislature
Oregon ‡	Legislature	Legislature
Pennsylvania	Legislature	Commission
Rhode Island	Legislature	Legislature
South Carolina	Legislature	Legislature
South Dakota	Legislature	Legislature
Tennessee	Legislature	Legislature
Texas ‡	Legislature	Legislature
Utah	Legislature	Legislature
Vermont * ‡	Legislature	Legislature
Virginia	Legislature	Legislature
Washington	Commission	Commission
West Virginia	Legislature	Legislature
Wisconsin	Legislature	Legislature
Wyoming	Legislature	Legislature

50-State Summary	Congressional Districts	State Legislative Districts
Legislature	44	37
Commission	6	13

* Uses advisory or backup commission for congressional districting.

‡ Uses advisory or backup commission for state legislative districting.

Source: adapted from National Conference of State Legislatures,
Redistricting Law 2010, Appendix B.

— Appendix D —

COMPARISON OF REDISTRICTING CHARACTERISTICS IN IOWA, ARIZONA, CALIFORNIA AND NEW JERSEY

		Iowa		Arizona		California		New Jersey	
		Congress	Legislature	Congress	Legislature	Congress	Legislature	Congress	Legislature
General	State Population (2009 est.)	3,007,856		6,595,778		36,961,664		8,707,739	
	Number of Districts	5	50 Senate 100 House	8	30	53	40 Senate 80 Assembly	13	40
	Ideal Population per District	601,571	60,157 (Senate) 30,079 (House)	824,472	219,859	697,390	924,042 (Senate) 462,021 (Asm.)	669,826	217,693
	Total Range of Deviation After Last Redistricting	0.02 %	1.46 % (Senate) 1.89 % (House)	0.00 %	3.79 %	0.00 %	0.00 % (Senate) 0.00 % (Asm.)	0.00 %	7.84 %
Redistricting Law	Informal Title of Redistricting Law	House File 707		Proposition 106		Proposition 11		Assembly Concurrent Resolution 25	Convention Proposal No. 45
	Citation(s)	IOWA CONST. art. III, §§ 35-36		ARIZ. CONST. art. 4, pt. 2, § 1		CAL. CONST. art. XXI, §§ 1 and 3	CAL. CONST. art. XXI, §§ 2–3	N.J. CONST. art. II, § 2	N.J. CONST. art. IV, §§ 2–3
		IOWA CODE §§ 42.1–7					CAL. GOVT. CODE §§ 8252-53		
	Year of Adoption	1980		2000		2008		1995	1966
	Method of Adoption	Act of legislature		Citizen-initiated public question		Citizen-initiated public question		Resolution of legislature ratified by voters	Constitutional convention proposal ratified by voters
	Method of Redistricting	Non-partisan agency proposes map for adoption by legislature		Independent commission adopts map		Legislature adopts map	Independent commission adopts map	Politician commission adopts map	Politician commission adopts map

Reading Between the Lines
Congressional and State Legislative Redistricting

		Iowa		Arizona		California		New Jersey	
		Congress	Legislature	Congress	Legislature	Congress	Legislature	Congress	Legislature
Redistricting Authority	<i>Number of Members of Redistricting Authority</i>	Varies		5		121 (governor and state legislators)	14	13	10 (11 after deadlock)
	<i>Partisan Composition of Redistricting Authority</i>	Nonpartisan agency		May vary, but likely 2D, 2R, 1I		Same as governor and state legislators	May vary, but likely 5D, 5R, 4I	May vary, but likely 6D, 6R, 1I	May vary, but likely 5D, 5R (+ 1I after deadlock)
	<i>How Members of Redistricting Authority Are Chosen</i>	Agency director appointed by bipartisan legislative council		(1) Nonpartisan judicial commission nominates 25 qualified candidates: 10D, 10R, 5I (2) Four legislative leaders each select one member (3) Four commissioners choose a fifth member		n/a	(1) State Auditor screens applicants for eligibility (2) Nonpartisan Applicant Review Panel nominates 60 eligible candidates: 20D, 20R, 20I (3) Four legislative leaders "strike" up to a certain number of nominees (4) State Auditor randomly selects 8 members from remaining nominees: 3D, 3R, 2I (5) Eight commissioners choose 6 additional members from remaining nominees: 2D, 2R, 2I	(1) Four legislative leaders and 2 state party chairs each choose 2 members (2) Twelve commissioners choose a 13th nonpartisan member	(1) Two state party chairs each choose 5 members (2) In the event of deadlock, Chief Justice of state Supreme Court chooses an 11th tiebreaking member

Reading Between the Lines
Congressional and State Legislative Redistricting

		Iowa		Arizona		California		New Jersey	
		Congress	Legislature	Congress	Legislature	Congress	Legislature	Congress	Legislature
Districting Criteria	<i>Compact</i>	Required	Required	Required	Required	Required	Required	--	Required
	<i>Contiguous</i>	Required	Required	Required	Required	Required	Required	--	Required
	<i>Preserve Political Subdivisions</i>	Required	Required	Required	Required	Required	Required	--	Required
	<i>Preserve Communities of Interest</i>	--	--	Required	Required	Required	Required	--	--
	<i>Preserve Cores of Prior Districts</i>	--	--	--	--	--	--	--	--
	<i>Protect Incumbents</i>	Prohibited	Prohibited	Prohibited	Prohibited	--	Prohibited	--	--
	<i>Voting Rights Act</i>	Required	Required	Required	Required	Required	Required	--	--
Timeline (2010s cycle)	<i>Date of Redistricting Authority Formation</i>	Previously existing		Feb. 28, 2011		Previously existing	Dec. 31, 2010	June 15, 2011	Nov. 15, 2010
	<i>Initial Deadline for Adoption of Map</i>	Not specified	Apr. 1, 2011	Not specified		Not specified	n/a	n/a	Mar. 2011
	<i>Final Deadline for Adoption of Map</i>	Not specified	Sep. 15, 2011	Not specified		Not specified	Sep. 15, 2011	Jan. 2012	Apr. 2011
	<i>Deadlock Contingency</i>	Not specified, but likely intervention by state supreme court	Adoption of map by state supreme court	Not specified, but likely intervention by state supreme court		Not specified, but likely intervention by state supreme court	State supreme court appoints panel to adopt map	State supreme court chooses one finalist map	Chief Justice of state Supreme Court chooses 11th tiebreaking member
	<i>Lifespan of Map</i>	2012–22		2012–22		2012–22		2012–22	2011–21

Source: author's analysis of relevant law.

— Appendix E —

MODEL REFORM BILL AND MEMO: THE “NEW JERSEY INDEPENDENT REDISTRICTING AMENDMENTS”

This Appendix presents a model redistricting reform bill, styled as a resolution of the Legislature of New Jersey and tailored to the civic landscape of that state. The model bill addresses the procedural and substantive issues discussed in Section 5 of this paper and incorporates several Ideas for Reform considered in Section 6. In order to demonstrate a variety of these concepts in a single model bill, the text below represents a significant departure from the status quo. In particular, the model bill —

Reduces the number of districting commissions from two to one

The New Jersey Independent Redistricting Commission (NJIRC) would be responsible for redrawing both congressional and state legislative boundaries, tasks that presently are assigned to the Redistricting and Apportionment commissions, respectively.

Provides detailed qualifications for Commission membership

Qualified commissioners would be required to meet certain criteria calculated to enhance the political independence of NJIRC members. In particular, the model bill retrospectively and prospectively limits political activities of commissioners and, in some cases, their immediate family members.

Establishes a competitive application process for Commission membership

The selection process would be intended to encourage appointment of political moderates who are technically qualified for the position and are geographically, ethnically and racially diverse. In particular, the Division of Elections would administer an application process and screen for disqualifications. Legislative leaders would then nominate and appoint ten members, with each major party choosing an equal number. The ten initial commissioners would then choose three additional members.

Requires an open and public deliberative redistricting process

The NJIRC would be required to make public the data it considers and provide an opportunity for broad public input and deliberation. In particular, the Commission would be required to hold public hearings and provide opportunities for public input both before and after district maps are drawn and displayed publicly.

Specifies and prioritizes districting criteria that must be accommodated

The NJIRC would be required to accommodate traditional districting criteria when re-drawing district lines. The model bill specifies which criteria must yield when conflicts among them arise. Additionally, the NJIRC would be required to issue a report with each map explaining the basis on which it believes it has complied with these criteria.

Prohibits partisan gerrymandering and consideration of certain political data

The NJIRC would be prohibited from drawing districts that favor or discriminate against an incumbent, political candidate or political party. Nor could it consider political party registration, voting history data, or places of residence of incumbents and candidates for elective office, until after draft maps have been publicly displayed.

ADDRESSING THE AREAS OF CONCERN AND INCORPORATING THE IDEAS FOR REFORM

Extra-legislative redistricting has been successful in several states. Following legislative gridlock and legal challenge, Iowa and Arizona both gave substantial redistricting authority to non-legislative entities. Iowa's post-reform experience has been relatively smooth; Arizona's has been somewhat rockier, though a recent state supreme court decision has cleared the way for a more uneventful experience after the 2010 census. Both states have been lauded as reaching politically fair and independent results. More recently, California also adopted extensive reform, following several decades of redistricting difficulties.

The model bill maintains and improves upon New Jersey's extra-legislative commission structure. The proposed reform shares several elements in common with Arizona and California's commission models, which are described in Section 3.

Autonomy of Decision-Making. The model bill improves political autonomy of the NJIRC by establishing detailed qualifications and a competitive application process for Commission membership. These changes are intended to enhance political independence of NJIRC members and encourage appointment of political moderates who are technically qualified for the position and are geographically, ethnically and racially diverse.

Civic Qualifications. The model bill retrospectively and prospectively limits political activities of commissioners and, in some cases, their immediate family members. In particular, during the five years before their appointment, commissioners must have been registered voters in the state and have voted regularly. These requirements are intended to ensure commissioners have been recently active in civic life. While a degree of political autonomy is important in the redistricting process, it is also important that decision-makers be familiar with the state's political landscape. These requirements attempt to strike the necessary balance between political independence and awareness.

Retrospective Limits on Political Activity. The model bill also disqualifies individuals who, during the last five years, have held public or political party office, or who have engaged in certain other political activities. Individuals whose immediate family members have done the

same are also disqualified. These requirements are intended to screen out extreme partisans and those with conflicts of interest. Individuals who have held office or engaged in certain political activities may be more likely to overemphasize political interests in the redistricting process at the expense of the public interest.

Prospective Limits on Political Activity. The model bill also prohibits commissioners from holding public office in the state, and from engaging in certain political activities, until districts are redrawn after the decennial census next following their appointment. These requirements are intended to prevent commissioners from personally benefitting from official decisions of the NJIRC. In particular, commissioners cannot run for office in congressional and state legislative districts that they help create.

Competitive Application Process. The model bill also establishes a competitive application process for Commission membership. The Division of Elections administers the application process and initially screens candidates for the qualifications described above. This step is intended to formalize and standardize the application process, and to place it with a non-partisan state agency.

Next, legislative leaders nominate from the pool of qualified applicants. Each leader makes 10 nominations – 40 nominees in all – and each nominee must be affiliated with the same political party as the nominator. Then, the same legislative leaders appoint NJIRC members from the pool of nominees. Senate leaders each make 2 appointments and Assembly leaders each make 3 appointments – 10 NJIRC members in all. Each appointee must be affiliated with a different political party as the appointer. Thus, while Democratic leaders must nominate Democratic applicants (and vice-versa), they do so knowing that Republican leaders will decide which Democratic nominees are ultimately appointed to the NJIRC. This Solomonic, “you cut, I choose” process is intended to result in ideological moderation. While legislative leaders may still nominate their own partisans, the ideological divide will narrow when legislative leaders from the other political party must choose among them.

Finally, the ten initial commissioners then choose three additional members, none of who may be affiliated with a political party already represented on the NJIRC. This requirement is intended to result in the appointment of 3 independent members. Thus, the NJIRC will typically include 5 Democrats, 5 Republicans and 3 Independents.

Legislative leaders’ nominations, and the three independent appointments, must “be made with due consideration to geographic, ethnic and racial diversity, as well as education and occupational experience and demonstrated ability to represent the best interest of the people of this State.” This requirement is intended to result in the selection of commissioners who are technically qualified for the position and who represent the regional and demographic diversity of the state.

