REDISTRICTING IN THE 1980'S

LEROY HARDY, ALAN HESLOP, GEORGE BLAIR
EDITORS

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A 50-State Survey

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In Memoriam,
George S. Blair
1924-1991

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Leroy Hardy, Alan Heslop, and George S. Blair, *Editors*

The Editors

This volume was brought together by three scholars with extensive practical experience in redistricting politics.

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INTRODUCTION

LEROY HARDY, ALAN HESLOP, AND GEORGE S. BLAIR

Redistricting of congressional and state legislative seats is again a burning public issue in many of the 50 states. In the elections of 1990 (as in the elections of 1970 and 1980, but even more intensively) the national and state party organizations struggled to win gubernatorial races and state legislative majorities in an effort to control (or at least to influence) redistrictings. In some states, the politics of redistricting was blamed for unusually bitter struggles over legislative leadership positions. Since the election of November 1990, the electronic and print media have devoted increasing attention to background information about reapportionment and redistricting.

The essays in this volume, produced through the cooperation of dozens of political scientists and other researchers from across the United States, are intended to increase public awareness of how redistricting was accomplished in the redistrictings of the 1980s: these essays set the stage to understand the redistrictings of the 1990s.[1]

The editors decided that a state-by-state survey was necessary because, despite the quest of modern scholars for a sphere of comparative state politics, each state of the Union remains essentially its own political universe. In an effort to develop fully the unique circumstances of each state, contributors were asked to concentrate their attention on the redistricting of state legislatures rather than on detailing the story of congressional redistricting, which is frequently covered by the *Congressional Quarterly*, the *Political Almanac*, and major newspapers.

It should be noted that we consistently use the term "redistricting", because it presents the basic challenge of the 1990s. To continue to use "reapportionment" to describe redistricting merely confuses the issue of representation and deflects attention from the real problem—unrestrained gerrymandering. In a discipline that aspires to scientific rigor, such terminological confusion is hard to justify or explain.

The essays presented here, in conjunction with essays in an earlier volume,[2] should make it easier for scholars to draw broad generalizations about the redistricting process, while remaining mindful of the diversity of redistricting history and practice in individual states. A careful reading of the 50 short studies presented here will yield a wealth of information about redistricting in the separate states and about the impact of redistricting on American politics at many levels.

THE "REAPPORTIONMENT REVOLUTION"

Until the mid-1960s, population was only one basis for apportionment in the United States. Land units (pieces of territory such as counties or townships) were another basis.

Debates over the proper weight to be given population and land in apportionment had long troubled representative governments. In England, the "rotten borough" became an issue of controversy as early as the seventeenth century (the classic example was Old Sarum, a medieval town that was partially under the sea and had lost its population, but not its parliamentary representatives.)

In America, the colonies used both population and land units as bases for apportionment. Controversies arose, even then, over the population inequities of land-based systems. Thomas Jefferson, for example, sharply criticized Virginia's county-based system for apportioning seats in the colonial assembly: he noted that while the lawmaker from the smallest county represented only 951 voters, the legislator from the largest county spoke for over 22,000.

The Northwest Ordinance of 1787 established a population basis for the apportionment of territorial legisla-

tive seats ("one for every 500 free male inhabitants"); but the U.S. Constitution, guaranteeing two U.S. senators and at least one member of the House of Representatives to each state regardless of population, reflected a comparable commitment to land-based systems.

After 1787, state legislatures differed widely in apportionment practices. A majority of the states admitted to the Union employed population as the basis for apportionment; but several states followed the "federal" plan of basing one house on population and the other on land units; the others, while employing population as the principal basis for apportionment, modified population-based representation with requirements that each county have a minimum of one representative.

In the first half of the twentieth century, land-based systems of representation came under increasing criticism as mass movements of population and the growth of great industrial centers produced ever greater population disparities among counties and other local electoral units within the states. Yet, state legislators, perhaps because they owed their election to the existent system, were often unwilling to reapportion.

The nature of the power struggle and its political import were highlighted in several states, when rurally dominated legislatures sought to perpetuate themselves by changing over to land-based apportionment schemes or by freezing existing plans in law, or by specifying that no county could have more than a specified maximum number of representatives.

The stalemate between the established powers protected by the apportionment formulae and the newer, urban-based groups and interests reached a crisis point after the 1920 census, which reported for the first time that a majority of Americans were residing in urban areas. Then, for the only time in American history, Congress refused to approve a reapportionment of congressional seats. And, following suit, the majority of state legislatures violated provisions in their own state constitutions to leave the existing state legislative and congressional district lines in place.

As long as apportionment decisions remained in the hands of malapportioned legislatures, it seemed, the system was largely immune to change. Though state executives in some cases deplored malapportionment, the state legislatures refused to correct inequities: in many cases, such correction meant the decimation of rural legislators. More and more the third branch—the judiciary—seemed to reformers to be the only key to change.

Initially, the courts remained aloof and repeatedly avoided involvement in the political maneuvering that surrounded redistricting and reapportionment. As late as 1946, in the case of *Colegrove v. Green*, the U.S. Supreme Court denied relief to Illinois residents challenging a congressional districting plan that gave one district nine times the population of another. In dismissing the challenge, the Court held that malapportionment was not "justiciable"—that is, not appropriate for judicial remedy. "The Courts," said Justice Felix Frankfurter in presenting his opinion, "ought not to enter this political thicket."

In 1962, however, in a dramatic turnabout, the U.S. Supreme Court took jurisdiction over complaints against malapportionment. The landmark decision was handed down in *Baker v. Carr*, a case in which urban residents of Tennessee contested the makeup of the rurally controlled state legislature and the legislators' failure to reapportion since 1901. Reversing the *Colegrove* decision, the Supreme Court ruled that complaints against malapportioned legislatures were indeed justiciable.

The Court refused, however, to specify what levels of population disparity would be constitutional as it remanded the case to a lower federal court. It was not until 1964, in the cases of *Wesberry v. Sanders* and *Reynolds v. Sims*, that the Supreme Court began the development of population standards. *Wesberry* struck down Georgia's congressional districting plan, holding that "as nearly as is practicable, one man's vote in

a congressional election is to be worth as much as another's." In *Reynolds*, the Court ruled that legislative districts for both houses of a bicameral state legislature must be "based substantially on population." These decisions mark a watershed in the theory and practice of representative government in the United States.

The Trilogy cases, *Baker, Wesberry*, and *Reynolds*, produced a flurry of suits challenging malapportionment in state legislatures. Suddenly, frenzied efforts were initiated in many states to make up for the half-century of neglect of the apportionment problem. By March 1964, 26 states had approved new apportionment plans. Alabama, Oklahoma, and Tennessee were redistricted under court-drafted plans; several states redistricted under court threats to postpone elections or to force all legislators to run for reelection at large rather than in their old districts. In Delaware, a court order gave the legislature 12 days to reapportion; Wisconsin was given 19 days, and Michigan 33 days. Faced with these examples of judicial severity, most states undertook to reapportion "voluntarily."

By 1966, legislatures in 46 of the 50 states had brought their apportionments into compliance with the new judicial standards of population equality. In a few states, reapportionment had been handed over to specially created commissions established by statute or by constitutional amendment. In some states, too, constitutional provisions requiring geographic or other modifications to population-based apportionments were abandoned or amended. Elsewhere, states created multimember districts in order to meet population requirements, while at the same time preserving the boundaries of traditional political subdivisions in their districting systems. A number of states actually changed the size of their legislatures in order to accommodate population-based apportionments.

In the period 1963-65, movements were undertaken in both Congress and the states to limit the effect of the court decisions on apportionment. These movements faltered and ceased by the late 1960s. By that time, nearly all the state legislatures were effectively based on equal population, and little impetus remained in the effort to resist "one man-one vote."

The Warren Court had given a remarkable demonstration of judicial power: the problem of legislative malapportionment, and the associated phenomena of rural overrepresentation and urban-suburban underrepresentation, had been remedied in less than a decade. Yet, as is so often the case, the solution itself generated new difficulties.

The collapse of traditional apportionment arrangements and the emphasis on population equality, combined with the availability of new computer technology, yielded unexpected opportunities for politicians. "One person-one vote" was hardly a cure-all for gerrymandering (redistricting for partisan or other political advantages). Indeed, population equality served to undermine the old constraints on gerrymandering. Soon, districts designed to maximize political advantage, within the confines of population equality, became common.

The first response of the Supreme Court was to make the requirement for population equality even more stringent, as if more precise equality could somehow check the reach for political gain. Thus, in *Swann v. Adams* and *Kirkpatrick v. Preisler*, the Court struck down districting plans that at any earlier period would have been considered impeccably "equal."

This approach, however, merely produced a further escalation of the competition for political advantage in redistricting. Legislative majorities (partisan and bipartisan) used the judicial emphasis on exact equality as a justification for drawing bizarrely shaped districts that cut across county and other subdivision boundaries. Challengers, pursuing different political objectives, authored their own slightly more "equal" gerrymanders. Gradually, some observers came to realize that equality was not an effective check on gerrymandering, but a stimulus to it.

The Supreme Court began to signal a new approach in 1973. The apparently inconsequential distinction in the

Court's earlier decisions between state legislative districts, which were to be "based substantially on population," and congressional districts, which were to be as nearly equal "as is practicable," now became critical. In a congressional districting case from Texas, *White v. Weiser*, the Court favored a plan so closely based on population that the largest district in the state had only about 400 more persons than the smallest district.

"Equality" in congressional districting thus appeared to be almost an absolute requirement. In two cases involving the districting of state legislatures, however, the Court began to permit greater flexibility in the interpretation of the meaning of "equality." In the first case, *Mahan v. Howell*, a redistricting plan was upheld for the Virginia state legislature in which the population variance between the largest and the smallest district was 16.4 percent. In the second case, *Gaffney v. Cummings*, Connecticut's 1971 redistricting plan for the state legislature was upheld despite a population deviation of 7.83 percent between the largest and smallest districts.

The Court's new approach to state legislative redistricting was hailed by commentators as marking a more mature and realistic perspective on the wide range of factors involved in districting. In *Mahan*, for example, the Court permitted Virginia's large deviations in district size on the grounds that the state had attempted to maintain the "integrity of political subdivision lines," balancing the benefits of equal-population districting with enhancing the role of local governments in state politics. In the same spirit, the smaller but still significant population variances upheld in *Gaffney* were justifiable to the Court in light of Connecticut's effort to bring about "proportional representation" of the two major parties in the state's legislature (that is, representation for each party in proportion to its share of the total vote cast in legislative contests).

In relaxing the strict standards of exact mathematical equality, the Court permitted the states to exercise discretion in selecting the factors, beyond population, for their own legislative redistrictings. Yet, the Court's new approach was criticized by those who claimed to fear that "minor deviations in mathematical equality" provided an open invitation to legislators to gerrymander with impunity.

Perhaps the most reasonable conclusion to be reached from the first two decades of major redistricting litigation is that the central problems of redistricting remain for the most part unresolved. The courts have provided appropriate relief to the geographical, economic, and political interests that had been denied political power by the malapportioned congressional, state legislative, and local governmental districts of the first half of this century. In particular, the "silent gerrymander" has been eliminated. Some forms of blatant racial gerrymandering, too, have been outlawed. Unfortunately, the courts have been either unwilling or unable to remedy the other, less obvious forms of partisan, bipartisan, and racial gerrymandering that continue to threaten our representative system. Indeed, the courts, at least to date, have assiduously avoided any direct confrontation with these more insidious forms of gerrymandering, preferring instead to tighten or relax the criteria of population equality as an indirect approach to the problem.

The 1980s brought few major changes in the Supreme Court's approach to redistricting law. The techniques of gerrymandering have kept well abreast of the courts' twists and turns, and with each successive redistricting experience the political process has become more sophisticated and complex. In 1986, *Thornburg v. Gingles* outlined new tests for applying voting rights law to redistricting; and in 1991 *Garza v. Los Angeles County* enforced an ethnically representative Latino district in place of an incumbent-drawn plan. At the end of the decade, however, there were few straws in the wind at which reformers could grasp.[3] Yet, in many states evidence of the accumulating effects of past gerrymanders was mounting.

Politicians and Redistricting

If the history of reapportionment and redistricting in the United States teaches us anything, it should warn us that redistricting is far more than a routine and

disinterested exercise in redrawing maps. Where the lines are drawn—and there are *always* a great many choices—affects the careers of incumbents and the future opportunity of challengers, the party balance in Congress and the state legislatures, the representation of minority groups, and even the role of local governments in state and national politics.[4]

In most states, redistricting plans proceed through the legislative process in much the same way as any other piece of legislation. The details of the plan are usually prepared by a committee whose membership is determined by the majority party leader, and the bill is approved by a simple majority vote of the full legislature. To become law, it must be signed by the chief executive of the state, and it is vulnerable to his veto.

Not surprisingly, political considerations play a major part in the process. Individual legislators struggle to maintain their incumbencies by drawing "safe" districts; legislative leaders seek to strengthen their positions by rewarding supporters with improved district boundaries or by punishing their opponents with "competitive" or elimination districts; majority parties develop plans to perpetuate their majority status and to shelter their members from unfriendly political winds in the future. Gerrymandering is widely, almost universally, practiced, for officeholders nearly always view redistricting as an opportunity to perpetuate or add to their power in the legislature.

There are two main types of gerrymander: (a) the *bipartisan*, or "incumbent survival," plan; and (b) the *partisan*, or "majority party," plan. In bipartisan gerrymanders, the aim is simply to ensure the reelection of incumbent legislators, generally by adding to the number of their party registrants within their districts. The telltale signs of a "sweetheart" process are increased majorities for all or most incumbents, a reduction in two-party competition, or even the elimination of electoral challenges in many districts.

The partisan redistricting process, for its part, aims to maintain or add to the number of seats held by the majority party. The basic technique is to *waste* the votes of the opposition party. This may be achieved by *concentration* of the voters of the minority party in as few districts as possible: these districts will then produce huge majorities for minority party representatives, but at the price of preventing or severely limiting effective minority party competition in other districts.

Alternatively, the wasting effect may be achieved by *dispersal* of the voters of the opposition party: by dividing up concentrations of minority party strength among a number of districts (while at the same time assuring that the minority party voters will always fall short of a majority in these districts), the majority party wins additional seats. Another technique sometimes used in partisan gerrymanders is the establishment of multimember districts that have the effect of submerging the voting strength of minority parties. The telltale sign of a partisan gerrymander is that the percentage of the seats held by the majority in the legislature is significantly higher than its percentage of the two-party vote in the preceding election.

Partisan gerrymanders put the skills of majority party leaders to a severe test, for such redistricting plans typically require some incumbents of the majority party to accept a reduction in their electoral "margins of safety" in order to build up majorities in neighboring districts; that is, some of an incumbent's loyalist voters must be removed from his district in order to increase the chances for a party victory in a neighboring district. Party leaders must find inducements to win the support of such incumbents for the party's redistricting plan: promises may be made of funds or of future legislation or patronage. If a leader fails to make appropriate concessions, rivals for the leadership position may pick up support from the threatened incumbents.

The task of minority party leaders is no less demanding in the case of an attempted partisan gerrymander, for they must find ways to counter the attractive offers made to some minority party incumbents of "safe" districts in exchange for their support of the majority party plan. Frequently, in legislatures where the margin of majority control is slim, redistricting will involve a

complex process of deals, offers, and counter-offers as each party leadership tries to hold its own party members in line in support of one plan and in opposition to other plans. Sometimes, there is a competition between the legislative majority leaders of one party and the governor of the other: inducements will be offered by each to members of the minority caucus, either to override the governor's veto or to adhere to "the party line."

Occasionally, the retirement or death of a legislator will ease the way to agreement on a final plan, for the district then may be freely dismembered and the pieces distributed in such a way as to please incumbents from the surrounding districts. In such a circumstance, political vultures are quick to swoop down on the territory of their departed colleague.

Of course, if a redistricting involves intense bargaining and counterbargaining, a shrewd incumbent who is willing to risk charges of party disloyalty may benefit from the process simply by constantly raising his bid to improve his own district. In some cases, the majority party finds itself unable to carry its plan through the legislature, or finds its plan blocked by the veto of a governor who represents the opposition party. Then, redistricting may become even more controversial; typically, the problem is resolved only by court intervention. (The classic example here may be the California redistricting of 1971-73, which pitted the vetoes of Republican Governor Reagan against slight but intransigent Democratic majorities in both houses of the legislature.)

A review of the essays in this volume, however, points up the fact that complaints about partisan redistricting, although sometimes soundly based, more often may be overdrawn. In approximately one-half of the states, the dominance of one party is so great that "partisan" redistricting would be superfluous. In such states, the redistricting process is an intraparty contest, pitting liberals or moderates of one party against conservatives of the same party (for example, Texas and New Hampshire), or rural legislators against urbanites (for example, Kansas), or representatives from one geographical division of the state against representatives of another (for example, east vs. west in South Dakota, or "upstate" vs. "low state" in South Carolina).

Finally, it must be emphasized that very often the redistricting process is characterized by great camaraderie among legislators of both parties. This is a phenomenon that outsiders—private citizens and non-office-holding party activists—may find puzzling; but the explanation is rather simple. Legislators share a common identity: they are all politicians. As such, they experience similar political dilemmas even though their rhetoric may present them as rivals.

Moreover, ease of cooperation among legislators is facilitated by the similarity of their problems: the Republican may have too may Democrats in his district, while the Democrat finds himself with too many Republicans. What better situation for bargaining and exchange, especially if someone—the boss, the media, or the public—is not watching?

The ability of party leadership groups and incumbents to shape state politics for a decade through redistricting has given rise in recent years to demands for a nonpartisan redistricting procedure, with the emphasis usually on some form of commission plan. Many reformers charge that there is an inherent conflict of interest in allowing state legislators to draw districting plans; they call for a solution that would take redistricting out of the hands of the incumbent legislators and turn it over to a bipartisan or nonpartisan redistricting commission. Active and occasionally successful in the 1970s, the movement for redistricting reform stalled prior to redistricting in the 1980s; but it was renewed after the 1981 events.

One state, California, has witnessed an astonishing plethora of referenda and other reform proposals in response to 1981-1982 partisan and bipartisan gerrymanders. As the 1991 event approached, California seemed to abandon the cause of redistricting reform (Propositions 118 and 119 in June of 1990 were defeated); in November of 1990, however, the state enacted Proposition 140 to impose term limitations on

the legislature. As the next round of redistricting is carried out in the early 1990s, the redistricting reform movement is likely to resurface in a number of key states.

Redistricting in the 1990s

The 1960s produced the beginnings of a "reapportionment revolution" in virtually every state of the Union, and the 1970s saw that revolution carried forward and brought to near-completion. While the print and electronic media gave much coverage to the courtroom battles of those years, the actual redistricting processes attracted relatively little public attention. This may be explained partly by their technical character and partly by the difficulty of interpretation to the general public. In part, too, the relative lack of attention was due to the success of many legislatures in restricting public involvement in and understanding of the process.

The redistrictings of the 1980s received little more critical scrutiny. The aftermath of the 1980s, briefly sketched in this volume, suggests, however, that redistricting abuse may not have gone wholly unnoticed. Certainly, disenchantment with incumbent legislators has reached an unprecedented pitch, especially in those states (for example, California and Indiana) that have practiced the most blatant gerrymanders.

One may safely predict that the redistrictings of 1991-92 will be accompanied by a mounting controversy over the law, politics, and technology of redistricting. The reason for this controversy is obvious: the redistricting plans that are finally written—whether by state legislatures or by commissions, or as the result of a complex bargaining process involving many official and unofficial participants—will shape government for a decade.

Many different groups have already been alerted to their stake in redistricting, whether their stake be in the contours of individual districts, in the outcomes of an entire plan, or in the choice that is made between legislative and nonlegislative processes. Minority spokesmen, for example, typically claim that "fair representation" requires districts that will elect members of their own minority group. In line with such claims, African Americans will certainly lobby in the 1990s, as they did in the previous decades, for districts that will maintain and increase the number of black congressmen and state legislators. In the states of the Southwest, Latinos have shown a determination to secure more districts that will elect Latinos to national and state offices. The essays in this volume also make it abundantly clear that other racial, gender, and ethnic groups are advancing claims to representation—the Indians in Arizona and South Dakota; the Puerto Ricans in New York and New Jersey; the Latinos in Chicago; gays in San Francisco and Los Angeles; Asians, especially in California; and women everywhere.

Business groups may seek to influence the redistrictings. Throughout the seventies and eighties, legislative majorities in a number of states were highly critical of business and industry, and some of the representatives of business will not wish to see these majorities perpetuated or strengthened via the redistricting process. Likewise, urban interests will fight in many states to retain political power that would otherwise be transferred in redistricting from the declining cities to the growing suburbs.

The prospect for the 1990s, then, is for many unexpected alliances on the redistricting battlefield—for example, between business groups and minorities, between Republicans and minorities, and between Democrats and other minorities. The top story may well be the role of the minorities in the shaping of political landscapes in the 1990s. The same minority group may find itself in a different coalition in Texas, let's say, than in California.

With such high stakes, a number of state legislatures and state party organizations are now devoting more resources to developing the extensive political/demographic data bases so critical to redistricting decisions. The new computer technology—which was used in only a handful of states in the late 1960s and early 1970s, and which was limited largely to urban states in the 1980s—is certain to be almost universally applied

in the 1990s. Unfortunately for legislators and party loyalists, however, sophisticated computer technology is now available to many different groups, and it is likely that legislatures will find their plans subjected to almost instant analysis by interested parties that have developed their own data bases and retrieval systems. Indeed, using today's computer technology, it is possible to analyze an entire redistricting plan, even for a large state, in as little as 24-48 hours. This will not ease the task of the legislators in devising a redistricting plan that will stand up to scrutiny by many interest groups, by the public at large, and by the state and federal judiciary. (Some observers suggest, therefore, that legislative leaderships will renege on commitments to open the process or to share access to information with the public; and that we can expect to see many last-minute plans launched on an unprepared public.)

In short, the redistrictings of the 1990s promise great controversy in many of the 50 states. The editors of this volume hope that its essays will provide a perspective for all interested parties on redistricting and its importance in the American political system. In moments of great optimism, the editors even hope that these essays will make some contribution toward bringing America closer to a system of representative government in which all citizens are given just and fair representation.

A previous volume, published in 1981, brought together a series of essays on the recent history of reapportionment and redistricting in the 50 states.[5] Those essays substantiated beyond doubt that major political changes had been produced by the Trilogy cases, a phenomenon often referred to as the "reapportionment revolution." In the wake of those decisions, new legislators, especially from urban areas, brought in new policies, views, and perspectives. But as early as 1970 the lure of permanency was exerting its fascination on the new incumbents. They had the same desire as the old incumbents—to retain their positions—and the desire intensified as legislative salaries, staff assistants, and perquisites increased.

All this is understandable in terms of human nature. What is less understandable to the present writers, however, is the apparent anxiety of many political scientists not merely to accept but to justify and to rationalize incumbents' self-serving practices in redistricting. In several legislatures, especially in the most populous states, redistricting has become a key means by which professional politicians free themselves from any meaningful electoral competition. Some political scientists even make the case for this new breed of tenured legislators, clouding the distinction between representatives and bureaucrats.

Some brief generalizations can be drawn from the essays presented in the 1981 and the present volume. They are:

Incumbency. Politicians typically render rhetorical homage to "good government criteria" in redistricting; but the protection of incumbents is the chief factor in most processes. Whatever doubts are expressed by political scientists concerning the importance of redistricting, incumbents treat it as the most important political event of the decade, offering the key to their security.

Rural/Urban/Suburban. Rural-urban disputes still have importance, although the one person-one vote rulings have eliminated the most flagrant examples of discrimination by one side or the other. Urban incumbents sometimes seek to perpetuate themselves in power by reaching into suburban areas sufficiently to pick up needed population while still maintaining urban dominance of the district and preserving their political base. At the level of population, however, the silent gerrymander is a vanished species for all intents and purposes: only the most drastic population shifts create silent disparities of any significance, and these are generally temporary in nature, being ended in the next redistricting.

Partisanship and Bipartisanship. Partisan emphasis in the analysis of redistricting frequently distorts the true political picture. What is assumed

to be a contest between Democrats and Republicans is often something quite different: a liberal versus conservative struggle, for example, or a bipartisan accommodation among most of the members of both parties that is challenged by recalcitrant members of one or the other party. Although the Democratic and Republican dimensions are frequently the focal point of press attention, the record seems to indicate more rhetoric than substance. In state after state, bipartisan accommodations seem relatively easy to accomplish.[6]

The real issue is rarely party control, especially in states where parties are weak. The main concern is the individual legislator's survival. The key pressures in the caucus are collegial, as shifting alliances form around one scheme or another, each of which advantages or discommodes different individuals. Except in unusual situations where an unpopular legislator or members of a shunned clique may be targeted for elimination, the drive is generally to find a scheme that will preserve all or nearly all incumbents. Often, dilemmas are modified by voluntary retirements, or by agreements to promote someone to higher office to ease the pressure. Only in the most drastic cases must someone go. When that occurs, members of both parties may often agree on whom it should be—the outsider, the sorehead, the crusader, or the too-independent: in others words, the person most disliked within the party or within the legislature, or the individual who poses the greatest threat to the bipartisan status quo.

Legislature and Governor. A partisan confrontation is more likely when the governor is of one party and the legislature of another. Often, the matter eventually devolves to a sweetheart arrangement in which each party accommodates itself to some of the demands of the other, but often not before the legislature has accused the governor of interference with its self-proclaimed prerogative in redistricting and often not before the governor has asserted his party's monopoly on "good government." The governor's singular role as decision maker makes him particularly effective in a leadership capacity, especially in legislatures characterized by factionalism.

Minorities in Redistricting. Ethnic claims and conflicts have come to substitute for the old rural/urban disputes. Under pressure from the federal courts and the U.S. Department of Justice, many states have set themselves to gratify powerful minorities by creation of ethnically representative districts—seats tailor-made for minority candidates, virtually assuring the election (and perpetual reelection) of a member of the dominant ethnic group. This process, however justifiable in terms of remedying past injustices, is not without its problems.

Budding contests between and among different minority groups trouble the concept of "ethnic representation." Struggles by minority incumbents to maintain the dominant role in their districts by packing in more minority voters give new meaning to the term "ethnic gerrymander." And "affirmative action gerrymanders," applying extreme interpretations of Voting Rights requirements, have become a focus of public controversy.

Commissions. Various types of commissions have been tried—with varying degrees of success. In many cases, the political nature of the commissions is poorly camouflaged, despite nonpartisan rhetoric. A prime example is Ohio. Legislative districts there are carved by a commission made up of the minority and majority leaders of each house, plus three statewide office holders. In 1981, the seven-member board consisted of four Democrats and three Republicans. At this writing in 1991, the opposite ratio prevails. Just as the 1981 result turned out to be Democratic, one may predict that the 1991 redistricting will have a Republican tilt. In some other states, however, commissions have a rather better record and have moderated both partisan and incumbent abuses of the redistricting process.

The Judiciary. Courts continue to enter the redistricting fray, but generally with reluctance, and with varying degrees of success. In some states, it is hard to resist the conclusion that judges have used redistricting suits as occasions to perform their partisan duty. In other states, the courts have filled a role as honest brokers, breaking partisan logjams and initiating reasonably even-handed solutions. In either case, of course, the courts typically are charged with malfeasance of one kind or another, and the political thicket of redistricting remains a place where judges clearly fear to tread. What appears urgently needed is an objective technique that courts can apply in a standard way to the tasks of line drawing.

Computers. The redistrictings of the 1980s saw much more general—and, apparently, some much more sophisticated—use of computer technology than the redistrictings of the preceding decade; and the evidence suggests that this trend continues to accelerate. The growing importance of technology has been accompanied by the rise to political significance of computer consultants in redistricting. These new professionals appear to be making more and more key decisions in line drawing. Not surprisingly, perhaps, the capability of the new geographic information systems to develop districts of literally any shape is leading to the creation of more bizarrely contorted districts than any in history.

The apotheosis of the computer as an instrument of control over the redistricting process has not yet materialized. Despite the availability of inexpensive computers and software, legislative elites remain jealous guardians of the data bases that are the real keys to power in high-tech redistrictings.

Each author of the essays in the main body of this volume was presented with the materials in this chapter. Although not required to adopt the terminology embodied here, many writers found the classification system useful to delineate redistricting practices for both state and congressional districts. Such standardization of terminology helps to clarify the nature of the problem.

NOTES

1. Most of the essays were written either in the fall of 1990 or very early in 1991. As an unfortunate but unavoidable consequence, most or all of the speculative judgments on the redistrictings of the 1990s may be out of date at the time of publication.

2. See Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981). We are grateful for permission to reprint here some of the materials that first appeared in this earlier volume.

3. For an example, however, see the inconclusive dicta in *Davis v. Bandemer*.

4. In most states, drawing new congressional and state legislative district lines is the responsibility of the state legislators themselves. Just how the incumbents view the redistricting process is well illustrated by a story (perhaps apocryphal) that concerns the redistricting of a state legislature. It seems that all the incumbents of both parties in this particular legislature were concerned about the political future of a long-time lawmaker known affectionately as "Old Joe." When the redistricting committee recessed for the first time, several legislators approached a committee member to inquire as to how Joe's district was being reshaped. "How's Old Joe doing?" they asked. "Fine," was the reply. At each recess, legislators made the same inquiry, and each time the answer was the same. Then during a later recess, a concerned lawmaker asked the usual question of the committee member: "How's Old Joe doing?" "To hell with Old Joe," came the reply. "They're talking about my district now."

5. See note 2. If the 50 essays in the 1981 volume did not substantiate the demise of "reapportionment" as an issue, these 50 certainly do. One person-one vote dominates the electoral system; but electoral distortions (gerrymandering) through redistrictings have accelerated, and with progressively more sophistication and effectiveness.

6. As the late speaker of the California Assembly, Jesse Unruh, often remarked, give the legislators a few weeks to play their partisan games, then they will settle down to the serious business of compromising their differences.

ALABAMA

WILLIAM H. STEWART

In the following pages we will consider the two subjects of congressional redistricting and state legislative redistricting in Alabama during the 1980s. In the former area the dominant Democratic policy-makers acted to improve chances for recapturing a district long held by Republicans. As far as state legislative redistricting was concerned, the dominant concerns have remained racial, and the much longer process of working out a system of districts based on the 1980 census figures was basically a struggle to increase the number of African Americans in the state House and Senate. This struggle was ultimately successful and, in the process, black and white politicians found themselves working together more closely in a new biracial alliance of key interest groups.[1]

CONGRESSIONAL REDISTRICTING

Alabama continued to have seven members in the U.S. House of Representatives following the 1980 census. An 18-member committee was set up by the legislature to develop a plan to make incremental changes in existing districts, and the redistricting committee developed a plan prior to the convening of a special session of the legislature on August 5, 1981. With the state's population placed at 3,893,888, each district ideally should contain 556,270. In the committee's plan the smallest district deviated from the largest district by about 2 percent (also the final margin). The overwhelmingly Democratic working group made the most changes in the 6th District, represented by freshman Republican Albert Lee Smith of Birmingham.

Shortly after the special legislative session convened, the House Judiciary Committee approved the legislative redistricting committee's plan. On August 11 the full House passed a substitute version of the plan which had emerged from its Judiciary Committee. This version was somewhat friendlier to Republican Smith than the committee plan. The Moral Majority tried to help Smith. It had been active in his initial election in 1980 and attempted to keep his district electable for him. The group said legislators were now engaged in "a blatant, obvious attempt to liberalize the 6th district [Smith's]."[2] On August 13, 1981, both the House and Senate approved the new congressional districting arrangements for the 1980s.

No effort had been made to draw a district (by gerrymandering, if necessary) in order to encourage the election of Alabama's first black member of Congress in modern times. This is expected, at this writing, to be the key redistricting issue in 1991. Republican Smith was the only member of Congress from Alabama to be defeated in 1982, losing by about 14,000 votes to a moderate Democrat.

In retrospect, the congressional gerrymandering engaged in by the Alabama Democratic legslature was pretty typical. It took surplus votes from safely Democratic territories and added them to what had previously been a reliably Republican district. The desired result was the election of a Democrat in place of a Republican.

STATE LEGISLATIVE REDISTRICTING

With districts drawn for the seven congressional seats, the Alabama legislature next in 1981 turned its attention to the infinitely more complicated task of state legislative reapportionment. It was frequently noted in news stories related to redistricting that the Alabama legislature had never successfully accomplished this task by itself.

On August 26, 1981, Governor Fob James announced that he would call a special legislative session to deal with state legislative redistricting. It would begin on September 29, and the special legislative reapportionment committee was expected to have a plan for consideration at that time. The governor did not

attempt to provide any leadership on this issue, saying he would go along with whatever the legislature decided upon.

The procedure used initially to come up with a new redistricting plan to reflect population changes and shifts between the 1970 and 1980 censuses was a very decentralized one. Basically, it was up to each local legislative delegation, organized on the basis of the county (in the case of the more populous areas) or the congressional district. One of the first redistricting problems reported was in Jefferson County (Birmingham). During the 1970s eight state senators (out of 35) resided in Jefferson County and 21 House members did (out of 105). However, instead of having fewer members of the legislature than it was properly entitled to, as in the old days, Jefferson now had a surplus. Its population actually warranted six Senate districts and 18 House districts.

The House of Representatives passed a redistricting bill on October 6, 1981, by a 75-21 vote. The Senate acted the same day, approving very similar legislative redistricting arrangements by a similarly lopsided 26-5 margin. African Americans were upset by the fact that two black Birmingham representatives were thrown together in the same district. They pointed out that the black population of Jefferson County had been increasing faster than the white population by an 8 percent to 3 percent ratio. This would suggest increasing opportunities for black representation rather than decreasing opportunities. Other black complaints centered on the violation of county lines in the construction of districts. In the 1980s the more the county was used in setting district parameters, the more African Americans would be helped.

There were several instances of very trivial kinds of gerrymandering at this stage of the redistricting process. For example, the leader of the Alabama Democratic Conference (the state's most prominent black political action group) did not want to be in a white district, so an amendment was adopted swapping 2,500 people between a predominantly white and a predominantly black district. On October 8, the House passed the Senate's previously approved redistricting plan by a 74-22 margin; it had approved its own legislation a couple of days earlier. When refinements were offered, the Alabama House passed the executive-amended redistricting plan 77-12 on October 20. The Senate passed it the same day by a 25-5 vote.

African Americans voiced opposition to the enacted plan. However, close capitol observers sensed that many black politicians were in agreement with what the majority of whites were doing. A *Montgomery Advertiser* editorial pointed out that "[m]ost black legislators [had] voiced no strong objections" to the reapportionment plan passed by the legislature in the fall of 1981. Indeed, "Black legislators... [had] helped draw the proposed lines." A number of black legislators were observed demanding "during legislative deliberations that their own districts be drawn so as to shore up the black voting majority to make it harder for a white challenger to win." In short, African Americans were apparently no different than whites in their desire above all for incumbent protection.[3] A spokesperson for the League of Women Voters said that the way legislators—blacks and whites—approached redistricting was "like writing your own job description."[4]

Following legislative approval of a redistricting plan, the next step was Justice Department review. Its decision came on May 6, 1982. The Alabama plan, the Justice officials asserted, "clearly would lead to a retrogression in the position of black voters."[5] Redistricting lines had been drawn that "do not appear to have been necessary to any legitimate governmental interest."[6] Apparently, protection of incumbents was not a subject of as much concern to Justice lawyers as it was to Alabama legislators.

William Bradford Reynolds, chief of Justice's Civil Rights Division (CRD), indicated that the legislature, in effect, ought to have engaged in positive gerrymandering to enhance black electoral opportunities. The CRD found 18 of the 105 House districts to be particularly suspect. Justice's finger-pointing was not directed exclusively at whites. Government attorneys

were intrigued by the fact that a district in Mobile was stacked with additional black voters to facilitate the reelection of the incumbent black senator. The Department of Justice also chided legislators for sloppy work, pointing out that 3,764 residents of a mostly-black section of Montgomery County weren't put in any legislative district.

In Alabama, conformity to some commonly identified districting criteria has not been insisted upon either by the Justice Department or by the courts. Where there has been a long history of racial discrimination, getting a better balance between blacks and whites in local and state decision-making forums is viewed as of much greater importance than adherence to idealized districting standards.

The legislative reapportionment committee met a few days after the Justice Department's ruling. At a session on May 10, 1982, legislators were reminded by their consulting attorney that, if federal officials had to draw up a state apportionment plan as they had in the past, "the needs of incumbents" would not be not considered.[7]

The House and Senate Judiciary Committees approved reapportionment plans on May 25, 1982. While it was expected that four of the 35 Senate districts would have black majorities, it was considered unlikely that a black could be elected in the new black-majority district because it still contained large numbers of white voters.

The full House approved a redistricting plan on May 26 by a 70-25 vote. The Senate acted the same day, approving redistricting 19-9—the exact plan which had been presented to the Justice Department on May 14. Only vague guidance came from Justice, its reply being, "Based on our analysis to date, the proposed modifications, if enacted into law[,] appear for the most part to address the May 6, 1982, objection."[8]

Both Senate and House passed further revised redistricting bills on May 28, the Senate acting on a 21-5 vote and then the House on a 56-31 vote. The House's action amounted to an endorsement of the Senate-passed plan. The House passed a cleaned-up redistricting bill (correcting detected technical flaws) on June 1, 1982, by a 40-32 vote, the Senate by a 21-8 margin. With these votes this special session on state legislative redistricting ended.

Alabama state legislative redistricting was now once again in the Justice Department's lap. It did not take long for a response. On June 8 state officials received a detailed letter regarding Justice's reactions to the latest state redistricting efforts. Ninety-eight districts were acceptable. Seven were suspect. The element of uncertainty was present because Justice had not finished with its evaluation of the seven worrisome districts.

In an editorial published at this time, the *Luverne Journal*, a small-town weekly, complained that "any plan submitted must be so gerrymandered as to actually give the black voter an advantage in electing those of his own race." Unfairly, "whites may not be allowed to elect all whites, [but] it is perfectly all right to gerrymander district lines so that blacks may be assured of electing blacks."[9]

On June 21, by a 2-1 vote, the federal court gave its assent to the makeshift redistricting plan for the fall, 1982, elections. However, the federal court did change three districts in Jefferson County. On July 2 the Supreme Court was requested to stop the interim redistricting plan from being used. The Supreme Court, however, declined to do so and primary and general elections went ahead as scheduled, the primary elections coming on September 7 and the general election on November 2, 1982. As feared, African Americans did not increase their numbers in the Alabama Senate, the figure remaining at three. In the House, the number of African Americans was boosted from 13 to 16. Republicans elected three senators (they had none previously) also, including the state's first woman senator. Republicans doubled their House membership (from four to eight). Also at this election, George C. Wallace was elected to his fourth and final term as governor.

In Alabama newly elected legislators are sworn in as soon as the election returns are made official. Thus, only a few days after the general election, incumbent and new legislators began working on a "permanent" redistricting plan. This time progress came rapidly. What was increasingly recognized as perhaps the strongest single interest group in the state, the Alabama Education Association (AEA), had been instrumental in the election of 40 legislators, of both races. This group was not as resistant to racially liberal districting policies as some recently defeated legislators or legislative aspirants had been.

Governor Wallace called a special session of the legislature to deal in part with redistricting, to convene on February 1, 1983. However, after they assembled they were on their own. "I have no recommendations," the governor said. [10] The executive leadership vacuum which prevailed in Alabama had heretofore allowed parochial concerns to be given unreasonable emphasis. However, broader alliances of interest groups (especially teachers, organized black Democrats, labor, and plaintiffs' trial lawyers) would now assume a greater role in the redistricting process than individual local legislators.

Most white leaders in the legislature apparently were now either exhausted from the previous redistricting efforts and without the energy to fight further, or else they had received AEA and/or ADC (Alabama Democratic Conference) support and sympathized with these groups' goals. On February 3, the House Judiciary Committee (chaired by African American Representative Charles Langford of Montgomery) reported out the plaintiffs' redistricting plan (with some amendments). Almost simultaneously the Senate Governmental Affairs Committee reported it out unchanged. On February 8, 1983, the House adopted its committee's plan on a 70-27 vote. It promised to increase the number of black House districts to 18 (from 17) and Senate districts to four (from three). Marginally better, the unamended plaintiffs' plan promised 19 black House districts and five black Senate districts.

There was some filibustering in the Senate over the plaintiffs' plan but it was of short duration. On the afternoon of February 17 the Senate passed the plan on a 21-11 vote. The House followed suit about midnight on a 54-27 vote. The largest House district had 39,230 residents, the smallest district, 35,205 residents. Based on the state population figure apparently used, 3,890,061 (accurate to within 0.0010 of the official census figure of 3,893,888), each district ideally should have had 37,048 residents. This meant that the largest House district deviated from the ideal by only 5.9 percent, the smallest district by only 5.0 percent.

The largest Senate district is composed of 116,936 people, the smallest district of 106,227. Ideally, each Senate district should have 111,145 residents. This means that the largest Senate district deviated from the ideal by only 5.2 percent, the smallest by only 4.4 percent. (There was, however, a 9.2 percent difference between the largest district and the smallest district. The comparable House deviation calculates out to 10.3 percent.)

In the final analysis, despite individual incumbent legislators' attempts to fine-tune their district boundaries so as to ensure their own reelection, the Alabama Senate and House district maps (see Figures 1 and 2) reveal markedly little in the way of gross gerrymandering. In part this is because overwhelmingly Democratic but partisanly undisciplined legislators had no grand party strategy to maximize the number of Democratic seats. Instead, as we have seen, the focus was on boosting black legislative seats.