Comparison with Other State Practices. The selection process prescribed by the model bill incorporates elements of both Arizona and California's practices. Both states utilize a non-partisan entity to begin the selection process and incorporate input from legislative leaders in subsequent stages. California effectively lessens the influence of each entity by establishing a wide-open application process and by diffusing the act of selection over multiple rounds.

The model bill incorporates both a nonpartisan first mover and an open application process, but leaves final decisions to legislative leaders, instead of random selection. This is a moderated version of the California model that recognizes the fact that such a plan remains untested in the American election system. Accordingly, the model bill accepts several of the more predictable elements of the Arizona and California models while rejecting their more unpredictable elements.

Integrity of Decision-Making. The model bill improves the integrity of the NJIRC's decision-making process by specifying and prioritizing districting criteria that must be accommodated and by prohibiting partisan gerrymandering and consideration of certain political data. These changes are calculated to guide the Commission's analysis and ensure that specific interests are either accommodated or disregarded during the redistricting process.

Required Districting Criteria. The model bill establishes a prioritized list of districting criteria as follows:

1. Compliance with the U.S. Constitution and federal law;
2. Population equality;
3. Geographic contiguity;
4. Respect for political subdivisions and other identifiable communities of interest;
5. Geographic compactness;
6. Preservation of the cores of existing districts; and
7. Electoral competition.

These criteria are described in Section 2 and many have been acknowledged as "traditional" by the courts, where they are frequently invoked to defend challenged district maps.

Regarding geographic compactness, there is no universally accepted standard, though several quantitative measures have been developed. These measures and their deficiencies are described in Section 2. Iowa law prescribes two additional measures ("length-width" and "perimeter" compactness) for comparing the relative compactness of districts and districting plans.²²⁷ Given the lack of agreement in this area, no standard has been prescribed in the model bill. However, it is expected that the NJIRC will consider compactness during the open hearing process and in its final reports, enabling members of the public to influence and review the Commission's analysis in this regard.

Electoral competition may be encouraged in one of several ways. Districts may be drawn to encompass roughly equal numbers of Democratic and Republican affiliates. Additionally, districts with historically competitive or uncompetitive elections may be deliberately kept intact or redrawn, as the case may be. The degree of electoral competition typically is measured from the margin of victory between major party candidates. However, like compactness, there is no universally accepted standard of electoral competition and none is prescribed in the model bill.²²⁸ Likewise, it is expected that the open hearing process and Commission reporting requirements will enable public scrutiny in this area.

The model bill specifies that each of the required districting criteria must be accommodated by the NJIRC, but only to the extent it does not conflict with any of the criteria above it. This list establishes the interests deemed most important in the redistricting process. Additionally, it recognizes that not all interests will be compatible with all others, all of the time. Thus, this list also provides the Commission with an order of precedence to determine which criteria must yield when conflicts among them arise.

Gerrymandering and Political Considerations Prohibited. The model bill also prohibits the NJIRC from political gerrymandering and considering certain political data during the initial stages of drawing districts (consideration in later stages is allowed only for testing for compliance with the required districting criteria). For example, if after drawing and displaying maps without regard to the prohibited information, there is an insufficient number of competitive districts, the NJIRC may then consider political data (e.g., party registration and voting history) and adjust district lines to accommodate this criterion. These requirements are intended to limit the Commission's ability to accommodate political interests, unless they are incidental to those interests covered by the required districting criteria.

Representative Outcomes. The preceding features of the model bill will secure more accurate representation through the redistricting process by diversifying commission membership and improving the decision-making process.

Resolving Deadlock. Toward the same end, the model bill retains and improves the existing means of resolving deadlocks in the redistricting process. In the event of deadlock, the NJIRC identifies two plans receiving the greatest amount of support on the Commission. The state supreme court then chooses the plan that conforms most closely to the required districting criteria. Because only one plan can be selected, this requirement will encourage factions to moderate their plans, in an attempt to ensure theirs will be the one chosen. If one side fails to moderate its plan sufficiently, it risks total loss when the other's is adopted.

Democratic Outcomes. The model bill will secure more democratic outcomes by its inclusion of electoral competition as a required districting criterion and an open hearing process.

Electoral Competition. The model bill requires that electoral competition be considered by the NJIRC, but only to the extent it does not conflict with any of the other required district-

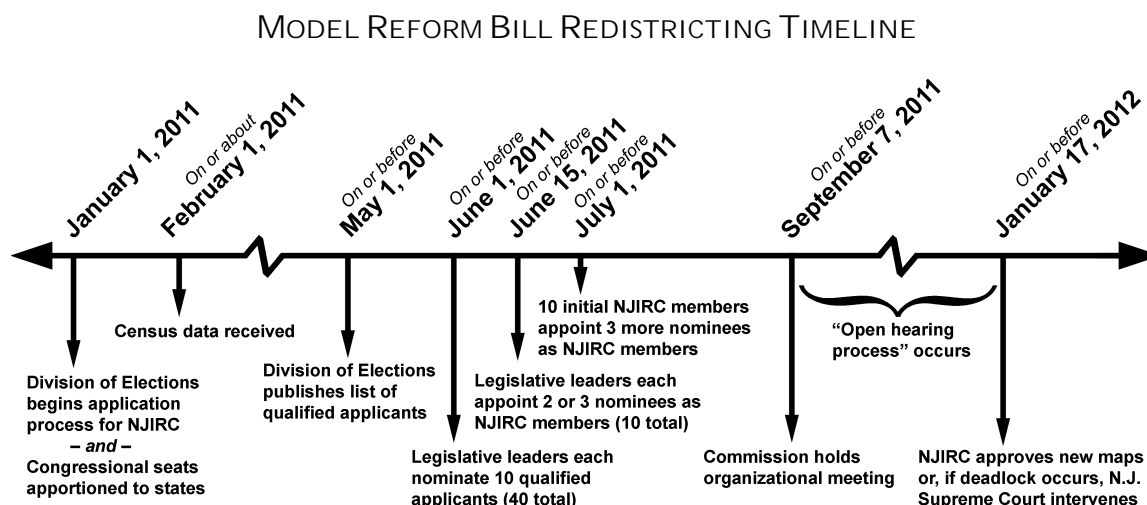
ing criteria. A minimum level of electoral competition is important in a democratic system of government. However, such a requirement may be prone to misuse. This requirement attempts to strike the necessary balance by encouraging greater electoral competition where possible, while ensuring the other required criteria are considered first.

Public Participation and Hearing Process. The model bill specifies detailed requirements for an “open hearing process to facilitate broad public input and deliberation.” These requirements are unprecedented in the history of New Jersey redistricting and include —

1. Availability of all data considered by the NJIRC in a manner that ensures immediate and widespread public access.
2. At least three public hearings in different parts of the State, subject to public notice in a manner likely to reach interested state residents;
3. Public display of draft maps and multiple ways in which state residents may submit comments; and
4. Opportunities for input both before the NJIRC draws any maps and hearings following the drawing and display of any commission maps.

Additionally, the NJIRC must issue a public report with each map explaining the basis on which it believes it has complied with the required districting criteria. These requirements are intended to provide the interested public ample opportunity to participate in a process that has broad consequences for representative government and political empowerment. They are also intended to provide the NJIRC with a wealth of additional information about how their work is perceived and how it may affect various individuals and communities of interest. They are also intended to enhance transparency and require the NJIRC to justify their decisions in full view of the public.

A timeline of the NJIRC’s redistricting work and its significant characteristics as specified by the model reform bill appear below.



CHARACTERISTICS OF THE MODEL REFORM BILL

		New Jersey (model reform bill)		New Jersey (current law)	
		Congress	Legislature	Congress	Legislature
General	<i>State Population (2009 est.)</i>	8,707,739			
	<i>Number of Districts</i>	13	40	13	40
	<i>Ideal Population per District</i>	669,826	217,693	669,826	217,693
	<i>Total Range of Deviation After Last Redistricting</i>	0.00 %	7.84 %	0.00 %	7.84 %
Redistricting Law	<i>Informal Title of Redistricting Law</i>	Model Reform Bill		Assembly Concurrent Resolution 25	Convention Proposal No. 45
	<i>Citation(s)</i>	Revised N.J. CONST. art. II, § 2		N.J. CONST. art. II, § 2	N.J. CONST. art. IV, §§ 2–3
	<i>Year of Adoption</i>	n/a		1995	1966
	<i>Method of Adoption</i>	Resolution of legislature ratified by voters		Resolution of legislature ratified by voters	Constitutional convention proposal ratified by voters
	<i>Method of Redistricting</i>	Independent commission adopts map		Politician commission adopts map	Politician commission adopts map
Redistricting Authority	<i>Number of Members of Redistricting Authority</i>	13		13	10 (11 after deadlock)
	<i>Partisan Composition of Redistricting Authority</i>	May vary, but likely 5D, 5R, 3I		May vary, but likely 6D, 6R, 1I	May vary, but likely 5D, 5R (+ 1I after deadlock)
	<i>How Members of Redistricting Authority Are Chosen</i>	(1) Division of Elections solicits applications and screens applicants for eligibility (2) Four legislative leaders each nominate 10 eligible candidates: 20D, 20R (3) Four legislative leaders each appoint 2 or 3 nominees: 5D, 5R (4) Ten initial commissioners appoint 3 additional members from eligible candidates: 3I		(1) Four legislative leaders and 2 state party chairs each choose 2 members (2) Twelve commissioners choose a 13th nonpartisan member	(1) Two state party chairs each choose 5 members (2) In the event of deadlock, Chief Justice of state Supreme Court chooses an 11th tiebreaking member

		New Jersey (model reform bill)		New Jersey (current law)	
		Congress	Legislature	Congress	Legislature
Districting Criteria	<i>Compact</i>	Required		--	Required
	<i>Contiguous</i>	Required		--	Required
	<i>Preserve Political Subdivisions</i>	Required		--	Required
	<i>Preserve Communities of Interest</i>	Required		--	--
	<i>Preserve Cores of Prior Districts</i>	Required		--	--
	<i>Protect Incumbents</i>	Prohibited		--	--
	<i>Voting Rights Act</i>	Required		--	--
Timeline (2010s cycle)	<i>Date of Redistricting Authority Formation</i>	July 1, 2011		June 15, 2011	Nov. 15, 2010
	<i>Initial Deadline for Adoption of Map</i>	n/a		n/a	Mar. 2011
	<i>Final Deadline for Adoption of Map</i>	Jan. 2012		Jan. 2012	Apr. 2011
	<i>Deadlock Contingency</i>	State supreme court chooses one finalist map		State supreme court chooses one finalist map	Chief Justice of state Supreme Court chooses 11th tiebreaking member
	<i>Lifespan of Map</i>	2012–22		2012–22	2011–21

Source: author's analysis of relevant law and model reform bill.

MODEL REFORM BILL

**ASSEMBLY CONCURRENT
RESOLUTION No. [•]**

**STATE OF NEW JERSEY
215th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Assemblyman [•]
District [•] ([•])

Co-Sponsored by:
Assemblymen [•]

SYNOPSIS

Proposes constitutional amendments, the “New Jersey Independent Redistricting Amendments,” to revise the method of congressional and state legislative redistricting.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: [•])

1 **A CONCURRENT RESOLUTION** proposing to amend Articles II and IV
2 of the Constitution of the State of New Jersey.

3 **BE IT RESOLVED** by the General Assembly of the State of New Jersey
4 (the Senate concurring):

5 1. The following proposed amendments to the Constitution of the
6 State of New Jersey, the “New Jersey Independent Redistricting
7 Amendments,” are agreed to:

8 PROPOSED AMENDMENT

9 a. Amend Article II to read as follows:

10 Article II
11 ELECTIONS AND SUFFRAGE

12 [. . .]

13 SECTION II

14 1. (a) After each federal census taken in a year ending in zero,
15 the ~~C~~ongressional and state legislative districts shall be es-
16 tablished by the New Jersey Independent Redistricting
17 Commission.

18 (b) The ~~e~~Commission shall consist of 13 members subject
19 to the qualifications of this paragraph.

20 (c) During the five years before their appointment, com-
21 missioners shall have been registered voters in the State of
22 New Jersey and have voted in at least three statewide gen-
23 eral elections. Additionally, commissioners and their im-
24 mediate family shall not have:

25 (1) Held appointed or elected federal, state or local of-
26 fice, or been a candidate for any such office;

27 (2) Served as paid staff to any congressional, state or
28 local elected or appointed officer;

29 (3) Served as an elected or appointed member, officer,
30 employee or paid consultant of a federal, state or local
31 political party, or of any campaign committee of a can-
32 didate for elective federal, state or local office; or

33 (4) Been a registered federal, state or local lobbyist.

34 As used in this subparagraph, “immediate family” includes
35 those with whom a person has a bona fide relationship es-
36 tablished through blood or legal relation, including parents,
37 children, siblings, and in-laws.

EXPLANATION – Matter struck out ~~thus~~ in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

ANNOTATIONS

Annotations appearing in the margin are explanatory and will not become part of the New Jersey Constitution.

EFFECTIVE DATE

Amendments become part of the New Jersey Constitution upon approval by the voters and apply to establishment of congressional or state legislative districts for use after the official federal census of 2020.

**ARTICLE II
Elections and Suffrage**

Section II, para. 1. Establishes qualifications and limitations for members of the New Jersey Independent Redistricting Commission, specifies that terms of office run for a decade following appointment, and specifies quorum and voting requirements.

Subpara. (a). Renames the New Jersey Redistricting Commission the New Jersey Independent Redistricting Commission (“NJIRC”) and requires it to establish congressional and state legislative districts.

Subpara. (c). Disqualifies from NJIRC membership individuals who have not been registered voters in the state, or have not voted regularly during the last 5 years.

Subpara. (c). Also disqualifies from NJIRC membership individuals who have held political office, run for political office, engaged in certain political activities, or whose immediate family members have done so, during the last 5 years.

1 (d) Until districts are redrawn after the decennial census
2 next following their appointment, commissioners shall be
3 ineligible to hold elective congressional, state or local leg-
4 islative office in New Jersey. Nor shall they be eligible to:

5 (1) Serve as paid staff to any congressional, state or lo-
6 cal elected or appointed officer;

7 (2) Serve as an elected or appointed member, officer,
8 employee or paid consultant of a federal, state or local
9 political party, or of any campaign committee of a can-
10 didate for elective federal, state or local office; or

11 (3) Register as a federal, state or local lobbyist.

12 (e) Commissioners' terms of office shall end on June 30 in
13 the year ending in one following their selection, or until
14 their disability, disqualification, resignation or removal by
15 at least eight commissioners.

16 (f) Seven commissioners shall constitute a quorum to take
17 action. Acts of the Commission shall pass if supported by a
18 majority of commissioners voting, except as otherwise
19 specified in this Constitution.

20 2. The Commission shall be established by July 1 in years
21 ending in one.

22 (a) By January 1 in years ending in one, the Division of
23 Elections shall begin an application process for members of
24 the Independent Redistricting Commission.

25 (b) By May 1 in years ending in one, the Division of Elec-
26 tions shall publish a list of applicants qualified to serve as
27 commissioner under this section.

28 (c) By June 1 in years ending in one, the President and mi-
29 nority leader of the state Senate and the Speaker and minor-
30 ity leader of the General Assembly shall each nominate ten
31 qualified applicants. Each nominee must be affiliated with
32 the same political party as the nominator. Nominations
33 shall be made, none of whom shall be a member or em-
34 ployee of the Congress of the United States. The members
35 of the commission shall be appointed with due considera-
36 tion to geographic, ethnic and racial diversity, as well as
37 education and occupational experience and demonstrated
38 ability to represent the best interest of the people of this
39 State and in the manner provided herein.

40 (d) By June 15 in years ending in one, the President and
41 minority leader of the state Senate shall each appoint two
42 nominees and the Speaker and minority leader of the Gen-
43 eral Assembly shall each appoint three nominees. Each ap-

Subpara. (d). Disqualifies NJIRC members from holding elective office for up to 10 years after their appointment.

Subpara. (d). Also disqualifies NJIRC members from certain political activities for up to 10 years after their appointment.

Subpara. (e). Specifies that NJIRC terms of office run for a decade following appointment.

Subpara. (f). Specifies quorum and voting requirements.

Section II, para. 2. Establishes the process by which NJIRC members are appointed, by July 1 in years ending in one.

Subpara. (a). Specifies that the Division of Elections begins an application process for NJIRC members beginning January 1 in each year ending in one.

Subpara. (b). Specifies that the Division of Elections publishes a list of qualified candidates by May 1 in each year ending in one.

Subpara. (c). Specifies that the state's four legislative leaders each nominate 10 qualified candidates (40 nominees in all), who must be members of the nominator's party, by June 1 in years ending in one. Nominations must be made with due consideration of certain diversity- and merit-based criteria.

Subpara. (d). Specifies that the state's four legislative leaders each appoint a certain number of nominees to serve on the NJIRC (10 appointees in all), who must not be members of their own party, respectively, by June 15 in years ending in one.

1 pointee must be affiliated with a different political party
 2 than the appointer. Appointments shall be certified to the
 3 Secretary of State.

4 (e) By July 1 in years ending in one, the ten initial commis-
 5 sioners shall appoint three qualified applicants who are not
 6 affiliated with any political party already represented on the
 7 Commission. Appointments shall be made with due con-
 8 sideration to geographic, ethnic and racial diversity, as well
 9 as education and occupational experience and demonstrated
 10 ability to represent the best interest of the people of this
 11 State. Appointments shall be certified to the Secretary of
 12 State.

13 (f) If the President or minority leader of the state Senate
 14 fails to make a nomination or certify an appointment by the
 15 specified deadline, the other shall be entitled to do so. If
 16 the Speaker or minority leader of the General Assembly
 17 fails to make a nomination or certify an appointment by the
 18 specified deadline, the other shall be entitled to do so.

19 (g) The Commission shall select a chair and vice chair, pro-
 20 vided both are not affiliated with the same political party.

22 (h) Vacancies shall be filled in the same manner as the va-
 23 cant position was originally filled, within five days of their
 24 occurrence, from the remaining nominees or qualified can-
 25 didates.

26 ~~(b) There shall first be appointed 12 members as follows:~~

27 ~~(1) — two members to be appointed by the President of~~
 28 ~~the Senate;~~

29 ~~(2) — two members to be appointed by the Speaker of the~~
 30 ~~General Assembly;~~

31 ~~(3) — two members to be appointed by the minority leader~~
 32 ~~of the Senate;~~

33 ~~(4) — two members to be appointed by the minority leader~~
 34 ~~of the General Assembly; and~~

35 ~~(5) — four members, two to be appointed by the chairman~~
 36 ~~of the State committee of the political party whose candi-~~
 37 ~~date for the office of Governor received the largest number~~
 38 ~~of votes at the most recent gubernatorial election and two to~~
 39 ~~be appointed by the chairman of the State committee of the~~
 40 ~~political party whose candidate for the office of Governor~~
 41 ~~received the next largest number of votes in that election.~~

42 ~~Appointments to the commission under this subparagraph~~
 43 ~~shall be made on or before June 15 of each year ending in~~

Subpara. (e). Specifies that the 10 initial NJIRC members appoint three additional qualified candidates to serve on the NJIRC. Appointments must be made with due consideration of certain diversity- and merit-based criteria.

Subpara. (f). Specifies that if any of the state's four legislative leaders fail to make a nomination or appointment, she or he forfeits the right to do so.

Subpara. (g). Specifies that the NJIRC chooses a chair and vice chair, but that both may not be affiliated with the same party.

Subpara. (h). Specifies that NJIRC vacancies are filled the same way in which the vacant position was originally filled.

~~one and shall be certified by the respective appointing officials to the Secretary of State on or before July 1 of that year.~~

~~Each partisan delegation so appointed shall appoint one of its members as its chairman who shall have authority to make such certifications and to perform such other tasks as the members of that delegation shall reasonably require.~~

~~(c) There shall then be appointed one member, to serve as an independent member, who shall have been for the preceding five years a resident of this State, but who shall not during that period have held public or party office in this State.~~

~~The independent member shall be appointed upon the vote of at least seven of the previously appointed members of the commission on or before July 15 of each year ending in one, and those members shall certify that appointment to the Secretary of State on or before July 20 of that year. If the previously appointed members are unable to appoint an independent member within the time allowed therefor, they shall so certify to the Supreme Court not later than that July 20 and shall include in that certification the names of the two persons who, in the members' final vote upon the appointment of the independent member, received the greatest number of votes. Not later than August 10 following receipt of that certification, the Supreme Court shall by majority vote of its full authorized membership select, of the two persons so named, the one more qualified by education and occupational experience, by prior public service in government or otherwise, and by demonstrated ability to represent the best interest of the people of this State, to be the independent member. The Court shall certify that selection to the Secretary of State not later than the following August 15.~~

~~(d) Vacancies in the membership of the commission occurring prior to the certification by the commission of Congressional districts or during any period in which the districts established by the commission may be or are under challenge in court shall be filled in the same manner as the original appointments were made within five days of their occurrence. In the case of a vacancy in the membership of the independent member, if the other members of the commission are unable to fill that vacancy within that five day period, they shall transmit certification of such inability within three days of the expiration of the period to the Supreme Court, which shall select the person to fill the vacancy within five days of receipt of that certification.~~

1 ~~2. The independent member shall serve as the chairman of~~
2 ~~the commission.~~

3 3. The Commission shall certify the establishment of new
4 congressional and state legislative districts to the Secretary of
5 State by the third Tuesday of each year ending in two.

6 (a) The eCommission shall meet to organize as soon as
7 may be practicable after ~~certification of~~ the appointment of
8 ~~its the independent~~ members, but not later than the Wednes-
9 day after the first Monday in September of each year end-
10 ing in one. At the organizational meeting, commissioners
11 ~~the members of the commission~~ shall determine such orga-
12 nizational matters as they deem appropriate. Thereafter, a
13 meeting of the eCommission may be called by the chair-
14 man or upon the request of seven members, ~~and seven~~
15 ~~members of the commission shall constitute a quorum at~~
16 ~~any meeting thereof for the purpose of taking any action.~~

17 (b) The Commission shall establish and implement an open
18 hearing process to facilitate broad public input and delib-
19 eration. At a minimum, this shall include:

20 ~~3. On or before the third Tuesday of each year ending in~~
21 ~~two, or within three months after receipt in each decade by~~
22 ~~the appropriate State officer of the official statement by the~~
23 ~~Clerk of the United States House of Representatives, issued~~
24 ~~pursuant to federal law, regarding the number of members~~
25 ~~of the House of Representatives apportioned to this State~~
26 ~~for that decade, whichever is later, the commission shall~~
27 ~~certify the establishment of the Congressional districts to~~
28 ~~the Secretary of State. The commission shall certify the es-~~
29 ~~tablishment of districts pursuant to a majority vote of the~~
30 ~~full authorized membership of the commission convened in~~
31 ~~open public meeting, of which meeting there shall be at~~
32 ~~least 24 hours' public notice. Any vote by the commission~~
33 ~~upon a proposal to certify the establishment of a Congres-~~
34 ~~sional district plan shall be taken by roll call and shall be~~
35 ~~recorded, and the vote of any member in favor of any Con-~~
36 ~~gressional district plan shall nullify any vote which that~~
37 ~~member shall previously have cast during the life of the~~
38 ~~commission in favor of a different Congressional district~~
39 ~~plan. If the commission is unable to certify the establish-~~
40 ~~ment of districts by the time required due to the inability of~~
41 ~~a plan to achieve seven votes, the two district plans receiv-~~
42 ~~ing the greatest number of votes, but not fewer than five~~
43 ~~votes, shall be submitted to the Supreme Court, which shall~~
44 ~~select and certify whichever of the two plans so submitted~~
45 ~~conforms most closely to the requirements of the Constitu-~~
46 ~~tion and laws of the United States.~~

Section II, para. 3. Specifies the process by which the NJIRC establishes new congressional and state legislative districts, by early January in years ending in two.

Subpara. (a). Specifies that the NJIRC must hold its organizational meeting in early September in years ending on one.

Subpara. (b). Requires the NJIRC to establish an "open hearing process to facilitate broad public input and deliberation" and specifies the minimum activities that satisfy this requirement.