The most notable example of gerrymandering as far as the Alabama Senate is concerned is probably District 23, the drawing of the lines of which resulted in the election of the first senator from the Black Belt since Reconstruction days. The other, most unusually contoured Senate district is District 4, the occupant of which is the only Republican senator north of the Birmingham metropolitan area. In the House the least compact districts, outside of the metropolitan areas with multiple districts frequently encompassing only small amounts of territory, are Districts 30 and 23, both

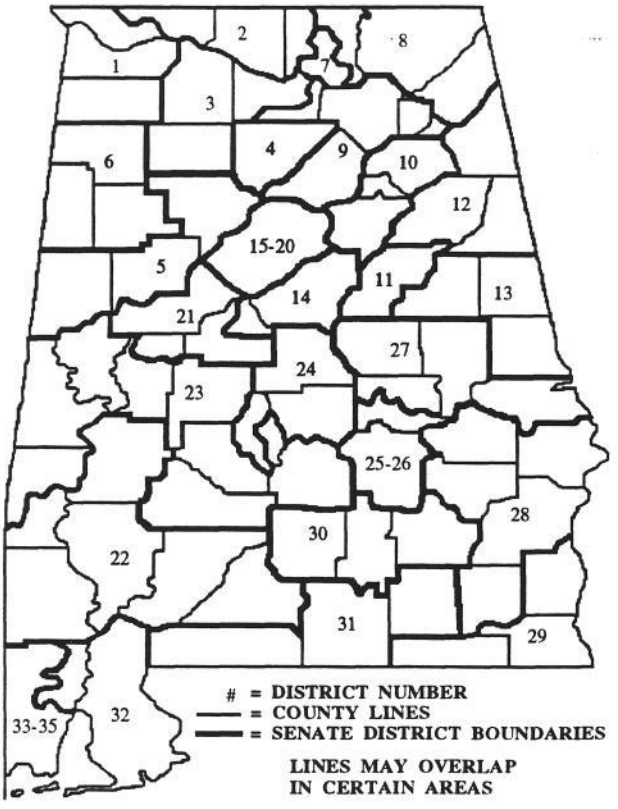

Figure 1. Alabama Senate Districts.

in north Alabama and both represented by whites. The present generation of districts basically goes back to 1972, when a CUNY statistician grouped census enumeration districts to form a court-approved, fairly compact redistricting plan. Changes since that time have been basically incremental in character. Elections under the final redistricting plan for the 1980s were ordered for the fall, 1983.

In a highly controversial move the Democratic state committee decided to handpick its candidates for the special legislative elections to be held on November 8, 1983. The AEA, the ADC, the Alabama Trial Lawyers Association, and the Alabama Labor Council were reputed to control 50 of the state committee's 132 seats, not all of whom were expected to participate in the legislative selection process.[11] At the September 30 committee meeting 11 incumbent legislators, most of whom were more conservative than the dominant interest groups preferred, were ousted as its nominees by the party committee. The state's largest newspaper exclaimed, "The Alabama Democratic Party's handpicking of legislative candidates [had] turned into a blood-letting . . . 11 incumbent lawmakers were hacked down by the State Democratic Executive Committee." Those who were ejected were said to be out of favor with the "powerful coalition of labor, teachers, trial lawyers and blacks," a coalition which, it was asserted, now "controls the Legislature and, to some extent, the party."[12]

In the November general elections, 67 of the 140 legislative seats were uncontested. In a development which was unusual for traditionally one-party Democratic Alabama, five Republican legislators (two of whom were Democratic converts) went back into office unopposed. General election contests had developed in 16 of 35 Senate districts and 57 of 105 House districts. One Senate district was also the subject of a serious (and ultimately successful) write-in campaign.

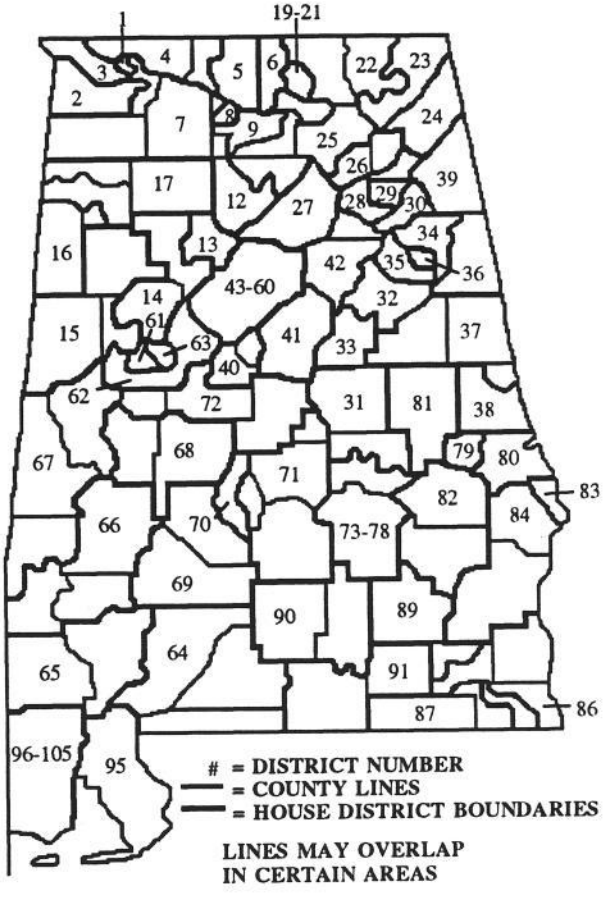

Figure 2. Alabama House Districts.

Election results were widely interpreted as "a backlash against the Democratic Party and its handpicked candidates." [13] The Democrats lost 13 legislative seats (from 129 down to 116). Republicans and independents now had greater representation than they had previously had in modern times. Republican seats increased from 11 to 16, including four Senate and 12 House seats. Independents won eight seats (five in the House, three in the Senate). Six of the independents were incumbent Democrats upon whom their state committee had not looked with favor when handpicking its candidates (five in the House and one in the Senate). Two of the independents were African Americans (and were strong Democrats). There were now nine instead of six women legislators.

Thanks to implementation of the plaintiffs' plan, African Americans won four additional seats. The legislature would now have 24 minority members (five senators and 19 representatives). This included the first minority representative to be elected north of Birmingham. The minority Senate seat envisioned by the plaintiffs' plan for the Black Belt materialized when Hank Sanders, a graduate of Harvard University Law School, was elected. Though it had lost several important races, the coalition which engineered the handpicking of Democratic candidates remained very strong.

Conclusion

As we have seen, much more energy was expended in Alabama in the early 1980s working on state legislative redistricting than on congressional redistricting. After the 1990 census figures become available for state policy-makers to labor with, we can expect just the opposite. Congressional redistricting will be much more controversial than state legislative redistricting. Alabama's present arrangements for legislative redistricting will require only modest changes, and disputes over gerrymandering by either African Americans or whites probably will not be very generalized. The primary objective of black Alabamians in this decade will be the creation of a district with a sufficiently large black majority to practically ensure the election of a black congressperson. In the early 1990s, it is predicted, the legislature will struggle mightily with congressional redistricting but will be unable to redistrict the state with a new black district. Ultimately, if Alabama is to have a black member of Congress, the federal judiciary will again have to implement a districting plan.

NOTES

1. For a discussion of reapportionment politics in Alabama prior to the 1980s, see William H. Stewart, "Alabama," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 26-30.
2. *Montgomery Advertiser*, August 12, 1981, p. 11.
3. Ibid., May 9, 1982, p. 2B.
4. Ibid., May 17, 1982, p. 11.
5. Ibid., May 7, 1982, p. 1.
6. Ibid., p. 2.
7. Ibid., May 11, 1982, p. 13.
8. Ibid., May 27, 1982, p. 1.
9. Editorial reprinted in *Montgomery Advertiser*, June 19, 1982, p. 4A.
10. *Birmingham News*, February 2, 1983, p. 2A.
11. Ibid., October 1, 1983, p. 8A.
12. Ibid., p. 1A.
13. Ibid., November 9, 1983, p. 1A.

ALASKA

GERALD A. MCBEATH

Alaska is a new state with limited experience in redistricting. It entered the Union in 1959 with an apportionment plan in place, and since then has had only four decennial censuses. The state is unique in four respects which strongly influence redistricting. Alaska has the largest land area of any state, but is one of the most sparsely populated. Second, the constitution limits the size of the House of Representatives to 40 seats, making it the smallest lower house in the nation; given the large territory covered by a small number of districts, each redistricting is disruptive. Third, since 1965, Alaska has been one of nine states whose redistricting plan is reviewed by the U.S. Department of Justice (but to the present no Alaska redistricting case has gone to U.S. federal court). Fourth and of greatest importance to the redistricting process, Alaska is the only state in which reapportionment powers are held by the governor, with the legislature playing no direct role. This last point reflects an attempt by the framers of the Alaska constitution to remove "politics" from the redistricting process. [1]

REDISTRICTING IN 1980-81

The legislature elected in 1980 was a hybrid, with Democrats in control of the House (22D, 18R, 2L) and a Republican coalition in the Senate. Independent Republican Jay Hammond, in the middle of his second term, appointed a Reapportionment Board with a Republican balance.

The 1970s were a period of explosive growth in Alaska. Because of an infusion of $900 million in new dollars from the oil lease sale following the discovery of Prudhoe Bay oil in 1968, and the 1974-77 construction boom driven by the building of the $8 billion Trans-Alaska Pipeline, population surged from 300,382 in 1970 to 400,851 in 1980. The new population settled in the railbelt corridor, boosting Anchorage and Fairbanks to nearly double their pre-Prudhoe Bay sizes. New residents were likely to be nonpartisan registrants, which obscured somewhat the partisan interest in redistricting.

Two issues were addressed during hearings of the Board—the state's nonresident population and single-member districts. The Board retained Dr. John Kruse of the state's Institute of Social and Economic Research to survey systematically nonresident workers in Alaska. Kruse's report concluded that only military personnel comprised a large and readily identifiable population of nonresidents. On- and offbase military personnel were surveyed regarding their interests, and those without plans for future residence in Alaska were subtracted from the 1980 census count. (Alaska is one of only six states that follows this practice.) This produced an ideal district size of 9,228.

Second, the Board adhered to the single-member district concept in all but six areas of the state (which accorded with comments at public hearings in all regions but Fairbanks, where the public preferred multimember districts). In drawing district lines, the Board followed equal-population rules where practical, modified by the provision that new districts should be composed of "contiguous and compact territory containing as nearly as practicable a relatively integrated socioeconomic area" as required by the Alaska Constitution. This produced integrated districts in nearly all cases, and there was little variance in population size. The most overrepresented and underpopulated House district was midtown Anchorage, at 4.17 percent; the most underrepresented and overpopulated House district was Juneau, at 5.8 percent. Their combined variance was 9.98 percent. [2]

In one area the Board did a modest amount of gerrymandering. It created an icicle-shaped district (called the "iceworm" district) which stretched some 500 miles from Cordova on Prince William Sound to the southeasternmost point in Alaska, near Dixon

Entrance. The largest city in the new district, Cordova, was closer to Valdez and Seward in District 6, but the Board argued that from a socioeconomic standpoint, Cordova resembled the fishing communities of the Inside Passage more than the commercialized and industrialized communities of Seward and Valdez. The effect, however, was to consolidate precincts which had narrowly supported Republican candidates in the past, and advance the number of safe seats in the legislature.

The 1981 redistricting plan was significant because it reduced the number of multimember districts in the state. (Alaska is one of only eight states retaining multimember House districts.) It also reduced rural influence, because of disproportionately greater population growth in urban than in rural locales. The 1981 plan was challenged in court, leading to modifications in 1983.

The 1983-84 Redistricting

In 1982, parties brought suit against the 1981 redistricting formula, alleging that the creation of the iceworm district violated the state constitutional requirement that legislative districts contain an integrated socioeconomic area. The Supreme Court in 1983 agreed that the redistricting plan improperly included Cordova in House District 2, and called on Democratic Governor Sheffield to appoint a new Board to resolve this issue as well as amend the 1981 plan to satisfy federal and state constitutional requirements.[3]

Sheffield appointed two Democrats, two Republicans, and one Independent to the Board. It fine-tuned the 1981 plan by making the military exclusion consistent across the state and by incorporating 1981 census data corrections. Its major action was to dissolve the iceworm district by reconfiguring District 2 as a southeast-islands district, including primarily small island fishing communities. This resulted in changes to south-central's representation, as Cordova was absorbed into a new district called "the donut." This represented Cordova, Valdez, Seward, Wasilla, and Palmer—communities at the periphery of Anchorage.

These data indicate no clear pattern of partisanship, in that legislatures were controlled by Democrats, Republicans, and bipartisan coalitions during each of the four sessions. During none of the sessions was there a unified single party in command of the legislature. (See Table 1.) Thus, the judgment of political analysts is that even if governors had the intention of influencing the distribution of the legislature through the redistricting process, they were unsuccessful in accomplishing this result. From 1982 to 1990 Alaska had Democratic governors, but this did not bring Democratic party control to the legislature. As Thomas A. Morehouse wrote in 1987, "If governors were able to increase the electoral chances of their party's legislative candidates through any form of gerrymandering, the effects do not stand out in the election results."[4]

Nor was there a clear pattern of incumbent reelection in the 1980s. The Alaska rate of incumbency is only slightly lower than that of the other states. In the period from 1962 through the 1984 elections, when incumbents ran in either House or Senate races, they lost their seats to the opposition party candidate only about one-fifth of the time. The vulnerable incumbents were those

Table 1. Organization of the Alaska Legislature, 1982-90.

	HOUSE				SENATE			
YEARS	REPUB.	DEM.	OTHER	ORG.	REPUB.	DEM.	OTHER	ORG.
81-82	16	22	2 (L)	Dem (to 6/16), Coalition (R)	10	10	0	Coalition (R)
83-84	21	19	0	Coalition (R)	11	9	0	Coalition (R)
85-86	18	21	1	Coalition (R)	11	9	0	Coalition (R)
87-88	16	24	0	Dem	12	8	0	Coalition (R)
89-90	15	25	0	Dem	11	9	0	Coalition (R)

from the largest and fastest growing urban areas, in Anchorage and Fairbanks—cities which account for most of the incumbent losses. These are also the areas typically changed most during redistricting. Thus, the significant impact of redistricting in the 1980s in Alaska probably was to reduce the incumbency effect in urban areas, making their politics more competitive.

Issues in 1990-91

In 1989 Democratic Governor Cowper, who had just announced his intention to leave office at the end of his first term, appointed a Reapportionment Board composed of two Democrats, one Republican, and two nonpartisans. Board members proceeded to hold hearings in most large communities of the state, and to draft initial recommendations. This Board's findings were based on population estimates of the state Department of Labor, using 1988 data.

The 1990 gubernatorial election brought a significant change to the Alaska redistricting process. Walter J. Hickel, Republican governor from 1966 to 1969, entered the race seven weeks before election day on the Alaska Independence Party ticket. He won the three-way race with 39 percent of the vote. One of Governor Hickel's first acts was to replace the members of the Reapportionment Board with his supporters. The new Board has four Republicans and one Democrat. The Alaska redistricting timeline leaves the Board only three months after the receipt of census figures on April 1, 1991, to submit a recommendation to the governor, who has an additional three months to make changes before issuing a proclamation establishing new districts.

As in previous redistrictings since the mid-1960s, Alaska remains bound both by equal protection strictures and by terms of the Voting Rights Act. The one person-one vote rule insures that changes will occur in legislative districts, as the state's population has increased about 37 percent since 1980, even after the oil slump and recession of 1986-88; but growth has not occurred evenly across the state. Those areas with population in excess of the new 12,000-per-district average will gain seats, and these areas tend to be in the railbelt—Anchorage suburbs, Fairbanks-North Pole, and Matanuska-Susitna and Kenai Peninsula communities. A large task for the new Reapportionment Board is redrawing district lines in the Anchorage area, a task complicated by a significant Native population and a large number of military personnel and dependents.

Military and dependents represent over 10 percent of the state's population. The percentage that is counted as resident, and thus entitled to representation, will have a major impact on district boundaries. Now there are incentives to residency—a Permanent Fund dividend of nearly $1,000 a year—which seem likely to increase the number of military claiming Alaska residency.[5]

Rural areas have not lost population, but their rates of population increase have fallen behind those of urban areas, which have been augmented by inmigration in response to economic opportunities. As a result, rural areas will likely lose representation in the legislature, a pattern which has been in effect since the 1960s. Because it appears to violate the Voting Rights Act, the loss of Native legislative representation will probably attract the U.S. Justice Department's attention to the state. As the population of rural districts increases, they become more unwieldy, violating state constitutional requirements of contiguous, compact, and integrated socioeconomic districts (for the House). Obviously, territorially vast districts do not encourage the development of close relationships between legislators and constituents prized by Alaskans. One possible consequence of federal pressure might be consideration of constitutional change to increase the size of the state legislature and thereby retain Native group representation.[6]

The nature of population change in the 1980s suggests that redistricting cannot be done in one or two regions of the state alone. Imbalances in rural and urban population growth will affect most or all districts in the state. Alaska's system of redistricting is unlike that of all other states in that it is solely an executive function operating under constitutional guidelines. The execu-

tive process is backed by almost immediate court review, with any citizen having standing to petition the superior court to correct reapportionment and redistricting errors. A 1991 issue is whether the public will gain access to the new technology of redistricting.[7] Challenges have been made to each of the state's redistrictings since 1962, and both superior and supreme courts have been involved. Given the span of likely changes, and the potential involvement of the state courts, court-imposed restricting, on an interim basis, seems likely during the early 1990s in Alaska.

Notwithstanding the difficulties of redistricting in Alaska, the process has not led to major calls for reform. There has been no strong interest in transferring the function to the legislature. It is not clear whether the Alaska experience, designed under a "model" constitution, offers clear lessons to the other states, but the system of redistricting under executive powers limited by constitutional constraints (both federal and state) seems to have reduced the partisan nature of the process—and the amount of gerrymandering.

NOTES

1. For a discussion of reapportionment politics in Alaska prior to the 1980s, see Richard L. Ender, "Alaska" in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 31-35.
2. Alaska, Reapportionment Board, "1981 Plan."
3. *Carpenter v. Hammond*, 667 P.2d 1204 (1983).
4. Thomas A. Morehouse, "Alaska's Elections," in Gerald McBeath and Thomas A. Morehouse, Alaska State Government and Politics (Fairbanks: University of Alaska Press, 1987), p. 132.
5. Personal communication from Allen Vezey, chair, 1991 Reapportionment Board, February 24, 1991.
6. Alaska, Reapportionment Board, "Reapportionment 1990 Overview."
7. PL 94-171.

ARIZONA

DAVID R. BERMAN

"For those of us demented souls who find vicarious nourishment in the game of politics, the redistricting morass is an epicurean feast." Thus wrote a political writer for the *Phoenix Gazette* in 1981. The redistricting and reapportionment processes were about to conclude with, as the columnist saw it, "charges of unfairness, minority underrepresentation, gerrymandering and a general lack of niceness." At the bottom of all this was a question of political power: "The ins have it, and the outs want it." [1]

The reapportionment battles of 1981 were reminiscent of conflicts in the 1960s and 1970s.[2] Many of the issues of 1981 will, no doubt, resurface in the future. This essay looks at the nature and effects of the 1980 reapportionment battle. It concludes with commentary on the process and recurring issues.

REAPPORTIONMENT IN THE 1980S

The GOP largely controlled the formulation of the reapportionment plan employed in the 1980s. In the legislature that drew up the plan in 1981, Republicans outnumbered Democrats in the House 43 to 17 and 16 to 14 in the Senate. The governor, however, was a Democrat. Predictably, Governor Bruce Babbitt vetoed both the congressional and legislative plans put together by Republicans. Babbitt relied on Democrats in the Senate to prevent an override of his veto. Republicans were, however, able to override the governor's veto by enlisting the support of four conservative Democrats. For going along with the Republicans, the four Democrats received assurance that their legislative districts would keep their essential characteristics.

Disputes over congressional districting influenced the compromises eventually made on legislative reapportionment in 1981. Most of the conflict over redistricting had to do with Republican efforts to alter the district of incumbent Democrat Morris Udall. Looking over the situation in May of 1981, Udall attributed this development to the national effort of the Republican party to gain control of the U.S. House of Representatives.[3]

Democrats placed strong priority on giving Udall a district he could win. This, reportedly, was part of the bargain made by the four Senate Democrats, who voted with the GOP on the legislative and congressional districting measures.[4] Eventually, the legislature did come up with a congressional districting plan which facilitated Udall's reelection possibilities. Udall, though, was not entirely happy with the districting changes, especially the splitting of his power base in Tucson into two districts.

Babbitt, in his veto message, said the legislative map was "in complete violation of the principles established by the Supreme Court" and the 1965 Voting Rights Act, and would "clearly dilute racial and ethnic minority interests in an unconstitutional and unlawful manner." He declared that the congressional map was a "textbook example of legislative dismemberment" which would "bifurcate" Tucson to gain unfair and illegal partisan political advantage." [5] Democrats particularly attacked the GOP legislative plan for diluting the vote of Indians. Both the Justice Department, which was required under the federal Voting Rights Act to preclear the apportionment plan, and a federal court agreed with this position.

Participants in the federal court suit agreed to a modified version of the GOP plan on April 2, 1982. The agreement ended the litigation. "We certainly got considerably more than we previously had," said House Minority Leader Art Hamilton (D-Phoenix). "If we'd been drawing the lines, of course, we would have done it differently. But everyone had to give." House Majority Leader Burton Barr (R-Phoenix) said

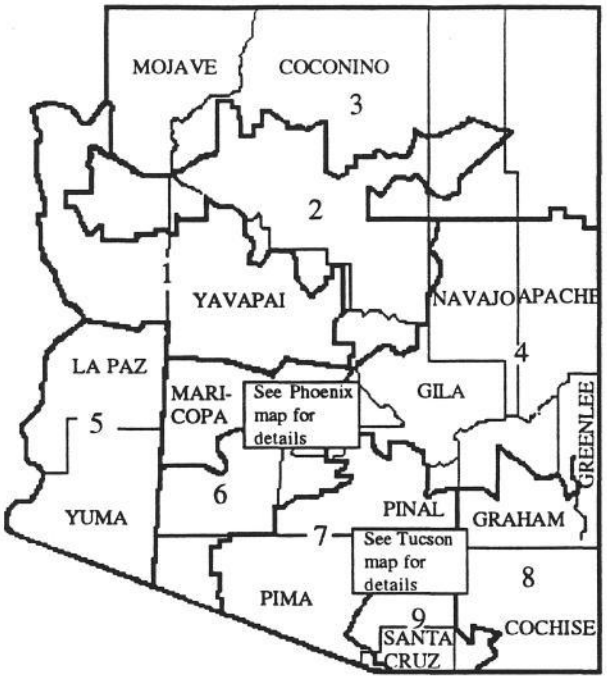

Figure 1. Arizona Legislative Districts.

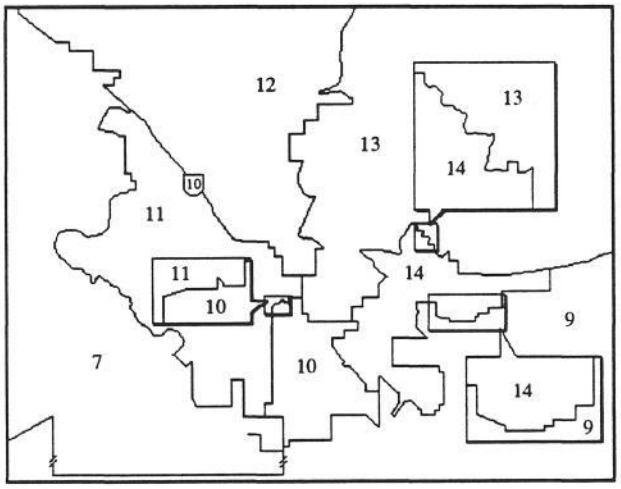

Figure 2. Legislative Districts in the Tucson Metropolitan Area.

the compromise had not "damaged anyone politically."[6]

On balance, though, the plan was a net gain for the Republicans. Much of this was due to the ability of the Republicans to distribute Republican voters among the districts. Republicans created a new, odd-shaped, heavily Republican District 21 which effectively diluted pockets of Democratic strength. Gains made by

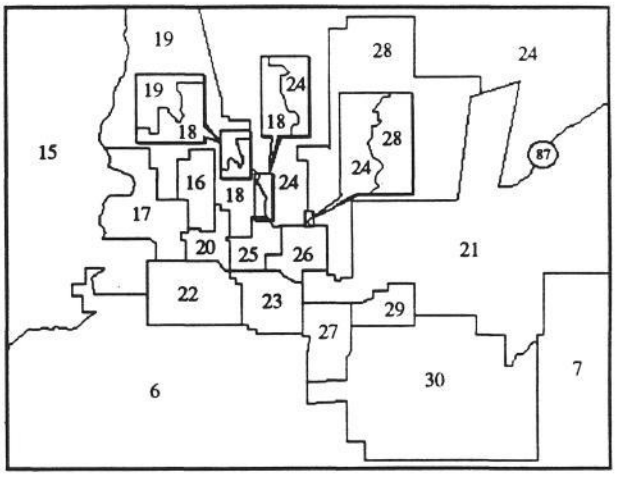

Figure 3. Legislative Districts in the Phoenix Metropolitan Area.

Democrats over the initial Republican plan came largely as a result of alterations ordered by the Justice Department and the courts in regard to the voting power of minorities. Along with changes in Indian districts, the final plan added some 5,000 people in Nogales to District 7, thus boosting Hispanic influence and Democratic chances there. (See Figures 1, 2, and 3 for the final districting plans.)

Table 1 shows the partisan complexion of the various districts in 1982 and election results in the districts in 1982, 1984, 1986, and 1988. It is assumed in the following discussion that the 1982 registration figures were comparable to estimates available to legislators in 1981 when they developed the plan. Twelve contests occurred in each district over the 1980s (four for Senate seats, and eight for House seats).

Registered Democrats outnumbered Republicans in 16 of the 30 districts at the time the legislature drew up the plan. Democrats were, however, in a much weaker position than these figures suggested. Offsetting the potential strength of the party was the historic tendencies of Democrats to vote at a lower rate than Republicans and to be more willing than Republicans to vote for candidates of the other major party.

The plan itself, as undoubtedly intended, also had a discriminatory impact on Democrats. In the districts where Republicans had at least a majority of the

registered voters, the Republican percentages were commonly in the low to mid-50s. Where the Democrats had a majority, the percentages were often in the high-60s, and in one case, the high-70s. The plan, in short, effectively distributed GOP registered voters to maximize the number of districts which the party could control. This practice was particularly apparent in regard to districts in Maricopa County. On the other hand, the plan tended to concentrate the Democratic vote and, thus, limit the number of districts that party could control. The GOP plan amounted to a "concentration-of-them, dispersal-of-us" strategy. [7]

Table 1. Party Registration (1982) and Election Returns (1982-1988) From Arizona Districts.

DISTRICT	REPUB. REGISTRATION (%)	DEM. REGISTRATION (%)	CONTESTS (OF 12) WON BY REPUBS.
1	51.3	41.7	12
2	44.1	46.4	6
3	25.8	67.9	1
4	25.1	70.3	0
5	35.6	58.6	0
6	33.1	62.1	4
7	25.3	67.2	0
8	25.7	68.7	4
9	43.8	45.3	12
10	19.2	69.5	0
11	27.5	58.0	0
12	41.3	45.3	10
13	42.5	44.3	7
14	43.9	44.7	7
15	53.6	40.3	12
16	51.6	40.3	12
17	58.1	36.0	12
18	54.9	37.9	12
19	55.4	36.1	12
20	43.4	44.8	1
21	54.9	36.7	12
22	24.7	69.4	0
23	18.4	75.7	0
24	56.1	34.3	12
25	47.5	44.2	11
26	56.2	36.6	12
27	48.5	39.4	12
28	61.2	28.9	12
29	59.1	33.5	12
30	56.4	34.6	12

Democrats had a majority of the registered voters in only 10 districts under the 1981 legislation. The GOP had a majority of registered voters in 12 districts. Republicans outnumbered Democrats in two other districts. Democrats outnumbered Republicans in the six remaining districts. The GOP, however, figured to be competitive in these districts. This was due not only to turnout and crossover factors but to the existence of a significant number of voters not registered with either party. Observers felt that this swing vote was largely conservative in nature and, because of this, within the reach of Republican candidates. All in all, the GOP could reasonably hope to control 20 of the 30 districts.

Matching up districts with actual voting patterns for the 1980s, we find 14 truly safe Republican districts, that is, ones in which GOP candidates won all the contests. Two other districts were nearly safe for Republicans. These were District 12, where they won 83 percent of the time, and District 25, where they won 95 percent of the time. Included in the 16 safe or nearly safe districts were all 14 districts in which Republicans outnumbered Democrats in 1981. In Districts 9 and 12, the GOP dominated even though the percentage of Republican registrants was lower than the percentage of Democratic registrants. Safely Democratic districts (where Democrats won from eight to 12 of the contests) turned out to be 11 in number. In the remaining, three pivotal districts, where no party won more than six or seven of the elections, Democrats narrowly outnumbered Republicans.

Over the 1980s the GOP controlled both houses. Its margin of control in the Senate, however, was not large

enough to override vetoes from Democratic Governor Bruce Babbitt, who held office during much of this period. Babbitt's use of the veto forced Republicans to deal with Democratic legislative leaders. "As the years went by," Babbitt noted, "we learned very effectively how to hold the Democrats together to use their ability to sustain my veto as a way of bargaining for what we wanted."[8] During the brief tenure of Republican Governor Evan Meecham, 1987-88, Republican legislators had no reason to bargain with the minority party. Democrats, as a consequence, were left out of the legislative process.

Redistricting Process and Issues

Changes made in Arizona's districting since the 1960s have benefited the Republican party. Republicans have usually controlled both houses of the state legislature. Redistricting changes have also meant that the legislature as a whole is more representative of the population. The principal beneficiaries have been the largest counties. Before 1966, Maricopa County, a Republican stronghold, sent two members to the 28-member Senate. It now sends 16 to the 30-member Senate. Pima County now has six senators compared with two prior to 1966. Conversely, the remaining counties have only eight senators, compared to 24 of 28 before 1966. Though less dramatic, similar changes in regional representation have occurred in the House.

Districting is a major event in the legislature. Arizona has not turned the task of redistricting over to a nonpartisan or bipartisan apportionment commission. Yet, while the legislature has the first crack at devising a plan, the governor, individual members of Congress, party organizations, the courts, and the federal Department of Justice may greatly influence what the legislature does in this regard.

The Democratic party, being the minority in the legislature, has been a principal means by which the voters, via the initiative and referendum process, and the courts enter the redistricting process. The mere threat of going to the voters gives the minority party considerable bargaining power. A more common process has been one in which a federal court exerts pressure, the GOP legislature responds with plans labeled invalid on several grounds by the Democrats, and the court requires further reform.

Review of the state's districting plan by the federal Justice Department is automatically part of the process because Arizona fails under the preclearance provision of the federal Voting Rights Act. The chief concern with this review is whether a plan dilutes the rights of minorities. Compared to a constitutional case in court, the preclearance process does not require proof of discriminatory intent. Rather, the Justice Department only needs evidence of discriminatory effects.

Conflict over redistricting in Arizona occurs on a regional basis as well as party, racial, or ethnic group bases. Regional interests and conflicts are likely to surface because population trends will require that Maricopa County receive additional representation. These will come at the expense of the rural counties. If the past is any sign, legislators are also likely to protect incumbents. With a few exceptions driven by partisan considerations (that is, targeting specific members of the minority party), the only districts up for massive recarving have been those held by members who are not seeking reelection.

Many of the issues that characterize the Arizona redistricting process also surface in congressional redistricting. One difference is that the "one person-one vote" standard is more demanding for congressional than for legislative district boundaries. The state, thus far, has only experienced the more agreeable problem of adding representatives. The state now has five congressional seats and will add at least one more because of its growth.

NOTES

1. John Kolbe, "Politically Demented Souls Will Thrill to Redistricting Rhubarb," *Phoenix Gazette*, November 30, 1981, Section A, p. 6.

2. For a discussion of reapportionment politics in Arizona before the 1980s, see J.L. Polinard, "Arizona," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 36-44.

3. *Phoenix Gazette*, May 11, 1981, p. 1.

4. Interview with Senator Bill Hardt, May 28, 1985.

5. *Phoenix Gazette*, December 7, 1981, Section A, pp. 1, 4.

6. Ibid., March 23, 1982, Section B, pp. 1, 2.

7. See Leroy Hardy, *The Gerrymander: Origin, Conception, and Reemergence* (Claremont, CA: Rose Institute of State and Local Government, 1990).

8. Interview with Bruce Babbitt, March 4, 1989.

ARKANSAS

DONALD V. WEATHERMAN

The primary focus of this essay is the redrawing of Arkansas' 100 House and 35 Senate districts after the 1980 census. The Arkansas Constitution places the responsibility for redistricting with a Board of Apportionment which consists of the governor, the attorney general, and the secretary of state. As in years past, the courts, both state and federal, will surely play a major role in Arkansas' redistricting.

THE 1981 REDISTRICTING

The redistricting plan of 1981 created 35 single-member Senate districts and a mixture of single-member and multiple-member House districts. (See Figures 1 and 2.) Single-member districts elect 74 of the House members with the other 26 members coming from two- and three-member districts. Pulaski County, the most populous county in the state, has five three-member districts. The remaining multiple-member districts are two-member districts.

The policies that guided the 1981 apportionment plan were both reasonable and consistent with those used in 1971.[1] The chief aim of the Board of Apportionment was equality of population. Beyond this, the Board members wanted to alter the 1971 plan as little as possible. They did not want to split cities or cross county boundaries any more than was absolutely necessary, nor did they wish to place existing incumbents in a position of challenging one another. As usually happens, these policies were not consistently applied.

CHALLENGES TO THE 1981 APPORTIONMENT

Redistricting has had little effect on the partisan makeup of the Arkansas legislature. While Republicans have made some minor gains over the past decade, they still have no significant impact on the legislative process. Republicans hold only nine seats in the state House and four seats in the Senate—but these are the most seats the Republicans have held in either chamber of the state legislature in this century.[2]

The main story behind Arkansas' 1981 redistricting was the 1982 congressional extension of the 1965 Voting Rights Act. More specifically, it was Congress's desire to overturn the Supreme Court's 1980 ruling in *Mobile v. Bolden*, which argued that a finding that the Voting Rights Act had been violated depended on the plaintiff's ability to prove intent to discriminate. The 1982 amendment altered the wording of Section Two

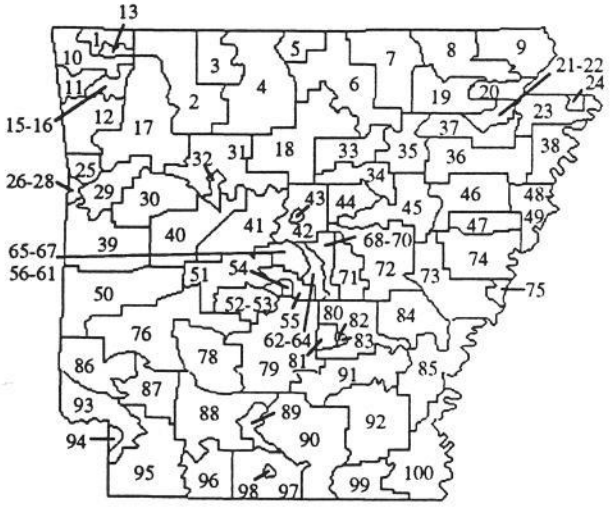

Figure 1. Arkansas House Districts.

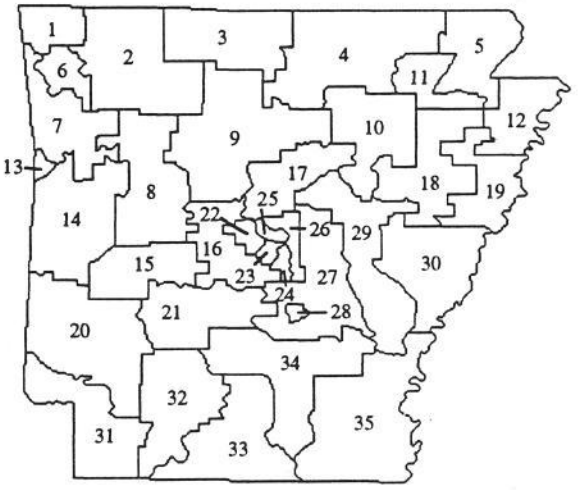

Figure 2. Arkansas Senate Districts.

of that act so plaintiffs have only to prove discriminatory *results*. As a consequence of this change, two district court cases have forced the redrawing of legislative lines in Arkansas. In *Smith v. Clinton* (1988), the court established the guidelines for creating "supermajority" districts. [3] The court's opinion stressed the fact that minorities "must have something more than a mere majority even of voting age population in order to have a reasonable opportunity to elect a representative of their choice."

With this principle set, the court then argued for the 65 percent figure of the total population that is supported by the Department of Justice. They defended this figure, arguing that 5 percent would offset the fact that nonwhite populations tend to be younger, another 5 percent would offset the traditionally lower voter registration for minorities, and 5 percent more would offset lower voter turnout among minorities. They further added: "When voting-age population figures are used, a 60% nonwhite majority is appropriate."

The ruling in *Smith* paved the way for the second important challenge to the 1981 redistricting plan. In *Jeffers v. Clinton* (1989), the plaintiffs wanted the plan of apportionment declared unlawful.[4] They requested new districts for the 1990 elections, and asked that the state of Arkansas be placed under the preclearance procedure set forth in Section Three (c) of the Voting Rights Act.

The court sided with the plaintiffs on all three points and ordered "affirmative gerrymandering." [5] The disputed districts were all in the Delta region of the state (primarily the southeastern area along the Mississippi River). The dispute involved 25 House districts and four Senate districts. After noting that there is extreme racial polarization between black and white voters in this region, the court observed: "With the exception of House district 82, in Jefferson County, there are no districts, House or Senate, with a majority-black voting-age percentage. A number of such districts, nine in the House and two in the Senate, could have been created."

Result of Court Ruling

Both the *Smith* and *Jeffers* cases ordered the redrawing of district lines. In *Jeffers*, the court "suggested" that the Board of Apportionment give serious consideration to the districts presented by the plaintiffs, because they demonstrated "a considerable degree of skill in drawing them." The court also recognized that the creation of majority-black voting-age districts would have some ripple effect on adjacent districts, but urged that this "be limited as much as possible." The judges further noted that while the law does not require any particular number of majority-black districts, "[w]e know, and have found in this opinion, how many such districts can be created, and we also know that their lines can be drawn so as to make them reasonably compact and contiguous." This led to "a sort of presumption" that any plan the Board of Apportionment submits "should contain that number of majority-black districts."

The approved plan has insured an increased number of black legislators in the Arkansas General Assembly. One important side effect of this redistricting plan was that two of the state's senior senators were placed in the same district. In the primary race that followed, Senator Jay Bradford defeated the man who had been the most powerful member of that chamber, Senator Knox Nelson.

The 1991 Reapportionment

Redistricting always causes legislators anxiety, but the wait for the 1991 plan may be especially difficult. Three factors will be of paramount importance. First, and most obvious, is the membership of the Board of Apportionment. Since all three members will be Democrats, there will be a greater opportunity for partisan gerrymandering than there was in 1981.

The second factor that will clearly influence the 1991 plan is the court rulings in both *Smith* and *Jeffers*. The later case, it must be remembered, has placed Arkansas under the preclearance provision of Section Three (c) of the Voting Rights Act. This will certainly make it hard for the Board to protect incumbents from being

placed in the same district. Affirmative gerrymandering will also require that less consideration be given to political and natural boundaries when drawing new districts. Equality of population may be the only criterion of the 1981 Board that will be maintained in 1991.

The third factor that will influence redistricting is demographic in nature. As in the previous decade, the main population growth has occurred in the northwestern portion of the state. This is the region within the state where the Republican party is strongest. The combined effect of all three of these factors will make partisan gerrymandering by Arkansas' Democrats unusually difficult.

Congressional Redistricting

Arkansas' representation in the U.S. Congress will probably not change numerically in the decade of the nineties, but this may be where the Democratic party will have its greatest opportunity. Currently, Arkansas has one Republican and three Democrats in the House of Representatives. The 1st and 4th Districts are safely Democratic, the 3rd is increasingly safe for the Republicans, and the 2nd continues to be a swing district. (See Figure 3.) In fact, the 2nd District was regained by the Democrats in the November election. The Republican incumbent, Tommy Robinson, made an unsuccessful bid for the Republican nomination for governor, and Democrat Ray Thornton was elected. The state's other three incumbents were reelected as expected.

Figure 3. Arkansas Congressional Districts.

The plaintiffs in the *Jeffers* case have already announced their intention to challenge the new congressional lines if there is not one majority-black district. The current 1st and 4th Districts are the logical areas where this would have to occur. These are also the two districts that will probably need territorial expansion to adjust for their shrinking populations. Where and how these districts cut into the current 2nd and 3rd Districts will be decisive.

As with the state legislative districts, the courts will probably play a much larger role in Arkansas' congressional redistricting in the 1990s than they have ever played before.

NOTES

1. Robert Johnston, "Arkansas," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 45-52.
2. Diane D. Blair, *Arkansas Politics and Government* (Lincoln: University of Nebraska Press, 1988), p. 38.
3. 687 Fed. Sup. 1310.
4. 730 Fed. Sup. 196.
5. Leroy Hardy, *The Gerrymander: Origin, Conception and Reemergence* (Claremont, CA: Rose Institute of State and Local Government, 1990), p. 14.

CALIFORNIA

T. ANTHONY QUINN

For four decades since the Republicans used it effectively in 1951, gerrymandering has been at the heart of reapportionment practice in California. In 1951, the Republican party gerrymandered California to keep itself in power. In 1961 Democrats repaid the deed by doing the same to consolidate their power. Interestingly, neither party succeeded in holding power for the decade. In 1971, the redistricting process deadlocked;[1] in the 1980s, a frustrated minority party took the issue to the people on four separate occasions.

As a prelude to the impending battle over redistricting, the California Assembly spent 1980 in a three-ring civil war. Speaker Leo McCarthy's Democratic faction squared off against Howard Berman's supporters in a number of Assembly primaries, and both factions faced Republican candidates that fall. Electorally the outcome was inconclusive. The GOP gained only two seats, opening the 1981 session with 32 of the 80 members. The McCarthy-Berman leadership struggle continued center-stage and into the breach walked Willie Brown, a flamboyant San Francisco assemblyman who put together a coalition of the two parties to claim the speakership for himself.

Brown had spoken out in favor of a reasonably amicable redistricting settlement in 1971, so both parties were hopeful that the 1981 legislative redistricting could occur without a repeat of the bitterness of the previous decade. With 48 seats and the governorship, the Democrats did not need to gain more Assembly seats. So 1981 dawned with an odd Republican-Democratic coalition speakership in the Assembly, the first-ever black speaker having been elected with more Republican than Democratic votes.

But politics is never so orderly as politicians would like it and the 1980 elections produced two results that promised political turmoil. One was the magnitude of the Reagan victory in California, which added four Republicans to the congressional delegation and frightened the Democrats. The other was the defeat of long-term state Senator Al Rodda after a campaign the Democrats thought very unfair. A further complication was the gain of two additional congressional seats which both parties believed they deserved.

No individual more dominated the congressional redistricting process in 1981, or better mastered its complexities, than Congressman Phil Burton of San Francisco. He first discovered the process when his own congressman was the victim of a gerrymandered district in 1951. In the 1960s, he helped shape Democratic party strategy as a legislator, and in the 1970s and 1980s he personally dominated congressional reapportionment politics.

The Burton of 1981 would be far different from the Burton who drew a plan to save every incumbent in 1971. This was a Burton bent on revenge: he wanted to show up those Democrats who failed to support him for majority leader in 1976, to beat the smug Republicans at their own game, and to rid the congressional delegation of those members he thought were bad for California. This was Burton's goal stated to party leaders, and this is precisely what he did.

After months of relative secrecy, Congressman Burton on September 9 walked into a Sacramento conference room to discuss congressional redistricting. One reporter described Burton's two-hour show as a "virtuoso performance, more than worthy of a man who aspired to the Speakership of the U.S. House of Representatives." Dan Walters of the *Sacramento Union* described the plan Burton unveiled: "It resembles nothing so much as a jigsaw puzzle designed by an inmate of a mental institution. Districts dip and swirl around, picking up a few voters here, and a few more there."[2] Burton himself said of his brother, Representative John Burton's district, "Oh, it's gor-

geous, it curls in and out like a snake," and "It was my contribution to modern art." [3]

Passage of the bill detailing the Burton masterwork was a formality. Speaker Brown had earlier accepted the Burton plan because it removed potential enemies from the Assembly. On Friday, September 11, Burton's redistricting went before a joint Senate/Assembly conference committee for a hearing which lasted only an hour and included no maps of the districts. Although the speaker had announced that no more business would be conducted on the Assembly floor that night, at about eight o'clock the plan was called up for a vote. Republicans showed a colored rendition of two of the more blatantly gerrymandered seats in Los Angeles while roundly denouncing Burton, the Democrats, Speaker Brown, and Howard Berman. But after an hour of speeches, the plan sailed out of the Assembly on a 44-to-29 vote. Two days later the plan passed the Senate, on another party-line vote, and on September 16 Governor Jerry Brown quietly signed the Burton plan into law.

The congressional redistricting was passed by a legislature already torn apart by its own line-drawing. Soothing springtime promises of an "easy" redistricting had given way to nasty battles in both houses, with the most heavy-handed partisanship occurring in the Senate.

In the Senate, the Democratic leadership decided on a two-prong strategy. First, they would protect and strengthen the seats of all 23 incumbent Democrats so there would be no chance of their losing control of the Senate in 1982. Second, they would take advantage of a serious cleavage in the Senate GOP caucus and punish those members deemed instrumental in the defeat of Senator Rodda.

By mid-summer districts were drawn for the Democratic senators, and most liked what they saw. All 23 had been drawn winnable districts. But placating the Republicans was not going to be easy. One bit of leverage not previously employed was to switch district numbers from odd to even, and vice versa, so that an incumbent would have to seek reelection in the midst of his term. A second strategy was to threaten loss of committee chair positions. The threats were sufficiently convincing to three Republican senators, causing them to support the Senate redistricting plan when it came up for a vote on September 11.

Despite all the hopes that the Speaker Brown-Republican coalition would allow an easy Assembly redistricting, internal pressures soon caused fissures in the coalition as well as between Brown and fellow Democrats. After months of internal maneuvering, a conference was held in the speaker's office in late August. Brown laid out the Democratic objective: create 49 seats for the 49 Democrats and 31 seats for the 31 Assembly Republicans. But that could not be done without collapsing two GOP seats. From this time on, conversation went downhill and the partisan bickering became more fierce, including a reported attempt to unseat Speaker Brown,[4] and Republican strategy not to cast votes for any bill requiring a two-thirds vote until redistricting was settled. This strategy killed a proposed legislative pay raise, which further escalated the smouldering conflict.

Final passage of the Assembly plan was somewhat anti-climactic, with all passion spent and the outcome a foregone conclusion. The most interesting moment in the Assembly debate came when one Republican compared the Democratic remapping to the Holocaust, and said the Democrats' careful planning to eliminate some Republican incumbents matched what the Nazis had done to the Jews.[5] The Assembly passed the plan on a party-line 44-to-35 vote.

The Democrats had now completed the business of passing three redistricting bills. If the Republicans were to stop them, it would have to be done outside the legislative process. GOP warnings that they would do so were becoming more frequent and louder. By early September, an all-but-irrevocable decision had been made by Republicans to put redistricting to the people through the complicated process of a state referendum. The California Constitution provides that: "The referendum may be proposed by presenting to the

Secretary of State, within 90 days after the enactment date of a statute, a petition . . . asking that the statute or part of it be submitted to the electors." The constitution also strongly implies, and it had been practiced in other referenda, that a valid referendum stayed the application of the referred law.[6]

So the Republican strategy in a nutshell was this: qualify a referendum, and stop the Democratic redistricting plans until the people had had a chance to vote on them.

But it wasn't quite that simple. A proponent of a referendum has only 90 days to gather the nearly half-million requisite signatures. This would be time-consuming and would cost as much as a million dollars. The media proved a helpful ally to the Republican efforts by excoriating the Democratic plans and urging people to sign the referendum petitions. On December 15, the 89th day of the drive, Secretary of State March Fong Eu announced that the three referenda had qualified with more than 800,000 valid signatures on each petition.

That same week, the GOP announced it was joining with the citizen lobby Common Cause to sponsor an initiative to remove redistricting from the legislature and entrust it to a bipartisan commission. The Democrats countered by preparing lawsuits against Republican efforts. The California Supreme Court handed down its decision on January 28, 1982. The crucial finding in the 4-to-3 decision was that the only practical and constitutional alternative available for use as the temporary court plan for the 1982 elections was the 1981 legislatively passed plan.[7] Justice Richardson insightfully pointed out an "intolerable anomaly" in his vigorous dissent. Should the voters reject the Democratic plans, the new legislature elected under those same laws would draw districts applicable for the rest of the decade.[8] Indeed, his warning proved to be the actual result.

In the June 1982 elections, the voters defeated the three Democratic plans with referenda votes exceeding 60 percent on each plan. This encouraging citizen support prompted the GOP to qualify Proposition 14, calling for a redistricting commission for the November 1982 election. Ineffective leadership and lack of a campaign accounted for the proposition's defeat by a 55-45 percent vote. In that same election, Democrats gained six congressional seats but underdog Republican Attorney General George Deukmejian won the governor's seat over Los Angeles Mayor Tom Bradley in the closest gubernatorial race of this century.

Deukmejian's victory prompted the Democrats to hurry through a second round of redistricting plans before Democratic Governor Jerry Brown left office. Brown called a special session of the legislature in December to do just that. The Democratic majority redesigned the districts of 1981 which had been voided by the voters. In general, the new plans recreated the districts used for the 1982 elections. The Republican minority came out somewhat better in the legislature. Republican incumbents joined the Democrats in the game of creating districts to give them greater mutual security. Governor Brown signed these three new bills on the morning of his last day in office—January 2, 1983.

But redistricting did not end there. In early 1983, Republican Assemblyman Don Sebastiani masterminded an initiative drive challenging the new apportionment laws. The proposal was unique in its comprehensive detail, which included maps showing new boundaries for each of the 45 congressional, 40 Senate, and 80 Assembly districts. Many of the proposed districts were competitive districts, with a number threatening the security of the current incumbents. Democrats appealed to the state Supreme Court to accept their case that the initiatives were unconstitutional, and the Court agreed to take up the case in August 1983.

By a 6-to-1 vote, the Court rendered its decision on September 15 by declaring the initiatives unconstitutional, thus removing them from the ballot. The majority ruled that the initiatives were intended to create "an exception to constitutionally mandated and long established rule that redistricting may occur only once

within the ten year period following the federal census."[9] The decision prompted Assembly Speaker Willie Brown to comment to the party faithful that "Sister Rose and the Supremes took care of that little matter [the Sebastiani Initiative]."[10] The Court's vote mirrored its composition, since only one of the seven members had been appointed by a Republican governor.

Shortly after the Court threw Sebastiani off the ballot, Deukmejian convened a meeting of Republican leaders and told them he wanted to draw up another redistricting commission proposal and put it on the ballot in 1984. Deukmejian had been prodded in this direction by his political advisor Sal Russo, who assured him that the legislature then serving was frozen in place by the 1982 bipartisan redistricting. This meant it was likely there would never be a favorable legislature for the governor to deal with, even if he served two full terms. Deukmejian was unhappy with the attitude of Democratic leaders toward both his administration and himself personally. Particularly ornery were Senate Democrats who, for no particular reason, were keeping him from living in the governor's mansion, and were unusually hostile on many policy issues.

The resulting product bore a close resemblance to Proposition 14, with one important difference. Rather than partisan officeholders, as was the case with the first commission, the governor's commission would consist of retired appellate court justices. On November 14, 1982, Governor Deukmejian released his proposal to the press and sent the initiative to the Attorney General for titling so it could be circulated. Like Proposition 14, it was a constitutional amendment, which meant obtaining nearly one million signatures before it could be put on the ballot. The proposal qualified for the November 1984 ballot and would have empowered the commission to create new districts for use in the 1986 elections. The measure was defeated by the voters, as the campaign by the Democrats not to "politicize the judiciary" prevailed over the Republicans' efforts to reform the districting process.

As a last resort to find a remedy to void the partisan congressional gerrymandered plans enacted by the Democrats, Republicans filed suit in federal courts, challenging the legality of the district lines. As the case lingered for decision, the gerrymandered districts continued to produce the intended results. Democrats maintained the huge majority of seats won in 1982, and in 1984 claimed 27 of the 45 congressional seats even though Republican congressional candidates received a slight majority of the two-party vote. Only one congressional seat shifted in the four-election period 1982-1988. While a few state legislative districts shifted occasionally, in the elections of 1986 and 1988, all 45 incumbent California House representatives won reelection and only two had victory margins of less than 15 percent.

Thus, the 1982 districting plans were highly successful for incumbents. According to one source:

> Since 1984, incumbents in the State Senate, Assembly and California Congressional delegation have won 393 races and lost only 7 . . . there have been 188 races in which the winner collected 70% of the vote or more, while in only 18 elections has the margin been as thin as five percentage points.[11]

Finally, in 1989, the United State District Court for Northern California did render its decision in *Badham vs. Eu*, disallowing the Republican challenge.[12] This action insured that the 1982 drawn districts would continue to work for Democratic and incumbent advantage through the elections of 1990.

As implied in the descriptive indictment of the 1981 and 1982 redistricting plans for California, the line-drawers showed unusual skill in creating gerrymandered districts. Examples of each species of gerrymandering by composition, form, and purpose are clearly evident in the districts for congressional seats and both state legislative chambers.

Two striking but not totally atypical examples of gerrymandered state legislative districts are the 37th Senate and 38th Assembly districts. The former includes Imperial County and parts of Orange, River-

side, and San Diego Counties. This particular concentration of voters gives the Republicans an 8-to-5 advantage. The Assembly district twists and turns to embrace the city of Hidden Hills, a part of the city of Los Angeles, and six other cities plus unincorporated county areas. Here the Republicans hold a 6-to-5 registration advantage. Each district graphically illustrates how county and city boundaries were ignored in drawing district lines.

An early weathervane of the 1990s tested the redistricting impulses of California voters in the June 5, 1990, primary. Two initiatives impacting on the redistricting process went down to decisive defeats after costly but clever campaigns against them. One, known as the Flynn initiative, would have retained redistricting power in the legislature but established strict criteria for laying out districts. A second initiative was backed by a nonpartisan coalition known as Californians for Political Reform. Under this initiative, authority to draw district lines would have passed from the legislature to a bipartisan commission of 12 members.

In the end the Democrats prevailed throughout the 1980s, although they probably would have lost without the crucial assistance of the California Supreme Court in its two key rulings on the referendum and the Sebastiani plan. But Republicans cannot blame all their problems on the Court. Three times they went to the people with their own reforms, and three times they were rejected. Had the GOP placed a commission proposal on the June 1982 primary ballot along with the referenda, however, the party might have succeeded in passing that reform. Feelings were still red hot on the redistricting issue in June, but by November the passions had cooled; the GOP was busy with other campaigns, and the redistricting commission initiative fell through the cracks.

The GOP made other errors. Assemblyman Sebastiani should have qualified a constitutional amendment instead of a statutory initiative for his plan. There was some historical basis for a once-per-decade rule, and his attorneys had discovered it early in the qualification process. But Sebastiani was strapped for funds and could not afford to get the number of signatures required for a constitutional amendment. But it would have blocked the Democratic attack on the special election, and he should have realized the need to make his initiative "Rose Bird-proof."

In one sense, though, the Republicans did not do too badly. The second redistricting plans gave them an opportunity to make safer the districts won from the Democrats in 1982. (See Table 1 for a summary of party strength in the California legislature throughout the 1970s and 1980s.) Assembly Republicans actually came out of the process a little better off than they were when they started, with 32 seats made safer for their incumbents. They had just 31 seats, several of which were very marginal, when redistricting began in 1981. In the Senate the overall result was a two-seat loss for the GOP, but again marginal districts were made safer. Only in Congress did the Republicans take a bloodbath which radically changed the numbers. The Burton plan effectively repealed all the gains of the first Reagan landslide. The gerrymander performed so well in 1984 that Republicans defeated only one Democratic congressman.

The GOP had a final chance to kill the Burton plan in January of 1983, by qualifying a second referendum against it. Governor Deukmejian could have called a special election on that referendum in late 1983, with far less political heat than was generated by his call for the Sebastiani special election; and the Burton plan might have been killed once and for all. With a Republican Governor, the GOP need not have feared another Burton-style gerrymander. To do this, however, would have required leadership from the Republican establishment in Washington, and none was forthcoming. Individual congressmen were not in position to launch a referendum from three thousand miles away, and this final chance to stop Burton slipped away.

And finally the future. Much has been said and written about the need for redistricting reform. Congressman Burton is dead now, and many Democrats speak with

Table 1. Party Composition of the California State Legislature, 1972-90.

	SENATE				ASSEMBLY			
YEAR	REPUB	REPUB %	DEM	DEM %	REPUB	REPUB %	DEM	DEM %
1972	19	47.5	19	47.5	29	36.3	50	62.5
1974	15	37.5	25	62.5	25	31.3	55	68.8
1976	14	35.0	26	65.0	23	28.8	57	71.3
1978	14	35.0	25	62.5	30	37.5	50	62.5
1980	17	42.5	23	57.5	32	40.0	48	60.0
1982	14	35.0	25	62.5	32	40.0	48	60.0
1984	15	37.5	25	62.5	33	41.3	47	58.8
1986	15	37.5	23	57.5	36	45.0	44	55.0
1988	15	37.5	24	60.0	33	41.3	47	58.8
1990	12	30.0	25	62.5	32	40.0	47	58.8

sincerity about wanting to avoid a redistricting imbroglio again. But Burton teaches one simple and important lesson: it is impossible to remove politics from redistricting. Whether or not redistricting creates such a conflict of interest that it must be removed from the legislature, the fact remains that the people had several opportunities to take the process away from the legislature, and failed to do so. Burton, for all his machinations, had a simple, understandable political goal in redistricting: to protect the liberal agenda from the Reagan revolution by loading the California delegation with liberal Democrats.

The redistricting battle of the early 1980s pitted two philosophies and two parties against one another in a classical political struggle. As Willie Brown once said, redistricting is the most fundamental and most personal issue a legislator confronts, and legislators did indeed act very much as politicians concerned with their own survival and self-interest—but then who would have expected them to act otherwise? For Governor Deukmejian, his initiative was an effort to reform a process he knew from personal experience to be flawed. For Assemblyman Sebastiani, it was an opportunity to challenge the established political order as only a true maverick can.

The motives of the California Supreme Court, however, are less clear. One cannot criticize politicians for being politicians, or mavericks for being mavericks. But the Court should have heeded the wise advice of Justice Mosk: redistricting is at the heart of the political thicket, and only a foolish Court would have entangled itself the way the Bird Court did. It paid a price in credibility that was perhaps greater than that paid by the myriad politicians who played the redistricting game in the 1980s. And it leaves unclear how redistricting will be resolved in 1991, when the time to redraw the lines rolls around again.

One thing is evident, however, and that is that the political setting in California has changed since 1981-82. Republican Pete Wilson was elected governor by a narrow margin over Diane Feinstein, so the Democrats cannot rush through redistricting bills as they did a decade ago before a friendly and partisan governor gave up his office to a successor of the other party. Second, the California Supreme Court has been largely reconstituted and now has a more conservative majority. Thus, the Democratic-controlled legislature may prefer to cooperate with a Republican governor to enact a plan acceptable to both parties, rather than risk close judicial scrutiny.

The defeat of five incumbent legislators seeking reelection by the voters in the November 1990 election may have sent a chilling message to legislators, since these election results represented the biggest incumbent defeat in the decade. The passage of Proposition 140 clearly sent such a chilling message, since voters

approved limiting legislative terms, reducing legislative staff, and cutting back on expenditures by and for the legislature—despite a costly and often misleading campaign to defeat the measure. This initiative is currently being challenged by the lawmakers before the state Supreme Court.

Thus, while change in the political setting in California is certain, its impact on how redistricting will be resolved in 1991 is still quite unclear.

NOTES

1. For a full account of these struggles, see T. Anthony Quinn, "California," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 53-57; and Quinn, *Carving Up California: A History of Redistricting, 1951-1984* (Claremont, CA: Rose Institute of State and Local Government, 1984).
2. *Sacramento Union*, September 11, 1981.
3. *San Francisco Chronicle*, September 11, 1981.
4. *Sacramento Union*, September 1, 1981.
5. *Sacramento Bee*, September 16, 1981.
6. California Constitution, Article II, Sections (a) and (b).
7. *Assembly v. Deukmejian*, 30 Cal. 3rd 658 (1983), majority opinion.
8. Ibid., dissent of Justice Richardson.
9. *Legislature v. Deukmejian*, 34 Cal. 3rd 658 (1983), majority opinion.
10. *Sacramento Bee*, February 9, 1984.
11. *Los Angeles Times*, March 11, 1990.
12. *Badham v. Eu*, 694 F. Supp. 664 (N.D. Cal 1989).

COLORADO

R.D. SLOAN, JR.

Colorado is one of the states where reapportionment of the legislature is now the responsibility of a bipartisan reapportionment body, the 11-member Colorado Reapportionment Commission (CRC) created in 1974.[1] The CRC first performed this duty in 1981-82, and it will carry out the same task for a second time in 1991-92. The size of the state legislature remains the same, 65 representatives and 35 senators. In the 1980s, the state population will have increased approximately 18 percent, and this is down sharply from the more rapid growth of nearly 31 percent during the 1970s.[2] But population growth (and decline) during the 1980s is distributed unevenly throughout the state, so that extensive changes in state legislative and congressional boundaries will be needed.

For congressional redisricting, the Colorado General Assembly is itself responsible. With the 1980 census, the number of congressional seats for Colorado increased to six from five (in the 1960s, Colorado had just four congressional seats). But with the 1990 census, the number of congressional seats for the state will remain constant, a result of the somewhat slower state population growth. As a result, massive changes in district lines may not happen. But again, because of uneven population changes within the state, some adjustments in boundaries will have to be made.

COLORADO REAPPORTIONMENT COMMISSION

We will turn first to the structure and process of reapportioning the state General Assembly by the CRC in 1981-82. The 1974 initiated amendment creating the CRC carefully designed a new structure and process of reapportionment. The 1974 amendment resulted directly from the widely felt frustration in 1972 when the state legislature, in reapportioning itself, encountered extreme difficulty in accomplishing the task. Overall, the new 1981-82 procedure was an improvement over the traditional method with the legislature, though the new procedure was not without its own problems. The 1974 amendment creating the CRC was an initiated proposal (ballot proposal no. 9) sponsored mainly by the state League of Women Voters; in the general election this measure gained a strong popular endorsement, 386,725 yes votes against 255,725 opposed.[3]

In the summer of 1981, the CRC was first activated under the provisions of the 1974 amendment (now Article V, Sections 46, 47, and 48, of the Colorado Constitution). Of the CRC's 11 members, four members are chosen by the majority and minority leaders in the General Assembly; so, not surprisingly, two Republicans and two Democrats were named. Governor Richard Lamm, Democrat, chose three members, all Democrats. Chief Justice Hodges of the Colorado Supreme Court chose the remaining four members, and four of his appointees were Republicans, making the balance on the CRC six Republicans and five Democrats. Hodges was a Republican, and he was the last of the justices to be selected to the state Supreme Court under the old system of partisan elections. (Colorado has since shifted to a version of the nonpartisan Missouri Plan of choosing judges).

From August through October the CRC drew the lines of all the new Senate and House districts. This was the preliminary plan, or Plan A. The CRC began with the somewhat easier task of drawing the district lines for rural areas. Then it closed in on the more complicated districts in the main metropolitan areas, where most of the population was located and where the population was increasing rapidly in many places (the whole metropolitan Denver region, Colorado Springs, Pueblo, Ft. Collins, and Greeley). Many decisions were made by 6-to-5 votes, but the CRC did get the lines drawn by late October.

The next step, as spelled out in the state constitution, was to hold public hearings throughout the state on the

Table 1. Party Balance in the Colorado General Assembly, 1976-1986.

CHAMBER	1976	1978	1980	1982	1984	1986
House	35R, 30D	38R, 27D	39R, 26D	40R, 25D	47R, 18D	40R, 25D
Senate	18R, 17D	22R, 13D	22R, 13D	21R, 14D	24R, 11D	25R, 10D

proposed Plan A districts. Subcommittees of the CRC and staff attended these meetings and took comments from local officials and citizens. Twenty-one hearings were held around the state from November 2 through December 7. A few meetings were sparsely attended and noncontroversial. But others drew attendances of 100 or more people, and often the input was very specific and critical of the proposed districts.

Following the testimony at these public meetings across the state, the CRC returned to the "drawing boards" to revise its preliminary Plan A to take into account at least some of the numerous local complaints and recommendations. What finally emerged was Plan B, or the "final plan," incorporating local inputs. The next step was to submit this revised proposal to the Colorado Supreme Court for review and approval.

It was at this time (December 1981) that partisan bargaining on the CRC grew more intense. On a number of issues, the minority Democrats were quite dissatisfied, though the Republicans could always outvote them. However, the Democrats did threaten to write a minority report to the court, setting out all of their disagreements with the Republican majority. The Republicans feared such a result, a divided majority-minority report, would be weak indeed. It would probably invite a very close and critical court scrutiny of all specific details that were in dispute.

Finally a unanimous report for Plan B was achieved. It was still a compromise that satisfied no one, and some of the Democratic members continued to have strong reservations. The Republican chairman, Robert E. Lee, admitted,

> It's been a tough, tough five months. We discovered you can't always do what you want. And it hasn't been possible to please everyone. But I think we've got something the state can go through the next ten years with. I hope the court finds we acted in good faith.[4]

The strategy of a unanimous report appeared to succeed; the court reviewed Plan B and accepted all of the district lines. The court in effect observed that the new districts might not be perfect in every respect, but that they were reasonably acceptable.

With the new procedure, reapportionment was completed on schedule. Partisanship was not abolished, as some of the supporters of the new method had hoped, but the CRC still managed to produce districts that were reasonably fair. No really drastic instances of gerrymanders stood out. The Republicans gained marginally, but the pattern of population growth in the 1970s (to the suburbs) accounted for most of this. For example, the city and county of Denver were Democratic strongholds, but between 1970 and 1980, their populations remained virtually static. So Denver suffered a relative loss in comparison with the Republican suburbs, which grew rapidly. In the reapportionment of 1981-82, Denver lost four of its 15 House seats and two of its eight Senate seats.

Table 1 shows no significant partisan shift in the General Assembly from 1980 to 1982 (the elections before and after reapportionment). No overall change can be identified as a consequence of gerrymandered reapportionment.

Also in these years, usually about half a dozen Senate seats (out of 17 or 18 senators up for election every two years) and from about a dozen to over 20 House seats (of all 65 representatives up for election every two years) were uncontested, but again there is no pattern that can be credited to reapportionment. Democrats

win by default in some blue-collar and Hispanic districts; Republicans run unopposed in some suburban and rural regions.

Passing comment should be made about CRC's work on deviations of population and percentages of ethnic populations by district. For district population deviations, the CRC came within the Colorado Constitution's standard of no more than a 5 percent deviation (3.98 percent for the Senate districts and 4.94 percent for the House districts). Ethnic population was tightly confined (not diluted) for African Americans within a very few districts, since that minority is mostly concentrated in a very few regions of Colorado. However, it was not possible to do this with the Hispanic population, which is distributed much more widely across the state.

Finally, there has been no significant effort to change the CRC to make it more nonpartisan rather than bipartisan. Also, no movement has surfaced to abolish the CRC and return to the old system of reapportioning of the legislature by the legislature itself. In most recent years, there has been no public discussion or polling done regarding the CRC, but an educated guess would be that the general public is reasonably satisfied with the existing system.

Reapportionment of Congressional Districts

The relatively smooth CRC reapportionment of the General Assembly stands in stark contrast to the seemingly endless efforts by the legislature (with vetoes by the governor) to redistrict Colorado's six congressional seats. In 1981 the Republicans had strong legislative majorities: 39 to 26 in the House and 22 to 13 in the Senate. Significantly, these margins were insufficient to override vetoes from Democratic Governor Lamm. As an aside, after the 1984 election, the Republicans did have what they liked to call a "veto-proof legislature" (margins above two-thirds in both chambers), but they lost that again in 1986.

In 1981, three Democrats and two Republicans represented Colorado in the U.S. House of Representatives. But since the 1980 census gave Colorado an additional seat, six districts had to be drawn, and the old district lines would change greatly. Again, the direction of population growth favored the Republicans. Democratic strategy (from Governor Lamm, the Democrats in the General Assembly, the three incumbent Democratic U.S. representatives, and Democratic party officials) was to protect the three Democratic incumbent representatives and to concede that Republicans would take the remaining three seats; the two Republican incumbents would be safe and the Republicans would also carry the new sixth seat. By contrast, the Republicans had greater ambitions for a 4-2 split, or even for a 5-1 margin.[5]

The first Republican reapportionment plan passed the legislature on almost straight party-line votes on June 6, 1981. Governor Lamm vetoed it on June 12. The governor did not give precise reasons for his veto other than to state that "I know it is possible to develop a better, fairer, and more responsible plan than that which has been presented to me." And he went on to predict the possibility of a tedious conflict:

> We have a situation in which one party controls the legislative branch while another party controls the executive branch. While the ingredients are present for a protracted and divisive partisan battle, and perhaps even a stalemate, I am very hopeful that we can now cooperate and compromise to formulate a plan which truly represents all of Colorado.[6]

With increasing exasperation on all sides a second Republican reapportionment plan went to Governor Lamm and was vetoed on July 17. Still a third Republican plan reached him with the same result, a veto on October 8.

A fourth effort at reapportionment was underway by late October and into November; some signs of compromise (and weariness) in the legislature between Republican and Democrats could be detected.

But by this time some Republicans were exploring another option. Five Republicans, one from each of the existing congressional districts, went to the U.S. district court for Colorado to petition for judicially imposed reapportionment. The Republican state ex-

Table 2. Colorado Congressional Representation, 1976-1986.

DISTRICT	1976	1978	1980	1982	1984	1986
1	Schroeder (D)	Schroeder (D)	Schroeder (D)	Schroeder (D)	Schroeder (D)	Schroeder (D)
2	Wirth (D)	Wirth (D)	Wirth (D)	Wirth (D)	Wirth (D)	Skaggs (D)
3	Evans (D)	Kogovsek (D)	Kogovsek (D)	Kogovsek (D)	Strang (R)	Campbell (D)
4	Johnson (R)	Johnson (R)	Brown (R)	Brown (R)	Brown (R)	Brown (R)
5	Armstrong (R)	Kramer (R)	Kramer (R)	Kramer (R)	Kramer (R)	Hefley (R)
6				Swigert (R)	Schaefer (R)	Schaefer (R)

ecutive committee supported and financed this suit. Their thinking was that Governor Lamm would never accept any proposal which did not guarantee safe seats for the three Democratic incumbents, a condition the Republicans were reluctant to concede. They began to feel that districts drawn by a federal judge would be better for Republican fortunes, that the chances for a 4-2 split would be good. It would be something of a gamble, but one Republicans finally decided to take.

Federal district Judge Sherman Finesilver took the case in early October. He ordered that the state must try a fourth time to agree upon reapportionment, but if that effort also failed, the federal courts would impose their own plan. Finesilver stated that:

> The legislature is the institution best suited to make these decisions. The governor and the legislature are directly reflective of the electorate. They still remain the best vehicle for accomplishing the redistricting as mandated. The question is whether the legislature and the governor are prepared to tell the people of the state 'we can't decide.' I have always been impressed with the leadership manifested by the governor and the legislature. I think that leadership should be manifested and that an attempt should be made to compromise.[7]

Judge Finesilver ordered legislative leaders and representatives of the governor to meet and to report their progress to him. Extended negotiating sessions ensued, but could produce nothing. Finesilver was at last convinced of the futility of further efforts: "I believe there has been a good faith effort and that there is no point in holding further negotiations."[8]

The case was heard by a three-judge district court appointed by the chief judge of the U.S. 10th Circuit Court. Two of the judges appointed were Republicans, the third a Democrat. By December 18, the court had seen at least 11 different proposals, and it finally concluded:

> The court is of the view that none of these plans fully comports with the objectives and criteria which we feel should be incorporated in any judicially approved redistricting plan. As a result the court is proceeding to develop its own plan incorporating the most desirable aspects of the plans presented to the court.[9]

On January 28, 1982, this three-judge district court issued its decree; reapportionment had at last been devised and imposed judicially.[10] It was essentially a 3-3 reapportionment, with all incumbents evidently protected. Democrats were understandably pleased; Republicans were surprised and displeased, although the two incumbent Republican congressmen expressed no complaints. Table 2 shows that the reapportionment has apparently resulted in little change.

1991-1992

Following the 1990 census, Colorado will go through the same state-level processes it did a decade earlier; what possible involvement federal courts may have is, of course, unpredictable. The Colorado Reapportionment Commission will be reactivated in July 1991 to reapportion the state General Assembly districts. This next time, with the number of congressional districts remaining at six, the task of congressional reapportionment may be somewhat less difficult, but that is not a foregone conclusion. The state will almost surely have the same divided political balance, a Democratic

governor facing a Republican legislature. So the ingredient of hard partisan bargaining over the new congressional districts is present. Population changes have not been as extensive in the 1980s as they were in the 1970s, so lines of both the congressional districts and the state legislative districts will not have to be adjusted quite as extensively.

On a more technical level, the Legislative Council staff has been working on the framework and data bases for reapportionment. The demographic section of the Division of Local Government is also involved. Colorado has participated with the U.S. Census Bureau in the Census Redistricting Data Program, and under public law 94-171 the Census Bureau will be providing population counts for redistricting purposes by April 15, 1991.

The Legislative Council staff is working with a flowchart in an effort to piece together the various "whats and whens" as the process moves forward in 1991 and 1992.

NOTES

1. For a description of redistricting in Colorado before 1981, see R.D. Sloan, Jr., "Colorado," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 58-62.
2. The 1990 projection is taken from p. 13, *Colorado Population Projections* (September 1989), prepared by the Demographic Section of the Colorado Division of Local Government.
3. *State of Colorado Abstract of Votes, 1974* (Office of the Secretary of State, 1975), p. 64.
4. *Denver Post*, December 19, 1981, p. B5.
5. One leading Republican expressed this commonly felt conviction: "As Republicans we are duty bound to make a plan that will elect five Republican congressmen and one Democratic congressman." Ibid., June 6, 1981, p. 1.
6. Ibid., June 13, 1981, p. 1.
7. Ibid., November 6, 1981, p. 5B.
8. Ibid., November 7, 1981, p. 1A.
9. Ibid., December 19, 1981. p. 1A.
10. *Carstens vs. Lamm* and *Goens vs. Lamm*, January 28, 1982 (Civil actions No. 81-F-11713 and No. 81-F-1870, respectively).

CONNECTICUT

TOD J. PRESTON

THE REAPPORTIONMENT PROCESS

In the past three decades, the state constitution has been amended four times (in 1965, 1976, 1980, and 1990) with regard to the procedure for redistricting.[1] Despite the fact that Connecticut is a strong party state—having only done away with the party lever at the ballot box in 1986—its constitution nonetheless mandates a strictly bipartisan approach to reapportionment. The institution provides a three-step process which places most of the authority with the legislature.

The first step in the process, effective beginning with the constitutional revisions of 1976, stipulates that an eight-member bipartisan reapportionment committee of the legislature draw up a redistricting plan. The Reapportionment Committee consists of four members of the Senate and four members of the House, equally divided by party. In order to become law, the plan drawn up by the Reapportionment Committee must gain approval from two-thirds of each house of the General Assembly.

If the General Assembly should fail to agree by the established deadline, the process is transferred to a nine-member bipartisan commission, appointed by the governor and designated by the president pro tem of the Senate, the speaker of the House, the minority leader of the Senate, and the minority leader of the House, each of whom selects two members. The ninth member of the commission, an elector of the state, is selected by these eight members. The reapportionment commission must draw up its own plan and, upon approval by at least five members, submit it to the secretary of state where it becomes law.

If the reapportionment commission fails to come to an agreement by the established deadline, the constitution provides that original jurisdiction shall be vested in the Supreme Court: ". . . the court may compel the commission, by mandamus or otherwise, to perform its duty or to correct any error made in its plan of districting . . . including the establishing of a plan of districting if the commission fails to file its plan . . ."[2] The Court's plan becomes law once it is submitted to the secretary of state.

1981 REAPPORTIONMENT

Although a number of states experienced tumultuous legislative redistricting following the 1980 census, Connecticut's reapportionment was relatively uneventful.[3] In fact, it was the first time since 1965 that the General Assembly reapportioned itself without judicial intervention. With a statewide population increase of only 2.5 percent during the 1970s, state legislative districts required only minor changes: namely, the loss of one representative each from Bridgeport, Hartford, and New Haven and increased representation to rural areas in the eastern and western parts of the state and along Long Island Sound. In order to take in more population, many existing Senate districts in the largest municipalities were extended into the outlying areas as well.

Because the redistricting plan requires the support of two-thirds of the General Assembly, the districts were redrawn so as to displace as few incumbents as possible. Not surprisingly, the General Assembly easily garnered the votes needed to approve the new plan for state legislative districts. The only minor controversy centered on concern that the districts divided representation in too many towns: 50 towns in House districts and 19 towns in Senate districts. One vocal critic of the plan in the House asserted that in approving the new districts the legislature had "sacrificed the interest of the public on the altar of incumbency."[4] Citing these charges, a group called the Committee for a Rational Reapportionment unsuccessfully challenged the House plan in court.

In 1981, both parties adopted different strategies in their attempt to maximize the protection of their incumbent-held seats. Whereas the Democrats sought to spread their support out and create a few marginal districts that could be won through hard work, the Republicans grouped their incumbents in safe, non-marginal districts. This strategy, after providing initial gains in the first part of the decade, hurt GOP prospects in the legislature later on.

As for reapportioning the state's six congressional districts in 1981, the legislature deadlocked when Republican members sought to redraw the map in hopes of adding one or two seats to the two that they already held. Disagreement centered primarily on the boundaries of the 6th District, represented by a four-term Democratic incumbent. Republicans sought to move three heavily Democratic towns out of the district and replace them with three more marginal towns. Thus, when the August 1 deadline arrived without any agreement on congressional districting, the responsibility shifted from the legislature to the bipartisan commission. The ninth member of the commission, a lawyer and unaffiliated voter from Madison, broke the 4-4 deadlock by voting in favor of the Democratic plan two days before the deadline. When the reapportionment was finally completed on October 28, the entire process had taken nearly five months. (See Figure 1.)

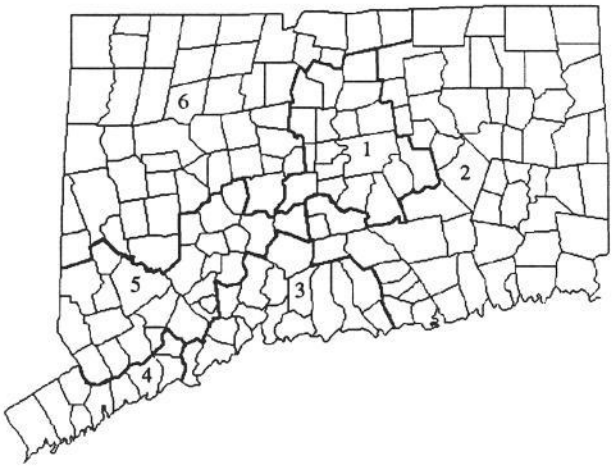

Figure 1. Connecticut Congressional Districts (adopted October 28, 1981).

Table 1. Connecticut Election Results, 1980-1990.

YEAR	LOWER	UPPER	CONGRESSIONAL
1980	69R, 82D	13R, 23D	2R, 4D
1982	64R, 87D	13R, 23D	2R, 4D
1984	85R, 66D	24R, 12D	3R, 3D
1986	59R, 92D	11R, 25D	3R, 3D
1988	63R, 88D	13R, 23D	3R, 3D
1990	63R, 88D	13R, 23D	3R, 3D

In 1982, Republicans were victorious in the 6th District as Nancy Johnson won that congressional seat, but their success was offset by the loss of the 3rd District to Democrat Bruce Morrison. Thus, their goal to break the Democratic lock on four congressional seats was not yet realized. In the General Assembly, Democrats maintained control of both houses.

As part of Ronald Reagan's landslide over Walter Mondale, in which Reagan won 61 percent of the Connecticut vote, the Democrats experienced major losses in 1984. (See Table 1.) Governor William O'Neill commented at the time that Reagan's support and coattails effect in the state was "a tidal wave, a typhoon, and an earthquake all rolled into one."[5] First, the Republicans captured control of both houses of the legislature, with a majority of 24-12 in the state Senate and 85-66 in the House of Representatives. Not since the Nixon landslide of 1972 had the GOP controlled both houses of the legislature. Furthermore, Republicans also picked up another congressional seat, making it an even 3-3 partisan split, when the Republican candidate, John Rowland, defeated the Democratic incumbent in the 5th District.

Two years of preparing for the state legislative and gubernatorial race paid off for the Democrats in 1986 when the voters gave them back control of the General Assembly and reelected Governor O'Neill to a second term. Also in the 1986 elections, voters narrowly approved a constitutional amendment which eliminated the party lever from state ballots and voting machines. The party lever had been in place since 1901.

In 1990 Connecticut elected Lowell Weicker as governor. The state's first Independent governor since the

1850s, Weicker had represented Connecticut in the United States Senate as a Republican from 1970-1988. With the creation of Weicker's Independent "Connecticut Party," the state now faces the possibility of becoming a three-party state. As for now, the Democrats continue with control of both houses of the legislature.

Population Growth 1980-1990

Overall, the state's population increased 5.8 percent from 3,107,576 in 1980 to 3,287,116 in 1990. This follows a growth rate of 2.5 percent in the 1970s and 19.6 percent in the 1960s. Unlike the 1970s, when the state's largest cities lost residents, 1990 census figures show that Hartford, New Haven, Waterbury, and Stamford grew between 2.5 and 5.5 percent in the 1980s. Only Bridgeport, the state's largest municipality, experienced a loss of citizens (down 0.6 percent from 1980). Thus, in 1991 the ideal district size will be 22,000 for House seats, 91,000 for Senate seats, and 548,000 for congressional seats.