1 ~~4. The New Jersey Redistricting Commission shall hold at~~
2 ~~least t~~

3 (1) Availability of all data considered by the Commis-
4 sion in a manner that ensures immediate and wide-
5 spread public access;

6 (2) Three public hearings in different parts of the State,
7 subject to public notice in a manner likely to reach in-
8 terested state residents;

9 (3) Public display of draft maps for a period sufficient
10 to allow reasonably broad consideration by state resi-
11 dents, and multiple avenues by which state residents
12 may submit comments; and

13 (4) Opportunities for input by interested state residents
14 before the Commission draws any maps and hearings
15 following the drawing and display of any commission
16 maps. ~~The commission shall, subject to the constraints~~
17 ~~of time and convenience, review written plans for the~~
18 ~~establishment of Congressional districts submitted by~~
19 ~~members of the public.~~

20 ~~5.~~ Meetings of the New Jersey Independent Redistricting
21 Commission shall be held at convenient times and loca-
22 tions, with at least 5 days' public notice. All Commission
23 meetings shall be open unless closed by at least eight com-
24 missioners, including at least one from each constituency
25 enumerated in subparagraph (b) of paragraph 1 above, and,
26 ~~with the exception of the public hearings required by para-~~
27 ~~graph 4 of this section and the meeting at which the estab-~~
28 ~~lishment of districts is certified as prescribed by paragraph~~
29 ~~3 of this section, may be closed to the public.~~

30 (c) The Commission shall establish single-member districts
31 for the Congress, the state Senate and General Assembly,
32 using the following criteria:

33 (1) Districts shall comply with the United States
34 Constitution and federal law;

35 (2) Districts shall have reasonably equal population
36 with other districts for the same office;

37 (3) Districts shall be geographically contiguous;

38 (4) Districts shall respect the geographic integrity of
39 political subdivisions of the State and identifiable
40 communities of interest. Communities of interest shall
41 be considered without regard to relationships with
42 elected officials, political parties or candidates for elec-
43 tive office;

Subpara. (b). Minimum open hearing process requirements include:

(1) Widespread public access to redistricting data considered by NJIRC;

(2) At least three public hearings subject to public notice;

(3) Public display of draft maps, an opportunity for "reasonably broad" public consideration thereof, and multiple avenues for submitting public comment thereon; and

(4) Opportunities for public comment before the NJIRC draws maps and public hearings after display of draft maps.

Subpara. (b). Specifies that NJIRC meetings must be held with at least 5 days' public notice and must be open to the public, unless closed by eight commissioners.

Subpara. (c). Establishes districting criteria the NJIRC must accommodate when drawing new maps. These criteria include:

(1) Compliance with the U.S. Constitution and federal law;

(2) Reasonable population equality;

(3) Contiguity;

(4) Geographic integrity of political subdivisions and identifiable communities of interest;

1	<u>(5) Districts shall be geographically compact;</u>	(5) Compactness;
2	<u>(6) Districts shall respect the cores of existing districts</u>	(6) Integrity of existing district
3	<u>for the same office; and</u>	cores; and
4	<u>(7) Districts shall be electorally competitive.</u>	(7) Electoral competition.
5	<u>Each criterion in this subparagraph shall be accommodated</u>	Subpara. (c). Provides that
6	<u>by the Commission to the extent its does not conflict with</u>	the districting criteria are pri-
7	<u>any of the criteria above it.</u>	oritized so that each must be
8	<u>(d) Political party registration, voting history data, and</u>	accommodated, but only to the
9	<u>places of residence of incumbents and candidates for elec-</u>	extent it does not conflict with
10	<u>tive office shall not be identified or considered by the</u>	any of the criteria above it.
11	<u>Commission until after draft maps have been displayed</u>	Subpara. (d). Prohibits the
12	<u>publicly, and then only to test for compliance with the cri-</u>	NJIRC from considering cer-
13	<u>teria established in subparagraph (c) above.</u>	tain political data during the
14	<u>(e) Districts shall not be drawn for the purpose of favoring</u>	initial stages of drawing dis-
15	<u>or discriminating against an incumbent, political candidate</u>	tricts. Consideration in later
16	<u>or political party.</u>	stages is limited to testing for
17	<u>(f) The Commission shall adopt two final maps that sepa-</u>	compliance with the criteria in
18	<u>rately establish district boundary lines for the Congress and</u>	subparagraph (c) above.
19	<u>state legislature. Final maps must be approved by at least</u>	Subpara. (e). Prohibits the
20	<u>eight commissioners, including at least one from each con-</u>	NJIRC from drawing districts
21	<u>stituency enumerated in subparagraph (b) of paragraph 1</u>	for the purpose of favoring or
22	<u>above. With each of the final maps, the Commission shall</u>	discriminating against political
23	<u>issue a report explaining the basis on which the Commis-</u>	interests.
24	<u>sion believes it has complied with the criteria established in</u>	Subpara. (f). Requires the
25	<u>subparagraph (c) above.</u>	NJIRC to draw separate maps
26	<u>(g) If the Commission is unable to certify the establishment</u>	for congressional and state
27	<u>of new congressional or state legislative districts to the Sec-</u>	legislative districts, provides
28	<u>retary of State by the specified deadline, or if prior thereto</u>	that at least eight commission-
29	<u>it determines that it will be unable to do so, the Commis-</u>	ers must approve each map,
30	<u>sion shall submit to the state Supreme Court the two plans</u>	and requires the NJIRC to
31	<u>receiving greatest support of its members. By majority</u>	issue reports with each map
32	<u>vote of its full authorized membership, the state Supreme</u>	explaining how it complied
33	<u>Court shall select and certify whichever of the two plans so</u>	with the criteria in subpara-
34	<u>submitted conforms most closely to the criteria established</u>	graph (c) above.
35	<u>in subparagraph (c) above.</u>	Subpara. (g). Provides that in
36	64. <u>The Legislature shall appropriate the funds and provide</u>	the event of deadlock, the
37	<u>staff support necessary for the efficient operation of the New</u>	NJIRC shall submit the two
38	<u>Jersey Independent Redistricting Commission, including legal</u>	plans receiving greatest sup-
39	<u>counsel and consultants as needed.</u>	port among commissioners to
40	<u>5. The Commission shall have sole legal standing to defend</u>	the state Supreme Court, which
41	<u>any action regarding a certified final map, and shall inform the</u>	shall choose the one it deems
42	<u>legislature if it determines that funds or other resources pro-</u>	to conform most closely to the
43	<u>vided for the operation of the commission are not adequate.</u>	criteria in subparagraph (c)
		above.
		Section II, para. 4. Requires
		the legislature to provide fund-
		ing and staff support necessary
		for the NJIRC's "efficient
		operation."
		Section II, para. 5. Specifies
		that the NJIRC has sole legal
		standing to defend its maps,
		requires the legislature to
		provide the NJIRC adequate
		funding to do so, and provides
		that the NJIRC shall select its
		own legal counsel for this
		purpose.

1 The legislature shall provide adequate funding to defend any
 2 action regarding a certified map. The Commission has sole
 3 authority to determine whether the state Attorney General or
 4 other legal counsel retained by the Commission shall assist in
 5 the defense of a certified final map.

6 ~~76.~~ Notwithstanding any provision to the contrary of this Con-
 7 stitution and except as otherwise required by the Constitution
 8 or laws of the United States, no court of this State other than
 9 the Supreme Court shall have jurisdiction over any judicial
 10 proceeding challenging the appointment of members to the
 11 New Jersey Independent Redistricting Commission, or any ac-
 12 tion, including the establishment of ~~C~~ongressional and state
 13 legislative districts, by the ~~e~~Commission or other public officer
 14 or body under the provisions of this section.

15 ~~87.~~ The establishment of ~~C~~ongressional and state legislative
 16 districts shall be used thereafter for the election of members of
 17 the House of Representatives, the state Senate and General As-
 18 sembly and shall remain unaltered through the next year ending
 19 in one after~~zero in which~~ a federal census for this State is
 20 taken.

21 ~~98.~~ If a plan certified by the commission is declared unlawful,
 22 the ~~e~~Commission shall ~~reorganize and~~ adopt another ~~Congres-~~
 23 ~~sional~~ district plan in the same manner as herein required and
 24 within the period of time prescribed by the court or within such
 25 shorter period as may be necessary to ensure that the new plan
 26 is effective for the next succeeding primary and general elec-
 27 tion for all members of the ~~United States~~ House of Representa-
 28 tives, the state Senate or General Assembly.

29 b. Amend Article IV to read as follows:

30 Article IV
 31 LEGISLATIVE

32 [. . .]

33 SECTION II

34 1. The Senate shall be composed of forty senators apportioned
 35 among ~~Senate~~legislative districts ~~as nearly as may be according~~
 36 ~~to the number of their inhabitants as reported in the last preced-~~
 37 ~~ing decennial census of the United States and according to the~~
 38 ~~method of equal proportions. Each Senate district shall be~~
 39 ~~composed, wherever practicable, of one single county, and, if~~
 40 ~~not so practicable, of two or more contiguous whole counties.~~

41 2. Each senator shall be elected by the legally qualified voters
 42 of the ~~Senate~~legislative district, ~~except that if the Senate district~~
 43 ~~is composed of two or more counties and two senators are ap-~~

Section II, para. 6. Grants the state Supreme Court original and exclusive jurisdiction over actions challenging the appointment of NJIRC members and establishment of district maps, except where the U.S. Constitution or federal law otherwise require.

Section II, para. 7. Specifies that maps approved by the NJIRC shall be used from the next election following their certification through the next year ending in one – typically for a period of ten years.

Section II, para. 8. Provides a process for establishing additional district maps, in the event a previously adopted map is declared unlawful.

ARTICLE IV
Legislative

Section II, para. 1. Establishes a 40-member Senate elected from single-member legislative districts. Removes language regarding population equality, which is now specified in Article II above, and the whole-county requirement, which was rendered obsolete by prior decisions of the New Jersey Supreme Court.

Section II, para. 2. Establishes popular election of Senators. Removes obsolete multi-member district language.

1 ~~portioned to the district, one senator shall be elected by the le-~~
 2 ~~gally-qualified voters of each Assembly district.~~ Each senator
 3 shall be elected for a term beginning at noon of the second
 4 Tuesday in January next following his election and ending at
 5 noon of the second Tuesday in January four years thereafter,
 6 except that each senator, to be elected for a term beginning in
 7 January of the second year following the year in which a de-
 8 cennial census of the United States is taken, shall be elected for
 9 a term of two years.

10 3. The General Assembly shall be composed of eighty mem-
 11 bers. ~~Each Senate district to which only one senator is appor-~~
 12 ~~tioned shall constitute an Assembly district. Each of the re-~~
 13 ~~maining Senate districts shall be divided into Assembly dis-~~
 14 ~~tricts equal in number to the number of senators apportioned to~~
 15 ~~the Senate district. The Assembly districts shall be composed~~
 16 ~~of contiguous territory, as nearly compact and equal in the~~
 17 ~~number of their inhabitants as possible, and in no event shall~~
 18 ~~each such district contain less than eighty per cent nor more~~
 19 ~~than one hundred twenty per cent of one fortieth of the total~~
 20 ~~number of inhabitants of the State as reported in the last pre-~~
 21 ~~ceding decennial census of the United States. Unless necessary~~
 22 ~~to meet the foregoing requirements, no county or municipality~~
 23 ~~shall be divided among Assembly districts unless it shall con-~~
 24 ~~tain more than one fortieth of the total number of inhabitants of~~
 25 ~~the State, and no county or municipality shall be divided~~
 26 ~~among a number of Assembly districts larger than one plus the~~
 27 ~~whole number obtained by dividing the number of inhabitants~~
 28 ~~in the county or municipality by one fortieth of the total num-~~
 29 ~~ber of inhabitants of the State.~~

30 4. Two members of the General Assembly shall be elected by
 31 the legally qualified voters of each ~~Assembly~~legislative district
 32 for terms beginning at noon of the second Tuesday in January
 33 next following their election and ending at noon of the second
 34 Tuesday in January two years thereafter.

35 SECTION III

36 ~~1. After the next and every subsequent decennial census of the~~
 37 ~~United States, the Senate districts and Assembly districts shall~~
 38 ~~be established, and the senators and members of the General~~
 39 ~~Assembly shall be apportioned among them, by an Apportion-~~
 40 ~~ment Commission consisting of ten members, five to be ap-~~
 41 ~~pointed by the chairman of the State committee of each of the~~
 42 ~~two political parties whose candidates for Governor receive the~~
 43 ~~largest number of votes at the most recent gubernatorial elec-~~
 44 ~~tion. Each State chairman, in making such appointments, shall~~
 45 ~~give due consideration to the representation of the various geo-~~
 46 ~~graphical areas of the State. Appointments to the Commission~~

Section II, para. 3. Estab-
 lishes an 80-member General
 Assembly elected from two-
 member legislative districts.
 Removes language regarding
 districting criteria, which is
 now specified in Article II
 above, and obsolete multi-
 member district language.

Section II, para. 4. Estab-
 lishes popular election of Gen-
 eral Assembly members.

Section III. Removes lan-
 guage regarding the New Jer-
 sey Apportionment Commis-
 sion. Redrawing of state legis-
 lative districts by the NJIRC is
 now specified in Article II
 above.

1 ~~shall be made on or before November 15 of the year in which~~
2 ~~such census is taken and shall be certified by the Secretary of~~
3 ~~State on or before December 1 of that year. The Commission,~~
4 ~~by a majority of the whole number of its members, shall certify~~
5 ~~the establishment of Senate and Assembly districts and the ap-~~
6 ~~portionment of senators and members of the General Assembly~~
7 ~~to the Secretary of State within one month of the receipt by the~~
8 ~~Governor of the official decennial census of the United States~~
9 ~~for New Jersey, or on or before February 1 of the year follow-~~
10 ~~ing the year in which the census is taken, whichever date is~~
11 ~~later.~~

12 ~~2. If the Apportionment Commission fails so to certify such~~
13 ~~establishment and apportionment to the Secretary of State on or~~
14 ~~before the date fixed or if prior thereto it determines that it will~~
15 ~~be unable so to do, it shall so certify to the Chief Justice of the~~
16 ~~Supreme Court of New Jersey and he shall appoint an eleventh~~
17 ~~member of the Commission. The Commission so constituted,~~
18 ~~by a majority of the whole number of its members, shall,~~
19 ~~within one month after the appointment of such eleventh mem-~~
20 ~~ber, certify to the Secretary of State the establishment of Senate~~
21 ~~and Assembly districts and the apportionment of senators and~~
22 ~~members of the General Assembly.~~

23 ~~3. Such establishment and apportionment shall be used there-~~
24 ~~after for the election of members of the Legislature and shall~~
25 ~~remain unaltered until the following decennial census of the~~
26 ~~United States for New Jersey shall have been received by the~~
27 ~~Governor.~~

28 c. Adjust subsequent section numbers of Article IV accordingly.

29 2. When this proposed amendment to the Constitution is finally
30 agreed to, pursuant to Article IX, paragraph 1 of the Constitution, it
31 shall be submitted to the people at the next general election occurring
32 more than three months after the final agreement and shall be pub-
33 lished at least once in at least one newspaper of each county desig-
34 nated by the President of the Senate and the Speaker of the General
35 Assembly and the Secretary of State, not less than three months prior
36 to the general election.

37 3. This proposed amendment to the Constitution shall be submitted to
38 the people at the election in the following manner and form:

39 There shall be printed on each official ballot to be used at the general
40 election, the following:

41 a. In every municipality in which voting machines are not used, a
42 legend which shall immediately precede the question as follows:

43 If you favor the proposition printed below make a cross (x), plus
44 (+) or check (√) in the square opposite the word “Yes.” If you are

1 opposed thereto make a cross (x), plus (+) or check (✓) in the
2 square opposite the word “No.”

3 b. In every municipality, the following question:

YES	<p style="text-align: center;">CONSTITUTIONAL AMENDMENT REVISING THE METHOD FOR REDRAWING CONGRESSIONAL AND STATE LEGISLATIVE DISTRICTS</p> <p>Shall the amendment of Articles II and IV of the Constitution, agreed to by the Legislature, revising the method for redrawing congressional and state legislative districts, be adopted?</p>
NO	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>Adoption of this amendment will (1) establish an application process for members of the New Jersey Independent Redistricting Commission, (2) limit qualified applicants to those most likely to be politically independent, (3) provide for an open hearing process, (4) require that certain interests be accommodated when drawing new district maps and (5) prohibit consideration of certain political information when drawing new district maps. This amendment also will remove certain constitutional language rendered obsolete by prior decisions of the New Jersey Supreme Court.</p>

SCHEDULE

5 This Constitutional amendment shall become part of the New Jersey Constitution upon
6 approval by the voters and shall be applicable to any establishment of congressional or
7 state legislative districts for use after the official federal census of 2020.

STATEMENT

9 This concurrent resolution proposes constitutional amendments, the “New Jersey Inde-
10 pendent Redistricting Amendments,” to revise the method for redrawing congressional
11 and state legislative districts. Specifically, the amendments:

1) Rename the New Jersey Redistricting Commission the New Jersey Independent Redistricting Commission (“NJIRC”) and require it to establish congressional and state legislative districts, thereby rendering obsolete the New Jersey Apportionment Commission.

2) Establish qualifications and limitations for members of the New Jersey Independent Redistricting Commission. Commissioners must have voted in two of the three most recent statewide general elections. Commissioners may not have held political office, run for political office, engaged in certain political activities, or have immediate family members who have done so, during the last 5 years. "Immediate family" members includes those with whom a person has a bona fide relationship

1 includes those with whom a person has a bona fide relationship established through blood
2 or legal relation, including parents, children, siblings, and in-laws. Additionally, Com-
3 missioners may not hold elective office for up to 10 years after their appointment, nor
4 may they engage in certain political activities for up to 10 years after their appointment.

5 3) Establish the process by which NJIRC members are appointed, by July 1 in
6 years ending in one, as follows: (1) the Division of Elections begins an application proc-
7 ess for NJIRC members beginning January 1 in each year ending in one; (2) the Division
8 of Elections publishes a list of qualified candidates by May 1 in each year ending in one,
9 (3) the state’s four legislative leaders each nominate 10 qualified candidates (40 nomi-
10 nees in all), who must be members of the nominator’s party, by June 1 in years ending in
11 one. These nominations must be made with due consideration of certain diversity and
12 merit-based criteria; (4) the state’s four legislative leaders each appoint a certain number
13 of nominees to serve on the NJIRC (10 appointees in all), who must not be members of
14 their own party, respectively, by June 15 in years ending in one; and (5) the 10 initial
15 NJIRC members appoint three additional qualified candidates to serve on the NJIRC.
16 These appointments must be made with due consideration of certain diversity and merit-
17 based criteria. If any of the state’s four legislative leaders fail to make a nomination or
18 appointment, she or he forfeits the right to do so. Vacancies are filled the same way in
19 which the vacant position was originally filled.

20 4) Specify the process by which the NJIRC establishes new congressional and state
21 legislative districts, by early January in years ending in two.

22 5) Require the NJIRC to establish an “open hearing process to facilitate broad pub-
23 lic input and deliberation” and specify the minimum activities that satisfy this require-
24 ment. Minimum open hearing process requirements include: (i) widespread public access
25 to redistricting data considered by NJIRC; (ii) at least three public hearings subject to
26 public notice; (iii) public display of draft maps, an opportunity for “reasonably broad”
27 public consideration thereof, and multiple avenues for submitting public comment
28 thereon; and (iv) opportunities for public comment before the NJIRC draws maps and
29 public hearings after display of draft maps.

30 6) Specify that NJIRC meetings must be held with at least 5 days’ public notice
31 and must be open to the public, unless closed by eight commissioners.

32 7) Establish districting criteria the NJIRC must accommodate when drawing new
33 maps. These criteria include: (i) compliance with the U.S. Constitution and federal law;
34 (ii) reasonable population equality; (iii) contiguity; (iv) geographic integrity of political
35 subdivisions and identifiable communities of interest; (v) compactness; (vi) integrity of
36 existing districts cores; and (vii) competition.

37 8) Provide that the districting criteria are prioritized so that each must be accom-
38 modated, but only to the extent it does not conflict with any of the criteria preceding it.

39 9) Prohibit the NJIRC from considering certain political data during the initial
40 stages of drawing districts (consideration in later stages is limited to testing for compli-
41 ance with the districting criteria provided in these amendments). The NJIRC is also pro-
42 hibited the NJIRC from drawing districts for the purpose of favoring or discriminating
43 against political interests.

44 10) Require the NJIRC to draw separate maps for congressional and state legislative
45 districts, provide that at least eight commissioners must approve each map, and require
46 the NJIRC to issue reports with each map explaining how it complied with the districting
47 criteria provided in these amendments.

1 11) Provide that in the event of deadlock, the NJIRC must submit the two plans re-
2 ceiving greatest support among commissioners to the state Supreme Court, which shall
3 choose the one it deems to conform most closely to the districting criteria provided in
4 these amendments.

5 12) Require the legislature to provide funding and staff support necessary for the
6 NJIRC’s “efficient operation.”

7 13) Specify that the NJIRC has sole legal standing to defend its maps, require the
8 legislature to provide the NJIRC adequate funding to do so, and provide that the NJIRC
9 shall select its own legal counsel for this purpose.

10 14) Grant the state Supreme Court original and exclusive jurisdiction over actions
11 challenging the appointment of NJIRC members and establishment of district maps, ex-
12 cept where the U.S. Constitution or federal law otherwise require.

13 15) Specify that maps approved by the NJIRC shall be used from the next election
14 following their certification through the next year ending in one – typically for a period
15 of ten years.

16 16) Provide a process for establishing additional district maps, in the event a previ-
17 ously adopted map is declared unlawful.

18 17) Remove duplicative language regarding districting requirements, and obsolete
19 language regarding whole-county requirements and multi-member districts.

20 18) Remove language regarding the New Jersey Apportionment Commission. Re-
21 drawing of state legislative districts by the NJIRC is provided in these amendments.

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— End Notes —

¹ George Amick, *When Lawmakers Choose Their Voters*, THE TIMES OF TRENTON (N.J.), Jan. 11, 2010, at A1; see also Editorial, *A Victory for Voters*, THE N.Y. TIMES, Apr. 29, 2007, at L114.

² For additional extreme examples of malapportionment, see Morris K. Udall, “Reapportionment I: ‘One Man, One Vote’ . . . That’s All She Wrote!,” available at <http://www.library.arizona.edu/exhibits/udall/congrept/88th/641014.html>.

³ See e.g., *Colgrove v. Green*, 328 U.S. 549, 550 (1946) (last Illinois congressional redistricting in 1901); *Baker v. Carr*, 369 U.S. 186, 191 (1962) (last Tennessee state Assembly redistricting in 1901); *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (last Georgia congressional redistricting in 1931); *Reynolds v. Sims*, 377 U.S. 533, 539 (1964) (last Alabama legislative redistricting in 1903).

⁴ So the U.S. Supreme Court described the landscape of apportionment in its decision not to intervene in a case of legislative malapportionment in Illinois. See *Colgrove v. Green*, 328 U.S. 549, 556 (1946) (“Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress.”).

⁵ *Baker v. Carr*, 369 U.S. 186 (1962).

⁶ *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964).

⁷ U.S. CONST. art. I, § 2.

⁸ *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964).

⁹ *Wesberry v. Sanders*, 376 U.S. 1, 49 (1964).

¹⁰ When *Wesberry* was decided, Georgia was not even the worst offender. Congressional districts in Michigan ranged from 802,994 to 177,431 – a ratio of more than 4.5-to-1. *Wesberry v. Sanders*, 376 U.S. 1, 49 (1964).

¹¹ *Reynolds v. Sims*, 377 U.S. 533 (1964).

¹² *Reynolds v. Sims*, 377 U.S. 533 (1964).

¹³ *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969) (“the ‘as nearly as practicable’ standard requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.”) (citation omitted).

¹⁴ *Kirkpatrick v. Preisler*, 394 U.S. 526, 533–35 (1969).

¹⁵ *Karcher v. Daggett*, 462 U.S. 725, 742–44 (1983).

¹⁶ *Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

¹⁷ *Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

¹⁸ See *State ex rel. Stephan v. Graves*, 796 F. Supp. 468 (D. Kan. 1992) (congressional district plan with a 0.94 percent total range of deviation was unconstitutional, even though it maintained county boundaries); see

also *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672 (M.D. Pa. 2002) (congressional plan with a 19-person total range of deviation was unconstitutional because the state's justification (preserving split boundaries) could be more closely achieved by alternative plans with a smaller deviation, and because the justification was not the actual cause of deviation in the first place).

¹⁹ An early exception to the 10 percent rule was *Mahan v. Howell*, 410 U.S. 315 (1973), in which the Court upheld Virginia's legislative districting plan (16.4 percent total range of deviation) in large part because of the commonwealth government's unusually close relationship to its municipalities. 410 U.S. at 325–30.