Despite widespread acknowledgements of undercounts across the country in the 1990 census, particularly of minorities in urban areas, the Census Bureau announced in July 1991 that it would not adjust the figures to account for having missed an estimated 5.3 million people. In Connecticut, the city of Hartford (which is roughly 70 percent African American and Hispanic) is filing suit against the decision, citing the Census Bureau's own admission that it could have failed to count as many as 4,000 people in the city.[6] If the undercount figures stand, Hartford could lose over $25 million in federal funds during the 1990s.

1991 Reapportionment

The 1991 reapportionment will operate under the new timetable established in the most recent constitutional amendment of November 1990. These revisions were instituted in the event that the Department of Commerce issued new census data to correct for a possible undercount. Whereas prior to 1990 the Reapportionment Committee of the General Assembly had until August 1 to pass a district plan, the eight-member bipartisan committee now has until September 15 to adopt a plan. If the General Assembly should fail to agree by the September deadline, the bipartisan commission has until November 30 to draw up its own plan (prior to the 1990 amendment the date had been October 30). Failure of the commission to come to an agreement by November 30 transfers the process to the state Supreme Court which has until February 15 to complete the reapportionment.

With the new civil rights regulations and U.S. Supreme Court decisions regarding the creation of minority-majority seats, it will be exceedingly difficult for the Democrats to shuffle minority populations in the central cities and push boundaries out into the outlying areas as they did the last time. This will permit the Republicans to creep into the marginal areas and secure more support now that minority areas will be more concentrated. This will probably result in Republican gains in the adjacent areas to Connecticut's central cities, particularly New Haven, Bridgeport, and Waterbury. Not surprisingly, a tacit alliance might be formed between minorities and Republicans, as each stands to lose from "creative" redistricting on the part of the Democratic-controlled legislature.

Looking to the Future

Despite the election of an Independent governor, Connecticut is still dominated by strong political parties—parties which are jealous of prerogatives and reluctant to relinquish control of the redistricting process. As a result, any reform in the reapportionment process, such as an independent, nonpartisan commission, is highly unlikely in the near future.

Interestingly, because both parties are so set on maintaining control over the process, the results are arguably as reasonable and equitable as any redistricting process in the nation. Particularly in the wake of the U.S. Supreme Court's 1986 *Brandemer* decision, both parties are wary of undertaking blatant gerrymandering for fear that their plan will be thrown out and that districts will be redrawn by the courts. For legislators on both sides of the aisle, nothing could be worse than to have the courts wield power over their political futures.

NOTES

1. Ridgway Davis, "Connecticut," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), p. 65.

2. Article 16, section 2, part d.

3. A number of states experienced political and judicial problems with 1981 reapportionment. In Hawaii, Michigan, New Mexico, Oregon, Texas, and Virginia, courts overturned all or parts of the redistricting plans. In California, the first redistricting plan was overturned by ballot initiative. In Indiana, the state legislature's plan was challenged all the way to the United States Supreme Court in the case of *Davis v. Brandemer* (1986).

4. Richard L. Madden, "Connecticut Approves New Districts," *New York Times*, August 1, 1981, p. B28.

5. *New York Times*, November 7, 1984, p. A5.

6. "1990 Census Count Will Stand," *Hartford Courant*, July 16, 1991, p. Al.

DELAWARE

CAROLYN MARIE BLACK

Delaware, the nation's 46th state in terms of size of population, has historically enriched the nation by its celebrated rank as the First State to ratify the constitution, and as home to the E.I. du Pont de Nemours Company, one of the original American family-owned businesses that has expanded to international distinction. In fact, in 1982 the Du Pont Company, whose motto is "Better Living through Chemistry," was the nation's 12th largest corporation. Today, Delaware's chemical manufacturing sector employs over 10 percent of the state's workforce.[2]

More recently, Delaware can be noted as the home base of over half of the Fortune 500 corporations and thousands of small companies as well. These companies have been enticed to the state by liberal incorporation laws and pro-corporate court decisions.[3] Delaware is also home to two unsuccessful 1988 presidential candidates, Republican Pete du Pont and Democratic Senator Joseph Biden.

Delaware experienced a 12 percent growth rate between 1980 and 1990, but because of its overall population of approximately 666,000, Delaware will continue to have one at-large representative.[4] As of today this seat is held by Democrat Thomas Carper. Delaware's Democratic party holds a 42 percent registration majority compared to a Republican 37 percent. The Democrats in this state are often noted as conservative and thus the state depicts a relatively balanced political picture, with a Republican governor, a Democratic representative, and one senator from each party.

There are only three counties in Delaware. The largest county, New Castle, is primarily a wealthy, suburban territory that houses approximately two-thirds of the state's population. The suburban sector of New Castle furnishes a base for the state's Republicans. However, within the county lies the city of Wilmington, which is predominantly Democratic. Delaware has a 14 percent black population, a large portion of which resides in Wilmington. Besides the city's majority-black concentration, minority Polish, Irish, and Italian groups are present as well. Wilmington happens to be the only real urban industrial center in the state. Today the city of Wilmington casts approximately 15 percent of the state's vote.[5]

The remaining counties, Kent and Sussex, are mostly rural. Kent, representing a conservative Democratic populace, is balanced by a primarily Republican Sussex.

Delaware has retained a 21-member Senate and a 41-member House since 1970. Redistricting is managed by the legislature and the respective party caucuses. Ideally, the House is made up entirely of one-member districts. Delaware endeavors to have its House and Senate use corresponding district lines and attempts to draw these lines within county boundaries. Each of the three redistrictings since 1970 have seen violations of these goals, yet they have remained relatively minor.

The 1980 redistricting resulted in a House plan with 27 full seats for New Castle County, five full seats for Kent, and seven full seats for Sussex. One seat was shared between New Castle and Kent, with the majority of the district falling in New Castle, and one seat was split between Kent and Sussex Counties. At that time the House had 19 Democrats and 22 Republicans. Senate redistricting allocated New Castle 13 full seats, with three full seats going to Kent, and two full seats to Sussex. One seat was split between New Castle and Kent, and the remaining two seats were shared between Kent and Sussex. In 1980 the Senate had 13 Democrats and eight Republicans.

The 1990 redistricting was completed in August 1990. For the House, New Castle County received 27 full

seats, while Kent gained one seat and Sussex lost one seat, thereby leaving each to receive six full seats. New Castle County and Kent County continue to share a seat with one another, and although the majority of the district continues to fall in New Castle territory, the Kent piece of the district is larger than before. Kent and Sussex also continue to share a seat. The greatest percent deviations in population from the ideal for House districts are +4.83 and -4.94.[6] The Democrats in the House have lost two seats to the Republicans since 1980, leaving the House with a 17-to-24 split.

For Senate 1990 redistricting, New Castle County received 13 full seats, with Kent receiving three full seats and Sussex receiving two full seats. One seat is still split between New Castle County and Kent, with the proportion of the split for each county unchanged since 1980. Finally, Kent and Sussex still share two split seats, with Sussex County acquiring additional territory as a result of the 1990 census. The greatest percent deviations in population from the ideal for Senate districts are +4.97 and -4.58.[7] The Democrats gained two seats since 1980 at Republican expense; there are currently 15 Democrats and six Republicans in the Senate.

Two controversial issues were addressed in the recent redistricting process. One of these focused on the survivability of incumbents. The resulting redistricting allowed all 21 incumbents in the Senate to retain their seats, and left 39 of the 41 incumbents of the House safely within their districts. One of the remaining seats in the House is presently occupied by two incumbents—a problem that is expected to be fought out in upcoming 1992 elections. The remaining district is without a representative at this time.

The second controversial issue in the 1990 redistricting effort had to do with the minority districts in the city of Wilmington. The Wilmington chapter of the National Association for the Advancement of Colored People (NAACP) requested that the city of Wilmington be allocated two Senate districts and four House districts with 65 percent black majorities each. The 1980 redistricting had two minority House districts with 83 percent black majorities. The final 1990 redistricting resulted in two minority Senate districts for the city of Wilmington with one at 68 percent black and one at 60 percent black, and three minority House districts with two at 60 percent black and one at 50 percent black. It remains to be seen if this outcome will be challenged in the courts or the Justice Department.

NOTES

1. Neal R. Peirce and Jerry Hagstrom, "Delaware: Diminutive State of the Diverse du Ponts," *Book of America: Inside Fifty States Today* (New York: Warner Books, 1984), p. 120.
2. Alan Ehrenhalt, ed., "Delaware," in *Congressional Quarterly: Politics in America 1991, 102nd Congress* (Washington D.C.: CG Press, 1991), p. 285.
3. Pierce and Hagstrom, "Delaware," p. 120.
4. Ehrenhalt, "Delaware," p. 275.
5. Ibid., p. 285.
6. Conversation with Legislative Analyst Michael Morten, September 5, 1991.
7. Ibid.

FLORIDA

SUSAN A. MACMANUS AND RONALD KEITH GADDIE
(WITH ASSISTANCE FROM DONNA CAMP BLAIR)

Florida's growth in recent decades has been phenomenal. Between 1970 and 1980, Florida jumped from the nation's ninth largest state to its seventh largest. Between 1980 and 1990, it leaped from the seventh to the fourth most populous state. Following the 1980 census, Florida picked up four congressional seats (from 15 to 19). It will also pick up four as a consequence of the 1990 census. The 1990 census showed Florida's population increased over 30 percent between 1980 and 1990, to nearly 13 million. With each census, the stakes of redistricting have become higher as the state's population makeup and partisan character have changed.

Over the past several decades, Florida's population has become older and more racially and ethnically diverse than that of many other states. Once a rural-dominated, one-party Democratic state, the state is now a more competitive two-party state. Power has shifted from the rural Panhandle area to Central and South Florida. Rapid influxes of Midwesterners into Central Florida and large infusions of immigrants from Latin and South America into South Florida have altered considerably the state's political landscape. Many of the newcomers (retirees and Hispanics) are Republicans.[1] As a consequence, there has been a significant change in the state's voter registration patterns.

In 1980, 64.9 percent of the state's registered voters were Democrats, 29.4 percent Republicans, and 5.7 percent other. As of September 1990, the figures were 52.5 percent Democratic, 40.7 percent Republican, and 6.8 percent other. The percentage of registered Republicans increased 38.4 percent in just a decade. It has changed the partisan profile of the state's elected officials.

The state's rapidly changing demographic, socioeconomic, and partisan makeup, beginning in the 1950s, have made each successive reapportionment and redistricting battle more intense.[2] The temptation to "gerrymander" has increased as the stakes have gotten higher, but the ability to do so (without litigation) has become more difficult in the two-party, multiethnic setting.

STATE LEGISLATIVE REDISTRICTING FOLLOWING THE 1980 CENSUS

Reapportionment in 1982 was anything but easy. It covered one regular legislative session and five special sessions. Ironically, the biggest controversy was not over where the lines were drawn, but whether state senators with unexpired terms would have to run for reelection following the reapportionment (terms are four years in Florida). The Senate redistricting plan called for the retention of 20 senators whose terms had not expired, even though some senators would be representing radically altered districts. This plan was supported by 32 of 40 senators but rejected by the leadership of the House of Representatives. The issue was ultimately resolved by the Florida Supreme Court.

Secondary in terms of controversy, but far more significant in its consequences, was the move from multimember to single-member districts. Support for the change came from members of both parties, the NAACP, Common Cause, the League of Women Voters, and virtually every major daily newspaper in the state.[3]

The breadth of support for the switch to single-member districts became apparent quite early. The House Select Committee on Reapportionment, created in November 1980, held 21 public hearings throughout the state to allow people to express their redistricting preferences. Out of 330 citizens testify-

ing, 271 testified on the issue of the switch from multi- to single-member districts. Of these, 83 percent advocated single-member districts.[4] Advocates of single-member districts predicted the switch would increase voter turnout, reduce campaign costs, and increase minority representation. The overwhelming public support for the switch led the chairs of the reapportionment committees in both houses to support publicly the move to single-member districts before the beginning of the 1982 session.

The coalition of African Americans and Republicans that emerged in 1982 in the successful push for single-member districts will no doubt be revitalized when the lines are drawn again in 1992. Much of the state's black population is concentrated in a few urban areas, whereas Republican strength lies in the suburbs and outlying counties surrounding the state's metropolitan areas. Republicans anticipate that plans drawn to maximize black representation will also maximize their representation—a phenomenon that is recognized on a national scale.[5] However, in the 1982 reapportionment battles, the minorities fared better than the Republicans, a point to be discussed later in this essay.

Redistricting was a major focus of the regular legislative session which began on January 18, 1982. At the time, Democrats held a comfortable 81-39 margin in the state House of Representatives; Democrats occupied 27 of the 40 Senate seats. Democrats also controlled the governor's mansion, occupied by the reelection-seeking Bob Graham, and all of the state's six cabinet posts.

In spite of their dominance, Democrats within the Senate were factionalized, primarily as a consequence of a rift between Senate President W.D. Childers (D-Pensacola) and long-time Senate power broker Dempsey Barron (D-Bay County). Barron forged a working majority of conservative Democrats and Republicans and managed to become chair of the Senate Reapportionment Committee. Barron, who had been in office in the days of the Pork Chop Gang when pine trees counted more than people, was known to be an opponent of any redistricting which might threaten his power base. However, Barron was committed to increasing minority access and improving district size equity. Legislators in each house had been well-briefed by the state attorney general on the case law governing apportionment and redistricting, requirements set forth in the Florida Constitution, and the preclearance requirements of the U.S. Voting Rights Act of 1965.[6]

Barron's goal in the Senate was to protect as many conservative incumbents as possible, once minority districts were drawn. His plan was an "ideological gerrymander" which utilized the technique of "non-continuous" numbering, among others. To understand his strategy, one must be aware of the structure of Florida's staggered terms. Senators from odd-numbered districts stand for election in years divisible by four, while members from even-numbered districts are up for election in even-numbered years not divisible by four. To capitalize on this structure, Barron's Senate apportionment plan did not call for all incumbents to stand for reelection in spite of the fact that some of their districts had been radically reconfigured. The plan featured a noncontinuous numbering system which allowed as many of his allies as possible to avoid facing their new constituencies until November 1984. The plan to permit senators with two years left in their term of office not to stand for reelection in 1982 turned out to be far more controversial than the placement of district lines.

Redistricting in the House was far less contentious than in the Senate. Republican leaders and incumbents alike expressed satisfaction with the Democratic majority's plan. Even Republicans from heavily Republican areas such as Pinellas County (St. Petersburg) were supportive.[7] (The initial vote on the House plan was 115-2.) However, the longer the issue dragged on, the more the unity of the House was threatened. House Republican leaders, tiring of the continued fight between the House and the Senate over the question of whether 20 or 40 senators should stand for election in 1982, threatened to break the House unity by supporting the Senate plan calling for only 20 to stand for election. But a discussion among Democratic and Republican House

leaders placated the Republican leadership and averted a partisan split in the House.[8]

Ultimately, an apportionment plan was passed on April 7, 1982, in the third special session of the year—the second in one day! A compromise struck by the House and Senate Reapportionment Committee chairs produced a resolution which did not compel all Senate members to stand for reelection but recognized the House of Representatives' objections to the plan and left the issue to be resolved by the Florida Supreme Court, which has review power over the apportionment process (Art. III, Sec. 16, Florida Constitution). In this capacity, the Court upheld each house's districting plan, but also ruled that all 40 senators would have to stand for election in 1982, thus affirming the House's position on the issue. The Court's May 12, 1982, ruling cited Article III, Section 15(a) of the Florida Constitution, which states that there shall be four-year terms in the Senate "except at the election next following a reapportionment, some senators shall be elected for terms of two years when necessary to maintain staggered terms."[9]

In fact, Florida's 1982 legislative apportionment was judged to be one of the fairest in the U.S. by groups such as the National Conference on State Legislatures. In a survey of all 50 states, Florida's House plan was found to come closer than any other in the nation to the perfect "one person-one vote" criterion; its Senate plan was second only to Iowa's.[10]

The ideal House district population in 1982 was 81,219. (Ideal district population is calculated by dividing the state population by the total number of districts, or 9,746,324 by 120.) Under Florida's plan, the total deviation between the largest district and the smallest House district was 378 people, or 0.46 percent deviation. The ideal Senate district size was 243,658. The total deviation between the largest and the smallest Senate districts was only 2,566 persons, or 1.05 percent.

The 1982 state legislative reapportionment plan also maximized minority representation. An excellent study by James Ammons concluded that "the Legislature, using the principle of 'affirmative gerrymandering'—drawing districts tailored to concentrate minority areas—established 'representative' and 'access' districts for blacks and Hispanics."[11] "Representative districts" were defined as those with black or Hispanic population majorities. "Access districts" were defined as those with black or Hispanic populations in excess of 30 percent.

The 120 single-member House plan created seven black representative districts and five black access districts; it created seven Hispanic representative districts. The 40 single-member district Senate plan created one black representative district and one black access district, as well as two Hispanic representative districts and two Hispanic access districts.

In summary, the plan's close adherence to the one person-one vote principle and its maximization of minority representational opportunities made it relatively easy for the Florida Supreme Court to approve the actual district lines. But of course this does not mean that there was no gerrymandering in the 1982 plan! In fact, there is plenty of evidence of affirmative gerrymandering, partisan gerrymandering, and, most predictably, incumbent gerrymandering.

Gerrymandering in the Florida Senate

Despite claims by the chair of the Senate Reapportionment Committee that the new map was drawn "with incumbents as blank masks," there is plenty of evidence to the contrary! Only three incumbents were left without districts (two in high-growth South Florida). To accomplish this feat, "noncontinuous numbering," "bacon strips," and "slicing" gerrymandering techniques were utilized.

Barron's attempt to protect his ideological bipartisan coalition is evident in his violation of the norm of continuous numbering of districts.[12] Tradition and law both held that Florida legislative districts be consecutively numbered. However, the Pinellas Senate seats (see Figure 1) are only one of a series of numbering irregularities evident in the 1982 Senate plan.

The use of "bacon strips" is evident in Figure 2, which illustrates the "before" and "after" shape of Senate districts in North Florida. Prior to 1982, the panhandle region, as it is called, elected four senators from two fairly compact multimember districts. After the reapportionment, the first and second seats in the westernmost multimember district were collapsed into one seat, effectively eliminating the Republican incumbent in the second seat. The 3rd and 4th Districts were split into a pair of strips. One ran from the suburbs of Pensacola along the Alabama and Georgia borders to suburban Tallahassee, 200 miles away. The 3rd Senate District ran parallel to the 2nd, tracing the Gulf of Mexico from 50 miles east of Pensacola to the edge of Jefferson County, again almost 200 miles in length.

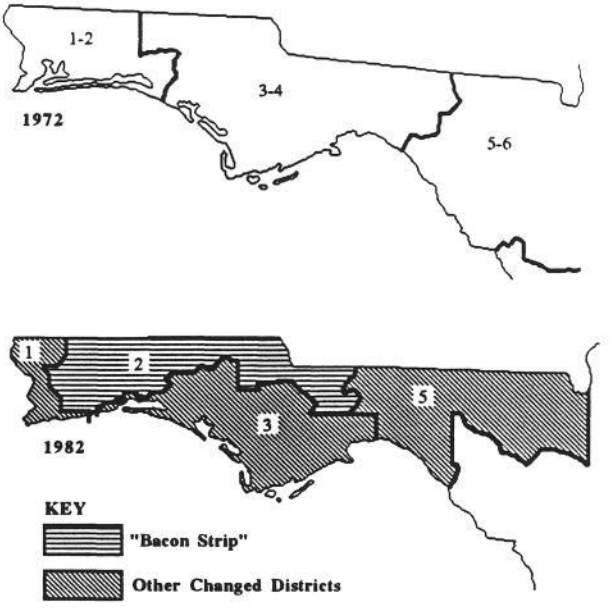

Figure 2. Examples in the Florida Senate of Protecting Democratic Incumbents Through the Use of "Bacon Strips" and Split Urban Areas.

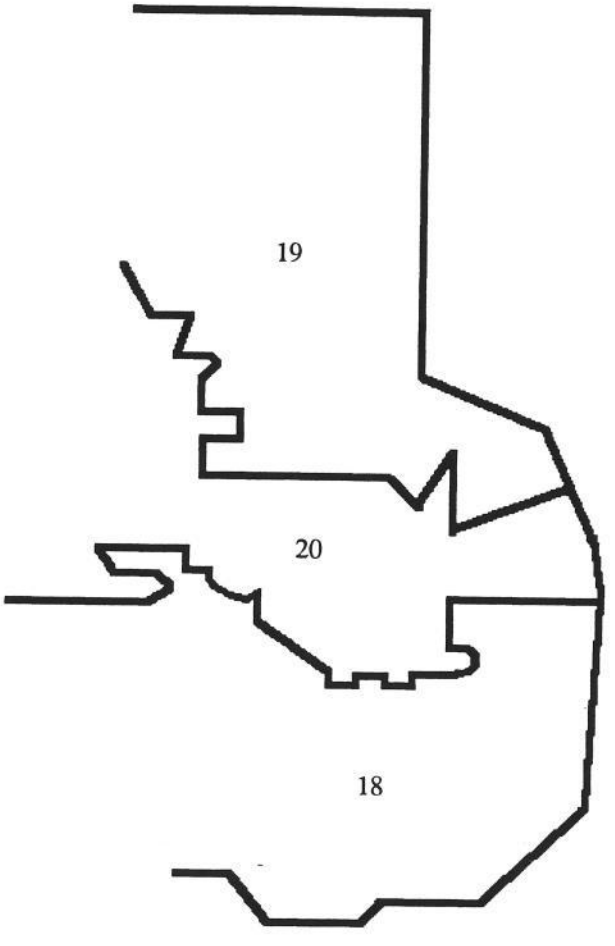

Figure 1. Noncontinuous Numbering of Florida Senate Seats in Pinellas County, 1982.

An example of "slicing" is shown in Figure 3. At issue here is the treatment of Pasco County, a fast-growing area north of Tampa characterized by Republican strength on its west side and Democratic strength on its east side. The new 4th District, which contained no incumbent, resembled a "radical dog-leg-right par 5," winding from its "tee" just above Clearwater on the Gulf Coast, across Pasco, Hernando, Citrus, and Marion Counties, hooking around Ocala to butt up against Volusia County, 40 miles from the Atlantic Ocean. Objections to the shape of the 4th District, as well as to the 21st and 12th Districts, were raised by Pasco County residents as well as the editors of the *St. Petersburg Times*.[13] The opinion of many was that Pasco County should have formed the center of a Senate district, rather than being parcelled among three districts. This county undoubtedly will be at the center of the upcoming reapportionment debates both in the Senate and the House.

Gerrymandering in the Florida House of Representatives

The switch from multi- to single-member districts, along with significant shifts in population concentrations, made it much more difficult from the start for

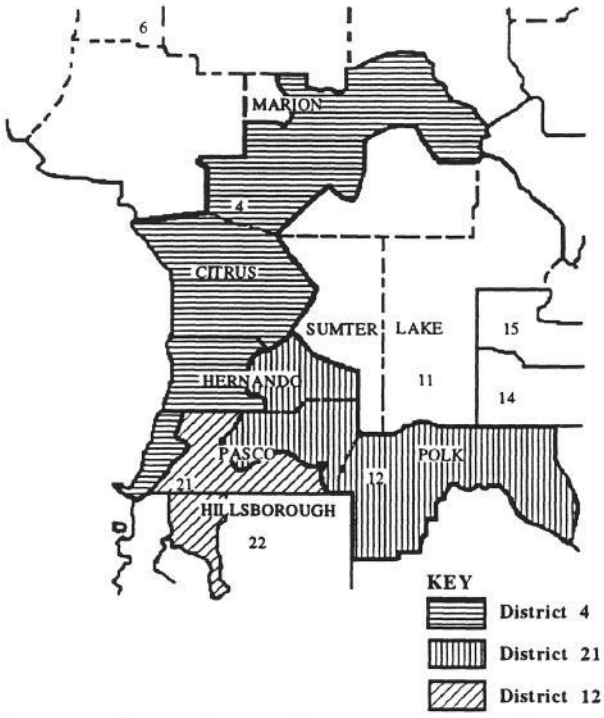

Figure 3. Slicing Pasco County Into Three Senate Districts, 1982.

House members to promote an "incumbent protection plan." The House plan created 28 new seats with no incumbents; it created three seats where incumbents ran against each other. In other instances, an incumbent's district was so altered that he/she decided not to run. In all, there were 44 open House seats (no incumbents running) following the 1982 reapportionment.

In spite of the lesser emphasis on incumbency protection in the House, there were still examples of line-drawing to promote safe districts for incumbents in the 1982 House plan. An example of such was the 19th House District in Duval County. Most of the district lay on the Atlantic coast. But there was an arm only a few blocks wide which jutted westward off the northern part of the district and ran inland to the bank of the St. John's River that was created to protect the incumbent.

From the start, a primary goal in the House was to achieve representational equity—both racial and geographical. As already noted, there was a strong coalition between minorities and legislators from heavily populated areas (Democrats and Republicans). This explains the much more consensual reapportionment efforts in the House, compared to the Senate. Thus, the most obvious type of gerrymandering in the House was the affirmative gerrymander. The plan created a number of majority black and Hispanic districts (representative districts) and several other access districts (30-50 percent minority population).

The difficulty the map-drawers had in creating black districts is that Florida's black population is much more dispersed than the black population in other southern states.[14] For example, in 1980, only four of Florida's 67 counties (Gadsden, Jefferson, Madison, Hamilton) had a black population larger than 35 percent, compared to 57 of 159 counties in Georgia and 24 of 46 counties in South Carolina. The same problem will exist in the next redistricting round. (It is not as difficult to draw a representative Hispanic district, especially in South Florida where most of the state's Hispanic population is concentrated.)

The 1982 Plan's Impact on Republican Representation

The immediate impact of the 1982 reapportionment on Republican representation in the Florida legislature was negative. Republicans lost three seats in the House (from 39 to 36) and five seats in the Senate (from 13 to 8). While only one Republican incumbent senator's seat was eliminated, the altered constituencies of the others obviously contributed to their losses. The House plan only eliminated the seats of six House Republicans. But, again, the new constituencies of another four resulted in their defeat in the 1982 House elections.

With each election after 1982, however, the Republicans have gained seats in both the House and Senate. The state's rapidly changing population base, especially in the Central Florida districts where Republicans had lost seats in 1982, and the influx of Republican Hispanics into South Florida, helped the party overcome its losses in 1982.

Table 1. Women in the Florida Legislature, 1980-1988.

CHAMBER	PARTY / RACE OR ETHNICITY	1980	1982	1984	1986	1988
SENATE	Democrat	2	7	7	6	7
	Black	0	1	1	1	1
	Hispanic	0	0	0	0	0
	Republican	2	2	2	4	4
	Black	0	0	0	0	0
	Hispanic	0	0	0	1	1
	Total	4	9	9	10	11
HOUSE	Democrat	9	11	11	13	8
	Black	1	1	1	1	2
	Hispanic	0	0	0	0	0
	Republican	4	9	11	10	8
	Black	0	0	0	0	0
	Hispanic	0	1	2	1	0
	Total	13	20	22	23	16

Note: Figures reflect the results of special elections held due to deaths or resignations.

The 1982 Plan's Impact on Minority Representation

The most significant immediate gains in representation were evident among African Americans and women. The former gained five seats in the Florida House of Representatives (from five to 10). The first two African Americans since Reconstruction were elected to the Senate. The open seats created as a result of the switch from multimember to single-member legislative districts were a major factor in increasing black representation. However, black representation levels did not increase in the decade following the 1982 reapportionment—in contrast to Republican, Hispanic, and female representational levels. The black population actually declined as a percent of Florida's total population in the mid-1980s, which explains some of this, as does the continued relative dispersion of the state's black population.[15]

Hispanic representational levels doubled from two to four seats in the House following the 1982 reapportionment. Again, the switch from multimember to single-member districts promoted this gain by opening up seats. Three of the Hispanic House members elected in 1982 were elected from open seats where no incumbent was running.

Hispanic Senate representation did not increase until the 1986 and 1988 elections. As previously noted, seven of the eight Hispanic House members and all three of the senators are from the South Florida (Dade County) area and all are Republicans. Rapid population gains and increasing political activism levels of Cuban Americans in that area explain the gains.

The number of women in the Florida legislature also increased significantly following the 1982 reapportionment. It jumped from 14 to 20 in the House and from three to eight the Senate. Eight women captured open seats created by the switch to single-member districts. But a major part of the gain by women was due to an increase in the number of women candidates—paralleling national trends showing more women running for elective positions at all levels of government. As the figures in Table 1 show, the number of women in the Florida House actually declined in 1988 but increased in the Senate.

The literature examining the determinants of female representation overwhelmingly concludes that districting configurations have far less impact on the election of women than on racial and ethnic minorities (due to the fact that women are not residentially concentrated or cohesive in their party affiliation). But

the 1982 Florida case suggests that when reapportionment created open seats, it encouraged more women to run for office and increased the likelihood that a woman would be elected. Equity concerns were also evident in the reapportionment of Florida's congressional districts in 1982, though less so than protection of incumbents.

Congressional Reapportionment in 1982

Florida gained four new seats in Congress following the 1980 census (from 15 to 19). In the 97th Congress (1981), Florida sent 11 Democrats and four Republicans to the U.S. House of Representatives. Following the 1982 reapportionment, it sent 13 Democrats and six Republicans to the House (98th Congress, 1983). Thus, Democrats and Republicans alike gained two seats as a consequence of the 1982 reapportionment. Not unexpectedly, incumbent Congress members pressured state legislators to protect them and, in fact, 14 of the 15 incumbents were protected in the plan finally adopted.[16] The 15th incumbent, L.A. "Skip" Bafalis, was the Republican candidate for governor.

Nonetheless, there were heated debates, especially regarding the shape of congressional districts in Central and South Florida. Congressional incumbents had to "fight off" ambitious state legislative opponents casting their eyes toward Washington. For example, three incumbent Congress members all fought reapportionment plans that would have deprived them of large parts of their old constituencies, or possibly even thrown them into the same district.

But in spite of what appears to be an "incumbent gerrymander," the congressional redistricting effort in 1982 actually produced a more logical, compact districting scheme than the previous redistricting effort 10 years prior. Among the improvements to the map was the breaking up of the monstrous 10th Congressional District, which prior to redistricting had touched West Palm Beach, Orlando, Sarasota, and Fort Myers.

Redistricting in the 1990s: A Preliminary Forecast

The dynamics of the state's growth, namely the increases in Republican registration levels and a more multiethnic population, mean that the redistricting battle in 1991 and 1992 will be hard-fought. Early forecasts predict litigation by the loser(s).[17] Democrats are anxious to hold on to what they have got and Republicans want to have "their turn" at redistricting. Exemplary of the Republican perspective are the remarks of one state legislator from Broward County who for 12 years "has seen districts zigzagged to split Republican strongholds and give Democrats the edge."[18]

Republicans recognized that they would have had a better chance of having "their turn" if Republican Bob Martinez had hung on to the governorship and if Republicans had gained four more seats in the Florida Senate, necessary to give them a majority in that chamber. Both the national and state Republican party organizations worked hard toward accomplishing each of these goals in the 1990 state elections. The stakes were obvious. As one analyst noted: "If Republicans gain control of the Senate, as they are threatening to do, the GOP will have more clout than it has had during any previous reapportionment, since it has never controlled either house of the state Legislature during a redistricting in modern history."[19] Unfortunately for them, Democrat Lawton Chiles beat Martinez for governor and the number of Senate seats held by Republicans stayed the same.

In Florida, the governor has a veto power over any congressional redistricting plan drawn up by the legislature but not over state legislative redistricting plans. Those plans are under the purview of the Florida Supreme Court.

Congressional Redistricting Forecasts

The chair of the House Reapportionment Committee (Wallace, D-St. Petersburg) predicts significant changes in the congressional districts, especially since the state will get four new seats. He predicts the most change in the area around Palm Beach and other cities on the

lower east coast.[20] Democrats are also anxious to redraw several districts in Central Florida which have elected Republicans in recent years. Republicans undoubtedly will fight hard to make these districts safer seats for Republican candidates.

Other forecasts are that one of the state's new congressional seats will be carved out of the Orlando area, another out of the area between West Palm Beach and Ft. Lauderdale, one from the Tampa area, and one from the Jacksonville area.[21] But another scenario forecasts that of the four new seats, two will be squeezed into the South Florida area, one into Tampa, and one into Orlando.[22] Naturally, several ambitious state representatives from those areas are already being touted as likely candidates for these new districts. Certainly their ambitions will affect the way the legislature draws the plans.

State Legislative Redistricting Forecasts

Early predictions for the reapportionment of the Florida legislature are that Pinellas, Dade, and Broward Counties will likely lose seats. In March 1990, the chair of the House Reapportionment Committee estimated that Pinellas County will lose one seat in the state House of Representatives, Broward County will lose one seat, and Dade County will lose three seats. The winners will be Marion, Brevard, Lee, Orange, Osceola, Seminole, Palm Beach, and Hernando Counties. According to Wallace: "It's apparent that there is a shifting of the population base from the older urban areas to emerging urban areas." He has hinted that the issue of multimember versus single-member districts will be revisited, but few observers expect there to be any serious consideration of proposals to return to multimember districts.

Fewer changes are predicted in the Florida Senate. The most tangible predictions are that Pasco County, currently divided among three Senate districts, will get its own district. In the Senate, the major struggle is likely to be over altering the district lines to make districts safer for each party's banner carriers. However, if the population trends of the past decade continue, Republicans might very well be advised to adopt a strategy of trying to maximize access districts, especially in the areas of high growth and immigration of Midwestern Republicans.

There is likely to be a coalition between Republicans and black leaders for reasons cited earlier in this essay. Both African Americans and Hispanics are prepared to use the courts to challenge any plan they judge to be dilutive of their maximum strength. Five Florida counties (Collier, Hardee, Hendry, Hillsborough, and Monroe) are subject to preclearance requirements under the language extension of the Voting Rights Act of 1975. Their plans must be approved by the U.S. Department of Justice. The difficulty in affirmative gerrymandering is that significant proportions of the state's black and Hispanic populations are located in the same metropolitan areas, setting the stage for some fierce battles between the two minority groups.

With the stakes so high, there can be little doubt that Florida's next round of redistricting will be difficult for all parties involved.

NOTES

1. In recent years, the largest stream of migrants has been Midwestern suburbanites who have brought their Republican registration to many lower Gulf Coast and Central Florida counties. In fact, "Many demographers, academics, and political professionals share the belief that the retirees who have come to Florida in the past decade have been a major cause of emerging Republican dominance." (Bill Osinski, "The GOP Army: Retirees Moving Into Florida Have Turned It Into a Republican Base," *Tampa Tribune*, March 20, 1990, pp. 4-5F.) In 1978, only two counties were regarded as Republican strongholds: Sarasota and Collier. By 1990, 12 counties had a majority of Republican registered voters: Brevard, Charlotte, Collier, Indian River, Lake, Lee, Manatee, Martin, Orange, Pinellas, Sarasota, and Seminole. Six other counties were within 5,000 voters of becoming Republican counties: Clay, Flagler, Hernando, Highlands, Osceola, and St. Lucie. (Lucy Morgan, "Florida's Republicans Are Building Strength," *St. Petersburg Times*, April 15, 1990, p. 7B.) The vast majority of Hispanic migrants have migrated

from Latin America into South Florida, especially Dade County. They tend to register as Republicans. As a consequence, the county has become less Democratic. In 1980, 72.1 percent of the Dade County registered voters were Democrats. By 1990, the figure had slipped to 54.8 percent. Of the 11 Hispanics serving in the Florida legislature in 1990, 10 were from Dade County (three in the Senate; seven in the house); all were Republicans. And a Republican Hispanic captured Democrat Congressmember Claude Pepper's congressional seat in 1989.

2. Two excellent works discussing early Florida legislative malapportionment are: William C. Havard and Loren P. Beth, *Representative Government and Reapportionment: A Case Study of Florida* (Gainesville: Public Administration Clearing Service of the University of Florida, Studies in Public Administration, No. 20, 1960); and William C. Havard and Loren P. Beth, *The Politics of Misrepresentation: Rural Urban Conflict in the Florida Legislature* (Baton Rouge: Louisiana State University Press, 1962). For an examination of Florida reapportionment in the 1960s and 1970s, see Manning J. Dauer, Michael A. Maggiotto, and Steven G. Koven, "Florida," in Leroy C. Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 74-81. Descriptions of the 1982 reapportionment are in: Neil Skene, "Reapportionment in Florida," in Allen Morris, *The Florida Handbook, 1985-1986: Florida's People and Their Government* (Tallahassee: Peninsular Publishing Company, 1985), pp. 131-40; Mark Herron, "An Overview of Florida's 1982 Reapportionment," *Florida Environmental and Urban Issues,* October 1982, pp. 5-21; and James H. Ammons, "Reapportionment, Single Member Districts and Black Representation in the Florida Legislature," *Florida Policy Review* 1 (Winter 1986), pp. 1-10.

3. See Deborah L. Ibert, "We Demand New Districts, Say Speakers," *Tallahassee Democrat*, September 3, 1981, p. 1D; Ardith Hillard, "Speakers Push Single-Member Redistricting to Spread Power," *St. Petersburg Times*, August 25, 1981, pp. 1B, 6B; Martin Dyckman, "Reapportionment: The Legislature's Decennial Drama," ibid., January 3, 1982, pp. 1-2D; and Ammons, "Reapportionment," pp. 1-10.

4. Ibid., p. 3, and Herron, "Overview," p. 6.

5. John Harwood, "Blacks, GOP Join Forces for Reform," *St. Petersburg Times*, September 2, 1990, pp. 1, 14A.

6. Herron, "Overview," provides an excellent, detailed account of the events preceding the actual 1982 reapportionment sessions.

7. David Powell, "Florida GOP Strategists Optimistic," *St. Petersburg Times*, January 18, 1982, p. 2B; Neil Skene, "Barron's Districting Plan Favorable to Pinellas Senators," ibid., January 16, 1982, p. 2B.

8. Paul Tash, "House GOP Threatens to Break Ranks," ibid., February 25, 1982, p. 4B.

9. Manning J. Dauer and H. Jeffrey Cutler, *Florida State Senatorial Districts in the 1982 Reapportionment* (Gainesville: Public Administration Clearing Service, University of Florida, 1981), p. 6; also see Herron, "Overview," pp. 5-21.

10. Ibid., p. 8, and Ammons, "Reapportionment," p. 2.

11. Ibid., pp. 2-3.

12. "Dempsey Barron's Railroad Train," *St. Petersburg Times*, January 19, 1982, p. 16A.

13. Ibid.; Richard Morgan, "Redistricting Plan Angers Pasco Leaders," *St. Petersburg Times*, January 20, 1982.

14. Charles Billings, "Electoral Geography and Black Political Power: The Case of Florida" (unpublished manuscript).

15. "Birth Rates, Migration Reverse Black Population Trend in Florida," *Tampa Tribune*, May 20, 1989, p. 10-B; and Billings, "Electoral Geography."

16. Bruce Dudley, "GOP Plans to Use Ballot Box to Beat Democrats to the Draw," *Tampa Tribune*, April 2, 1989, pp. 1, 18A.

17. Ibid., p. 18A.

18. Bruce Dudley, "By the Numbers: House Awaits Census," *Tampa Tribune*, January 8, 1990, pp. 1, 4B.

19. Dudley, "GOP Plans," p. 18A.

20. Ibid.

21. Dudley, "By the Numbers," p. 4B.

22. Lucy Morgan, "Pinellas Likely to Lose House Seat," *St. Petersburg Times*, March 9, 1990, p. 1-B.

GEORGIA

CHARLES S. BULLOCK, III, AND RONALD KEITH GADDIE

Since 1930 approximately one-third of Georgia's counties have lost population. The 1970s were atypical of this pattern with only 10 of 159 counties failing to add population. Despite the broad distribution of growth, many counties failed to match the 19.0 percent growth statewide. The fastest growing areas tended to be suburban and it was in these counties that the Republican party was rebounding from Watergate and Jimmy Carter's presidential campaign.

African Americans, who had little success in winning new districts during the 1970s, also entered the reapportionment process looking for gains. As in many other states, Georgia's racial minority found an enthusiastic ally in the state's partisan minority.[1]

THE SETTING

Democrats dominated the special session convened in August of 1981 to redistrict the state, holding 157 of 180 House seats and 51 of 56 Senate seats. Governor George Busbee was also a Democrat. As the session opened, the work of the Senate Reapportionment Committee was supplanted by a plan devised by the chamber's majority leader, Tom Allgood, working in conjunction with lobbyist Cheatham Hodges. Despite criticism from reapportionment chair Senator Perry Hudson, Allgood had commitments from 44 senators,[2] more than enough to ratify his handiwork. Hudson sought to stir up opposition by telling his colleagues, "I can't help [but] be sad to think that this plan was drafted by a lobbyist. Can you imagine a lobbyist drawing your district lines? That is what happened."[3]

REPUBLICAN DEFEATS

Republicans were too few to do more than cry "foul" from the sidelines. For example, suburban Atlanta's Gwinnett County failed to maximize its influence. The Gwinnett House delegation objected when more than 15,000 county residents were divided between a rural single-member district and a three-member district dominated by Hall County (Gainesville). The Gwinnett GOP chair charged that splitting off these two areas "is an attempt by Speaker Tom Murphy to dilute what he perceives as Republican strength in Gwinnett County."[4]

When GOP efforts in Gwinnett and elsewhere were rejected, Republican legislators threatened to file complaints with the U.S. Justice Department. (Georgia is subject to Section 5 of the Voting Rights Act and therefore reapportionment plans must receive federal approval prior to implementation.) Republican Representative Tom Phillips of Gwinnett noted that the Republican party at the state and national levels had "encouraged us to file a complaint when the reapportionment plan is submitted to the Justice Department for review."[5]

Because of the strong preference of the Justice Department for single-member districts, many multimember districts had been eliminated in the early 1970s. In sections of the state having few African Americans, however, some multimember districts remain, with the largest concentration being in Cobb County, located on Atlanta's northwest flank. In 1981 Cobb was divided into two five-member districts in a display of packing and stacking. The eastern district was surrendered to the GOP while having a five-person western concentration, it was hoped, would keep Republicans at bay there. The plan worked as anticipated in 1982, with Democrats winning all five of the western seats. Even as late as 1986, Republicans won only one western seat; in 1988, the dike collapsed and the GOP captured four western seats, only to fall back to three in 1990.