²⁰ *Gaffney v. Cummings*, 412 U.S. 735 (1973) (7.8 percent total range of deviation upheld); *White v. Regester*, 412 U.S. 755, 764 (1973) (9.9 percent total range of deviation upheld and the Court noted “[v]ery likely, larger differences between districts would not be tolerable without justification based on legitimate considerations incident to the effectuation of a rational state policy”) (internal quotation omitted); *Chapman v. Meier*, 420 U.S. 1 (1975) (total range of deviation exceeding 20 percent struck down); *Connor v. Finch*, 431 U.S. 407 (1977) (19.3 percent total range of deviation struck down); *Voinovich v. Quilter*, 507 U.S. 146 (1993) (reaffirming the 10 percent rule); but see *Brown v. Thomson*, 462 U.S. 835 (1983) (89 percent total range of deviation upheld because the plan was found to advance the rational state policy of using counties as representative districts) and *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (in an obvious partisan gerrymander, 9.98 percent total range of deviation held to violate one-person, one-vote).

²¹ *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

²² *Reynolds v. Sims*, 377 U.S. 533, 580–81 (1964); see also *Mahan v. Howell*, 410 U.S. 315 (1973) (16.4 percent deviation upheld because commonwealth's ability to legislate locally warranted representation of political subdivisions); *Brown v. Thomson*, 462 U.S. 835 (1983) (large deviation upheld because the plan ensured county representation, but the precedential value of this decision is questionable because the court considered only a single district); *Quilter v. Voinovich*, 857 F. Supp. 579 (N.D. Ohio 1994) (13.81 percent deviation upheld because it preserved county boundaries).

²³ See *Chapman v. Meier*, 420 U.S. 1, 25 (1975) (goals of preserving municipal lines and natural geographic features could be served at least as well with smaller deviation); *Langsdon v. Millsaps*, 836 F. Supp. 447, 452 (W.D. Tenn. 1993) (goal of preserving county lines could be better served with a smaller deviation), *aff'd* 510 U.S. 1160 (1994).

²⁴ *Reynolds v. Sims*, 377 U.S. 533, 580–81 (1964).

²⁵ *Abate v. Mundt*, 403 U.S. 182, 187 (1971).

²⁶ Voting Rights Act § 2, 42 U.S.C. § 1973 (2006).

²⁷ *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986) (“Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.”).

²⁸ See *Bush v. Vera*, 517 U.S. 952, 959 (1996); see also *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

²⁹ See *Bush v. Vera*, 517 U.S. 952, 959 (1996); see also *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

³⁰ See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997); see also *Bush v. Vera*, 517 U.S. 952, 960 (1996); *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

³¹ See *Abrams v. Johnson*, 521 U.S. 74, 92 (1997); see also *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995).

³² See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997).

³³ See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997) (“Protecting incumbents from contests with each other was another factor, which the court subordinated to the others because it was inherently more political.”) (internal quotation omitted).

³⁴ *Shaw v. Reno*, 509 U.S. 630, 671–72 (1993); *Karcher v. Daggett*, 462 U.S. 725, 758 (1983). For example, where racial gerrymandering is alleged, courts have required a plaintiff to prove that mapmakers subordinated traditional districting principles – including compactness – to racial considerations. See *Miller v. Johnson*, 515 U.S. 900, 916–17 (1995).

³⁵ See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997); *Bush v. Vera*, 517 U.S. 952, 960 (1996); *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (preserving political boundaries); see also *Abrams v. Johnson*, 521 U.S. 74, 92 (1997); *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995) (preserving communities of interest). See also *Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (“As long as the criteria are nondiscriminatory, these [traditional districting criteria] are all legitimate objectives that on a proper showing could justify minor population deviations.”) (internal citation omitted).

³⁶ *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995). However, a state may not simply “assume[] from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.” *Id.* at 920.

³⁷ See, e.g., *Reynolds v. Sims*, 377 U.S. 533 (1964) (Alabama legislative apportionment scheme respecting county lines); *Karcher v. Daggett*, 462 U.S. 725 (1983) (New Jersey congressional apportionment scheme largely respecting municipal lines).

³⁸ *Abrams v. Johnson*, 521 U.S. 74, 84 (1997).

³⁹ *Abrams v. Johnson*, 521 U.S. 74, 84 (1997).

⁴⁰ *Johnson v. Miller*, 922 F. Supp. 1556 (S.D. Ga. 1995) (Since protecting incumbents “is inherently more political than factors such as communities of interest and compactness, we subordinated it to the other considerations.”), *aff’d*, *Abrams v. Johnson*, 521 U.S. 74 (1997) (“Protecting incumbents from contests with each other was another factor, which the court subordinated to the others because it was inherently more political.”) (internal quotation omitted).

⁴¹ Editorial, *The Gerry-mander: a New Species of Monster*, BOSTON GAZETTE, Mar. 26, 1812, available at <http://memory.loc.gov/rbc/rbpe/rbpe00/rbpe000/00000100/001dr.jpg>.

⁴² STEVE BICKERSTAFF, LINES IN THE SAND: CONGRESSIONAL REDISTRICTING IN TEXAS AND THE DOWNFALL OF TOM DELAY 102–03 (2007).

⁴³ After the 2004 election, six of Texas’s thirty-two congressional seats changed party hands and the delegation went from majority Democrat (17–15) to majority Republican (21–11). See Biographical Directory of the United States Congress, 1774–present, <http://bioguide.congress.gov/>.

⁴⁴ OHIO CONST. art. XI. In 2000, congressional redistricting was done by the normal legislative process. See 2002 OHIO LAWS FILE 84 (a Bill to establish Congressional district boundaries for the state based on the 2000 decennial census of Ohio).

⁴⁵ ARIZ. CONST. art. 4, pt. 2, § 1.

⁴⁶ N.J. CONST. art. IV, § 3.

⁴⁷ N.J. CONST. art. II, § 2.

⁴⁸ VT. STAT. ANN. tit. 17, §§ 1901–09 (2009).

⁴⁹ CONN. CONST. art. III, §§ 6(b)–(c), amended by arts. XII, XVI, § 2, XXVI and XXX, § 2 of amendments.

⁵⁰ Editorial, *Legislature’s challenge: Fix bizarre redistricting*, THE CHICAGO SUN-TIMES, May 3, 2009, at A22.

⁵¹ *In re Legislative Districting of General Assembly*, 193 N.W.2d 784, 786 (Iowa 1972) (quoting former § 35 of the Iowa state constitution).

⁵² *In re Legislative Districting of General Assembly*, 193 N.W.2d 784 (Iowa 1972) (citing, among others, *Reynolds v. Sims*, 377 U.S. 533 (1964) and *Wesberry v. Sanders*, 376 U.S. 1 (1964)).

⁵³ *In re Legislative Districting of General Assembly*, 196 N.W.2d 209 (Iowa 1972).

⁵⁴ 1980 IOWA ACTS ch. 1021, IOWA CODE §§ 42.1–7 (2009).

⁵⁵ IOWA CODE § 42.6 (2009).

⁵⁶ IOWA CONST. art. III, § 35.

⁵⁷ IOWA CONST. art. III, § 36.

⁵⁸ IOWA CODE § 42.4 (2009).

⁵⁹ These are (1) “length-width compactness . . . the absolute value of the difference between the length and the width of the district” and (2) “perimeter compactness . . . the distance needed to traverse the perimeter boundary of a district”). IOWA CODE § 42.4, para. 4 (2009).

⁶⁰ IOWA CODE § 42.4, para. 5 (2009).

⁶¹ Iowa Legislative Services Agency, “Legislative Guide to Redistricting in Iowa” (Dec. 2007), available at <http://www.legis.state.ia.us/Central/LSB/Guides/redist.pdf>.

⁶² *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 687 (D. Ariz. 1992).

⁶³ 42 U.S.C. § 1973aa-1a (2006).

⁶⁴ *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684 (D. Ariz. 1992), *aff’d*, 507 U.S. 980 (1993) (mem.).

⁶⁵ *Arizonans for Fair Representation v. Symington*, No. CIV 92-256, 1993 WL 375329, at *1 (D. Ariz. June 19, 1992).

⁶⁶ *Arizonans for Fair Representation v. Symington*, No. CIV 92-256, 1993 WL 375329, at *4 (D. Ariz. June 19, 1992).

⁶⁷ Editorial, *Bipartisan Support: Redistricting Commission a Worthy Idea*, THE ARIZONA REPUBLIC (Phoenix), Sep. 3, 2000, at 14B.

⁶⁸ Arizona Secretary of State, Official Canvass, 2000 General Election, available at <http://www.azsos.gov/election/2000/General/Canvass2000GE.pdf>.

⁶⁹ Arizona Proposition 106 (2000), available at <http://www.azsos.gov/election/2000/info/pubpamphlet/prop2-C-2000.htm>.

⁷⁰ ARIZ. CONST. art. IV, pt. 2, § 1.

⁷¹ ARIZ. CONST. art. IV, pt. 2, § 1, para. 13.

⁷² ARIZ. CONST. art. IV, pt. 2, § 1, paras. 14–16.

⁷³ ARIZ. CONST. art. IV, pt. 2, § 1, paras. (14)(A)–(F).

⁷⁴ See *Arizona Minority Coalition for Fair Redistricting v. Arizona*, 220 Ariz. 587, 598 (2009).

⁷⁵ ARIZ. CONST. art. IV, pt. 2, § 1, para. 18.

⁷⁶ ARIZ. CONST. art. IV, pt. 2, § 1, paras. 19 and 22.

⁷⁷ The following timeline is drawn primarily from *Arizona Minority Coalition for Fair Redistricting v. Arizona*, 220 Ariz. 587, 592–94 (2009).

⁷⁸ *Arizona Minority Coalition for Fair Redistricting v. Arizona*, 220 Ariz. 587, 592 (2009).

⁷⁹ *Navajo Nation v. Arizona Independent Redistricting Comm’n*, 230 F. Supp. 2d 998, 1016 (D. Ariz. 2002).

⁸⁰ See *supra* note 66 and accompanying text.

⁸¹ *Arizona Minority Coalition for Fair Redistricting v. Arizona*, 220 Ariz. 587, 595–96 (2009).

⁸² *Arizona Minority Coalition for Fair Redistricting v. Arizona*, 220 Ariz. 587, 600 (2009).

⁸³ The following historical summary is drawn from Institute of Governmental Studies, University of California, “Proposition 77 Redistricting,” <http://www.igs.berkeley.edu/library/htRedistricting.html>.

⁸⁴ For a summary of California ballot propositions, see National Conference of State Legislatures, “Ballot Measures Database,” <http://www.ncsl.org/default.aspx?tabid=16580>.

⁸⁵ California Secretary of State, “California Ballot Pamphlet, General Election, November 2, 1982” 54–57, 66–67, available at http://traynor.uchastings.edu/ballot_pdf/1982g.pdf.

⁸⁶ National Conference of State Legislatures, Ballot Measures Database, <http://www.ncsl.org/default.aspx?tabid=16580>.

⁸⁷ California Secretary of State, “California Ballot Pamphlet, General Election, November 6, 1984” 54–55, 81–107, available at http://traynor.uchastings.edu/ballot_pdf/1984g.pdf.

⁸⁸ National Conference of State Legislatures, “Ballot Measures Database,” <http://www.ncsl.org/default.aspx?tabid=16580>.

⁸⁹ California Secretary of State, “California Ballot Pamphlet, Primary Election, June 5, 1990” 48–51, 80–109, available at http://traynor.uchastings.edu/ballot_pdf/1990p.pdf.

⁹⁰ California Secretary of State, Statement of Vote, June 5, 1990 Primary Election 53, available at <http://www.sos.ca.gov/elections/sov/1990-primary/1990-primary-sov.pdf>.

⁹¹ California Secretary of State, Official Voter Information Guide, Nov. 8, 2005 Special Statewide Election (Proposition 77), available at http://vote2005.sos.ca.gov/voterguide/prop77/title_summary.shtml.

⁹² California Secretary of State, Statement of Vote, Nov. 8, 2005 Special Statewide Election 4–6, available at http://www.sos.ca.gov/elections/sov/2005_special/detail_props_formatted_pg1_7.pdf.

⁹³ California Secretary of State, Statement of Vote, Nov. 4, 2008 General Election 63–65, available at http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf.

⁹⁴ Eric Bailey, *Farm animal protection measure wins; Redistricting also is poised for victory. Propositions 1A and 4 are too close to call*, LOS ANGELES TIMES, Nov. 5, 2008, at A20.