AFRICAN AMERICAN CONCERNS

While Republicans threatened to complain to the Justice Department, their allies in the Legislative Black Caucus were better positioned to seek federal inter-

vention. The black perspective was captured by Representative Billy Randall, who said that, "The bottom line is that where black districts could be created, they should be . . ."[6] Such efforts to maximize the number of majority-black districts collided with the attempts of the white Democratic leadership to protect incumbents.

The GOP leadership was drawn to support the Black Caucus because, when minority voters are concentrated in some districts, the remaining overwhelmingly white districts may be more receptive to GOP efforts. Moreover, given the Democratic hegemony in the legislature, any disruptions in incumbency would help the Republican party, which often has difficulties inducing challengers to take on incumbents.

The Caucus's efforts to increase the number of heavily black districts were generally unsuccessful. As shown in Table 1, majority-black House districts remained at 30, while in the Senate an additional black district was created, which raised the total to eight. Not only were there problems in increasing the number of black districts, the success in making some districts more heavily black was modest at best. In each chamber an additional district more than 60 percent black was created while there were two fewer districts in the House in the 50-55 percent black range and one fewer in the Senate. Blacks sought to create five black House districts in suburban Atlanta's DeKalb County, where they claimed that only three of the county's districts had black concentrations sufficient to ensure the election of a black legislator.[7] The Justice Department promoted black interests in one DeKalb Senate district. The Allgood plan removed minority voters from a district in which they constituted 69 percent of the population and 57 percent of the registrants, to protect one of his allies.[8] Justice objected to this proposal, since even though the receiving district would be 65 percent black, blacks would be only 42 percent of the registered voters.[9]

In Savannah, two black incumbents sought to create a third black House district by reducing the minority proportions in their own districts from 83 and 98 percent to 73 percent. This would allow the creation of a third district about 70 percent black.[10]

Fulton County, which includes most of Atlanta, lost five House seats in 1980. Most Black Caucus members endorsed the elimination of countywide seats. In a maneuver supported by a senior member of the Caucus with close ties to the speaker, an amendment was adopted to maintain two at-large seats. The head of the Atlanta chapter of the NAACP saw this action as a stab in the back.[11] These at-large seats remained in the hands of whites until 1988, when both were captured by African Americans.

While the bulk of the General Assembly saw no obligation to maximize black districts, it did carry out some affirmative action gerrymanders. A notable example occurred in Dougherty County, where, although the House delegation was reduced from four to three, a second black district was created. The sitting black member's reconfigured District 132, as seen in Figure 1, was given an hourglass waist which was approximately 1000 feet wide.

Table 1. Majority-Black Legislative Districts Before and After the 1982 Redistricting.

	% BLACK				TOTAL OVER
CHAMBER	50.0-54.9	55.0-59.9	60.0-64.9	OVER 65	50 % BLACK
House					
Pre-1982	7	3	1	19	30
Post-1982	5	4	3	18	30
Senate					
Pre-1982	3	0	0	4	7
Post-1982	2	1	0	5	8

Other Features

Two other features in the state legislative redistricting were the rural wrap and the incumbent incursion. Multiple examples of each exist.

The rural wrap occurs when a rural or suburban district arcs around an urban area. The best example, which appears in Figure 2, comes from northwest Georgia

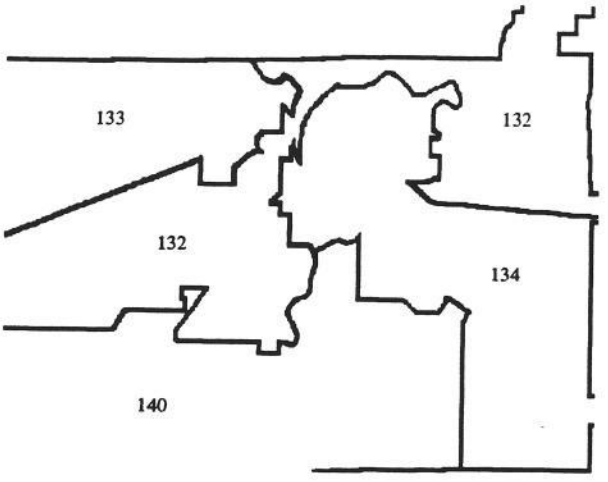

Figure 1. Affirmative Action Gerrymander for District 132.

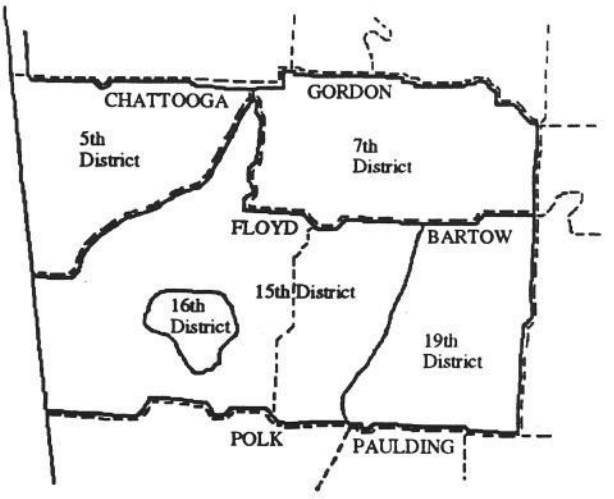

Figure 2. District 16, Showing the Rural Wrap of District 15.

where the city of Rome in House District 16 is completely surrounded by a two-person district. Less extreme forms are found elsewhere.

In the incumbent incursion a tentacle extends from a largely rural district into an urban area in order to bring the rural district up to the needed population level and save the seat of the incumbent. The Macon area, which had hoped to dominate two Senate districts, found itself split among four with only one district wholly in Bibb County. Similarly, population from Athens was used to flesh out two rural districts, and, as previously mentioned, fingers from two less urban districts extended into Gwinnett.

Congressional Districting

Since Georgia neither gained nor lost a congressional seat, the general outlines of its 10 districts remained largely intact. The 8th District maintained its reputation as perhaps the longest district in eastern America stretching 260 miles from the Florida border to the edges of metropolitan Atlanta, Athens, and Augusta. An editorial writer said of the 8th, "It resembles a nightmare brought on by a late dinner of pizza, chili and onion rings and a bottle of tequila." [12] The same writer observed that the district was so narrow that to campaign, "All you'd have to do is drive through the district and shake hands with folks on both sides of the road."

The serious conflicts from the 1981 legislative session involved three Atlanta-metro counties. The struggle in one county was partisan, while in the other two it was racial.

Disagreements over where to draw the line between Districts 4 and 5 in the Atlanta area produced the only litigation to come out of the 1981 remapping. District 5 had sent Andrew Young (D) to Congress in 1972 as the first African American to be elected from a Deep South state in this century. When Young won the district, it was 44 percent black in population but only 38 percent in its registered voters.

Black state Senator Julian Bond wanted a district more than 70 percent black. His proposal would have placed the Democratic incumbents for Districts 4 and 5 in one 90 percent white district, where they would have been endangered, since the population leaned Republican. The Senate, allegedly at the behest of Majority Leader Tom Allgood, proposed a 69 percent black district.[13]

The conference committee produced a 57 percent black district, to which the Justice Department objected. The state challenged the Justice Department objections before the District of Columbia District Court. The three-judge panel supported Justice and concluded that the state had intentionally diluted black political influence.[14] At a special session late in the

summer of 1982, the General Assembly increased the 5th to 65 percent black by reducing the 4th to 13 percent black. The Justice Department approved this plan.

In the remainder of the state the population concentration in the Atlanta area loomed large. In addition to the 4th and 5th Districts, which were wholly within metro-Atlanta, another five districts contained one or more counties of the Atlanta Metropolitan Statistical Area (MSA). An eighth district abutted the Atlanta MSA, although it included none of the counties. Only the two districts which lie wholly in South Georgia were clearly outside of the Atlanta penumbra.

Consequences of the Redistricting

In the immediate aftermath of the redistricting, African Americans gained two Senate but no House seats. Table 2 shows that the 1982 elections also saw Republicans pick up two Senate but no House districts. During the decade, there were further gains for both sets of challengers of the plans devised by white Democrats. In the Senate, white Democrats lost six seats to each group of challengers during the decade, while in the House Republicans added 12 seats to eight for African Americans.

Looking to 1991

Georgia is projected to have been the eleventh fastest growing state during the 1980s. Most counties which have exceeded the state's average rate of growth are in metropolitan statistical areas in North Georgia, with particularly explosive growth coming in several Atlanta-area counties.[15] It is projected that at least two Senate seats will be moved to North Georgia, along with six House seats.

The most rapidly growing counties are ones in which Republican candidates have done well. With additional seats going to Gwinnett and Cobb Counties, it seems likely that Republicans will score further gains. Republican advances, stemming from the allocation of more suburban seats, will be accelerated by the GOP-Black Caucus coalition. Representatives of black and Republican interests have begun mapping their strategy. The well-heeled Republicans bring to this union financial resources needed to obtain the most sophisticated computer hardware and software with which to produce alternatives to the plans crafted by the legislature's Reapportionment Committees.

The Republican-African American alliance is not a majority in either chamber and Georgia continues to have a Democratic governor. If African Americans are dissatisfied, they can object when the Justice Department reviews Georgia's plans as required under Section 5 of the 1965 voting Rights Act.

The Justice Department preclearance office now seems to be operating under the premise advanced by Representative Randall a decade ago—if a black district can be drawn, it must be. With state-of-the-art technology, it is unlikely that the Black Caucus will miss many opportunities to identify such potential majority districts. While maximizing the number of majority-black

Table 2. Partisan and Racial Composition of the Georgia Legislature, 1981-91.

CHAMBER	1981-82	1983-84	1985-86	1987-88	1989-90	1990-91
House						
Black Democrats	19	19	22	22	25	27
White Democrats	138	138	132	130	119	118
Republicans	23	23	26	28	36	35
Senate						
Black Democrats	2	4	5	6	7	8
White Democrats	49	45	42	40	38	37
Republicans	5	7	9	10	11	11

seats may not inevitably maximize Republican seats, the two usually increase together.[16]

It is likely that after the next redistricting, urban legislators will be more heavily black than before. The suburbs will return mostly white Republicans, while white Democrats will predominate in rural areas. Thus the three sets of players in the legislature—black Democrats, white Democrats, and white Republicans—may come from quite distinctive constituencies, which may affect coalition patterns in subsequent sessions.

Georgia is assured of an eleventh congressional seat and has a shot at a twelfth. The new seat(s) would go to the Atlanta area. The most likely scenario for an eleventh seat would be to pack Republicans into a district on the north side of Atlanta to provide short-term relief for the Democrats from whose districts Republicans were removed.

African Americans hope to create one or even two additional majority-black districts. One avenue to explore links black populations in Columbus and Albany via the heavily black rural counties along the Alabama border. A second possibility combines black populations in Macon and Augusta by going through black belt counties in middle Georgia. Each of these four cities has traditionally dominated its own district. Should it prove possible to create one or both of the districts desired by black legislators, the outlines of Georgia's congressional districts would undergo their most substantial changes in this century. Black objectives will be promoted if Georgia gets a twelfth seat so that each district will have relatively less population, since in order to demand black districts, it must be demonstrated that a majority of the voting age population in the district would be black.[17]

Conclusion

The 1991 redistricting session seems destined to be a reprise of 1981. Republicans and black Democrats will square off against white Democrats. The most significant factor which might alter the outcome in 1991 is an improved bargaining position for African Americans, who will almost certainly be able to extract additional majority-black districts. One member of the Black Caucus predicts that redistricting will produce 15 to 20 new majority-black seats.[18]

Most observers believe that the new reapportionment will eliminate the few remaining multimember districts. One former representative of a two-person district says, "The issue will not even be a big debate on whether or not we will continue to have multiple districts, but it will be how the single-member districts will be drawn."[19] A member of the Black Caucus indicates that his group may bring suit if necessary to make single-member districts universal. As suggested in the context of Cobb County earlier, if there is a partisan outcome to eliminating these districts, it may be pro-Democratic. While the number of white Democrats elected in 1992 will be fewer than currently serve, they will, nonetheless, constitute at least a plurality in both chambers.

NOTES

1. For a discussion of reapportionment politics in Georgia prior to the 1980s, see Keith R. Billingsley, "Georgia," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 82-85.

2. "House Revamp Plan Going to Floor," *Gwinnett Daily News*, August 26, 1981, p. 3.

3. "House, Senate Redistricting Plans Passed," *Columbus Enquirer*, August 28, 1981, pp. A1-A2.

4. Mike Roberts and Pamela Fine, "Phillips, Wall Oppose House Revamp Plan," *Gwinnett Daily News*, August 27, 1981, pp. 1, 7.

5. Ibid., p. 7.

6. Ron Woodgeard, "Black Caucus Not Happy With Plans," *Macon Telegraph*, August 25, 1981, p. 1.

7. "Reapportionment Tops Docket," *Albany Herald*, August 27, 1981, p. 6A.

8. Tom Crawford and Mike Christensen, "Political Expediency Runs First in Legislative Reapportionment," *Atlanta Journal-Constitution*, August 30, 1981, p. 1-J.

9. Letter from William Bradford Reynolds to Michael Bowers, February 11, 1982.
10. Shari Sigman, "Proposal Draws Ginsberg's Fire," *Savannah Evening Press*, August 26, 1981, p. 11.
11. "NAACP To File Suit Over House Redistricting Plan," *Macon Telegraph*, August 31, 1981, p. 23.
12. "Eighth District Plan Is Like Bad Dream," ibid., August 24, 1981, p. 4A.
13. Rumors held that Allgood supported the black concentration in the 5th District in return for the Black Caucus's agreement not to demand that Allgood's Augusta district be made more heavily black. Ultimately Allgood's district emerged 52.3 percent black. Allgood's district was one of two objected to by the U.S. Attorney General. Allgood's plan reduced the proportion of blacks in his own district from 50 to 48 percent, while the Senate Reapportionment Committee had created a 55 percent black district. After polling less than 55 percent of the vote in the 1988 primary against Augusta's former black mayor, who was only recently out of prison, Allgood retired in 1990.
14. *Busbee v. Smith*, CA No. 82-0655 (D.C. D.C., 1982).
15. Douglas C. Bachtel, Marylou Mandell, and Everett S. Lee, "Georgia's Changing Social, Economic and Demographic Environment: A Historical Perspective," *Issues Facing Georgia* 2 (December 1988).
16. Charles S. Bullock, III, "Redistricting and Changes in the Partisan and Racial Composition of Southern Legislatures," *State and Local Government Review* 19 (Spring 1987): 62-67; Kimball Brace, Bernard Grofman, and Lisa Handley, "Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" *Journal of Politics* 49 (February 1987): 169-85.
17. *Thornburg v. Gingles*, 478 U.S. 30 (1986); *McNeil v. Springfield Park District*, 851 F. 2d 937 (7th Cir. 1988).
18. Faye Cunningham, "Irwin Won't Split Counties During Reapportionment," *Athens Banner-Herald*, May 12, 1990, p. 14A.
19. Ibid., p. 1A.

HAWAII

ANNE F. LEE

Over the years Hawaii, like many other states, has faced a considerable number of challenges to reapportionment plans. From statehood in 1959 through the mid-1970s, Hawaii was reapportioned by the legislature (1965), by constitutional convention (1968), and by commission (1973); and while it witnessed six court cases regarding the various maps, no plans were upset.[1]

As did many states, Hawaii faced a court battle over its 1981 map but was unusual in that the case centered on whether registered voters can be used as the population base for redistricting. Use of registered voters as the base was not unique to the 1981 maps; that base was used in all earlier plans. This time, however, challengers were successful, dramatically changing the complexion of the state's districting. Because very few jurisdictions have used this base and few courts have ruled on the issue, the 1981 redistricting and litigation hold a special significance.[2] As the 1981 redistricting got underway, Hawaii continued to be heavily dominated by the Democratic party, a domination existing since the early 1960s.

The increase in population from 769,913 in 1970 to 964,691 in 1980 did not warrant an additional congressional seat and did not have an immediate impact, since Hawaii's law required basing redistricting on registered voters. In spite of an increase in voter registration from 291,681 (1970) to 402,795 (1980), the 1981 reapportionment commission did not alter district lines significantly.

Hawaii's geography has always played a role in reapportionment. Based on long tradition, the state is divided into the four counties reflective of its island nature: Kauai County (the islands of Kauai and Niihau); Maui County (the islands of Maui, Molokai, and Lanai); Hawaii County (the "Big Island"); and the City and County of Honolulu (the island of Oahu). The state constitution requires using the basic island units (counties) as the starting point for all reapportionments, containing all state legislative districts within each island unit, and giving each unit at least one member per chamber.

Roots of the challenge to the 1981 plans are found in the U.S. Supreme Court's 1966 ruling on a Hawaii case: *Burns v. Richardson*.[3] In *Burns*, the Court held that state legislative reapportionment could be based on either of these "permissible" bases: (1) total population or (2) total population minus any or all of the following categories: aliens, transients, short-term or temporary residents, or felons.

The Court also held that the number of registered voters alone is not a permissible base and can be used *only* if there is a showing that its use results in a substantially equivalent distribution of legislators as would occur with a permissible base. According to the Court, Hawaii, as a young state with high voter registration and turnout figures, satisfied this test. However, the decision included a strong caution: "We are not to be understood as deciding that the validity of the registered voters basis as a measure has been established for all time or circumstances, in Hawaii or elsewhere."[4]

With the appointment, on March 1, 1981, of eight members of the nine-member commission, Hawaii's latest experience with redistricting began.[5] Representing both political parties equally, they could not agree on a chairperson and the state Supreme Court, as required by law, made the appointment. Following the constitution as well as certain provisions in the statutes, the commission reapportioned the state and the congressional districts on the basis of 402,795 registered voters.

Table 1. Single- and Multimember Districts Under the 1973 and 1981 Redistricting Plans.

	HOUSE DISTRICTS			SENATE DISTRICTS			
REDISTRICTING	1-MEMBER	2-MEMBER	3-MEMBER	1-MEMBER	2-MEMBER	3-MEMBER	4-MEMBER
1973	5	20	2	1	1	2	4
1981	6	21	1	1	1	2	4

Based on the *Report and Reapportionment Plan of the 1973 Reapportionment Commission* (Honolulu: State of Hawaii, 1973) and the *Report and Reapportionment Plan of the 1981 Reapportionment Commission* (Honolulu: State of Hawaii, 1981)

Table 1 compares type of districts used in the 1973 and 1981 plans and shows that both relied heavily on an almost identical multimember districting distribution.

Additionally, to maintain the status quo, the commission was willing to accept very high deviations. Maximum deviations found in the 1973 plans were 30.0 percent in the Senate and 29.2 percent in the House. The 1981 plan's deviations were 41.18 and 16.02 percent, respectively. One needs to be aware, however, that all these percentages are based upon the numbers of registered voters.

Unfortunately, figures are not available for analyzing the districts in terms of total population or other permissible bases, because Hawaii's voter precincts and census tract boundaries did not coincide. Nevertheless, it is not difficult to conclude that deviations, based on a permissible base, would be considerably higher.[6]

The state's two congressional districts, based on registered voters, had a deviation of 0.2 percent. The line separating the 1st District (urban Honolulu) and the 2nd (suburban/rural Oahu and the other islands) remained fairly intact.

Charges of gerrymandering, put forth by Republicans, focused on the redrawing of lines on Oahu. They maintained that the 8th House District (Waialae-Kahala), a longtime Republican stronghold, was intentionally turned from a two-member district into a single-member district by dispersing major parts into surrounding Democratic areas in order to eliminate one GOP representative. They also argued that the potentially strong new Republican areas in Mililani were dispersed into several surrounding districts. Democrats on the whole were satisfied with the minimal changes to the districts.

The commission reduced Oahu's House seats by two due to population shifts, and some believed that a deal was struck. According to an account at the time: "The tradeoff, the deal theory goes, is that if the GOP gains on the Neighbor Islands, it has to give up something on Oahu."[7] Thus, the dispersion of Waialae-Kahala (a GOP loss) and the combination of traditional Democratic rural areas with a GOP-leaning urban area—resulting in a huge West-Hawaii County district (a GOP gain). The second seat Oahu lost came from Manoa-Makiki, Oahu's only three-member House district, which was changed to a two-member district.

Approximately one month after the commission filed its report and plans with the lieutenant governor, members of the Republican party filed suit in federal district court. Their complaint challenged the state legislative map on five major grounds:

1. Deviations in the plan far exceeded tolerable limits and were not justified by an overriding state policy.

2. The multimember districting was unconstitutional.

3. Gerrymandering resulted in favoring Democratic party candidates.

4. Areas with distinct socioeconomic interests were split and submerged.

5. The use of registered voters as a base was unconstitutional.[8]

Hawaii County Democrats joined the case to challenge the districting there, and three members of the League of Women Voters of Hawaii, representing both political parties, intervened on the registered voter and deviation issues. The court also allowed the League to challenge an issue not originally included: the registered voter basis of the two congressional districts.

A three-judge federal panel heard oral argument in *Travis v. King*[9] on March 24, 1982, on the registered voter base and deviation issues, choosing not to address the other allegations. The next day the court handed down an order which held the plans for state legislative and congressional districts invalid. Shortly thereafter the court appointed special masters to draw maps.

In directions to the masters the court specified guidelines which were to have a profound impact on the state:

1. Congressional districts had to be based on total population and the legislative districts on a permissible base.

2. Population deviations had to be kept to a minimum.

3. Single-member districts had to be used unless there were persuasive reasons for multimember districts.

On May 4, 1982, the court ordered implementation of the masters' plan. The congressional map, based on total population, had a deviation of 0.012 percent. The legislative plan, based on total population minus nonresident military personnel and their dependents (a figure estimated from various state statistical data) had a House deviation of 8.6 percent and a Senate deviation of 18.6 percent.

In order to keep deviations to a minimum, two districts crossed county lines. These first bicounty districts in Hawaii's history brought forth audible groans from some state officials and a cartoon in a local newspaper showing rental canoes for candidates, thus initiating the phrase "canoe" districts. But all became relatively quiet as soon as campaigning got underway.

The court-ordered plan also brought another first: all single-member districts. Wailing was heard from some in the state, primarily incumbent legislators. Being used to running in multimember districts, they were understandably worried about the impact of a new political map. But again, once campaigning started, few complaints were heard.

In October, 1982, the three-Judge panel handed down its written opinion in *Travis v. King*.[10] While the court found the state's policy of providing each basic island unit with meaningful representation a rational one, it concluded that deviations in the 1981 state legislative plan bore no relationship to implementing that policy and that the state failed to show the registered voter base was substantially equivalent with a permissible base.

In ruling that congressional districts must be based upon total population, the court said that "pursuant to article I, [section] 2 of the Constitution states must depend on total federal census figures to apportion congressional districts within their boundaries." The state's argument that a high military population made use of total population inappropriate did not persuade the judges because "the presence of this large military population certainly aided the state in achieving its two congressional seats" and "[e]quity alone argues that it therefore should be included in the base used to draw the congressional districts within the state."

The federal district court allowed the state to reconstitute the commission and present new plans; these were implemented for the 1984 elections and continued in effect through the 1990 elections.

Four important decisions were made by the reconstituted commission.[11] First, it decided that the population base for the state legislative districts would be total census minus military personnel and their dependents, who were located in the state but who had declared their residence to be in other states. A survey carried out for the commission showed that 97 percent of the military personnel were nonresidents and could be excluded. The figure used as a base was 848,678 (out of 964,795 total population), a very different figure from the 402,794 registered voters first used.

Second, the commission decided to stay with single-member districts even though their map could have used multimember districts and many observers were convinced that this would happen. Third, the commission decided it preferred to follow the constitutional mandate to keep basic island units intact, but it would also split districts if necessary. In the end, four canoe districts were drawn, two House and two Senate, because, fourth, the commission determined to make every effort keep deviations for the state districts to 10 percent or below.[12] The splits brought the Senate deviation to 9.63 percent and the House deviation to 9.8 percent. The deviation for the congressional plan, based upon total population, was 0.0096 percent.

Travis v. King brought a number of significant, but totally unexpected, changes to the state of Hawaii—changes which will have an impact on the work of the next reapportionment commission. Recent attempts to bring constitutional and statutory provisions in line with federal guidelines did not succeed. Legislative proposals for constitutional amendments relating to reapportionment came before voters on the 1988 and 1990 ballots, but they failed to pass. Though corresponding statutory amendments were enacted in 1990, they are not effective since they were to become operative only on ratification of the proposed 1990 constitutional amendments. Since the constitution was not amended, the commission has various options, and whichever strategy is adopted will have an impact not only on where lines are drawn but also on how vulnerable the state legislative plans are to legal challenge. As to the options: (1) The commission could ignore *Travis* and *Burns* by simply using the constitutionally required registered voter base; or (2) it could ignore the state constitution and use a permissible base; or (3) it could go through a multistep process to show whether a map based on registered voters is substantially equivalent to one based on a permissible base. If substantial equivalency is demonstrated, a map based on registered voters could be adopted. If an equivalency is not evident, the registered voter base should be dropped and a permissible base used.[13]

The commission must also make decisions regarding bicounty districts. There may be pressure to do away with bicounty districts and abide by the constitutional mandate to keep districts within basic island unit boundaries. Yet in all likelihood, any determined effort to keep deviations to a minimum will require the use of bicounty districts.[14] Furthermore, the commission will no doubt consider single-member versus multimember districts. While the constitution allows up to four members per district, a return to multimember districting seems unlikely.

Census information will probably show considerable growth in three parts of the state that demonstrate increasing Republican strength. No areas have actually declined in population but some have lost in proportion to those which have grown most. This is essentially the same trend as ten years ago, although the trend has accelerated and the changes may result in significant adjustments to district lines and perhaps party fortunes.

The commission must also make a policy decision regarding the population base to use in drawing congressional district lines. If total population is used, as *Travis* requires, state law is violated; if a registered voters base is used, as the statute still requires, legal challenge is almost certain.

Hawaii will continue to have two members of the House of Representatives, and there are no apparent rumblings in the state regarding possible 1990 census undercount problems. Because of population shifts, especially the growth in Leeward Oahu, the line

Table 2. Party Membership of State Legislators, Governor, Congresspersons, and Senators, Elections of 1982-90.

ELECTION YEAR	HOUSE*	SENATE*	GOVERNOR	U.S. HOUSE	U.S. SENATE
1982	43D, 8R	18D, 7R	D	2D	2D
1984	40D, 11R	21D, 4R	D	2D	2D
1986	40D, 11R	20D, 5R	D	1D, 1R	2D
1988	45D, 6R	22D, 3R	D	1D, 1R	2D
1990	45D, 6R	22D, 3R	D	2D	2D

*Hawaii's legislature has 51 House and 25 Senate members.
Note: The decrease in Republican strength in the state legislature in 1988 was partly due to three Republicans running, and winning, as Democrats in reaction against a conservative, fundamentalist surge in the state GOP.

separating the two districts will need adjusting. This will present some interesting political questions.

The state's experience with two commissions (1973 and 1981) shows that the bipartisan makeup neither removed politics from the process nor had any impact on the longstanding Democratic control over the state. It is not likely that the 1991 commission will differ.

As the 1991 reapportionment approaches, Hawaii continues to be dominated by the Democrats. Table 2 shows that the Democrats control the state legislature, governorship, and congressional delegation.

The 1990 elections did not bring about a change even though the Republicans made an effort at offering serious competitive candidates. In fact, that party may be in an even weaker position, given the 1990 loss of two-term Republican U.S. Representative Patricia Saiki, who gave up her House seat to run unsuccessfully against Democratic Senator Daniel Akaka. At the state level, GOP strength remains at six of 51 House and three of 25 Senate seats. After the 1988 elections Republicans held three of the four county mayoral offices, but the 1990 elections reduced that number to two.

It would not be surprising, however, if the Republicans again claim partisan gerrymandering. The recent U.S. Supreme Court decision in *Davis v. Bandemer*[15] is likely to give hope that such charges will at least be heard, if not actually upheld, as was not the case in 1982, when the judges in *Travis* chose not to hear gerrymandering allegations. Whether Hawaii Republicans can satisfy Davis's stringent requirement of showing *long-term damage*, and thus be successful on this basis, is uncertain.

The state constitution sets up what could be considered a gerrymander in favor of the neighbor islands, to protect them from being overwhelmed by urban Oahu. This is because the constitution requires the apportionment of seats among the basic island units, containing districts within those units, and allocating no less than one member per unit in each house. Two factors have influenced this built-in overrepresentation: (1) strong feelings in favor of preserving the individual identities of the island units (a tradition going back to the monarchy), and (2) thoughts that maintaining county integrity will protect Democratic strength that traditionally comes from rural-agricultural (i.e., neighbor island) sectors.

Additionally, "[r]eapportionment on the basis of registered voters tends to give the neighbor islands a distinct advantage in that both the percentage of registered voters and the rate of voter turnout are [traditionally] higher than in the urbanized Oahu."[16] Such a base almost guarantees, as well, that certain ethnic and income groups will be either over- or underrepresented.

Will the 1991 commission ignore federal requirements as determined in *Travis* (and *Burns*) and follow current constitutional and statutory provisions—thus inviting litigation on these issues? The answer will set the stage for Hawaii's next venture with reapportionment.

NOTES

1. For background, see Richard Kosaki, "Hawaii," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 86-95; and Norman Meller and Harold S. Roberts, "Hawaii," in Eleanore Bushnell, ed., *Impact of Reapportionment on the Thirteen Western States* (Salt Lake City: University of Utah Press, 1970), pp. 113-35.

2. For discussion of cases dealing with a registered voter base, as well as other aspects of reapportionment, see Anne F. Lee and Peter J. Herman, "Ensuring the Right to Equal Representation: How to Prepare or Challenge Legislative Reapportionment Plans," *University of Hawaii Law Review* 1 (1983).

3. 384 U.S. 77, 1966.

4. Ibid.

5. The nine members of the commission are selected in the following manner: the president of the Senate and the speaker of the House each select two members; members of each chamber belonging to the party or parties different from the president and speaker each select one person from their respective houses, who, in turn, pick two members each for the commission. These eight are to be appointed by March 1 of each reapportionment year, and they select their chair (the ninth). The state Supreme Court appoints a chair if they cannot agree. Plans become law upon submission to the lieutenant governor and publication.

6. An affidavit submitted by an expert witness for the League interveners in *Travis v. King* demonstrated that the use of registered voters *did lead* to substantial under and overrepresentation of large numbers of people in Oahu's districts, and that the same would be true for districts on the other islands.

7. Jerry Burris, "The Politics of Reapportionment," *Honolulu Star Bulletin-Advertiser*, November 15, 1981. See also Jerry Burris, "GOP Sues to Overturn Reapportionment Plan," *Honolulu Advertiser*, November 14, 1981.

8. Some of these allegations were based on guidelines set in the state constitution: districts should be compact and contiguous, they should not be drawn to unduly favor a person or political faction, and districts should avoid submergence of socioeconomic areas into a substantially different area.

9. 552 F. Supp. 554, D. Hawaii 1982.

10. It is significant that, based on *Travis*, the 1981 reapportionment for the City and County of Honolulu, the state capital and home to about 80 percent of the state's population, was also struck down by the federal district court in *Shipley v. Mita* (1982). That court-ordered plan resulted in significant changes to the nine council districts.

11. *Report and Reapportionment Plan of the 1981 Reapportionment Commission* (Honolulu: State of Hawaii, 1984).

12. Unconfirmed rumor suggested that politics also played a role. Had the commission done away with canoe districts, they would likely have put two incumbents into the same district: one was then the speaker of the House and the other a very popular new legislator.

13. The difficulty which the 1991 commission faces in showing a substantial equivalency is suggested by the fact that in 1990 only 51.09 percent of the voting age population was registered.

14. The U.S. Supreme Court's decision in *Brown v. Thompson* (462 U.S. 838, 1983) is unlikely to have a real impact on the state. With only four counties and 51 House and 25 Senate seats (with some holdover senators at each election), it is unlikely that any county will be left with zero representation in either chamber.

15. 478 U.S. 109, 1986.

16. Jim Wang, *Hawaii State and Local Politics* (University of Hawaii at Hilo: Published by Jim Wang, 1982), p. 263.

IDAHO

GARY F. MONCRIEF

The redistricting experience in the 1980s for the Idaho legislature was a particularly tortuous one. It involved (1) a special session of the state legislature, (2) two gubernatorial vetoes, (3) the filing of a suit by Republican lawmakers, (4) the withdrawal of the suit by the GOP, (5) a series of state district and state Supreme Court cases (known as Hellar I, II, and III), and, (6) finally, the implementation of a controversial court-ordered plan which included the creation of floterial districts. This eventually resulted in a 1986 amendment to the Idaho Constitution which will have very important consequences for the reapportionment of the 1990s.

The history of the last redistricting in Idaho begins in July of 1981, when an 11-day special session produced a redistricting bill that passed (on near-perfect party-line votes) 25-10 in the Senate and 50-20 in the House of Representatives. Republicans held substantial majorities in both houses of the legislature, 23-12 in the Senate and 56-14 in the House. Governor John Evans was, however, a Democrat. He vetoed the redistricting bill.

This first attempt at redistricting in Idaho in the 1980s was characterized by three factors. First, substantial readjustment of the district lines was required because of relatively large population increases in some areas of the state, coupled with the decision not to add any new seats to the legislature. This forced the drawing of boundary lines which crossed over traditional regional and county boundaries in several instances. Because of geographical, historical, and religious factors, Idaho is a state characterized by regional politics. The creation of districts crossing some of the regional lines was an early source of conflict.

Second, a definite urban-rural conflict existed in the 1980s redistricting process. Idaho is basically a rural state, with the exception of several urban centers. One of these, the Boise metropolitan area (Ada County), contained 173,000 people, equivalent to 18.3 percent of the state's population, according to the 1980 census. There were 35 legislative districts in the state, with one senator and two representatives elected from each district. After the 1980 census, it was determined that the "ideal" population for each district was about 27,000 residents. The Ada County delegation argued that at least six legislative districts should be contained wholly within the county. The eventual plan, however, retained only five districts.

The third and most important factor in the eventual veto decision was the charge of political gerrymandering. It is important to understand that Idaho has been characterized by divided government since 1970, when the Democrats gained control of the governor's office, while the Republicans have held majorities in both houses of the state legislature. In 1981 the Republicans were one Senate seat shy of a "veto-proof" legislature. It is this issue that led to the governor's veto. While Governor Evans justified his veto on several grounds, the key issue was the manner in which District 33 (part of Bannock and Oneida Counties) was redrawn in "a conscious effort to gerrymander."[1] District 33 had been marginally Democratic, and the new district lines would have replaced several Democratic precincts with Republican ones, making the district marginally Republican.

After the veto, the question of redistricting was set aside until the 1982 legislative session. This session began with the Republican majority determined to pass virtually the same bill again and "dare" the governor to veto it again in light of impending May primary elections, and the governor's own reelection bid. This is precisely what occurred. In February 1982, the Idaho legislature passed HB 530, a bill very similar to the one vetoed the previous year. On March 2, after claiming the Republicans were trying to gerrymander

the Democrats out of at least one seat in the Pocatello area, Governor Evans vetoed HB 530.

Republican legislators, frustrated by the governor's action, persuaded the state attorney general (a Republican) to file suit, asking a U.S. district court to reapportion the state's 35 legislative districts according to the provisions of the rejected HB 530. Meanwhile, legislators began working on yet another reapportionment plan which would satisfy both the Republican majority and the Pocatello Democrats. Compromise was finally made and on March 24, 1982, a new reapportionment bill (HB 830) was passed. This time Governor Evans signed the bill into law—Idaho finally had a redistricting plan acceptable to both parties. The overall population deviation from the largest to the smallest districts was about 5.4 percent. At this point the Republicans dropped their lawsuit.

Then, on March 31—one week after the bill was signed—a suit was filed in state district court, seeking an injunction against the implementation of the redistricting plan. The rationale for this action was that the plan was in violation of Article III, Section 5, of the Idaho State Constitution, which prohibited the violation of county boundary lines in creating legislative districts.

This type of state constitutional stipulation is not unusual, and exists in many states. It often poses a conflict between federal constitutional requirements of equipopulous districts and state constitutional requirements protecting county boundaries. States have tried various approaches to reconciling these conflicting mandates, from ignoring the state constitutional stipulation to allowing significant population deviation between problem districts in "pursuit of a rational state policy" of protecting county lines.[2] In the redistricting of the Idaho legislature in the 1970s, the former strategy was undertaken; there were many instances of county boundaries being crossed to create legislative districts.[3] The 1982 redistricting plan to be implemented by HB 830 followed the same approach. The Idaho Supreme Court later noted that in this plan, almost two-thirds of the legislative districts "join all or a portion of one county with portions of one or more other counties, in apparent direct violation of the constitutional prohibition against dividing counties . . ."[4]

The primary elections, utilizing the new districts created by HB 830, were held on May 25, while the suit was still pending. Two weeks later, on June 8, First District Court Judge Dar Cogswell declared the redistricting plan in violation of the Idaho Constitution. While Governor Evans hailed the decision, it caused considerable confusion among state legislators. Although Cogswell declared the redistricting plan unconstitutional, he refused to invalidate the recently held primary election, or to halt the pending 1982 November general election. Instead, he ruled that the "unconstitutional" districts could stand for the November 1982 general election. In June of 1983, the Idaho state Supreme Court agreed that HB 830 was unconstitutional (*Hellar I*) and remanded the case to Judge Cogswell's district court for further proceedings. After reviewing numerous plans, Judge Cogswell selected a redistricting plan known as "14-B". This plan, one of numerous plans submitted by the original plaintiffs to demonstrate that both the U.S. Constitutional "one person-one vote" mandate and the Idaho State Constitutional mandate to preserve county boundary lines could be achieved, was eventually accepted by the Idaho State Supreme Court in *Hellar II*.[5]

It was a complicated plan that diverged from the previous plan in three significant ways. First, it established 21 new seats in the legislature (seven in the Senate, 14 in the House of Representatives). Second, it established several relatively large multimember districts. Historically, all districts were multimember, in that two representatives were chosen from each; but Plan 14-B created several districts with four to six representatives in each (as well as two to three senators in each). Third—and most importantly—the new plan created seven floterial districts.

The floterial is a relatively complex electoral mechanism. A floterial is an electoral district which "floats" over several smaller districts, and "is intended to

provide additional representation for two or more electoral districts that are otherwise underrepresented."[6] There are several drawbacks to the use of floterials, but such districts do have one important advantage: they facilitate the preservation of county boundary lines in the creation of legislative electoral districts.[7] Consider the hypothetical example that we will discuss below:

Say that the ideal population for a legislative district is 30,000. There are three adjoining counties (Counties A, B, and C), each with a population of 40,000. The total population of the area, then, is 120,000, and should be allotted four legislative districts. In order to create these four districts, we are going to have to "cut" all three counties. Thirty thousand people in County A form one district, but the other 10,000 must be placed in a district in combination with 20,000 from County B. The remaining 20,000 people in County B must be placed in a district with 10,000 people from County C, and the last district will contain the remaining 30,000 from County C. This example meets the U.S. Constitutional requirement of "one person-one vote," but in so doing it violates county boundary lines. The floterial solution is to create one legislative district in each county, and then combine the three counties to form a floterial district for the election of an additional representative. Thus four legislative districts are created, representing a total population of 120,000, but without violating county boundaries.[8]

Plan 14-B, with its system of multimember and floterial districts, was adopted by Judge Cogswell. The legislature immediately appealed to the Idaho Supreme Court (*Hellar II*) arguing that 14-B was too complicated, and that the method used to compute deviation from the ideal population was inappropriate. In *Hellar II* the Idaho Supreme Court determined that 14-B met the standards of both the U.S. Constitution and the Idaho State Constitution. *Hellar II* was decided in January of 1984. While accepting the validity of 14-B, the Court did permit the state legislature (about to convene for the 1984 session) one last effort to draw its own plan. The Court declared, "The 1984 election shall be conducted under Plan 14-B unless the legislature enacts a constitutional alternative reapportionment plan."[9] The Court retained jurisdiction over the case so that it might quickly review any new reapportionment plan devised by the 1984 Idaho legislature.

The state legislature did devise a new plan in HB 746. This particular plan did not split counties, nor did it make use of floterials. The maximum population deviation between the largest and smallest districts, however, was 33 percent. Legislators argued that this was permissible deviation in pursuit of a rational state policy, in light of the U.S. Supreme Court decision in Wyoming the previous year.[10]

In a decision marked by very heated dissent, the Court decided on a 3-2 vote that the legislative plan was (1) a violation of the "one person-one vote" criterion and (2) that there was evidence of partisan gerrymandering in several districts.[11] The Court also stated that, "It is noteworthy that either by pure chance or by design the scheme of H.B. 746 does not put one incumbent legislator against another in either Ada, Canyon, or Twin Falls counties, the three counties as to which evidence of gerrymandering was presented."[12] The *Hellar III* decision was handed down on April 16, 1984, and Plan 14-B has served as the reapportionment plan for the remainder of the decade.