⁹⁵ CAL. GOV’T CODE § 8252 (2009).

⁹⁶ CAL. GOV’T CODE § 8252(d) (2009).

⁹⁷ CAL. GOV’T CODE § 8252(a)(1) (2009).

⁹⁸ CAL. CONST. art. XXI § 2(c)(1).

⁹⁹ CAL. CONST. art. XXI § 2(c)(6); CAL. GOV’T CODE § 8252(a)(2) (2009).

¹⁰⁰ CAL. CONST. art. XXI § 2(c)(3).

¹⁰¹ CAL. CONST. art. XXI § 2(d).

¹⁰² CAL. CONST. art. XXI § 2(b).

¹⁰³ CAL. GOV’T CODE § 8253(a)(7) (2009).

¹⁰⁴ CAL. CONST. art. XXI, §§ 2(g)–(i).

¹⁰⁵ CAL. CONST. art. XXI, § 2(j).

¹⁰⁶ CAL. CONST. art. XXI, § 1(d).

¹⁰⁷ See N.J. CONST. art. II, § 2 (congressional districts) and art. IV, § 3 (state legislative districts), available from <http://www.njleg.state.nj.us/lawsconstitution/constitution.asp>. Note, however, that not all of the seemingly relevant language pertaining to legislative redistricting remains in force. As explained in the main text, several provisions were rendered obsolete by subsequent court rulings.

¹⁰⁸ ERNEST C. REOCK, JR., *POPULATION INEQUALITY AMONG COUNTIES IN THE NEW JERSEY LEGISLATURE 1791–1962* at 17 (1963).

¹⁰⁹ ERNEST C. REOCK, JR., *POPULATION INEQUALITY AMONG COUNTIES IN THE NEW JERSEY LEGISLATURE 1791–1962* at 24 (1963).

¹¹⁰ Even this the legislature sometimes failed to do. Reapportionment was delayed by one year in 1921 and by a decade in the 1950s, when the legislature failed to reach an agreement. ERNEST C. REOCK, JR., *POPULATION INEQUALITY AMONG COUNTIES IN THE NEW JERSEY LEGISLATURE 1791–1962* at 19 (1963).

¹¹¹ Ernest C. Reock, *Redistricting New Jersey after the 2010 Census*, Center for Government Services, Rutgers, The State University of New Jersey at 12 (Mar. 2008).

¹¹² *David v. Cahill*, 342 F. Supp. 463, 466 (D.N.J. 1972) (referring to 1970s map, with a 50 percent range of deviation, as “patently unconstitutional”); *Karcher v. Daggett*, 462 U.S. 725, 742 (1983) (finding no legitimate justification for a 0.70 percent range of deviation in the 1980s map).

¹¹³ See, e.g., University of Southern California, Annenberg School for Communication & Journalism, *The Redistricting Game*, <http://www.redistrictinggame.org/index.php?pg=learnaboutmission&mission=5>; Democratic Leadership Council, “Redistricting Reform” (June 2008), available at http://www.dlc.org/ndol_ci.cfm?contentid=253454&kaid=139&subid=900083; Steven Hill, Op-ed, *Schwarzenegger vs. Gerrymander*, THE N.Y. TIMES, Feb. 19, 2005, at 15; David Kinney, *It’s (Y)our Party*, THE STAR-LEDGER (Newark, N.J.), June 13, 2004, at 1 (describing New Jersey’s commissions as “quasi-independent”).

¹¹⁴ See Brennan Center for Justice, *A Citizen’s Guide to Redistricting 21* (2008) (noting that for politician commissions, “either legislators or other elected officials can sit on the commission, but the legislature as a whole isn’t involved”). Cf., “independent commissions,” which the Brennan Center describes as consisting of “five or six members of the public, largely chosen by the legislative leadership, but who are not themselves legislators or other public officials.” *Id.* at 22.

¹¹⁵ N.J. CONST. art. II, § 2.

¹¹⁶ N.J. CONST. art. II, § 2, para. 1(a).

¹¹⁷ Herb Jackson, *Bergen, Passaic Get Seats on Redistricting Commission*, THE RECORD (Bergen County, N.J.), June 16, 2001, at A4; David Kinney, *N.J. redistricting panel taps Rutgers prof*, THE STAR-LEDGER (Newark, N.J.), July 17, 2001, at 16.

¹¹⁸ N.J. CONST. art. II, § 2, paras. 3, 4.

¹¹⁹ N.J. CONST. art. II, § 2, para. 5.

¹²⁰ N.J. CONST. art. II, § 2, para. 4.

¹²¹ N.J. CONST. art. II, § 2, para. 3.

¹²² N.J. CONST. art. II, § 2; 2 U.S.C. § 2a (2006).

¹²³ See, e.g., *New Jersey District Map Still Helps Incumbents*, THE N.Y. TIMES, Oct. 27, 2001, at D4; Ron Marsico, *Incumbents like new congressional map*, THE STAR-LEDGER (Newark, N.J.), Oct. 27, 2001, at 11; Michael Symons, *Rep. Holt’s seat safer*, ASBURY PARK PRESS, Oct. 27, 2001, at 3A.

¹²⁴ See David Kinney, *Outlook hopeful for compromise redistricting plan*, THE STAR-LEDGER (Newark, N.J.), Oct. 26, 2001, at 36 (quoting one source as describing the adopted plan as “‘very, very, very, very close’ to what the delegation first proposed months ago”); Maria Newman, *Harmony Reigns (Surprise!) In New Jersey Redistricting*, THE N.Y. TIMES, July 17, 2001, at 28; David Kinney, *On N.J. map, there’s a deal in the House*, THE STAR-LEDGER (Newark, N.J.), July 13, 2001, at 1.

¹²⁵ Ron Marsico, *Incumbents like new congressional map*, THE STAR-LEDGER (Newark, N.J.), Oct. 27, 2001, at 11.

¹²⁶ Ron Marsico, *Incumbents like new congressional map*, THE STAR-LEDGER (Newark, N.J.), Oct. 27, 2001, at 11.

¹²⁷ Since the 2001 map was adopted, only New Jersey’s 3rd District has changed party hands, in 2008, when incumbent Republican James Saxton retired and Democrat John Adler won the seat in an open contest.

¹²⁸ See *Redistricting the Nation, Top 10*, <http://www.redistrictingthenation.com/top10.aspx> and supra Figure 2F and accompanying text.

¹²⁹ N.J. CONST. art. IV, § 3.

¹³⁰ N.J. CONST. art. IV, § 3, para. 1.

¹³¹ Herb Jackson, *Redrawing Districts*, THE RECORD (Bergen County, N.J.), Nov. 19, 2001, at O6.

¹³² N.J. CONST. art. IV, § 3, para. 1.

¹³³ N.J. CONST. art. IV, § 3, para. 2.

¹³⁴ N.J. CONST. art. IV, § 3.

¹³⁵ Donald E. Stokes, *Legislative Redistricting by the New Jersey Plan* at 1 (1993).

¹³⁶ Donald E. Stokes, *Legislative Reapportionment in New Jersey* at 8 (Jan. 1991).

¹³⁷ Donald E. Stokes, *Legislative Redistricting by the New Jersey Plan* at 36–39 (1993).

¹³⁸ N.J. CONST. art. II, § 2.

¹³⁹ *Jackman v. Bodine*, 43 N.J. 453 (1964); 43 N.J. 491 (1964); 44 N.J. 312 (1965); 44 N.J. 414 (1965); 49 N.J. 406 (1967); 50 N.J. 127 (1967); 53 N.J. 585 (1969), *cert. denied*, 396 U.S. 822 (1969); 55 N.J. 371 (1970), *cert. denied*, 400 U.S. 849 (1970); *Scrimminger v. Sherwin*, 60 N.J. 483 (1972); *Davenport v. Apportionment Commission*, 63 N.J. 433 (1973), 65 N.J. 125 (1974).

¹⁴⁰ Though it was suggested by the court that the obsolete language be revised, the legislature yet to do so. *Davenport v. Apportionment Commission*, 65 N.J. 125, 132 n.4 (1974).

¹⁴¹ *Scrimminger v. Sherwin*, 60 N.J. 483, 498 (1972).

¹⁴² Herb Jackson, *In Secrecy and Haste, New Political Map Takes Shape*, THE RECORD (Bergen County, N.J.), Apr. 8, 2001, at A1.

¹⁴³ Herb Jackson, *In Secrecy and Haste, New Political Map Takes Shape*, THE RECORD (Bergen County, N.J.), Apr. 8, 2001, at A1.

¹⁴⁴ ERNEST C. REOCK, UNFINISHED BUSINESS: THE NEW JERSEY CONSTITUTIONAL CONVENTION OF 1966, at 240 (2003).

¹⁴⁵ David Kinney, *Professor enters redistricting battle*, THE STAR-LEDGER (Newark, N.J.), Mar. 28, 2001, at 23.

¹⁴⁶ Act of Apr. 4, 2001, ch. 50, 2001 N.J. LAWS 191 (delaying primary election registration deadline).

¹⁴⁷ David Kinney, *Democrats win vital vote on redistricting*, THE STAR-LEDGER (Newark, N.J.), Apr. 12, 2001, at 17.

¹⁴⁸ *Page v. Bartels*, 144 F. Supp. 2d 346 (D.N.J. 2001) (alleging dilution of minority voting power); *Robertson v. Bartels*, 148 F. Supp. 2d 443 (D.N.J. 2001), *aff'd*, 534 U.S. 1110 (2002) (alleging racial gerrymandering).

¹⁴⁹ *Page v. Bartels*, 144 F. Supp. 2d 346, 364–65 (D.N.J. 2001) (finding the plan would “enhance and expand the opportunity for African Americans and Hispanics to participate in a meaningful way in the political process”); *Robertson v. Bartels*, 148 F. Supp. 2d 443, 458 (D.N.J. 2001) *aff'd*, 534 U.S. 1110 (2002). In a third suit filed one month after the plan was adopted, Republicans alleged improper division of municipalities into multiple districts in violation of the state constitution. This challenge was also resolved, in 2003, in favor of the plan. *McNeil v. Legislative Apportionment Comm’n of State*, 177 N.J. 364 (2003).

¹⁵⁰ Act of Apr. 23, 2001, ch. 73, 2001 N.J. LAWS 256 (delaying primary election).

¹⁵¹ Several months after the legislative districting plan was approved, the Republican-controlled state legislature reduced state aid to private universities “with endowments in excess of [one billion dollars].” Act of June 29, 2001, ch. 130, 2001 N.J. LAWS 620, 845 (making appropriations for the support of the State Government). Of the state’s fourteen eligible institutions, only one was affected: Larry Bartels’s. Princeton University consequently lost an estimated \$760,000 in state aid that year. See William S. Beaver, *Politics and Government: Princeton Pays a Price for Its Independence*, THE N.Y. TIMES, Aug. 5, 2001, at NJ6. The state judiciary also saw its funding cut by more than \$12 million, a move that one observer connected to the Chief Justice’s selection of Bartels. See Herb Jackson, *Towns Getting \$8m More From State*, THE RECORD (Bergen County, N.J.), June 23, 2001, at A1.

¹⁵² David Kinney, *Legislative battle lines*, THE STAR-LEDGER (Newark, N.J.), Apr. 12, 2001, at 17.

¹⁵³ In the only statewide race that year, the Republican candidate earned 42% of the popular vote.

¹⁵⁴ The only exceptions were 2007 and 2009, when Democrats lost one seat in the General Assembly.

¹⁵⁵ ARIZ. CONST. art. IV, pt. 2, §§ 1, paras. (14)(A)–(F).

¹⁵⁶ CAL. CONST. art. XXI, §§ 1 and 2(d).

¹⁵⁷ *Wesberry v. Sanders*, 376 U.S. 1, 49 (1964).

¹⁵⁸ Morris K. Udall, “Reapportionment I: “One Man, One Vote” . . . That’s All She Wrote!,” available at <http://www.library.arizona.edu/exhibits/udall/congrept/88th/641014.html>.

¹⁵⁹ *Jackman v. Bodine*, 43 N.J. 453, 460 (1964).

¹⁶⁰ *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964).

¹⁶¹ *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

¹⁶² *Burns v. Richardson*, 384 U.S. 73 (1966).

¹⁶³ U.S. Census Bureau, American FactFinder, (Census 2000 State Legislative District Summary File (100-Percent) datafile), available at <http://factfinder.census.gov/servlet/DatasetMainPageServlet>.

¹⁶⁴ Redistricting the Nation, District Search, <http://www.redistrictingthenation.com/search.aspx>.

¹⁶⁵ Redistricting the Nation, Top Ten, <http://www.redistrictingthenation.com/top10.aspx>.

¹⁶⁶ Redistricting the Nation, District Search, <http://www.redistrictingthenation.com/search.aspx>.

¹⁶⁷ The legislative redistricting plan adopted in 2001 divides only two of the state's 566 municipalities; the congressional districting plan divides twenty-nine. See THE LEAGUE OF WOMEN VOTERS, 2009 NEW JERSEY CITIZEN'S GUIDE TO GOVERNMENT 54–66, <http://www.lwvnj.org/pubs/CG09.pdf>.

¹⁶⁸ *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995). However, a state may not simply “assume[] from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.” *Id.* at 920.

¹⁶⁹ THE LEAGUE OF WOMEN VOTERS, 2009 NEW JERSEY CITIZEN'S GUIDE TO GOVERNMENT 54–66, <http://www.lwvnj.org/pubs/CG09.pdf>.

¹⁷⁰ The three-way splits were upheld by the New Jersey Supreme Court as a legitimate means of enhancing minority voting strength under the Voting Rights Act. See *McNeil v. Legislative Apportionment Comm'n of State*, 177 N.J. 364, 382 (N.J. 2003).

¹⁷¹ THE LEAGUE OF WOMEN VOTERS, 2009 NEW JERSEY CITIZEN'S GUIDE TO GOVERNMENT 54–66, <http://www.lwvnj.org/pubs/CG09.pdf>.

¹⁷² Jurisdictional Statement, *Robertson v. Bartels*, 2001 U.S. Briefs 721, at *24 (2001).

¹⁷³ See *Robertson v. Bartels*, 148 F. Supp. 2d 443 (D.N.J. 2001), *aff'd*, 534 U.S. 1110 (2002).

¹⁷⁴ See, e.g., *New Jersey District Map Still Helps Incumbents*, THE N.Y. TIMES, Oct. 27, 2001, at D4; Ron Marsico, *Incumbents like new congressional map*, THE STAR-LEDGER (Newark, N.J.), Oct. 27, 2001, at 11; Michael Symons, *Rep. Holt's seat safer*, ASBURY PARK PRESS, Oct. 27, 2001, at 3A.

¹⁷⁵ See David Kinney, *Outlook hopeful for compromise redistricting plan*, THE STAR-LEDGER (Newark, N.J.), Oct. 26, 2001, at 36 (quoting one source as describing the adopted plan as “‘very, very, very, very close’ to what the delegation first proposed months ago”); Maria Newman, *Harmony Reigns (Surprise!) In New Jersey Redistricting*, THE N.Y. TIMES, July 17, 2001, at 28; David Kinney, *On N.J. map, there's a deal in the House*, THE STAR-LEDGER (Newark, N.J.), July 13, 2001, at 1.

¹⁷⁶ *New Jersey District Map Still Helps Incumbents*, THE N.Y. TIMES, Oct. 27, 2001, at D4.

¹⁷⁷ Author's analysis of elections data, available at <http://www.state.nj.us/state/elections/njresults.html>.

¹⁷⁸ Since the 2001 map was adopted, only New Jersey's 3rd District has changed party hands, in 2008, when incumbent Republican James Saxton retired and Democrat John Adler won the seat in an open contest.

¹⁷⁹ See, e.g., William S. Beaver, *Politics and Government; Princeton Pays a Price for Its Independence*, THE N.Y. TIMES, Aug. 5, 2001, at NJ6; David Kinney, *Democrats win vital vote on districting*, THE STAR-LEDGER (Newark, N.J.), Apr. 12, 2001, at 17; Herb Jackson, *New Political Map Adopted: Democrats Cheer Result*, THE RECORD (Bergen County, N.J.), Apr. 12, 2001, at A1.

¹⁸⁰ William S. Beaver, *Politics and Government; Princeton Pays a Price for Its Independence*, THE N.Y. TIMES, Aug. 5, 2001, at NJ6.

¹⁸¹ The Democrats held a 44–36 seat majority in the General Assembly and at 20–20, neither party held a majority of seats in the state Senate.

¹⁸² Author's analysis of elections data, *available at* <http://www.state.nj.us/state/elections/njresults.html>.

¹⁸³ The only exceptions were 2007 and 2009, when Democrats lost one seat in the General Assembly.

¹⁸⁴ Author's analysis of elections data, *available at* <http://www.state.nj.us/state/elections/njresults.html>.

¹⁸⁵ Author's analysis of elections data, *available at* <http://www.state.nj.us/state/elections/njresults.html>.

¹⁸⁶ These figures are derived from the 1997 Senate election and 1999 General Assembly election results. There were no Senate elections in 1999.

¹⁸⁷ JULIET EILPERIN, *FLIGHT CLUB POLITICS: HOW PARTISANSHIP IS POISONING THE HOUSE OF REPRESENTATIVES* 117 (2006).

¹⁸⁸ Author's analysis of elections data, *available at* <http://www.state.nj.us/state/elections/njresults.html>.

¹⁸⁹ Author's analysis of elections data, *available at* <http://www.state.nj.us/state/elections/njresults.html>.

¹⁹⁰ An additional substantive consideration is the effect of redistricting on minority voters. There is extensive literature on how the census data can be used to diminish, enhance or optimize minority voting strength by packing and/or cracking minority populations. One strand of this literature examines the probabilities that a minority-preferred candidate will be elected as a district's minority concentration changes. Of course, as minority concentration increases, so too does the probability that their preferred candidate will be elected. But by over-concentrating minorities into fewer districts, the probability that minorities can elect an effective coalition in the legislature decreases. Thus, there is a tradeoff to be made between likelihood of representation in a specific district and in the legislature at large. See DAVID L. EPSTEIN AND SHARYN O'HALLORAN, "Gerrymanders as Trade-Offs: the Coevolution of Social Scientific and Legal Approaches to Racial Redistricting" in *DESIGNING DEMOCRATIC GOVERNMENT: MAKING INSTITUTIONS WORK* 189–224 (Margaret Levi et al. eds., 2008).

¹⁹¹ Six states utilize an advisory or backup commission to draw congressional lines; ten states utilize an advisory or backup commission to draw state legislative lines (see Appendix C). In general, advisory commissions merely recommend a plan, over which the legislature has final say; backup commissions draw district lines only when the state legislature is unable to do so.

¹⁹² See, e.g., University of Southern California, Annenberg School for Communication & Journalism, *The Redistricting Game*, <http://www.redistrictinggame.org/index.php?pg=learnaboutmission&mission=5>; Democratic Leadership Council, "Redistricting Reform" (June 2008), *available at* http://www.dlc.org/ndol_ci.cfm?contentid=253454&kaid=139&subid=900083; Steven Hill, Op-ed, *Schwarzenegger vs. Gerrymander*, THE N.Y. TIMES, Feb. 19, 2005, at 15; David Kinney, *It's (Y)our Party*, THE STAR-LEDGER (Newark, N.J.), June 13, 2004, at 1 (describing New Jersey's commissions as "quasi-independent").

¹⁹³ See Brennan Center for Justice, *A Citizen's Guide to Redistricting* 21 (2008) (noting that for politician commissions, "either legislators or other elected officials can sit on the commission, but the legislature as a whole isn't involved"). Cf., "independent commissions," which the Brennan Center describes as consisting of "five or six members of the public, largely chosen by the legislative leadership, but who are not themselves legislators or other public officials." *Id.* at 22.

¹⁹⁴ ARIZ. CONST. art. IV, pt. 2, § 1, para. 16.

¹⁹⁵ ARIZ. CONST. art. IV, pt. 2, § 1, paras. (14)(A)–(F).

¹⁹⁶ IOWA CODE § 42.4, para. 5 (2009).

¹⁹⁷ N.J. CONST. art. II, § 2, para. 3.

¹⁹⁸ *McNeil v. Legislative Apportionment Comm'n of State*, 177 N.J. 364 (N.J. 2003).

¹⁹⁹ IOWA CODE §§ 42.4 and 42.6 (2009).

²⁰⁰ ARIZ. CONST. art. 4, pt. 2, § 1, paras. 12 and 16.

²⁰¹ CAL. GOV'T CODE § 8253(a)(7) (2009).

²⁰² CAL. GOV'T CODE § 8253(a)(2) (2009).

²⁰³ CAL. GOV'T CODE § 8253(a)(3) (2009).

²⁰⁴ N.J. CONST. art. II, § 2, paras. 3, 4.

²⁰⁵ N.J. CONST. art. II, § 2, para. 5.

²⁰⁶ N.J. CONST. art. II, § 2, para. 4.

²⁰⁷ See William S. Beaver, *Politics and Government; Princeton Pays a Price for Its Independence*, THE N.Y. TIMES, Aug. 5, 2001, at NJ6 (suggesting the Republican-controlled state legislature singled out Princeton University – the tiebreaking member's institution – for budget cuts); Herb Jackson, *Towns Getting \$8m More From State*, THE RECORD (Bergen County, N.J.), June 23, 2001, at A1 (suggesting the Republican-controlled state legislature singled out the state judiciary – which appointed the tiebreaking member – for budget cuts).

²⁰⁸ See Ernest C. Reock, *Redistricting New Jersey after the 2010 Census*, Center for Government Services, Rutgers, The State University of New Jersey at 13 (March 2008); see also Section 3 herein.

²⁰⁹ In every congressional election since the current map was adopted, all members of Congress from New Jersey seeking reelection have won. Only New Jersey's 3rd District has changed party hands, in 2008, when incumbent Republican James Saxton retired and Democrat John Adler won the seat in an open contest.

²¹⁰ Author's analysis of elections data, available at <http://www.state.nj.us/state/elections/njresults.html>.

²¹¹ N.J. CONST. art. IV, § 2, para. 3.

²¹² N.J. CONST. art. II, § 2, para. 4.

²¹³ New Jersey Citizens' Clean Elections Commission, "Final Report" 5–6, 46–47 (May 8, 2006), available at http://www.njleg.state.nj.us/committees/NJCCEC_FINAL.pdf.

²¹⁴ N.J. CONST. art. II, § 2, paras. 3, 4.

²¹⁵ N.J. CONST. art. II, § 2, para. 5.

²¹⁶ N.J. CONST. art. II, § 2, para. 4.

²¹⁷ In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court announced a three-step inquiry to determine whether a redistricting plan violates antidiscrimination provisions of the Voting Rights Act. The *Gingles* criteria have since been clarified by the courts, as recently as March 2009 in *Bartlett v. Strickland*, 128 S. Ct. 1648 (2009) (holding that a minority group must constitute a numerical majority of the voting-age population in an area before the Voting Rights Act requires the creation of a legislative district to prevent dilution of that group's votes).

²¹⁸ *Reynolds v. Sims*, 377 U.S. 533 (1964) held that both houses of a bicameral state legislature must be districted on a population basis; *Mahan v. Howell*, 410 U.S. 315 (1973), *Gaffney v. Cummings*, 412 U.S. 735 (1973), *White v. Register*, 412 U.S. 755 (1973) et al. have clarified the permissible level of population variance.

²¹⁹ See, e.g., *Legislature v. Reinecke*, 516 P.2d 6, 408–46 (Cal.1973) (Report and Recommendations of Special Masters on Reapportionment).

²²⁰ See *Bush v. Vera*, 517 U.S. 952, 959 (1996); see also *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

²²¹ See *Bush v. Vera*, 517 U.S. 952, 959 (1996); see also *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

²²² See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997); see also *Bush v. Vera*, 517 U.S. 952, 960 (1996); *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

²²³ See *Abrams v. Johnson*, 521 U.S. 74, 92 (1997); see also *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995).

²²⁴ See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997).

²²⁵ See *Abrams v. Johnson*, 521 U.S. 74, 84 (1997) (“Protecting incumbents from contests with each other was another factor, which the court subordinated to the others because it was inherently more political.”) (internal quotation omitted).

²²⁶ N.J. CONST. art. IX.

²²⁷ IOWA CODE § 42.4, para. 4 (2009).

²²⁸ The analysis in Section 5 uses a 20-point margin of victory as “a common measure of competitiveness.” See *supra* Table 5A and accompanying text.

— Vita —

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