Redistricting in the 1990s

Nothing remotely resembling the present redistricting scheme will exist for the 1990s.[13] This is due to a state constitutional amendment, passed by the 1986 Idaho state legislature and approved by the voters in November of that year. This amendment, to Article III , Sections 2, 4, and 5 of the Idaho State Constitution, has three important provisions. First, it eliminates the constitutional prohibition on "cutting" county boundaries in redistricting. Instead, the language now reads, "a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States."[14] While this will make the redistricting task somewhat easier, it does increase the possibility that gerrymandering will occur. It especially

increases the opportunity for splitting urban counties to dilute their strength.

A second provision of the 1986 state constitutional amendment was the specific elimination of the use of floterials in the future. Floterials were unpopular with the legislators themselves, and may have led to some confusion on the part of the voters who were asked to vote in both a "regular" district and a "floterial" district. This means that the 21 legislators representing floterials will find their present districts eliminated in the next reapportionment.

Finally, the amendment eliminates a number of seats in the legislature. Presently, there are 42 Senate and 84 House seats. The amendment calls for "not less than thirty nor more than thirty-five members" in the Senate, and "not more than two times as many representatives as there are senators."[15] In other words, the maximum number of seats will be 35 in the Senate and 70 in the House (a total of at least 21 fewer seats than presently exist). It is possible, but unlikely, that reductions could be much greater. The amendment allows for as few as 30 senators (which would mean a maximum of 60 representatives). With this sort of constitutionally mandated reduction in seats, the redistricting controversies undoubtedly will be intense.

The other important change is the increased strength of the Democratic party. The Republican party had controlled both houses of the state legislature for over a quarter-century (and was therefore the majority party in each of the last three reapportionments in Idaho). The Democrats gained ground in the 1980s, however, and the 1990 election resulted in a tied Senate (21 Republicans, 21 Democrats). The lieutenant governor, C.L. "Butch" Otter, is a Republican, and has the constitutional authority to cast the tie-breaking vote in the Senate. On the other hand, the governor (with veto power over reapportionment plans) is Cecil Andrus, a Democrat. The implication of all this is that the partisan balance in the Senate and executive branch is so even that a blatant partisan gerrymander is very unlikely. The House remains solidly in Republican control.

Finally, congressional redistricting in Idaho likely will be much less contentious than the state legislative case. There are only two congressional districts in the state, and historically the adjustment between the two runs along a north-south dimension through the state, splitting the city of Boise.

NOTES

1. *Idaho Statesman* (Boise), July 31, 1981.

2. See Gary Moncrief and Tony Stewart, "The Thicket Gets Thicker: State Legislative Reapportionment in the Eighties," paper presented at the annual meeting of the Western Political Science Association, Sacramento, California, April 1984. Also see Gary Moncrief, "Floterial Districts, Reapportionment, and the Puzzle of Representation," *Legislative Studies Quarterly* 14 (May 1989): 252.

3. For a discussion of the reapportionment history of Idaho in the 1960s and 1970s, see Neil McFeeley and H. Sydney Duncombe, "Idaho," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 96-100.

4. *Hellar v. Cenarussa* (*Hellar I*), 664 P.2d 765 (Idaho 1983), 765.

5. *Hellar v. Cenarussa* (*Hellar II*) 682 P.2d 524 (Idaho 1984).

6. Moncrief, "Floterial Districts," p. 251.

7. See H. Sydney Duncombe and Tony Stewart, "Idaho's Unique Approach to State Legislative Apportionment: Statewide Floterial Districts," *State Government* 58 (1985): 96-100.

8. The trick here is the way deviation from the ideal population is calculated. The Court accepted a computational method which resulted in a 9.65 percent deviation. This has been a source of controversy for some time. See Gary Moncrief and Robert Juola, "When the Courts Don't Compute: Mathematics and Floterial Districts in Reapportionment Cases," *Journal of Law and Politics* 4 (1988):

737-49.

9. *Hellar II* at 529.

10. *Brown v. Thompson*, 103 S.Ct. 2690 (1983).

11. See *Hellar v. Cenarussa* (*Hellar III*), 682 P.2d 538 (1984), especially the dissent of Justices Bakes and Shephard, and the concurring opinion of Justice Bistline. See also Daniel Dovenbarger, "Democracy and Distemper: An Examination of the Sources of Judicial Distress in State Legislative Apportionment Cases," *Indiana Law Review* 18 (1985), especially pp. 906-10.

12. *Hellar III* at 543-44.

13. This discussion draws heavily on Gary Moncrief, "Reapportionment in Idaho: Prospects for the 1990s," in Gary Moncrief and Anne Lee, eds., "Reapportionment in the Western States: Prospects for the 1990s: A Roundtable Report," paper presented at the annual meeting of the Western Political Science Association, Newport Beach, California, March 1990.

14. Idaho State Constitution, Article III, Section 3.

15. Idaho State Constitution, Article III, Section 2.

ILLINOIS

JAMES L. MCDOWELL

Illinois, as is the case of most urban-industrial states, has found the problem of decennial redistricting difficult to solve. This was not always the case, but it has been a continuing controversy in the twentieth century.[1]

As noted by many observers, Illinois redistricted both chambers of its General Assembly in conformity with population increases and internal relocations as scheduled from its entry into the Union in 1818 through 1901. At the same time, legislators treated the state's congressional delegation fairly— at least as regards population equality. To be sure, the legislature drew districts for partisan advantage, which afforded the dominant Republicans considerable benefit at both state and national levels.

When the 1910 federal census data became available, partisan considerations ceased to be the prime ingredient in drawing boundary lines. The rural leadership realized that if the legislature continued to reallocate districts equitably, Cook County (Chicago) eventually would come to hold a majority of seats in both houses of the General Assembly—at the expense of downstate members. The Illinois legislature, therefore, joined many other state assemblies in adopting the technique of the silent gerrymander, ignoring its constitutional mandate to redistrict in 1911 and thereafter for more than four decades. Indeed, the legislature was so adamantly opposed to redrawing any lines that when the state received an additional congressional seat in the 1940s, the General Assembly refused to redistrict and forced candidates for the new seat to run from the state at large.

The legislature's failure to act during this period resulted in the 1901 districts becoming flagrantly unequal in population. For example, the most populous district in the 1950s contained nearly 18 times as many people as the least populated; 28 of the 51 districts contained less than the constitutionally permitted minimum of 80 percent of the population mean; and, theoretically, by 1952, as few as 26.4 percent of the state's residents could elect majorities in both houses of the General Assembly. If legislators appeared indifferent toward maintaining equality of representation, the public seemed even more apathetic. With only a few pleas for relief from "good government" groups, occasional condemnations of the situation by governors, and but a smattering of legal challenges to confront, assembly members were free to continue the status quo.

END OF THE SILENT GERRYMANDER

It was at the urging of newly elected Republican Governor William Stratton in 1953 that the legislature initiated the first change in Illinois districts in more than a half-century. Over the strident opposition of legislative leaders of both parties in both chambers, the governor persuaded the General Assembly to submit a reapportionment amendment to the voters in 1954. This amendment, with widespread political, civic, interest group, and newspaper support, was approved by an overwhelming 4-to-1 margin. In ratifying the amendment, Illinois voters broke two longstanding state political traditions.[2]

First, the amendment ended the 80-some-year-old practice of choosing three representatives and one senator from each legislative district. Senators particularly welcomed this change. For some time, members of the upper chamber had argued that sharing the same geographical area with three representatives gave these members of the lower house a built-in advantage in mounting a political challenge. Accordingly, the amendment increased the number of districts from 51 in each chamber to 59 in the House of Representatives and 58 in the Senate. The difference in numbers virtually prevented congruent districts between the

chambers, thus insulating senators from direct competition with representatives familiar with their entire constituencies.

Further, the amendment provided that the new 177-member House should be chosen on the basis of population, with districts allocated among Chicago, suburban Cook County, and the remaining 101 downstate counties. Redistricting of the House was scheduled for 1963 and every 10 years thereafter. However, the amendment made no provision for redistricting the Senate, thus creating presumably "permanent" districts. While the amendment did not establish a classic "little federal" system, it did provide that area be the "prime consideration" in drawing district boundaries. In creating 18 Senate districts in Chicago, six in suburban Cook County, and 34 downstate, the amendment appeared to ensure continued downstate control of the upper chamber. Rural areas might lose House seats to Cook County due to population shifts and urban growth, but this would be more than compensated for by permanent control of the Senate.

Two additional provisions in the 1954 amendment, coupled with federal judicial intervention, materially affected redistricting in Illinois in the 1960s. The amendment required redrawing of House boundaries in 1963; directed that a 10-member bipartisan commission attempt the task should the legislature fail; and ordered that should neither the General Assembly nor the redistricting commission succeed in fashioning new lines, the entire 177-member House should run for election at large in 1964. These latter two conditions were widely viewed as sufficient incentive for the legislature to act. In fact, they were not.

Unexpectedly, redistricting became an insurmountable problem in Illinois in 1963. While there was divided control of state government—Republicans held majorities in both houses of the legislature and Democrats controlled the governor's office—only the House was actively involved in the process. The Senate maintained the state's tradition of not getting involved in the internal affairs of the other chamber, and the governor took no active role. House Republicans, however, were beset by internal dissension and could not hold their coalition together, while Democrats consistently voted as a bloc. Only after months of intense negotiation over how many districts to transfer from the southern part of the state to the Cook County suburbs was the House able to pass a redistricting plan; the Senate gave the new lines its almost casual consent.[3]

Governor Otto Kerner then became active in a negative fashion: he vetoed the bill, noting that two-thirds of the new districts fell below the average population figure per district. Republicans challenged the validity of the veto, but the state Supreme Court upheld the governor's action. The state then prepared to use the redistricting commission mechanism for the first time.

The attempt to redistrict with a bipartisan commission, on which no legislators could serve, was a continuing disaster throughout the agency's four-month tenure. Heavily weighted with professional politicians from both parties, the 10-member group disagreed principally over two topics: whether to move one district or two districts from the southern end of the state to the populous northeastern sector; and, more importantly, whether to ignore the boundary between Chicago and suburban Cook County and permit some city districts to "overlap" so that Chicago could continue to control 23 districts instead of the 21 to which census figures entitled it. The two opposing sides could not come to grips with either major issue, particularly the latter, and the time period expired before the panel was able to effect a compromise.

The election of the entire 177-member House in 1964 was unusual in several respects. First, each party was limited to 118 candidates, chosen in special party conventions rather than the traditional direct primaries. Next, the practice of cumulative voting was suspended for this election. Finally, the election was conducted on special "bedsheet ballots"—paper ballots over three feet in length—because there were no voting machines capable of handling so many candidates. An overwhelming Democratic vote in Cook

County (principally, of course, in Chicago)—the last county tallied in the month-long count of the paper ballots—gave Democrats a 118-to-59 margin in the House while Republicans retained control of the Senate. The Democratic governor was reelected, giving the party two of the three elements involved in redistricting in 1965. However, the *Reynolds v. Sims* decision, requiring that the seats in both houses of a state legislature be apportioned solely on the basis of population, meant that the composition of the Senate would be at issue as well in 1965, suggesting that the next redistricting would be an extremely difficult task.

Redistricting proved more than difficult; it was impossible. Each chamber approved plans for both houses, then steadfastly refused to consider the bills passed by the other. Consequently, the General Assembly adjourned without enacting a redistricting measure, placing control of the process in the hands of nonlegislative agencies. The Illinois Supreme Court (with a federal district court panel watching closely) took responsibility for senatorial redistricting, and another bipartisan commission was charged with drawing House districts.

By combining elements from the divergent legislative proposals, the judicial panel devised a senatorial plan that was grudgingly accepted by both political parties. The court-ordered plan allowed no overlapping districts between Chicago and its suburbs but did assign 30 of the 58 districts wholly within Cook County, giving the state's most populous county a Senate majority for the first time in history. The state Supreme Court concluded its work in relatively short order, but again things did not go smoothly in the bipartisan redistricting commission. Appearing to be hopelessly deadlocked after three months, commissioners finally broke the logjam when Democrats accepted a Republican proposition that Cook County districts be identical to those devised for the Senate. In return, Republican members agreed to a Democratic plan for downstate districts that gave Democrats the opportunity to control the lower chamber in most elections. Although district populations varied by as much as 7 percent from the mean, the commission's map received federal court approval.

The redistricting turmoil of the 1960s was but a prelude to the dissension of the 1970s. The political situation was much the same as in 1965, only in reverse. In 1971, Republicans controlled the House and the governor's office, while Democrats organized the Senate as the Democratic lieutenant governor cast the tie-breaking vote in an equally divided (29-to-29) upper chamber. Further complicating the situation was the fact that legislators were operating under provisions of Illinois' new state constitution, which returned the districting scheme to the pre-1954 method of electing one senator and three representatives from each of 59 legislative districts.[4]

While the combination of divided political control and senatorial fears of built-in electoral opposition served to muddy the redistricting waters, the real problem—as in 1965—was what to do about Chicago. City Democrats wanted to control 20 districts (a loss of only one) instead of the 18 that census figures indicated would be proper. They proposed to do this by adopting the now infamous "overlapping" districts, extending some city districts far enough into the suburbs to meet population standards but not far enough to risk losing political control. Late in the session, the Republican House speaker convinced his party to go along, but Senate Republicans balked. Once again the legislature failed to redistrict prior to adjournment, and once again this chore was handed over to a redistricting commission.

The new Illinois Constitution provided for a redistricting commission different from those that operated in 1963 and 1965. Instead of a 10-member bipartisan commission appointed by the governor, the new system provided for an eight-member bipartisan body, with one legislator and one public member appointed by each of the four principal legislative leaders. Three of the four followed the letter if not the spirit of the new constitution by appointing themselves and their principal aides. Since the Senate minority leader could not participate because of a serious illness, he selected

former Governor Stratton and the deputy minority leader. The new commission achieved success within a month, adopting a plan very much like the one adopted earlier by the House. All four Democrats supported the plan, as did the Republican speaker (who had backed the proposal during the session) and his aide. This provoked bitter dissent from Senate Republican appointees, who protested that the overlapping districts in Cook County "sold out the suburbs." But the General Assembly did have a districting system—one that dislodged relatively few incumbents, yet deviated by no more than 0.5 percent from the population mean.

The 1980s: More of the Same

The decade of the 1970s had proven extremely frustrating for Illinois Republicans, particularly those serving in the General Assembly. Democrats controlled both chambers for three consecutive sessions during this period, for the first time since the Roosevelt-dominated politics of the 1930s. However, most political observers agreed with the Republican leadership that the party was in its best position in more than a decade. Republicans held the governorship—in the person of James Thompson, one of the state's most popular chief executives—and controlled the House by a 91-to-86 margin. Democratic control of the Senate had been reduced to the minimum majority of 30-to-29. Republicans hoped to entice at least one Democrat to defect and support their redistricting proposals.

Further buoying Republican hopes were two population factors. The western and northern suburbs and the collar counties (especially DuPage), long Republican strongholds, were the fastest growing areas in the state. At the same time, Democratic-dominated Chicago had lost over 360,000 residents from 1970 to 1980. This suggested that the city control of legislative districts would drop from 20 to 15—and these five districts would undoubtedly wind up in Republican territory.

Although very optimistic, Republicans were also reasonably cautious. The former speaker, who had joined the Democrats in approving the commission-drawn districts in 1971, had done so at least partly because he thought the new boundaries would favor Republicans. He was correct for the first election under the 1971 map, but Democrats, beginning with a 101-to-76 margin in the 1974 "Watergate" election, won three of the next four House elections and swept all four Senate elections over the rest of the decade. (See Table 1.) The former speaker was among the Republican casualties of the districting he helped approve.

The Republicans' political euphoria was further tempered by a significant constitutional change. Using the constitutional initiative, a group labeling itself the "Coalition for Political Honesty" succeeded in placing on the 1980 ballot a proposed amendment to reduce the number of representatives from 177, all chosen from three-member districts, to 118, all chosen from single-member districts. Subsequent approval by voters by a 2-to-1 majority meant not only an abrupt halt to the legislative careers of a guaranteed one-third

Table 1. Illinois Legislative and Congressional Representation, 1971-91.

	HOUSE		SENATE		U.S. HOUSE	
YEAR	DEM.	REPUB.	DEM.	REPUB.	DEM.	REPUB.
1971*	87	90	29	29	12	12
1973**	86	91	28	30	10	14
1975**	101	76	34	25	13	11
1977**	94	83	34	25	12	12
1979**	89	88	32	27	10	14
1981**	86	91	30	29	10	14
1983***	70	48	33	26	12	10
1985	67	51	31	28	13	9
1987	68	50	31	28	13	9
1989	67	51	31	28	14	8
1991	72	46	31	28	15	7

*The lieutenant governor's tie-breaking vote allowed the Democrats to organize the Senate.

**The Democratic total in these sessions includes one member elected as an Independent but who voted with the Democrats in the election for speaker of the House.

***This was the first session following adoption of the "cutback amendment."

Sources: Compiled by the author from *Illinois Bluebook* (Springfield: Office of the Secretary of State, published biennially); and Jack R. Van Der Silk, ed., *Almanac of Illinois Politics – 1990* (Springfield: Sangamon State University, 1990).

of the House members, but also the demise of the state's unique system of cumulative voting. This device, in place for 110 years, was created to foster minority party representation and overcome a north-south schism in the state caused by Civil War loyalties. The system was overwhelmingly effective as voters consistently elected two representatives from one political party and one from the other in all but the most partisan districts.

The change to single-member districts posed an additional problem. It was all but a foregone conclusion that the legislature would create 59 senatorial districts, then divide each of these to establish two single-member representative districts in the same territory. Not only would this return the General Assembly to the pre-1954 situation where senators faced built-in competition, but population shifts either could result in open seats or could produce occasions where two, three, or even more incumbents might wind up in the same district. Legislators, especially Republicans who appeared to be in the driver's seat, had to come up with some means of accommodating this possibility.

As in the past, however, the overriding concern was what to do about Chicago. House Republicans, in particular, were determined to limit the city to 15 districts as suggested by census figures; Democrats, on the other hand, were equally stubborn in insisting on retaining control of 20 districtings by overlapping city-suburban boundaries. While both Republicans and Democrats combined the latest in computer technology with traditional "hands-on" politics in attempts to gain political advantage, virtually all of their efforts took place behind the scenes during the first five months of the regular session. As a result, the first redistricting plan was not made public until the second week in June.

The product mainly of Senate Republicans, the proposal reduced Chicago's districts to 17, wholly within the city limits, and shifted three districts to suburban Cook County. This plan took care of incumbents to a fault: while it enhanced the chances of Senate Republicans, it endangered the futures of more than a few House Republicans by placing two or more of them in the same district in several instances.

House Republicans entered the fray the following week, making an overt appeal to minority voters in Chicago. While reducing the city's share of legislative districts to the equivalent of 15 1/2, the plan proposed 14 black House seats and three Hispanic seats among the total of 31 city seats. Districts outside city limits were generally compact and contiguous but carefully crafted to assure Republican success. Forty-one districts were placed in the heavily Republican suburbs and five surrounding counties, and 44 districts stretched across the remaining 96 counties downstate. Senate Republicans could expect to benefit from this creative map-making as well.

Senate Democrats waited until the final two weeks—and waited too long—to introduce their proposal. Not surprisingly, their plan sought to preserve 20 Chicago-oriented districts by employing the overlap technique and attempted to throw as many Republican incumbents together as possible in downstate districts.

That none of these plans was adopted is not surprising. While compromise had hardly been a significant element in this acerbic session, the lateness of introduction of the redistricting proposals (and Senate Democrats were especially tardy) did not permit an adequate time frame for serious negotiations. But the failures can be summed up succinctly: patronage, politics, and pugilism.

The House Republican map was the first to fall. Since it was not unusual at this time for Chicago Republicans to hold patronage positions through the Democratic organization (for example, in or around City Hall or in the Chicago Park District), it came as no surprise when five Chicago Republicans defected and voted against their party's plan. The redistricting bill failed of passage by a single vote as Republican pleas for minority-group support produced only two black Democratic cross-overs.

Senate Republicans were counting on at least one Democrat to cross party lines to provide the necessary one-vote margin for their redistricting measure. But their hopes were dashed when the author of the Senate bill, frustrated by what he considered delaying parliamentary tactics by the Democratic presiding officer, questioned the ancestry of the Senate president on the chamber floor. He was quickly physically attacked by another Democratic senator and a brief but fierce exchange of punches took place in front of the rostrum. This incident appeared to solidify Democratic ranks; there were no defections and the Republican plan failed on a party-line vote. Senate Democrats then passed their plan, but it was a case of too little, too late. There was insufficient time remaining before the constitutional deadline for the House to consider the measure. As in 1963, 1965, and 1971, a nonlegislative commission would oversee redistricting of the General Assembly.

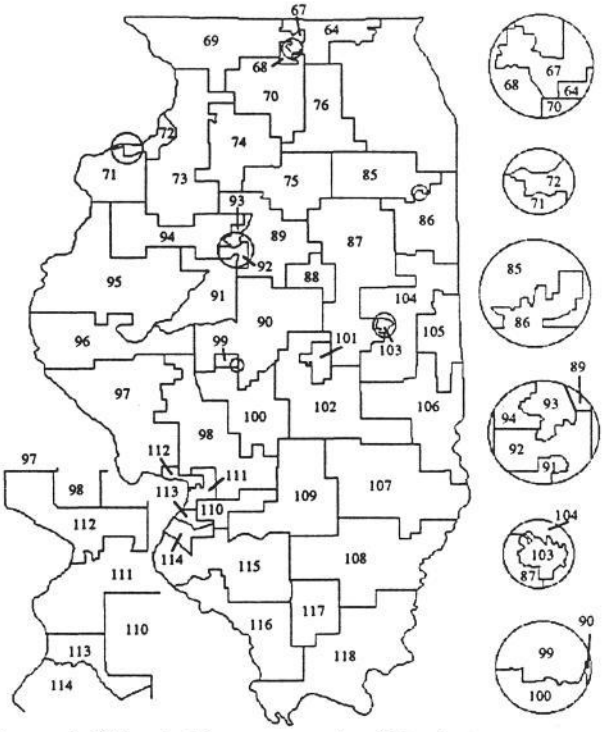

Figure 1. Illinois Representative Districts.

The 1981 Legislative Redistricting Commission was put together in the same fashion as the one a decade earlier, except this time legislative leaders did not appoint themselves and their principal aides. The leadership—the House speaker, the Senate president, and the two minority leaders—each appointed a veteran legislator and a private citizen, although two of the latter group (one representing each party) were former legislators. This group had until August 10 to formulate a redistricting plan. At first affairs moved smoothly, but negotiations soon broke down, again over the question of what to do about Chicago representation, and the commission conceded its failure shortly before midnight on its deadline date. Following the constitutional procedure, the Illinois Supreme Court then nominated two candidates for the ninth slot on the commission: former Republican Governor Richard Ogilvie and former Democratic Governor Samuel Shapiro. In a blind draw, the Republican secretary of state drew the name of Governor Shapiro, giving the Democrats a 5-to-4 edge.

Following nearly a month of intense and increasingly acrimonious discussions, Democratic commissioners—just four days before the October 5 deadline—produced a redistricting plan rather similar to what their party's proposal had been in the legislative session. The new map was adopted October 2 on a party-line vote, with Governor Shapiro—the "wild card"—providing the decisive vote. Although the districting plan had a distinct Democratic bias, there was no overt gerrymandering, unless one considers the extensive use of overlapping districts to be such. Not only did districts extend from Chicago to the Cook County suburbs in order to allow city Democrats to control as many as 20 districts, but districts also crossed the Cook County line into surrounding counties as Democrats employed the time-honored tactic of concentrating as many Republican voters as possible into as few districts as possible. Indeed, the Democratic map not only produced legislative districts that were contiguous and reasonably compact (see Figures 1, 2, and 3) but districts that came remarkably close to the ideal population average throughout the state. All 59 Senate districts and all but one of the 118 House districts came within 1 percent of the mean.

Republicans, Hispanics, and African Americans challenged the commission plan in an expensive and futile

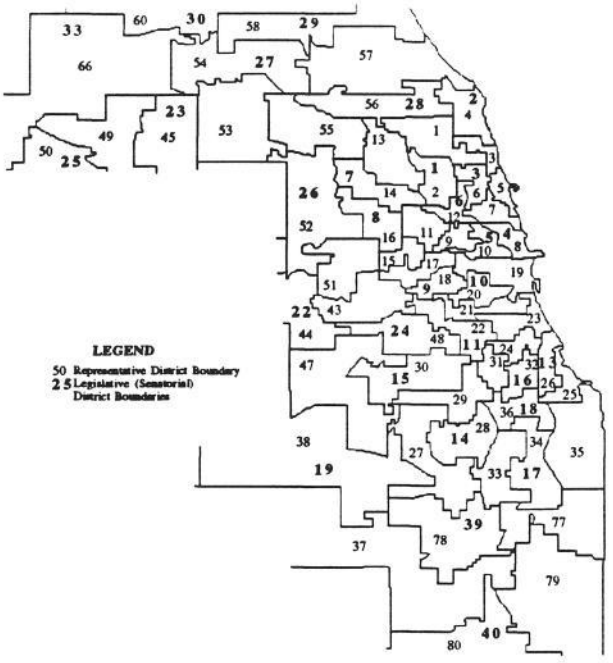

Figure 2. Cook County Legislative Districts.

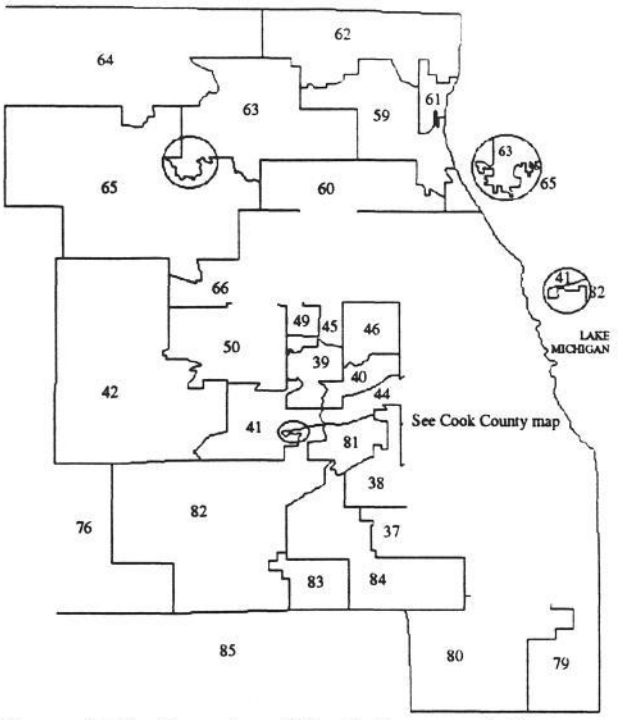

Figure 3. Northeastern Illinois Representative Districts.

plea to the federal district court for northeastern Illinois. The three-judge panel (two Democratic appointees, one Republican) ordered modifications in several Chicago districts to provide an additional black-oriented constituency and another with a Hispanic-majority population. The court also made additional boundary adjustments downstate, but it did nothing to alter the Democratic flavor of the overall map.[5]

The combination of circumstances that had made Republicans so optimistic in January 1981 had turned into a worst-case scenario by January 1982: Democrats would dominate legislative elections during the decade of the 1980s, winning all five House elections and controlling all five Senate sessions.

Legislative redistricting dominated the attention of the General Assembly from the 1960s to the 1980s, but legislators also had to redraw congressional district boundaries. As noted earlier, this had proved to be no problem through the 1950s as the legislature refused to redraw any lines until forced to do so by the 1954 reapportionment amendment. However, in the wake of the U.S. Supreme Court decision in *Wesberry v. Sanders*, applying the "one man-one vote" principle to the U.S. House of Representatives, the General Assembly had to adjust congressional boundaries in order to meet population standards. This proved far easier to achieve than legislative redistricting. Likewise, in 1971, Republicans, unable to effect a legislative redistricting plan, succeeded in drawing congressional districts (subsequently approved by a federal court panel) that enabled the party to pick up two seats and gain a 14-to-10 majority of the Illinois delegation in the 1972 elections. In fact, Republicans dominated three of the five elections of the decade, managed one 12-to-12 deadlock, and lost control only in the "Watergate" election of 1974 when Democrats eked out a 13-to-11 margin. The Republicans of the 1970s found it was easier dealing with someone else's problems than determining their own political fates.

The 1980 census, however, indicated the extent to which the migration from the "rustbelt" to the "sunbelt" had affected Illinois. Although the state's population increased about 3 percent, it did not grow as much as that of the nation as a whole (11.4 percent). Consequently, Illinois lost two seats in the U.S. House

of Representatives. Further, approximately 70 percent of the state's 11.4 million residents lived in northeastern and northern Illinois. This suggested that when the time came to cut districts, the underpopulated areas of southern Illinois would be prime targets as the General Assembly attempted to meet the population average of approximately 519,000 per district.

The political factors which promised good fortune for the Republicans in legislative redistricting in 1981—control of the House and the governor's office and just a one-vote deficit in the Senate—also applied to congressional districting. Likewise, the combination of rapidly growing suburban Cook County and adjacent counties and the sharply declining population in Chicago suggested that Republicans could maintain if not improve their hold on the congressional delegation. But, as in the case of the General Assembly redistricting effort, this was not to be the result.

Curiously, neither political party tried to eliminate any southern Illinois district, despite that area's loss of residents over the previous decade. Instead, both parties attempted to gain advantage solely within Cook County. House Republicans suggested dealing with the two-seat loss by combining four veteran Chicago Democrats into two city districts. Senate Democrats countered by abolishing two suburban Republican seats. Each chamber passed its own plan but took no action on the proposal of the other, even though the legislature remained in session two days beyond its constitutional deadline.

Once again, as in 1971, a three-judge federal district court panel would decide the composition of Illinois' congressional districts. The panel received three proposals: the Republican map, which combined four city Democratic districts into two; the Democratic map, which made up for city population deficiencies by extending three Chicago districts into suburban Cook County; and a "neutral" map submitted by former Governor Ogilvie and former Secretary of State Michael Howlett, a Democrat, which took one "safe" district from each party. The judges did not seriously consider the "neutral" plan, and they rejected the Republican proposal as overly partisan. By a 2-to-1 vote, the panel ordered the Democratic map into effect on the grounds it contained the smallest variations from the population mean and best reflected the partisan sympathies of the state's electorate. Interestingly, the two votes in the majority were cast by a Republican appointee and a Democratic choice, while a Republican appointee was in the minority.

As in the case of General Assembly elections in the 1980s, Democrats dominated congressional balloting during the decade. Beginning with a 12-to-10 edge in the 1982 election, Democrats increased their majority to 13-to-9 in 1984 and 1986, and to 14-to-8 in 1988. In one of the most stunning upsets in state political annals, Democrats captured a Republican stronghold in northwestern Illinois (District 16) to gain a 15-to-7 advantage. The seat had been left open when the longtime incumbent made an unsuccessful bid for the U.S. Senate.

The judicially approved congressional districting placed 13 seats across the northern one-quarter of the state and the remaining nine districts throughout the remaining three-quarters of the state's geographical area. (See Figures 4 and 5.) Figure 4 in particular illustrates the difficulties of devising congressional districts in Illinois. With about 70 percent of the state's residents concentrated in six northeastern counties, the remainder of the population is widely dispersed across the remaining 96 counties and about 90 percent of the state's land area. Of necessity, the downstate districts may be contiguous but they can hardly be compact.

Consider District 15, which begins at the southern boundary of Cook County and extends southward to include distinctly rural Piatt County (Monticello) and all of 10 counties and parts of two others. More widespread is District 22, ranging from Fayette County (Vandalia), which straddles U.S. 40, to Alexander County (Cairo) at the confluence of the Mississippi and Ohio Rivers, a district length of more than 140 miles. Even more elongated is District 19, which borders Indiana for more than 160 miles from Vermilion County (Danville) to White County (Carmi). Not only

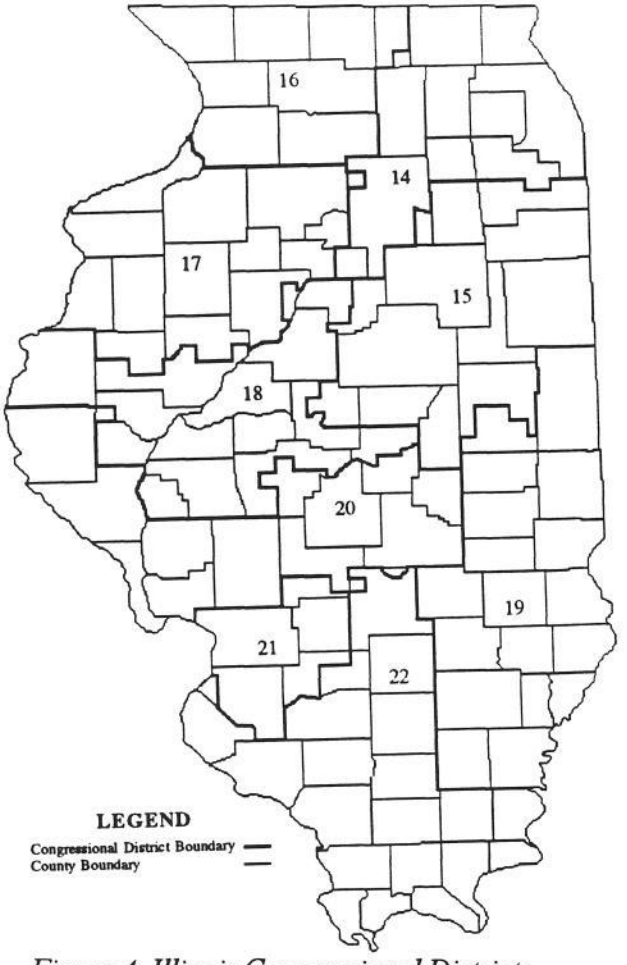

Figure 4. Illinois Congressional Districts.

does this district contain more counties than any other—17 plus part of another—but its area encompasses both small towns and small farms and the metropolitan areas of Danville and Champaign-Urbana (Champaign County), home of the University of Illinois. Some observers question whether such a far-flung district as this one can reflect a community of interest.

Finally, voting patterns under this districting system showed interesting concentrations of party preference. Over the decade of the 1980s, Democrats consistently won eight districts in Chicago and generally carried all four districts from Springfield (Sangamon County) south. Republicans generally dominated central and northwestern Illinois and the Cook County suburbs.

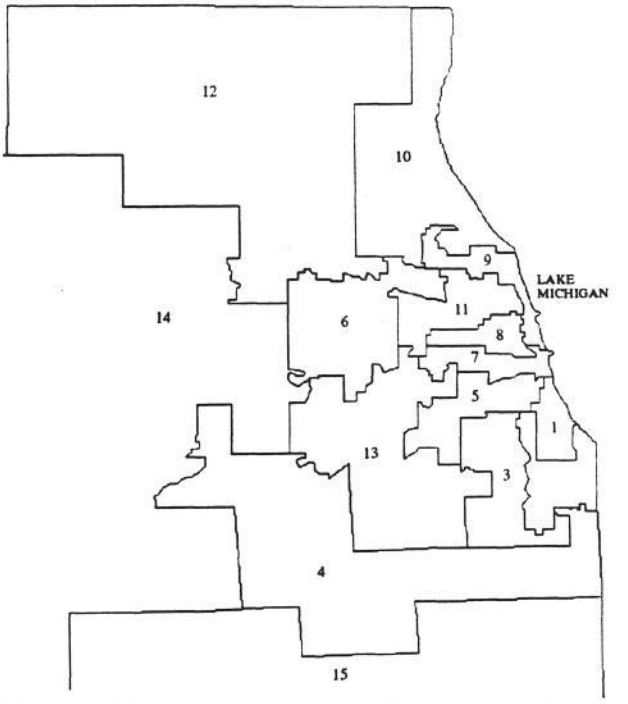

Figure 5. Northeastern Illinois Congressional Districts.

Conclusion

In reviewing the history of legislative districting in the state of Illinois over the past four decades, two facts stand out with stark clarity. First, with the exception of the 1955 redistricting under terms of the 1954 reapportionment amendment, the General Assembly has not drawn its own district boundaries since 1901. The redistricting of 1955 was relatively easy because the legislature, rather than being faced with the unpleasantness of displacing a lot of incumbents or breaking up voting coalitions, was actually able to add seats under terms of the constitutional amendment: from 51 to 59 districts in the House, for 24 new seats; and from 51 to 58 districts in the Senate, for a total of seven new members.

Redistricting in 1963 was not so simple a task. The House majority party was beset by internal dissension, and when at last the members of the Republican majority were able to compromise their differences and pass a redistricting bill, the Democratic governor vetoed the measure, citing population inequities. The ensuing redistricting commission remained deadlocked along partisan lines throughout its four-month tenure

and failed to enact a redistricting plan, resulting in the election of the entire House membership from the state at large in 1964.

The legislature again failed to redistrict in 1965. Each chamber passed its own maps but refused to consider the product of the other chamber, so that the legislature adjourned without drawing new lines. The Illinois Supreme Court then redrew Senate boundaries, and a redistricting commission finally agreed on a redistricting plan for the House after being stalemated for more than three months. The final compromise was reached because neither party wanted another at-large election.

Again in 1971, neither house of the legislature would or could pass the redistricting bills proposed by the other chamber. Very late in the session, the Republican speaker was able to convince members of his party to accede to a Democratic plan, but Democrats still could not muster sufficient votes in the Senate. A redistricting commission, acting with unusual rapidity, approved a redistricting measure, with two Republicans joining four Democrats in passing the proposal. The state Supreme Court approved the plan.

Finally, in 1981, Republicans seemed to have a tremendous political advantage, but politics turned out to be their downfall. Five Republicans in the House defected to the Democrats and voted against their party's bill, while Democrats held their ranks in the Senate to defeat another Republican proposal. The resulting deadlock gave rise to another redistricting commission which, with its original composition of four members from each political party, could not complete its redistricting task in the time allowed. A ninth member, chosen by lot, proved to be a Democrat; and, on a 5-to-4 party-line vote, a Democratic plan was enacted.

There is an ironic twist to the redistricting story in Illinois. Most observers believed that relinquishing control over their own political destinies was the last thing legislators would allow to occur. However, since 1963, General Assembly districting has always ended up either in the hands of a nonlegislative commission or under the direction of some level of the judicial system.

The second thing to note about Illinois redistricting—besides the utter futility of legislators' attempts to draw their own district boundaries—is the fact that all recent redistricting attempts, since 1955, have been made under conditions of divided government. (The Republicans controlled both houses of the General Assembly and the governor's office in 1955.) In 1963, Republicans controlled both the House and the Senate, but a Democrat occupied the governor's mansion. In 1965, Democrats controlled the House and the governor's office, but the Republicans held the House of Representatives. In 1971, Republicans controlled the House and the governor's office, but Democrats were able to organize the upper chamber of the legislature (which was evenly divided, 29-to-29) by virtue of the tie-breaking vote accorded the Democratic lieutenant governor. Finally, in 1981, Republicans again controlled the House and the governorship, but Democrats clung to a slender 30-to-29 edge in the Senate. Certainly the obvious problems caused by divided partisan control of the policy-making branches of government played a significant role in the General Assembly's continuing failure to redistrict itself.

It was widely feared that the two factors of divided government and irresolvable differences among legislators would again come into play when the Illinois legislature convened in 1991. Democrats controlled both chambers of the General Assembly, as they had in seven of the previous eight House sessions and all eight previous Senate sessions. And, as had been the case since 1976, Republicans held the governorship, although this year it was a newcomer, former Secretary of State James Edgar, who occupied the statehouse. Many observers anticipated a replay of 1963 when the legislature, controlled by one party, ran afoul of a veto by a governor of the other party. The party alignment was reversed in 1991, but the political conditions were the same.

Political considerations aside, the 1991 redistricting again would be complicated by the question: what to

do about Chicago? The 1990 census figures indicated the city again had lost substantial numbers, while the suburban areas continued to post significant increases. Although Democrats had the votes to override a veto in the House, they were five votes short in the Senate. Therefore, it was widely expected that the task of revising legislative district boundaries would again become the duty of a redistricting commission.

To complicate matters further, Illinois' population grew so little between 1980 and 1990 that the state lost another two congressional districts. Not only did the reduction of districts to 20 threaten the state's overall political clout in Washington, it also particularly endangered the influence of the Chicago Democratic organization, especially on important U.S. House committees such as Ways and Means.

Two other items also evoked concern. Southern Illinois also had undergone an outward migration, and this area faced the prospect of its districts extending even further north of U.S. Route 36 in order to approach the approximate population average of 571,500 residents. Adding Republican-oriented central Illinois territory to these far-southern districts (assuming one district was not simply eliminated) could also alter the state's political complexion.

The other politically sensitive matter involved a concerted effort by Hispanic groups to create a "Latino" district in Chicago. Hispanic representatives argued that without the increase in "Latino" population between 1980 and 1990, Illinois would actually have lost population in the latter census. They suggested that Hispanics made up almost 8 percent of the state's population, entitling this group to at least one congressional seat. To create a Latino district, however, would further impinge upon the influence of the Chicago Democratic organization.[6]

Given these conditions, few would be surprised if the General Assembly again failed to redistrict either legislative or congressional districts, thus calling into play again a state redistricting commission and federal court action for U.S. House seats.

NOTES

1. For a survey of redistricting in Illinois prior to the 1980s, see James L. McDowell, "Illinois," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 101-9.

2. The most complete review of the enactment of the 1954 amendment is John E. Juergensmeyer, *The Campaign for the Illinois Reapportionment Amendment* (Urbana: University of Illinois Institute of Government and Public Affairs, 1957). For a contemporary account of the 1955 redistricting, see Gilbert Y. Steiner and Samuel K. Gove, *The Legislature Redistricts Illinois* (Urbana: University of Illinois Institute of Government and Public Affairs, 1956).

3. The accounts of redistricting efforts in 1963 and 1965, and the 1964 at-large election, are based upon James L. McDowell, *The Politics of Reapportionment in Illinois* (Carbondale: Southern Illinois University Public Affairs Research Bureau, 1967).

4. For a thorough and statistic-laden account of redistricting efforts in 1971 and 1981, see Charles N. Wheeler III, "Redistricting '81: A Democratic Decade?" *Illinois Issues*, Spring 1982, pp. 10-19.

5. *Rybicki v. State Board of Elections*, 574 F. Supp. 1082 (1982).

6. Migdalia Rivera and Linda Yanez, "Latinos Deserve Congressional District" (letter to the editor), *Chicago Tribune*, April 28, 1991, sec. 4, p. 2.

INDIANA

JAMES L. MCDOWELL

Indiana lawmakers confront the twin necessities of redistricting their General Assembly districts and the state's congressional constituencies in 1991 under circumstances different from those which had previously prevailed in the twentieth century. Earlier modifications of district boundaries all had taken place with the same political party in control of both the governor's office and the two assembly chambers. The 1990 elections, however, produced a divided legislature (a 52-to-48 Democratic House of Representatives and a 26-to-24 Republican Senate) to negotiate these politically tense issues with Democratic Governor Evan Bayh.

The 1990s redistricting situation is also complicated by minority group insistence on greater black representation in the House and Democratic desires to eliminate multimember representative districts in Indiana's major metropolitan areas. Democrats will seek 100 single-member districts in hope of continuing their House majority (a position they had gained only two times in the previous 11 sessions) while Republicans will want to retain the two- and three-member districts to aid them in regaining their customary advantage.

Senate redistricting is expected to cause less difficulty, not only because of the anticipated firm control exercised by the veteran Republican leadership but also due to the fact that the upper chamber already consists entirely of single-member districts. Observers expect new alignments in the northwestern part of the state, which had experienced significant population losses, but relatively minor boundary changes in the rest of the state except for the fast-growing South Bend area.

As the 1991 session convenes, congressional redistricting appears likely to offer the greatest challenge. Three Democratic districts lost population according to the 1990 census, and five of the state's ten seats ordinarily were closely contested. Thus, the final decision on which areas to add to or subtract from existing districts could have a profound effect on the composition of the Indiana delegation to the U.S. House of Representatives.

Whatever the outcome of the 1990s remapping—whether the divided General Assembly could adopt a bipartisan approach and effect a political compromise on the new districts, or whether political rancor would undermine the entire process and invite federal judicial intervention—one conclusion was inevitable: the districts created in 1991 (or perhaps 1992) would be only a snapshot of Indiana at that point in time. The experience of the 1980s indicated districts did not necessarily retain the partisan cast intended when originally drawn.

Indiana residents may have felt disfranchised by the legislature's silent gerrymander from 1921 to 1963, although, frankly, there is little evidence of protest against the districting system other than dissatisfaction voiced periodically by various "good government" groups.[1] Some at least might have been angered by the obvious political approach toward districting in the 1960s but, again, publicly stated opposition was minimal. More than a few appeared to believe they were denied equal protection of the law by the General Assembly's concentration tactics of the 1970s, the decade in which the seeking of legal redress became an integral part of the Indiana districting process. Certainly during this period, many voters/residents were confused as to who represented them in Indianapolis as the legislature often dipped beneath county and township lines to use voting precinct boundaries in an effort to achieve both population equality and partisan advantage. In urban areas, it was not uncommon for across-the-street neighbors to be represented by different individuals in the General Assembly. All this set the stage for the controversial redistricting of the 1980s.

Table 1. Indiana Legislative and Congressional Representation, 1971-91.

	HOUSE		SENATE		U.S. HOUSE	
YEAR	DEM.	REPUB.	DEM.	REPUB.	DEM.	REPUB.
1971	46	54	21	29	5	6
1973	27	73	21	29	4	7
1975	56	44	23	27	9	2
1977	48	52	28	22	8	3
1979	46	54	21	29	7	4
1981	37	63	15	35	6	5
1983	43	57	18	32	5	5
1985	39	61	20	30	5	5
1987	48	52	20	30	6	4
1989	50	50	24	26	7	3
1991	52	48	24	26	8	2

Sources: Compiled by the author from *The Book of the States* (Lexington, KY: Council of State Governments, published biennially); and *Congressional Directory* (Washington: Government Printing Office, published biennially).

The 1980 elections produced total Republican control of Indiana state government. (See Table 1 for a summary of Indiana legislative and congressional representation in the period from 1971 through 1991.) Not only did Republicans dominate the General Assembly (63-to-37 in the House and 35-to-15 in the Senate), but they also held all nine statewide elected offices, headed by a new governor, Robert Orr. If there had been any doubt that Republicans would employ their tremendous political advantage, it was quickly dispelled by Senator Charles Bosma, chairman of the Senate Election Committee: "They [the Democrats] are going to have to face the political reality that we are going to do everything we can to hurt them." [2]

In some ways, Republicans were almost too strong for their own good. Although individual preservation was the primary concern of most incumbents, Republicans had too many sitting members to protect. Further, every major city lost population according to the 1980 census. The internecine feud among Republicans in both the House and Senate continued throughout the 1981 session, delaying the introduction of the redistricting plan until two days prior to adjournment. There were no hearings where the public could offer comment, and Democratic members were not permitted to participate in the deliberations. The intraparty compromise appeared to live up to the promise of Senator Bosma, but ultimately it would damage the Republicans.

The districts created in 1981 continued the pattern established in 1971-72—a combination of single-member, two-member, and three-member districts for the House and 50 single-member districts for the Senate. The 1981 redistricting did contain some modifications for the House, however, in that the legislature increased the number of single-member districts from 53 to 61, while reducing the number of two-member districts from 13 to nine. The number of three-member districts remained at seven.

In drawing districts in 1981, Republicans were able to work with more sophisticated information and more sophisticated tools than ever before. Republicans, using computers supplied by their state central committee and furnished with software by a Michigan consulting firm, created new maps. However, Republicans were thwarted by internal dissension within their own legislative caucuses, as members wanted to have their say on district boundaries. Thus, the 1981 districts continued to reflect political instinct and human influence. Or, as an outside commentator noted later, "Computer software can't account, for example, for a lawmaker who insists that his mother's grave be in his district." [3]

While the computer-generated maps were not actually used, these plans undoubtedly influenced the final districts devised. The Republican-controlled districting, not only for the Indiana House and Senate, but also for the state's congressional districts, ranks among the finer examples of creative cartography as well as the more blatant gerrymanders of this century. The legislative district populations did vary less than 2 percent from the ideal figures of 54,902 for representative districts and 109,804 for senatorial districts. Republican mapmakers were forthright, however, in introducing the redistricting proposals. They estimated the creation of 58 to 60 "safe" Republican districts in the

House and 30 "secure" districts in the Senate; they suggested there were 30 to 33 certain Democratic House districts and eight to 10 guaranteed Democratic Senate seats; and, finally, they indicated 10 to 15 House districts and 10 to 12 Senate seats might be classified as "marginal." [4]

For the Indiana Senate, Republicans employed the tactics of both concentration and dispersal (see Figure 1). Senate District 10 (heavily Democratic South Bend) became an island surrounded by Republican-oriented District 11. Fort Wayne was divided between an inner-city district (15) and a city-suburban district (16), the latter decidedly Republican in character.

The most obvious gerrymandering, however, took place in Democratic-dominated Vigo County (Terre Haute), where, for example, Democrats hold 39 of 43 city- or county-elected offices. This district (39), as shown in Figure 1, became known euphemistically as the "finger district" (although referred to behind the scenes in more scatological language); it stretched 87 miles in length from north to south and was no more than 16 miles wide at any point. Republican mapmakers then attached the remainder of Vigo County, a horse-shoe-shaped configuration, to largely rural counties to the north and east to create a district favoring their party. This strategy worked in 1982, but Democrats reclaimed the seat in 1986 and retained the position in 1990.

Similarly, in drawing House districts, Republicans conceded most urban areas, except Fort Wayne and Indianapolis, to the Democrats by compacting inner-city voters into a relatively few districts, while absorbing fringe-area Democrats into Republican-leaning constituencies with a rural/small-town orientation. The majority party granted solid Democratic seats to the Gary-Hammond area, South Bend, Muncie, Kokomo, Terre Haute, Jeffersonville, and Evansville, and recognized the Democratic leanings of most of the sparsely-populated rural areas in the southern portion of the state. In the northern part, however, Republicans created a set of mostly compact districts (except for the

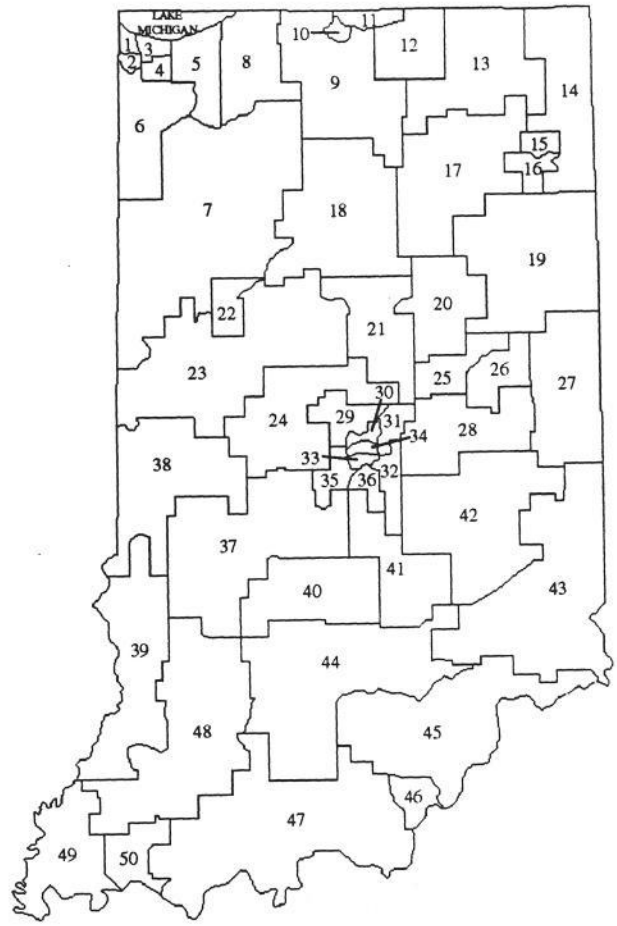

Figure 1. Indiana Senate Districts.

elongated District 22 and the U-shaped District 25, as shown in Figure 2).

For all of the dissension expressed over the previously described House districts, the major controversy continued to be over the five three-member districts in Marion County. As in 1971, Republicans created four "safe" districts in suburban areas and relegated Democrats to a single district in downtown Indianapolis. And, as in the 1970s, Republicans consistently won 12 of the 15 Marion County seats.

There was one other redistricting problem confronting the General Assembly in 1981, that of congressional boundaries. Traditionally, the legislature had paid even less attention to the lines for U.S. House of Representatives districts than to those of its own constituencies. While the 1980 federal census indicated Indiana had

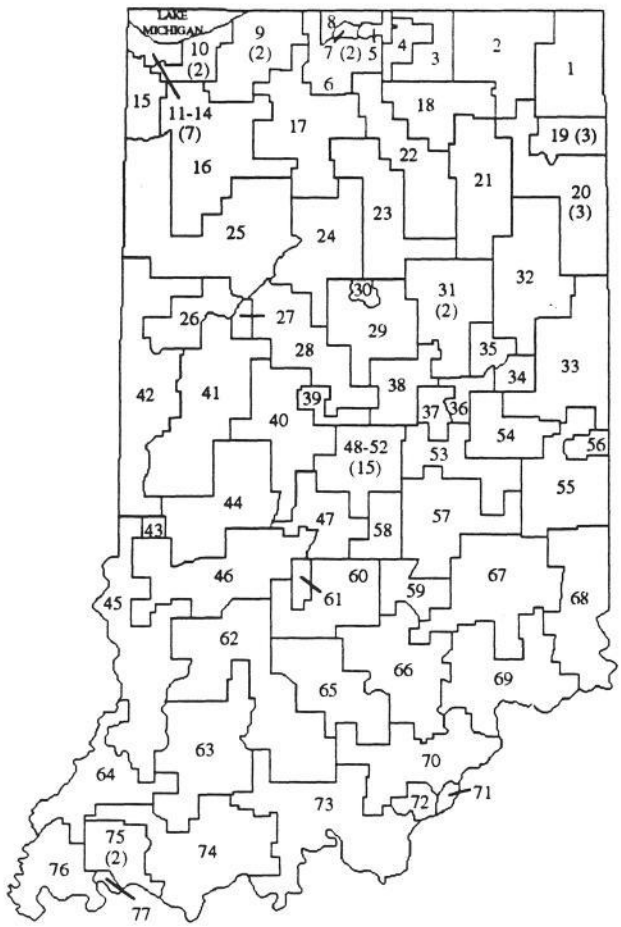

Figure 2. Indiana House Districts.

experienced a modest population increase, the state fell some 6,800 persons below the figure needed to keep its 11 U.S. House seats. The loss of one member required a wholesale reshuffling of congressional district lines. Here again, Republican legislators employed creative cartography.

Democrats were an anomaly in Indiana politics in the 1970s. While Republicans dominated state government and provided substantial majorities for their presidential candidates, they could not control the state's congressional delegation. Not only did Democrats hold both Senate seats until the 1976 election and one until the 1980 balloting, but they also claimed a majority of the state's U.S. House delegation, dating from the 1974 "Watergate" election (when the party captured nine of 11 seats) through the 1980 voting.

In one of the most innovative gerrymanders in any state in the 1980s (if not for many years in the past), Indiana Republicans succeeded in placing three Democratic incumbents in the same district.[5] In spite of being in total control of the congressional redistricting process, Republicans were able to manage only a five-to-five split in both the 1982 and 1984 elections, lost one seat in 1986, dropped another in 1988 which Democrats continued to hold in 1990, and lost yet one more in 1990. Thus, Democrats forged an eight-to-two congressional majority by the end of the decade—on the basis of a Republican-inspired map.

Not unexpectedly, the Republican redistricting of 1981 was challenged in federal court. However, it was neither the flagrant gerrymandering of Indiana Senate districts nor the obvious manipulation of congressional districts that brought about the legal dispute. Rather, the legal battle focused on the 16 multimember House districts. As in the earlier *Chavis* case, plaintiffs argued the multimember districts diluted the political power of black voters. A companion suit alleged the multimember districts diminished the political influence of a "recognized minority group"—the Indiana Democratic party. The first suit, filed by the NAACP, argued the 1981 redistricting grouped more than 82 percent of the state's 414,000 black residents into multimember districts, thus abridging their political impact. The second suit alleged the 1981 districting was discriminatory in that it divided up Democratic voters by placing them in districts with enough Republicans so only the latter party could hope to win the election. Plaintiffs in this suit cited election statistics indicating that in 1982, Democrats won 51.9 percent of the statewide vote for the Indiana House but could win only 43 of the 100 seats.

A special three-judge panel, consisting of two Democratic-appointed U.S. District Court judges and a Republican-nominated judge from the Seventh U.S. Circuit Court of Appeals, heard the suits in 1983. The panel dismissed the initial challenge, ruling that no racial discrimination could be found and, further, the voting efficacy of African Americans "was impinged upon because of politics and not because of their race."

However, the lower court panel ruled two-to-one (reflecting partisan sentiment) that a political gerrymander did, in fact, exist and that Democratic voters were entitled to redress under the equal protection clause of the 14th Amendment.[6]

If there was any question whether "politics makes strange bedfellows," the result of the lower court decision provided an affirmative answer: yes, it can—and in this situation, it did. As the Republican party prepared to appeal the decision, it received the support of the Democratic National Committee, which did not want a precedent established which might be used in suits challenging Democratic-influenced partisan redistricting in other states—particularly in California. Likewise, the California Democratic delegation, California State Assembly Democrats, and California State Senate Democrats (separately) filed *amicus curiae* briefs on behalf of Indiana Republicans. On the other hand, the Republican National Committee, much to the displeasure of the Indiana Republican state chairman, intervened on the side of Hoosier Democrats, reasoning that if Indiana's legislative plan was ruled unconstitutional, then California's congressional districting could be struck down as well.

The U.S. Supreme Court held seven-to-two in 1986 that some political gerrymanders might be unconstitutional but, nevertheless, overturned the lower court decision involving Indiana's multimember districts in the case of *Davis v. Bandemer*. While conceding plaintiffs' original arguments that Democrats received 51.9 percent of the stateside vote but could win only 43 seats in 1982, and accepting the fact Democrats carried 46.6 percent of the vote for House candidates in Marion and Allen Counties in 1982 but won only three of 21 seats, the Court held (1) "a group's electoral power is not unconstitutionally diminished by the fact that an apportionment scheme makes winning elections more difficult..." and (2) "relying on a single election (1982) to prove unconstitutional discrimination, as the District Court did, is unsatisfactory."[7]

The *Davis* decision meant the 1981 districts would remain in place for the remainder of the decade. However, the 1986 election results indicated a change in political fortunes was on the horizon. The incumbent Republican governor gained only a modest reelection victory (52 percent to 47 percent), while Democrats improved their standing in the House by nine seats, maintained 20 seats in the Senate, and picked up a congressional district (5). Most significantly, Evan Bayh, son of former U.S. Senator Birch Bayh (1963-1981), defeated Rob Bowen, son of a former governor, for the mostly ministerial but highly visible position of secretary of state—only the Democrats' second state office election victory in more than a decade.

The 1986 election results would prove to be a harbinger of things to come. Secretary of State Bayh was elected governor in 1988, defeating an all-Marion County Republican ticket. The new governor's success not only provided Democrats with their first major statewide election win in 24 years but also aided his party in coming close to parity in the Senate (now a 26-to-24 Republican majority, with a Democratic lieutenant governor as the presiding officer), and forged a 50-to-50 partisan division in the House, the first such tie in Indiana political history. The House attempted to function with co-speakers (presiding on alternate session days), co-committee chairmen, and equal party division on all committees. The 1989-90 General Assembly was not an unmitigated disaster, but it received few positive reviews, Perhaps the best assessment was provided by a New York-based writer who referred to the Indiana arrangement as "the Noah's Ark approach to state government."[8]

While the 1988 election did produce legislative confusion, conflict, and consternation, it also provided Democrats with a formidable base for the crucial 1990 balloting. Democrats did gain a 52-to-48 majority in the House for the 1991-92 sessions in which redistricting would be a mandatory agenda item, and they maintained their 24 seats in the Senate. The combination of a divided General Assembly and a Democratic governor (the first such situation since 1961, when the legislature did not consider redistricting) suggested the need for political accommodation and compromise, a condition rarely present in Indiana politics.

Redistricting in the 1990s

The General Assembly does not have to complete the redistricting process in 1991, as it can defer action until the following year. However, the legislature must complete action by the end of January 1992, prior to the opening date of candidate filings for legislative and congressional offices . . . or defer the date of the primary elections. Further, there is no backup agency for redistricting, such as a nonpartisan commission. If the General Assembly fails to redistrict, the only recourse appears to be action by a federal judicial panel.

NOTES

1. James L. McDowell, "Indiana" in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 110-15.
2. Quoted in Gary C. Jacobsen, *The Politics of Congressional Elections* (Boston: Little, Brown and Co., 1983), pp. 13-14.
3. David Shribman, "While Computers May Ease 1991 Redistricting, Politicos Will Still Say Where to Draw the Lines," *Wall Street Journal*, February 7, 1990, p. A16.
4. *Indianapolis News*, April 28, 1981, p. 1.
5. At least one Republican legislator found the tactic repugnant. Rep. Steve Moberly of Shelbyville, a resident of the proposed new District 2, commented, "Putting three congressmen in the same district is just too cute." *Indianapolis News*, May 1, 1981, p. 2.
6. *Bandemer v. Davis*, 603 F. Supp. 1479 (1983).
7. Ibid., at 110, 111. See also Rob Gurwitt, "Redistricting Waters Muddied by Court's Decision in Indiana," *Congressional Quarterly Weekly Report*, July 19, 1986, pp. 1641-42. The Supreme Court noted, but did not comment upon, the representative quality of single-member districts. In 1982, Democrats won 53.1 percent of the vote for state Senate seats and carried 13 of the 25 up for election.
8. David Shribman, "A Less for Voters: Two for the Price of One Is No Bargain," *Wall Street Journal*, February 21, 1990, p. Al; see also James L. McDowell, "The Indiana General Assembly in 1989: Revolution or Evolution?" *Proceedings, 1989*, Indiana Academy of the Social Sciences, Vol. 24 (Greencastle, IN: DePaul University, 1989), pp. 68-77.

Iowa

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Fair procedures are no guarantee of fair results, particularly in the area of electoral districting. In 1980 Iowa Republicans, fearing loss of control of the state legislature, moved to protect themselves from a Democratic gerrymander by enacting a "fair" process for the redistricting to take place in 1981. The process, as we shall explain, succeeded in distancing politicians from the design of districts. Indeed, politically neutral bureaucrats designed the districts using "just" procedures and criteria, eschewing such conventional considerations as party registration, voting history, and incumbents' residences. It did not, however, yield a fair system in the sense of correspondence between votes and representation.

Background to Redistricting in 1981

Two factors made redistricting after the 1980 census particularly important to Iowa politicians. The highly competitive nature of the state's two-party system in the 1970s was one. The importance of fairness, or at least its appearance, in Iowa politics was the other.[1]

Iowa political culture called for fair play. Political leaders might want the benefits of a proficient gerrymander, but they did not want the costs of too blatant a gerrymander. The Republicans lost goodwill—and control of the legislature—when their relatively mild gerrymander led to a successful court challenge in the 1970s. They shunned a replay in the 1980s.

Even more, the Republicans shunned a Democratic gerrymander. Iowa's population had grown modestly in the 80s, barely enough to retain its six congressional seats. Notably, though, the population shifted considerably, especially from rural areas to metropolitan ones. The 1970s congressional and legislative districts had been drawn to almost perfect numerical equality.[2] By decade's end the largest district was larger than the smallest by 8.5 percent for Congress, 34 percent for the Iowa Senate, and 72 percent for the Iowa House. Clearly, new districts would have to be considerably different from the old, especially in the 50-member Iowa Senate and 100-member Iowa House. The scale of change meant maneuverability would be available for an artful electoral cartographer. The Republicans feared a Democratic gerrymander because they anticipated losing control of the legislature in the 1980 election. To force the Democrats to suffer loss of public support if they adopted highly partisan districts, the Republicans enacted their neutral, nonpartisan electoral law, House File 707 (1980).

Iowa's Electoral Districting Law

House File 707 removes, at least for a while, the redistricting process from legislative control. Under the law the Legislative Service Bureau (LSB) prepares the district plans. The LSB serves the legislature, writing bills and conducting research, and enjoys a cherished reputation for probity. Under the redistricting law the LSB generates districts following closely defined rules. In decreasing order of importance these are:

1. Population equality, "as far as is practicable."

2. "Convenient contiguous territory," meaning places actually connected to each other by road rather than just next to each other on a map.

3. Maintaining the unity of counties and cities when possible, and when division is necessary doing so in more populous jurisdictions in preference to smaller ones.

4. Compactness, measured by: (a) ratio of length to width; and (b) population dispersion, defined as the difference between the geometric centroid of a district and the centroid weighted by the district's population distribution.

In addition, the law explicitly prohibits consideration of politically relevant data in the determination of districts. The prohibition covers addresses of incumbents, voter registration, voting history, and demographic data other than the population count.

The law also requires nesting, with each Senate district consisting of two House districts, and, as far as possible, each legislative district falling wholly within a single congressional district. These requirements impinge on the others. First, putting two House districts in each Senate district means that one of the levels cannot have districts maximizing compactness, whether measured by the ratio of length to width or population dispersion. Likewise, 50 and 100 legislative districts cannot be spread evenly among six congressional districts. In the 1990s, when Iowa will have five congressional districts, the nesting requirement will not necessarily conflict with other requirements.

The Iowa legislature retains approval rights over the LSB's district plans, but only after a series of public—and well-publicized—hearings. The legislature must accept all three sets of districts—House of Representatives, Iowa Senate, Iowa House—or reject them. If the first plan is indeed rejected, the LSB provides a second plan, which again must be accepted *in toto* or rejected, at which point the LSB would be directed to provide a third plan. The legislature is authorized to accept, amend, or replace the third plan. Hence, the legislature retains power over electoral districting, subject to gubernatorial veto.

The 1981 Redistricting Process

Facing the 1980 election with foreboding, Iowa Republicans emerged from it with exultation. As they expected, they delivered the state's electoral college votes to Ronald Reagan; as they hoped, they knocked off a Democratic incumbent in the U.S. Senate race; and as they only dreamed, they retained control of both houses of the legislature. This did mean, however, that they had to live with their electoral districting legislation, either accepting the product of their creation or suffering the possibly severe political consequences for political hypocrisy.

Gary Kaufman, with both engineering and legal expertise, led the LSB's redistricting effort. He noted that thousands of combinations were possible as he used computer algorithms to manipulate Iowa's 2400 townships and census tracts. After weeks of operating in great secrecy, the LSB published his three sets of proposed districts in 1981.

The result jolted the Republicans and jollied the Democrats. The most attention-grabbing feature was a congressional district including the homes of two congressmen, only two Republicans rather than their hoped-for pair of Democrats. In addition, 52 legislators—more than a third of the membership—found themselves sharing districts with colleagues. Worse, from the Republicans' perspective, most were their incumbents. In terms of the legally mandated criteria, the proposed districts were marked improvements over the past. Deviation from population equality was minuscule, less than a tenth of a percent: 0.0975 percent for the Iowa House; 0.0612 percent for the Iowa Senate; and 0.0392 percent for the House of Representatives. This accuracy far surpassed the accuracy of the U.S. Census, but, in the absence of a correction formula, it provided fairness. Taken together, the proposals were also almost as compact as those districts in use at the time.

These districts could not, however, survive political muster. Public hearings elicited a range of complaints. A common one was of "fugitive" townships, i.e., townships separated from their counties in order to get closer to population equality. This and other complaints clearly fell outside the realm of the law, and therefore outside the LSB's legally defined task, but they did not fall outside of politics. On the other hand, considerable testimony supported the plan and the whole philosophy behind neutral redistricting.

The Republicans, using the argument that they wanted to see alternatives, defeated the plan on a straight party-line vote in the Iowa Senate, 29-21. Advising the

LSB that they thought better plans could be developed, the Senate asked the LSB to try again.

Try again the LSB did, publishing its second redistricting plan in June. In some ways this plan outperformed the rejected one, examples being average population for congressional districts and population variance ratios for the House. More objectively, this plan was almost as good as the first one in terms of the legal criteria.

Politically, the second plan was both better and worse. It was better in that each congressman was in a separate district, though not good enough for some Republicans in that no Democrats found themselves sharing a district. It was worse in that fully 56 legislators were in the same districts as colleagues. Some Republicans praised this plan; others sought an alternative of more direct advantage for their party. Three Republican senators did break ranks with their colleagues, but the Senate still rejected the plan on a 26-24 vote.

As the LSB began work on its final plan the Republicans mapped their alternative, which would be more favorable for incumbents and therefore the Republican party. Meanwhile the political flak was flying. Democrats had a winning issue in Republican hypocrisy if the third plan was also rejected. The LSB and Republicans presented their plans on the same day in July. In terms of the legal criteria, the LSB plan did improve somewhat on the other two with regard to congressional districts, but it was not as good, especially in comparison with the first plan, in terms of legislative districts. The third plan was more palatable to the Republicans in two significant ways. First, it gave them their desired congressional district with two Democratic incumbents. Second, it forced only 42 legislators against each other, still a sizable number but a substantial improvement on the previous plans.

The Republicans clearly designed their plan to protect legislative incumbents while helping Republicans in congressional races. Only 16 incumbents were to square off, most of them Democrats, and the Democrats were to be hurt in two congressional districts by concentrating Democratic voters in a single central Iowa district, a classical case of opponent concentration gerrymanders.

In an effort to protect their party's image, Republican leaders backed the third LSB plan. Most of the eight Republicans and both Democrats who opposed the plan in the Iowa Senate did so because they would have to run against colleagues to retain their posts. The Iowa House also passed the plan, sending it to the governor, who signed it into law.

The Democrats supported each of the LSB plans. They did not fear losing a congressional seat with the third plan because one of the Democratic incumbents simply planned to stay in his old district by moving back to his boyhood home in southwest Iowa, thwarting Republican strategy at least for a time. One Democratic spokesman said: "There are three things the Republicans can't do in southwest Iowa. They can't give it to Missouri, they can't give it to Nebraska, and they can't beat Tom Harkin" [3] Republicans conceded the seat to Harkin but planned to capture it and the northwest Iowa seat if the incumbents decided not to run.

Iowa Elections Using the 1981 Districts

The consequences of electoral redistricting have been very different for congressional and legislative races. The biggest factor in congressional races has been incumbency. In the four elections since redistricting, incumbents have won everytime they have run for reelection, and they have done so with consistently large margins. On the other hand, the challenging party has won all three open seats, the Republicans indeed taking the two in western Iowa (when Harkin ran for the U.S. Senate and when Berkley Eedell retired for health reasons) and the Democrats an eastern seat when Cooper Evans retired. On balance, electoral districting helped Republican congressional candidates when popular Democrats vacated seats that were safe only for them personally. Redistricting clearly affected the balance in Iowa congressional districts. Thanks to the advantage of incumbency, Democrats found themselves losing two-thirds of the seats with almost half the votes. Arguably, the Repub-

Table 1. Democratic Vote Percentages and Percentages of Seats Won in Iowa Elections, 1980-88.

	HOUSE		SENATE		U.S. HOUSE	
YEAR	VOTE (%)	SEATS (%)	VOTE (%)	SEATS (%)	VOTE (%)	SEATS (%)
1980	44.9	42.0	50.5	55.6	54.0	50.0
1982	53.3	60.0	50.5	55.2	52.7	50.0
1984	53.2	60.0	53.7	60.0	47.0	33.3
1986	51.0	58.0	55.8	60.0	48.1	33.3
1988	53.5	62.0	53.7	60.0	48.9	33.3

licans got what they wanted in the redistricting of congressional districts in 1981. The results, though from a supposedly fair process, favored the Republicans, who would likely win a higher percentage of seats than votes.

Republicans did not get what they wanted from redistricting in legislative races. The 1982 election decimated the Republican leadership as the Democrats won a sizable majority. Throughout the decade the Democrats have won a majority of votes, but never a really overwhelming one. As shown in Table 1, their totals have ranged from a high of 53.5 percent in 1988 to a low of 51.0 in 1986 in the House and a high of 55.8 in 1986 and a low of 50.5 in 1982 in the Senate. The electoral consequence has always been a massive victory for the Democrats, whether their voting edge was moderate or marginal. Democratic membership in the Iowa House has ranged only from 58 to 62 in the four elections. In each of the last three Senate races the Democrats have won 15 of the 25 seats, and in 1982, when 29 seats were contested because redistricting left some seats open, they won 16. The sets of legislative districts have clearly favored the Democrats.

Politically controlled redistricting usually benefits incumbents. That was not the case in Iowa in 1981. The difficult election, of course, was the first one under the new districts, 1982 (Table 2). Fully 23 Republicans and 13 Democrats who sat in the Iowa House in 1982 did not do so in 1983, many because they decided not to seek reelection. Six incumbents lost to challengers in the Iowa House that year, another five to fellow legislators. Eight of the losing incumbents were Republicans. Furthermore, the Democrats dominated the vacant seats, i.e., seats with no incumbents because of redistricting, winning 13 of 17.

After the 1982 election, incumbent success returned to normal, i.e., approaching 100 percent. Democratic incumbents did better than Republicans through the decade, losing only five legislative seats compared with 16. The Democrats also fared better holding open seats. Thirty-one times a Democrat did not run for reelection in the general election; twenty-one times the Democratic candidate held the seat for the party. Republicans were able to win open Republican seats on nine of 21 times in the three elections.

Issues for the 1990s

Given the split in control of Iowa government between a Democratic legislature and Republican governor, major changes in Iowa's redistricting law are unlikely, so Iowa is likely to go through a second round of redistricting with a politically neutral process. This does not mean politicians will be disinterested. Indeed, their interest will again be captured by changes in the population distribution of the state and nation. On the national level, Iowa will actually experience reapportionment in the 1990s, losing a congressional seat. At the state level, differential migration will force substantial realignment of legislative districts.

The major growth in the state has been in the area dominated by Des Moines, the capital, and the university towns of Iowa City and Ames. Metropolitan Des Moines, arguably including Ames, is in the 4th District, which has in fact grown enough to be retained as an electoral district. Given the overwhelming Democratic advantage in that district, its retention would

Table 2. Electoral Stability in the Iowa Legislature Since the 1981 Redistricting.

CHAMBER AND ELECTION RESULTS	1982	1984	1986	1988
House				
Incumbents reelected (%)*	90.6	96.7	95.1	96.7
Repub. incumbents defeated**	4	3	2	3
Dem. incumbents defeated***	2	0	2	0
Repub. open seats (%)****	12.5	100.0	33.3	75.0
Dem. open seats (%)*****	66.7	40.0	73.3	80.0
Senate				
Incumbents reelected (%)*	93.8	90.0	100.0	94.7
Repub. incumbents defeated**	1	1	1	1
Dem. incumbents defeated***	0	1	0	0
Repub. open seats (%)****	33.3	0.0	66.7	66.7
Dem. open seats (%)*****	No open seats	100.0	100.0	33.3

*Percentage of incumbents winning when they contested the general election (not counting the five seats, four of which were won by Democrats, contested by a House incumbent from each party in 1982, or the two contested seats won by Senate Democrats).

**Republican incumbents contesting and losing general elections.

***Democratic incumbents contesting and losing general elections.

****Republicans holding seats vacated by Republican incumbents.

*****Democrats holding seats vacated by Democratic incumbents.

effectively constitute an opponent concentration gerrymander. Iowa City is in the 3rd District. Its growth has about balanced the loss of population in metropolitan Waterloo, the economy of which was badly battered in the 80s. Members of Iowa's congressional delegation will have to be very nervous about the surprises redistricting in 1991 will hold for them.

Redistricting will be worrisome for Iowa legislators, too. The genuinely rural portions of the state have lost ground to the metropolitan areas, and rural legislators are concerned about a continuing diminution in rural political power. Coupling population shifts with the neutral procedure is bound to put many incumbents in districts with colleagues, ensuring another sizable change in the legislature, just as the 1981 redistricting did.

Conclusions

Two sets of plans, each equally well fulfilling the criteria of the Iowa law, could have grossly different political consequences, one giving a sizable advantage to one party, the other to the opposing party. By precluding the consideration of political data, the authors of House File 707 may have created a neutral process for generating electoral districts. They designed a process immune from gerrymandering in the sense of purposive distortions. They did not, however, design a system that would guarantee fair results. The results are for all practical purposes random, with any type of advantage possible.

Given that the party controlling the legislature is the only one having veto power over the process, the Iowa redistricting process can not be seen as being totally fair. Nevertheless, it is surely a great advance over what Iowa had before and what most states retain. The use of the process yielded electoral districts fulfilling the legislative mandate for population equality, contiguity, and compactness.

NOTES

1. For a discussion of reapportionment in Iowa before the 1980s, see John M. Littschwager, "Iowa," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 116-20.

2. The architect of these districting plans was Professor John Littschwager of the University of Iowa, under direction of the courts.

3. *Des Moines Register*, July 25, 1981.

KANSAS

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Like so many other states, Kansas has struggled with reapportionment over the last quarter of a century. Major disagreements among the federal and state courts and the state legislature over reapportionment dominated the 1960s and early 1970s, resulting twice in court-imposed reapportionment plans. In 1974, however, the state approved a new constitutional provision that represented a deliberate attempt by the state to keep reapportionment controversies out of the federal court system by providing for a mandatory review of apportionment plans by the state Supreme Court, and requiring the state legislature to reapportion every ten years, beginning in 1979. The 1979 reapportionment, based on the state agricultural census, was relatively noncontroversial.[1] Thus, Kansas entered the decade of the 1980s with a new apportionment and a requirement to reapportion the state legislature in 1989.[2]

APPORTIONING THE KANSAS STATE LEGISLATURE IN 1989

The combination of the 1974 constitutional provisions, and the fact that in 1978 the state legislature decided to discontinue the annual agricultural census, created a problem for the state as the decade of the 1980s drew to a close. Since the last agricultural census had been conducted in 1978, and the 1980 federal census would be nine years old, reapportioning on the basis of either census was unlikely to be approved by the courts. Though the establishment of a reapportionment commission was urged by some legislators, the 1974 resolution, as adopted, clearly kept the authority in the hands of the legislature—at least in the first instance. The plan called for reapportionment of the legislature in 1979 and every ten years thereafter, and was envisioned as a way of ensuring that the state agricultural census would be used, because the decennial federal census would be considerably dated. The constitutional provisions called for the state attorney general to present each reapportionment law to the Kansas Supreme Court within 15 days after passage of the legislation, with his or her comments as to its constitutionality. Within 30 days after receiving the plan, the Court was to rule on the "validity" of the reapportionment action. Should the Court find the reappointment invalid, the legislature would get a second and then a third opportunity to pass a valid reapportionment plan before the Court acted to impose its own plan.

What was unique about the Kansas reapportionment procedure was the use of a state agricultural census instead of the federal census. The constitutionality of its use had been upheld in the federal courts; indeed, the federal district court used the state census as the basis of its court-imposed reapportionments of the Kansas Senate in 1968 and 1972.

The agricultural census was conducted by county clerks and assembled by the State Board of Agriculture. The Board, however, did not consider the census as one of its more important functions, and it was widely regarded as having been conducted under rules that varied by county. It differed from the federal census in two important ways—college students were to be counted by their home counties unless it was clear that they had established a residence away from home, and military persons were to be counted not at their military installations, but at their permanent home addresses. Since there was no real quality control to see that the census was properly conducted, and since some state funds were distributed on the basis of the agricultural census, county clerks had a great incentive to count as many individuals as was possible.

The abandonment of the state census in 1978, coupled with the 1974 constitution provision necessitating reapportionment in 1989, posed a real dilemma for state officials. The initial response of the legislature was to consider doing nothing, and awaiting the results

of the 1990 federal census in preparation for a reapportionment prior to the 1992 state Senate and House elections. The attorney general, among others, however, advised that population changes had been too substantial to survive a judicial test, necessitating reapportionment in 1989.

Obviously, the state constitution had to be changed to get away from the requirement of regularly reapportioning in the ninth year of the decade. In 1987 the legislature drafted a proposal requiring it to reapportion legislative districts in 1989, and from then on early in each decade. The judicial review procedures were not changed, and House and Senate districts were to be reapportioned in 1992 and every ten years thereafter. The new basis for the reapportionment would be the federal census, but adjustments to the census would still be required to accomplish the results previously accomplished through the use of the state agricultural census (regarding the counting of students and military personnel). But since state senators were elected in 1988 for four-year terms, it soon became clear that this requirement really only applied to the House. Voters approved the new reapportionment guidelines, including a one-time state census which was to be conducted in 1988. The census task was to be conducted by the secretary of state, whose office received $3.4 million to conduct the census.

In 1989, the Kansas legislature redistricted the House using the 1988 state census as a basis. The need for the new reapportionment was confirmed by the new census, which showed one House district with 36,942 people and another with 11,141 people, and 91 of the state's 125 House districts deviating by more than 5 percent from the ideal district size of 18,348.[3]

As a matter of comity between the two legislative chambers, the reapportionment process essentially was conducted in a manner that let the House come up with a plan which both the Senate and governor approved. The House Apportionment Committee early in the session held hearings on the subject of reapportionment, and adopted a number of guidelines dealing with the need to have compact and contiguous districts that deviated by less than 10 percent from the population ideal. The leadership of both parties played a major role in the final House plan. The plan passed the House 97-27 and the Senate 32-7, with relatively little debate and an absence of gerrymandering charges.

A good part of the plan's legislative popularity was due to the fact that few incumbent-versus-incumbent districts were created, and Republicans, who controlled both houses and the governor's seat, did not seek undue partisan advantage. Under the plan, Democratic incumbents would run against each other in only three districts, while two Republican incumbents in western Kansas would be forced to run against each other—resulting in the loss of one Republican seat. In one new district in northeast Kansas and one district in northcentral Kansas, Republican and Democratic incumbents would have to face each other. Apparently, the minority Democratic leadership considered this an acceptable political arrangement, and did not challenge the reapportionment either during the House or Senate proceedings or during the later review by the Kansas Supreme Court.

Due to population shifts over the past decade, the rural areas of northwest Kansas lost the most seats under the House apportionment plan, but still the loss was a rather marginal one of four seats. Some of the larger urban counties, like fast-growing Johnson in the Kansas City metropolitan area, and Sedgewick, where Wichita, the state's largest city, is located, gained a number of additional seats. Because of Republican domination of many suburban areas, however, Democrats are unlikely to gain appreciably by the decline in rural seats in western Kansas, and Republicans may actually do better because of population growth in the Kansas City suburbs that has translated into additional seats. Rural domination of legislative leadership positions is likely to remain even after the new redistricting. Currently, all of the four top House posts—speaker, speaker pro tem, majority leader, and minority leader—are held by rural representatives, and 21 of the 26 House committee chairmanships are held by rural legislators.

The Kansas Supreme Court upheld the 1989 House reapportionment plan.[4] The Court found that the plan met the equal protection guidelines set by the federal courts. The average deviation of the population of districts among the 125 House districts was less than 3 percent. The most populous district was 5.3 percent above the ideal, while the least populous district was 4.7 percent below the ideal, well within constitutional guidelines.[5]

Opposition to the 1989 reapportionment, both in the legislature and during the judicial review process, focused almost entirely upon the validity of the 1988 state census, the basis of the reapportionment. Cities and counties where universities were located and/or which had large military installations joined in a series of suits in federal and state courts challenging the results of the new census. The challenges raised questions about the accuracy of the census figures, particularly since they differed so much from the figures of the last agricultural census, completed in 1978. In the 1988 census, Douglas County lost more than 15,000 persons, Leavenworth County 10,000 persons, and Riley County 7,000.

Although the litigants have charged that the 1988 census undercounted the residents of many areas, the major problem may lie with the lack of quality control that characterized the earlier state agricultural censuses. Two of the counties that are involved in litigation, Douglas and Riley, are home to large college towns, and Riley has a large military base. There seems to be good circumstantial evidence that both counties, during the years of the old state agricultural census, probably improperly counted students and military personnel in a manner at variance with the intent of state law.

The 1988 agricultural census has also been challenged by a number of critics who contend that certain racial minorities have been undercounted in the course of the census operation. While even census officials indicate that some undercounting of minorities probably did take place, the state did make a major effort to assess the minority population, including employing a total of 106 workers who spoke Spanish and four who spoke a variety of Southeast Asian languages.[6] No districts with large minority population concentrations were eliminated by the 1989 reappointment plan.

Questions of the validity of the state agricultural census as a basis for reapportionment will ultimately be settled by the courts. It is worth noting, however, that in the Kansas Supreme Court's upholding of the redistricting law for the House, it devoted several paragraphs to the question of the 1988 agricultural census, saying "We presume, for the purposes of this action alone, that the census is accurate and valid."[7]

An interesting related question has arisen over the failure of the Senate to reapportion during the 1980s. In Kansas, each of ten members of the State Board of Education are elected from districts based on four senatorial districts. Five members of the Board are scheduled to be elected in 1990 from districts that are based on significantly unequal populations, and the attorney general has raised the issue of whether or not the present districts are constitutional. The spring 1990 session of the Kansas legislature must deal with the issue before the fall 1990 elections.

A Note on U.S. House Seats

After the 1980 federal census, Kansas was able to retain its five U.S. House seats. There had been a sufficient rearrangement of the state's internal population, however, that the state legislature was in general agreement that the district boundaries had to be changed. At the time a Democrat in the governor's chair faced a legislature with both houses controlled by Republicans. During the 1982 session the legislature tried on two occasions to devise a redistricting plan that the governor would accept, but twice the governor vetoed the legislature's efforts. With the June filing date rapidly approaching, legislators from both sides of the aisle joined formally and informally in a court action. A three-judge panel accepted a Democratic plan which had been urged on the legislature by a leading Democratic senator.[8]

After the 1990 federal census, the state legislature may face an even more formidable redistricting challenge. While the population of Kansas has increased roughly 3 percent in the past decade (according to federal estimates), the faster growth of other parts of the nation will likely cause Kansas to lose one congressional seat starting in 1992.

Because of internal population shifts during the 1980s, with declining rural and expanding urban and suburban populations, the loss of one congressional seat for the state may lead to some dramatic congressional district boundary changes. The 1st District, in rural western Kansas, is expected to encompass even more counties than presently, and the 5th District, in southeast Kansas, is expected to be the one likely to be carved up. The currently constituted 5th District, which is experiencing a decline in population, is sandwiched between two districts growing in population in northeast Kansas, and a growing congressional district to its immediate west which encompasses the major population center of Wichita.

Right now the five congressional seats in Kansas are held by incumbents who are electorally safe. The design of the four new districts could do much to alter this situation. While Republicans today hold both the governor's chair and both houses of the legislature, it is by no means assured that such will be the case after 1990, with Democrats currently given a chance to control the lower house and elect a governor in 1990. It is expected that the redistricting of the likely four U.S. House seats will be a highly intense, partisan issue early in the decade.

Conclusion

Kansas, of course, will again have to reapportion both houses of the state legislature as well as deal with a redistricting of U.S. House seats prior to the 1992 elections. Assuming the state census conducted in 1988 is relatively compatible with the 1990 federal census results, there should be few important changes that differ from those discussed in this essay.

With a relatively small and rather scattered minority population, and a seeming bipartisan consensus on reapportionment issues as we enter the 1990s, the danger of gerrymandering to disadvantage various minority groups and population categories seems rather minor compared to the problem in many other states. Future apportionments are likely to be formulated as in the past, through the legislative process, with all its attendant political trappings and compromises. Protection of incumbents is likely to remain something all legislators will agree to as a major priority of reapportionment.

NOTES

1. For a discussion of reapportionment in Kansas prior to the 1980s, see Allan J. Cigler and James W. Drury, "Kansas," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 121-28.
2. Kansas Constitution, Art. X, para. 1.
3. Kansas Legislative Research Department, memo dated January 20, 1989.
4. The Kansas Supreme Court *In re Substitute for House Bill No. 2492*, 245 Kansas 125, noted that no one appearing before it challenged the apportionment legislation "on the basis that it dilutes the vote of rural or urban voters, or other specific groups of voters . . ."
5. The ideal or perfect population size was 18,348 persons. The least populous district contained 17,482 persons and the most populous district, 19,317 persons.
6. *Wichita Eagle-Beacon*, February 6, 1989.
7. *In re Substitute for House Bill No. 2492*, 245 Kansas 125.
8. *Pat O'Sullivan et al. v. Jack Brier*, 540 Fed. Supp. 1200 (1982).

KENTUCKY

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The Kentucky Constitution creates a General Assembly composed of 38 senators and 100 representatives. The Constitution further provides that districts be "approximately equal" in population. Although the Constitution provides that no more than two counties shall be combined to form a representative district, this provision has been interpreted to be read "if possible." There are no other Kentucky provisions.

The state legislature is responsible for redrawing Kentucky's U.S. congressional and General Assembly districts.[1] The history of the redistricting process in Kentucky may be highlighted by noting that as the decade of the 1970s opened, Kentucky's constitutionally mandated system of apportionment was not in conformity with the 1960 reapportionment cases.

The post-1980-census plan was drawn during the regular 1982 session of the General Assembly, which convened on January 5, 1982. The three redistricting laws (that of the Kentucky House, the Kentucky Senate, and the U.S. congressional districts) were enacted before the end of February 1982. None of the plans was challenged in the state or federal courts. The success of the 1982 session was due to the activities of the 1981 Interim Committee on Government and the Constitution of the Legislative Research Commission. During 1981 this joint House and Senate committee considered proposals for redistricting and drafted a proposed bill which was immediately introduced when the regular session met. This allowed the bill's rapid consideration and disposition.[2]

Historically the Democrats have maintained a substantial majority in both chambers of the General Assembly. Despite their minority position, Republicans were often reluctant to challenge the state's apportionment structure. Although several factors were involved, this reluctance was often based on the common practice of rotation of seats amoung counties in the instance of rural multicounty districts, or on other similar types of special arrangements.[3]

As the decade of the 1990s opens, it should be noted that the General Assembly has undergone a number of changes during the past two decades. Specifically, the list of changes would include: (1) an increase in the importance of the committee in the legislative process; (2) an increase in tenure among both senators and representatives (see Table 1); (3) a redefined relationship of the General Assembly with the governor; and (4) a change in the election period for senators and representatives so that newly elected members of the General Assembly serve for one year in the interim after their election and before the regular session of the General Assembly (i.e., representatives are now elected in even-numbered years to serve in the subsequent even-year session of the General Assembly, e.g., members elected in 1986 served in the 1988 General Assembly). None of these changes was precipitated by the redistricting process. However, these changes *will* directly affect the 1990 apportionment process. This will be true if for no other reason than that the greater number of incumbent General Assembly members, coupled with population shifts within the state, will necessitate a number of district boundary changes in both the House and Senate.

Throughout the 1980s the Democrats controlled both the office of governor and both houses of the General Assembly. Democratic dominance is illustrated by the data shown in Table 2. It should be noted that Repub-

Table 1. Incumbency in the Kentucky General Assembly.

SESSIONS	HOUSE	SENATE
1971-77	66%	46%
1979-86	79%	70%
1990	84%	73%

Table 2. Kentucky General Assembly Political Party Affiliation.

	HOUSE		SENATE	
YEAR	DEMOCRATIC	REPUBLICAN	DEMOCRATIC	REPUBLICAN
1980	75	25	29	9
1982	76	24	29	9
1984	74	26	29	9
1986	74	26	28	10
1988	71	29	30	8
1990	71	29	30	8

lican membership increased in the House during the decade of the 1980s. This increase, too, is illustrated in Table 2. Most authorities agree that these gains are district-specific, i.e., they are not a reflection of shifts in population or voting alignments.

The 1992 legislature will convene in early January. The filing date for the 1992 election primaries to be held that May is January 27. This has prompted some people to suggest that a 1991 special session of the General Assembly should be called to deal with the question of apportionment, particularly if major redistricting of U.S. congressional seats is necessary. In any event, there is a dilemma for those involved in the redistricting process. If incumbency proves decisive in the 1990 elections, there will be opportunity for incumbents to insure their certain future reelection. On the other hand, if new representatives and senators are elected in the 1990 elections, and a special session is called for 1991, the newly elected members of the General Assembly will be lacking the experience generated by the interim session process and will likely have less of an input into the redistricting process.

One additional feature of recent House elections is the partisan nature of contested elections. The data in Table 3 clearly reflect that Republican candidates will more likely face contested elections (i.e., will have opposing-party opponents who will receive at least 25 percent of the votes in the general election) than will Democratic candidates. These data indicate a substantial association between contested seats and party affiliation.

Statewide, 29.5 percent of the registered voters are registered as Republicans. Thirty-nine of Kentucky's 120 counties (32.5 percent) have 30 percent or more registered Republicans. These counties are concentrated primarily in the south-central to southeastern part of the state. The four counties which have a Democratic majority, but contain at least 10,000 registered Republicans, are: Campbell (35 percent), Fayette (31 percent), Jefferson (30 percent), and Kenton (31 percent). All four are urban counties.

The type of data reflected in Table 3 do not of themselves indicate the presence of gerrymandering.

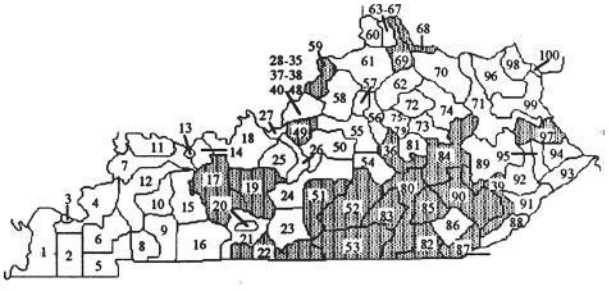

Figure 1. Districts of the Kentucky House of Representatives, 1982 Redistricting (1990 Republican Districts Shaded).

Figure 2. Districts of the Kentucky Senate, 1982 Redistricting.

Table 3. Contested Elections and Party Affiliation.

	1984 SESSION		1988 SESSION	
CONTESTED/NONCONTESTED	REPUBLICANS	DEMOCRATS	REPUBLICANS	DEMOCRATS
Contested elections	18	29	15	13
Noncontested elections	8	45	14	58
	Q = .55		Q = .65	

However, there is some basis for expressing concern over the structuring of some General Assembly districts. (See Figures 1 and 2.) Examples can be drawn from both urban and rural districts. For example, there are only two counties with a majority of registered Republicans which were not represented by a Republican representative in the 1988 session of the General Assembly. (See Figure 3.) In one of these, Lewis County, it is noteworthy that part of the 74 percent Republican majority of this district is combined with Carter County's 62 percent Democratic registration to form District 96. The remainder of Lewis County's voting population is then combined with all of Rowan County (75 percent Democratic), Morgan County (97 percent Democratic), and a portion of Lawrence County (61 percent Democratic) to form the 71st District. The shape of the 71st District, viewed as a single factor, would almost indicate massage, especially since three of the adjoining four counties are split as a part of the creation of adjoining districts.

What may sometimes "look" like a gerrymander is not an actual case of gerrymandering. Geography must be considered in evaluating rural Kentucky legislative districts. Connecting transportation networks generated by topographic considerations often dictate the string-like dimensions of a legislative district. For example, the pattern of the 80th District is made logical by the topography, whose sole uniting force is U.S. Highway 27 which runs north-south through the district.

House District 36 is an example of concentrating minority voters. Garrard County, the only complete county in the district, is Republican (57 percent). Combined with it are an approximately equal number of voters in each of the other two counties in the district (Jessamine, 77 percent Democratic, and Madison, 75 percent Democratic). In actual fact the Madison precincts included in the district (Valley View in the northwest part of the county, and the southernmost precincts of the county) maintain the strongest Republican voting records of the county. Theoretically, the 36th District could become Democratic. However, the unified vote generated by the whole of one county with supplemental voting units from adjacent counties may exert a particularly strong impact on the representative-selection process.

The influence of partisan issues is also reflected in the structuring of Senate districts in the General Assembly. An example which gives the visual appearance of this influence would include the keeping intact of the three counties which comprise the 22nd District, while a number of other counties are split, e.g., in the 5th, 11th, 23rd, and 34th Districts.

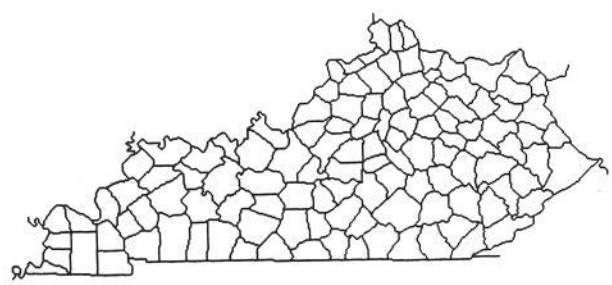

Figure 3. Kentucky Counties.

Both House and Senate members are willing to discuss the redistricting process. Incumbents and challengers alike are strongly aware of the partisan nature of the structuring of General Assembly districts. This is particularly true of Jefferson (Louisville) and Fayette (Lexington) Counties, where district lines often reflect a variety of "interest" patterns. In any event, it seems likely that the traditional pattern of strong leadership input into the redistricting process in Kentucky will

hold true for the 1990s apportionment. In the 1990s it seems likely that this strong input will come predominantly from within the legislature.

It appears certain that Kentucky will lose one congressional seat. During the 1982 redistricting session the congressmen generally indicated what they wanted, and the General Assembly accepted their requests. The pattern for the 1990 redistricting of congressional seats will be somewhat different. Reduction of the number of congressional districts from seven to six has unleashed not only partisan competitiveness, but clashes of regional and urban/rural interests. Reduction of the congressional delegation means that each of the six "new" districts probably will be larger both in area and population. Conventional wisdom indicates that the present 1st, 2nd, 3rd, 5th, and 7th Districts will each be expanded, with a "new" district being created from those portions of the present 4th and 6th Districts which are not allocated to the other districts. The 4th and the 6th happen to be the districts of two of the three Republican congressmen from Kentucky (the other Republican representative is from the solidly Republican 5th District). This pattern results from the strongly entrenched "rural" segments of the state being able to exert their influence. This leaves the Bluegrass and northern Kentucky interests locked in a battle to protect their own interests from encroachment by the surrounding districts and the attempts of metro Louisville to maximize its interests.

NOTES

1. For a summary of twentieth century reapportionment activities in Kentucky, see J. Allen Singleton, "Kentucky," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 130-33.

2. During the interim between regular biennial sessions of the General Assembly, the standing committees of the two chambers meet as a Joint Committee of the Legislative Research Commission.

3. Joyce Honacker, "Reapportionment," in *Issues Facing the 1982 General Assembly* (Frankfort: Legislative Research Commission, 1981), pp. 120-31. See also Malcolm Jewell and Penny Miller, *The Kentucky Legislature* (Lexington: University Press of Kentucky, 1990), especially chapters 1 and 2.

LOUISIANA

RONALD E. WEBER

The Louisiana redistrictings of the 1990s were to prove as troublesome as had been the redistrictings of the previous two decades. As in the 1970s, the work of the legislature on both state legislative and congressional plans provoked controversy, resulting in a U.S. Department of Justice objection to the plan for the state House of Representatives and a federal court rejection of the plan for the U.S. congressional delegation.[1] The principal issue that caused the U.S. Department of Justice and a federal court to reject the plans drawn by the state legislature involved the question of whether or not the plans provided fair representation to black minority voters in the state. The rejected plans were then redrawn to provide fairer representation to black minority voters, resulting in preclearance of the revised state House of Representatives plan and in federal court approval of the revised U.S. congressional plan.

In responding to the mandates contained in the U.S. Voting Rights Act of 1965, as amended, the state of Louisiana found it necessary to create "affirmatively gerrymandered" districts in order to improve the degree of representation provided to black minority voters of the state. Whereas the state in the 1970s had been able to satisfy claims for enhanced black minority representation in the state legislature by drawing reasonably compact districts, it was impossible in the 1980s to meet the mandate of the U.S. Voting Rights Act without creating districts that were non-compact. The compactness criterion had already been given little attention in the congressional redistricting of the 1970s when the legislatively created 8th District was given a narrow, elongated shape in order to bring together Democratic-leaning parishes along the Mississippi River so as to ensure the election of a Democratic congressman from that district. Since partisan politics had dictated that geographical compactness should be ignored in the 1970s, it was hard in the 1980s for legislators to argue that compactness had to be adhered to when it came to drawing districts in which black populations and voters would be concentrated, in order to guarantee additional amounts of black minority representation. The result was that the "affirmative gerrymander" became the acceptable way in which to create black minority districts in which black voters would have an equal opportunity to elect representatives of choice in Louisiana.

Louisiana in the 1980s also was the site of major federal court litigation over whether or not judicial election districts must meet the mandate of the U.S. Voting Rights Act of 1965, as amended. With Louisiana electing almost all of its judges on a nonpartisan ballot from at-large electoral districts, the focus of litigation has been upon an attempt to subdivide those electoral districts in a way to create some subdistricts with black population and voter majorities. Along the way, the litigation has forced the U.S. Supreme Court to determine whether or not judges are "representatives" within the meaning of the word as used in the U.S. Voting Rights Act, as amended, and the federal circuit and district courts to wrestle with the questions of how to judge whether or not at-large judicial electoral districts violate the Voting Rights Act and whether or not the "one person-one vote" doctrine should apply in the drawing of electoral districts for judges. The type of judicial election litigation evidenced in Louisiana has also been brought in several other states, forcing state legislatures to grapple with judicial districting issues as well as the normal issues of state legislative and congressional districting.

THE REDISTRICTINGS OF THE 1980S—THE STATE LEGISLATURE

The state legislative reapportionments of the 1980s were the first to be governed by the provisions of Louisiana's new constitution, which had gone into effect in 1975. For the first time, the legislature was required to create single-member district plans for each chamber. Under the state constitution, the num-

ber of senators is not to exceed 39, while the number of representatives is limited to 105. The legislature is also required to complete its reapportionment by the end of the year following the year the U.S. Census Bureau reports the final census figures to the President. This provision meant that the legislature had to complete reapportionment of its seats by December 31, 1981. Under the constitution, if the legislature failed to reapportion itself within that time period, any registered voter could petition the state Supreme Court, requesting that the Court carry out the reapportionment.

The 1980 U.S. Census of Population figures for Louisiana indicated that the state Senate and House of Representative districting plans used during the 1970s were severely malapportioned and had to be redrawn. Most of the parishes in the northern part of the state had not been growing as rapidly as the state as a whole, and hence the new districting plans had to shift representation in the direction of South Louisiana. The suburbs of New Orleans and the parishes along the Mississippi River, between Baton Rouge and New Orleans, had been growing relatively rapidly and would gain several seats. The city of New Orleans had lost population and would have to lose representation in both legislative chambers.

The first state legislative reapportionment action of the 1980s took place at a special session of the legislature in November 1981. Acting on a "call" limited largely to state legislative and congressional reapportionment, the legislature adopted new single-member district plans for the state Senate and House of Representatives that remedied the malapportionment problem of the 1970s districts. The Senate plan had a mean district population of 107,794, with the deviations from the mean district ranging from a low of -4.62 percent to a high of +3.81 percent, for a total spread or 8.4 percent. The House of Representatives plan had a mean district population of 40,038, with the deviations from the mean population ranging from a low of -4.81 percent to a high of +4.81 percent, for a total spread of 9.70 percent.

The Senate plan was adopted with the support of the two black senators of the time, because the plan created three new black majority districts for the Senate—one in East Baton Rouge Parish, one in Caddo (Shreveport) Parish, and one in New Orleans. Although not all of these districts had black voter registration majorities at the time of their creation, it was expected that all three of them would probably elect black senators right away or later in the decade. Because the state Senate's plan was viewed as a serious attempt to enhance black minority representation in the chamber, the two senators supported the plan when it was sent to the U.S. Department of Justice for preclearance, and thus the plan was precleared under Section 5 of the Voting Rights Act, as amended, without any difficulties.

Where the state Senate had been able to develop a plan that would receive black minority group support at the U.S. Department of Justice, the state House of Representatives plan was created over the objections of most of the ten members of the House's Black Caucus. Because the House districts were smaller in size than the Senate districts, the Black Caucus felt that it would be easier to create more black House districts than Senate districts. When the final adopted House plan created five new black population majority districts, with only three of them having black voter registration majorities (one in Shreveport, one in Lake Charles, and one in New Orleans), most of the House's black members voted against the plan and filed a protest with the U.S. Department of Justice, raising questions about the racial fairness of the plan. Questions were raised about whether or not black voters had been packed into districts in Baton Rouge and New Orleans, while at the same time white districts had been created in those two cities that contained sufficiently large black populations so that these populations could have been combined with adjacent black populations to create new black voter registration majority districts. Allegations were also made that black population majority districts could have been created in Alexandria (Rapides Parish), Lafayette (Lafayette Parish), and in the river parishes of Ascension, Assumption, Iberville, St. James, and St. John. After reviewing the

state House of Representatives submission and the black minority group objections to the plan, the U.S. Department of Justice objected to the plan in all of the areas in question except Lafayette Parish.

The U.S. Department of Justice objections to the state House plan came in the spring of 1982, and hence reapportionment of the House of Representatives districts was on the agenda for the 1982 regular session of the legislature. At that session the legislature adopted two bills related to the House of Representatives districts. The first act was designed to meet the U.S. Department of Justice's objection to the plan adopted in 1981. The amendments to the plan called for the creation of a new black population and voter registration majority district in Baton Rouge and new black population majority districts in Alexandria and the river parishes area between Baton Rouge and New Orleans. These four new black population majority districts, when coupled with the four new districts created by the original plan, resulted in an overall plan calling for eight possible black majority districts for the House of Representatives. The second act of the 1982 regular session that was related to House districting made minor changes to several districts without affecting any of the black majority districts. Neither of the acts had any impact on the overall population deviation of the first House plan. These two acts received preclearance from the U.S. Department of Justice later in 1982.

The new Senate and House districting plans were first used in the primary and general elections of 1983. Under the new Senate plan, only two sets of incumbents were paired, with two veteran senators deciding to retire rather than run for reelection against colleagues. New districts without incumbents were created in Baton Rouge (a black population and voter registration majority district) and along the north shore of Lake Pontchartrain in St. Tammany and Tangipahoa Parishes. Thirty-seven of the incumbent senators sought reelection, with 32 being returned to office and only five defeated. Black senators were elected to two seats (one in Baton Rouge and one in Shreveport), bringing the total number of black members of the Senate to four. The Republican membership of the Senate remained unchanged at one member after the 1983 elections. The new district along the north shore of Lake Pontchartrain in St. Tammany and Tangipahoa Parishes had been expected to be fertile territory for Republicans, but the voters in the district chose a Democrat over several Republican candidates.

In the new House of Representatives plan, six sets of incumbents were paired. In only two of districts did the incumbents face each other in the 1983 election, with retirements, changes of residence, or pursuit of higher elective office ensuring that the other four incumbents would not have to run against colleagues for reelection. New black majority districts without incumbents were created in the Shreveport, Lake Charles, and Baton Rouge areas. The other new districts were created in Jefferson Parish and along the north shore of Lake Pontchartrain in St. Tammany parish. Eighty-nine of the 105 House incumbents sought reelection under the new plan, with 79 of them being successful and ten being defeated. Four additional black members were elected—one from Shreveport, one from Lake Charles, one from Baton Rouge, and one from the River Parishes area. The three new black population majority districts in New Orleans and one new black population majority district in Alexandria continued to return white members. In none of the four districts did black voters constitute a majority of the registered voters after the redistricting. The Republican membership of the House increased by one in the 1983 election, with the one additional seat coming in a new district in Jefferson Parish that had been created through reapportionment.

Overall, the Senate and House redistrictings of the 1980s did not have much impact on changing the membership of the two legislative bodies. Compared to the major changes of the previous decade, whereby single-member districting plans had replaced combination multimember and single-member schemes, the redistrictings of the 1980s involved only reallocations of population from district to district without changing the number of districts. Hence, few incumbents had to face each other in the 1983 election, yielding a high

return rate for incumbents who sought reelection. In subsequent special and regular elections, later in the decade, one additional black member was elected to both the Senate and the House from New Orleans. Republicans also made gains in both chambers in the 1980s, largely through party switches, some of which can be attributed to the redistrictings of the 1980s that had made the districts in question more favorable, electorally, for Republicans.

NOTES

1. For a discussion of redistricting in Louisiana before 1980, see Ronald E. Weber, "Louisiana," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 134-40.

MAINE

G. THOMAS TAYLOR AND KENNETH PALMER

The reapportionment of the state legislature was not completed until 1983, when the legislature was controlled by Democrats, by a margin of 93 to 58 in the House and 23 to 10 in the Senate. Democrats had been in control of the legislature since the mid-1970s. The governor in 1983 was Joseph Brennan, a Democrat who had first been elected in 1978, and was reelected by a large margin in 1982. Brennan was a moderate-to-liberal Democrat who was known to be closely in tune with mainstream thinking in Maine. His lack of flair was more than compensated for by his detailed knowledge of the intricacies of Maine politics. A former attorney general, he had been a career politician for nearly two decades.

To facilitate future reapportionment, the legislature in 1975 proposed a constitutional amendment to create an Apportionment Commission.[1] Under its provisions, the legislature must adopt the commission plan or its own plan by a two-thirds vote. The commission performed its first task shortly after its creation. In the same election that approved the Apportionment Commission, Maine voters ratified another constitutional amendment that abandoned multimember House districts, which were in use in cities having more than one representative. The commission carved single-member districts from the 11 multimember districts that had existed, and apparently did so in an effective manner. Thomas Lapointe of Portland, a Democratic member on the 1977 commission, characterized its work in this way: "It was very, very smooth. It was not highly charged, relatively speaking. But anyone who doesn't think partisanship enters into reapportionment is naive."[2]

The Apportionment Commission was designed to begin work after the 1980 census. The provisions in the amendment stipulated that the commission would be composed of three members of each party from the House and two members from each party in the Senate, the chairmen of both state political parties, and three public members. Two of the public members were to be selected by each group of party members. The third was to be selected by the two public members. For the 1983 Apportionment Commission, the third member (and eventual chairperson of the commission) was Roger Mallar, a former commissioner of the Department of Transportation and a widely respected engineer and civic activist who was acceptable to both parties.

The commission's work was fairly harmonious. The Democratic leader on the commission, Edward Kelleher, observed that "Suspicions evaporated after the second meeting, and respect began to build." Senator Charlotte Sewall, who headed the Republican contingent, commented that the Senate reapportionment was "relatively harmonious," but that in the case of the House reapportionment, "it was very hard to reach agreement."[3] The legislature approved the plan by a vote of 28 to four in the Senate without debate. Three Republicans from widely scattered parts of the state voted against it, as did one Democrat. The House approved the plan 101 to 45. The vote was along party lines, but not exclusively so. Democrats nearly all supported the commission's recommendation (by a vote of 83 to seven), while Republicans opposed it by a vote of 38 to 18.

Debate in the House was extended, but largely favorable to the actions of the commission. One reason was that the commission regularly discussed changes in the districts with the members as the commission was considering alternatives. Representative Gregory Nadeau, a member of the commission, stated that "both parties worked hundreds and perhaps thousands of extra hours discussing individual districts with every legislator who wished to discuss their district. The result of that exchange of information was an understanding of local concerns in apportionment."[4]

Citizens were able to present their ideas in two public hearings that the commission held during the course of its work.

Of course, not all legislators were happy with the results of the commission's efforts. Mostly the commission was able to comply with the state constitutional mandate that apportionments respect the territorial integrity of towns and cities in assigning them to legislative districts. However, in a few instances, compromises appeared to be struck that did not meet that standard. Representative Robert Dillenback of Cumberland complained that the commission chopped up communities and he preferred that the matter go to the courts.[5] Another legislator, Representative Darryl Brown, from the central Maine community of Livermore Falls, said that his district now resembled "a horseshoe-shaped arrangement," and "included parts of three counties, several school districts, and two congressional districts."[6] He agreed with Representative Dillenback that the issue should be taken to court.

Only one legislator made explicit reference to what she perceived as partisan behavior on the part of the commission. Representative Mary MacBride of Aroostook County found her service on the body to be "an excellent learning experience," and believed that the commission "was a diligent group, working long hours and working hard, trying to find compromises . . ." Nonetheless, she voted against the plan on the floor of the legislature because it was "so unfair to Aroostook County Republicans.[7] That county lost two seats and in her view the Republicans took the burden of the loss. On the other hand, several Democrats who were actually hampered by the commission plan supported it.

Generally, Democrats endorsed the plan. From the profile of the House vote (the number of 101 was the minimum number necessary for passage), it appeared likely that the Democratic leadership in that chamber played an important role in lining up support for the reapportionment plan. The complaints that were voiced came mostly from Republicans. The tone of the debate was moderate, and even critics were generally laudatory toward the work of the commission. As noted earlier, both parties in the Senate gave overwhelming approval to the plan without debate.

Following approval of the commission report, some partisan wrangling took place in the media over the expenses that body had incurred. The legislature had originally appropriated $25,000 for the reapportionment task; the final expenses were about $110,000. Speaker John Martin noticed that despite the overrun, the reapportionment process had cost much less in Maine than in most other states.[8]

The results of legislative elections in 1984 and 1986 produced little overall change in the partisan composition of the House and Senate. House Democrats held 92 seats in the 1983 legislative session, which number fell to 85 in 1985 and remained at the same level in the 1987 session. Republicans slightly improved their margin in the same period, from 59 members in 1983, to 66 in 1985, and 65 in 1987. Likewise, Republicans gained one seat in the Senate in 1985, and another four seats in 1987, bringing their total in that year to 15 senators. Democrats, however, continued to control the Senate, though their margin fell from a 23-10 ratio in 1983 to a 20-15 ratio in 1987. The election statistics fairly well put to rest any lingering ideas that the Apportionment Commission had engineered a sharply partisan gerrymander for Maine Democrats.

Results of Reapportionment

The Maine legislature had to approve the Apportionment Commission's plan by a two-thirds vote by March 31, 1983 or once again it would be up to the courts to determine boundaries. New district lines would be first used in the 1984 elections. Before this reapportionment, each member of the House of Representatives represented 6,580 persons, while after reapportionment, each member would represent 7,450 persons. Each senator would represent more than 32,000 persons on the average, which was an increase of 2,000 constituents from 1970.

The commission report to the 111th Maine State Legislature was made on March 1, 1983, and began as follows:

> Reapportionment of the State of Maine in 1983 involves the redistricting of the State Senate and House seats as well as Maine's two congressional seats, to reflect the population changes recorded by the 1980 federal census.[9]

Accordingly, the plan contained the following basic elements:

1. The northern congressional district received 20,000 Waldo County voters, who had been previously voting in the southern congressional district.

2. The state Senate was enlarged from 33 to 35 seats (by adding two new districts in York and Sagadahoc counties).

3. Boundary lines for 151 House seats were redrawn.

In addition, the commission's guiding objectives were outlined as follows in its report:

1. Substantial equality of population among districts of each type, which supports the one person-one vote principle.

2. Districts should be as contiguous and compact as possible.

3. District lines should minimize the crossing of political subdivision lines.

4. Districts should be sensitive to communities of common interest.

The commission also concluded that: "Deviations from mathematical exactness or 'ideal districts' that do occur must be within the limits recognized as tolerable by judicial precedent." An ideal district was defined as the total state population (1,125,030) divided by the number of districts allowed. An ideal House district would have (1,125,030 divided by 151) 7,451 people.[10] The general guidelines used by the commission that governed deviations from equality in legislative districts were that the overall deviation of districts was to be less than 10 percent and the mean deviation less than 2 percent. More stringent standards of population equality were considered for congressional districts.

There were differences of opinion about who actually benefited. While Maine's population had increased by 13 percent to 1,125,000, the trend toward Democratic supremacy in the Maine House had begun well before the 1983 Apportionment Commission Report. (For example, in 1980 there were 73 Republicans and 77 Democrats in the House.) Moreover, as was observed in the state's largest newspaper, the *Bangor Daily News*: "Few Senate incumbents, Republicans or Democrats, are really hurt by the new districting configuration . . . although many will see a host of new faces, should they seek re-election."[11]

Most of the immediate change appeared in the multimember districts of the largest cities. The *Maine Sunday Telegram* reported that: "There are sure to be some losers, mostly in the cities where population losses have folded districts into each other."[12] However, partisan leaders differed on their own assessment of the overall results. For example, Maine state GOP Chairman Loyall Sewall concluded that the new House boundaries left 62 district seats tilting toward Republicans and 21 seats up for grabs.[13]

The collapse of the at-large districts meant that the cities' legislative seats could become more competitive. For example, Democratic slates of House candidates had become virtually unbeatable in the cities of Lewiston, Portland, and Biddeford. In fact, in 1977, 87 of the Democratic legislators had resided in these multimember districts, while only eight of 63 Republicans had been elected from multimember districts.[14]

The ideal population size for a Senate district hovered around 32,000, while a House district was about

7,500, as the Apportionment Commission continued its deliberations. Specifically, it was decided that the House of Representatives would have 151 districts with an ideal district of 7,451 persons. These proposed House districts ranged from a low of 6,936 to a high of 7,884, and deviated from the ideal by -6.91 percent and +5.81 percent, respectively, for an aggregate deviation of 12.72 percent.

The commission concluded that:

> This problem is also compounded by Maine's peculiar geography and demography such that the House Plan could be created with an aggregate deviation of less than 8%, even if population equality was the only objective.[15]

Under the 35-single-member-district plan, the ideal Senate district was determined to have a population of 32,144. The districts recommended by the commission ranged from 30,550 to 33,171, with deviations from the ideal of -4.959 percent and +3.194 percent, respectively. The overall aggregate deviation was, therefore, 8.153 percent, which is within the 10 percent tolerance for population equality suggested by judicial precedent.

The Apportionment Commission went on to report that except as required by population size in Maine's largest cities, no municipalities were divided in this Senate plan. County boundaries were followed "to the greatest extent practicable, considering the competing objectives for compactness, contiguity and sensitivity to communities of common interest."[16] However, the adopted reapportionment plan reflected a judgment that it was more important to preserve city and town boundaries than county boundaries.

Maine's minority population is very low (African American < 1 percent, Hispanic 1 percent, and Native Americans 1 percent). However, Franco-Americans are a prominent ethnic group in Maine and were affected to some extent by the losses previously reported for safe Democratic seats in multimember districts in Lewiston and Biddeford.

As regards congressional redistricting, the 1980 census revealed that the 1st District was top heavy (with 580,492 people, as opposed to 543,178 in the 2nd District), creating, a gap of 3.33 percent. Much of this growth had occurred in York County at the southernmost boundary. York was the only urban center to experience major growth in the 1970s, when its population increased by 27,896, or 25 percent.[17]

Thus, in 1981 a bill was enacted that required the House and Senate Apportionment Commission also to deal with congressional districts in 1983 and every year thereafter.[18]

In apportioning Maine's two congressional districts, the commission determined that the ideal district would be 562,515 in population. The 1st District population was to be 562,511, and the 2nd District population would be 562,519, with an overall deviation for recommended districts of 0.001490 percent.

Thus, the more sparsely populated northern congressional district gained 20,000 Waldo County voters, who had previously been in the southern congressional district. Congressional districts used a deviation of less than 1 percent as a standard.

A Court Challenge

After the legislature enacted the commission plan, its foes submitted an alternative model to the Maine Supreme Judicial Court. The group was called the Citizens for Constitutional Apportionment, led by former East Millinocket Representative Walter E. Birt, who headed a 1972 reapportionment committee. While most of individuals associated with the group, including Birt, were prominent Republicans, the party itself did not become a party to the litigation. The CAC's plan had a slightly greater deviation in districts than the commission plan (the difference between the largest and smallest Senate districts was 9 percent in the new plan, as against 8 percent in the commission plan). However, the new arrangement reduced the number of multicounty districts from 19 to nine. Birt also said that the plan reduced the number of districts with portions in two counties from 15 to eight, and

those with portions in three counties from four to one. One of the arguments focused on Representative Brown's District 58, which was horseshoe-shaped and contained towns from three different counties. The Court thought that the district might approach "the limits of what is constitutionally permissible under the state compactness-and-contiguity test," but that the district situation did not show improper judgment. The Court also believed that attempts to alter District 58 would have a ripple effect on many other districts. It is important to note that the commission plan paid greater attention to municipal lines than to county lines, partly because adherence to county boundaries, required in the state constitution prior to 1975, had been removed.

The Court held that petitioners had "failed to show that the legislature used improper judgment in the choices that it made" in "its attempt to harmonize the standards imposed by the state and federal constitutions." [19] Therefore, the Supreme Court rejected the challenge to the statewide redistricting plan in a unanimous vote in December 1983. The Court said that while the new districts may be "less than perfect, they are the product of legitimate judgmental choices made by the legislature in its attempt to harmonize the standards imposed by the state and federal constitutions." [20]

Significance and Conclusion

The 1980 census revealed a population decline in several of Maine's largest cities (Portland, Bangor, Lewiston), while moderate growth was occurring in the outlying suburban areas. For example, Portland declined by about 3,500 persons during the 1970s, while the neighboring town of Windham almost doubled its population to 11,238.

Another major demographic trend that affected the apportionment issue was that the northern section of the state lost population and the southern tip of the state and the suburban communities around Portland gained in population. As reported here, the commission's plan passed the legislature by a two-thirds majority during the spring of 1983 and was implemented after a brief citizen's group challenge in the courts. It is significant to note that this was the first time that reapportionment had been completed in 30 years without direct intervention by the courts to implement the apportionment plan. It was also the first time in the state's history that state House, state Senate, and U.S. House of Representatives districts were redrawn at the same time.

Overall and in a comparative context, political reactions were likewise slight. Nor did the apportionment results affect the balance of power in the legislature. Republicans gained very slightly in the two elections immediately following apportionment, then lost ground in the 1988 election to the Democrats. The apportionment system itself appeared to have little to do with those tides. Suburbs had gained representation because cities had lost marginally in population, a pattern carefully manifested in the 1983 apportionment system. However, the partisan outcomes were shaped by the political events of the particular election year, not the design of the districts.

NOTES

1. For a description of redistricting in Maine prior to the 1980s, see Paul Chapman, "Maine," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 141-47.
2. *Maine Sunday Telegram*, November 11, 1982.
3. Ibid., March 6, 1983.
4. *Maine Legislative Record*, March 30, 1983, p. 462.
5. Ibid., p. 464.
6. Ibid.
7. Ibid., p. 463.
8. *Portland Press Herald*, May 19, 1983.
9. *Report to the 111th Maine State Legislature*, March 1, 1983, p. 6.
10. *Report to the Maine Legislature of the Apportionment Commission*, pp. 7-8.
11. *Bangor Daily News*, March 12-13, 1983, p. 3.
12. *Maine Sunday Telegram*, March 6, 1983.
13. *Portland Press Herald*, October 8, 1983.
14. *Bangor Daily News*, March 26-27, 1977.

15. *In re 1983 Legislative Apportionment of House, Senate* (Me. 1983): 819-31.
16. *Report to the 111th Maine State Legislature*, p. 11.
17. "Census May Siphon Clout From Cities," *Maine Sunday Telegram*, April 5, 1981.
18. Legislative Record Debate.
19. *In re Legislative Apportionment House, Senate*, 469 A.2d 819 at 831.
20. *Portland Press Herald*, December 10, 1983.

MARYLAND

M. MARGARET CONWAY

For much of its history, Maryland's legislature was the epitome of malapportionment.[1] The Maryland constitution requires that legislative districts be contiguous, compact, and of equal population, while giving due regard to the boundaries of political subdivisions and to natural boundaries.[2] In some areas of the state, and particularly in rural areas, these latter provisions may present obstacles to having districts which are contiguous and of equal population. If geographic areas are separated by a bay or river which is not crossed by a bridge, they are not considered contiguous. This presents substantial problems in redistricting that part of Maryland which is on the Eastern Shore of the Chesapeake Bay and many areas on the western shore. The political subdivisions whose boundaries must be considered are the counties and incorporated municipalities.[3] Maryland follows a southern pattern of local government, with most or in some counties all local government responsibilities accruing to the county. Baltimore City is an independent governmental unit, not contained within the boundaries of any county, and performing all local government functions.

A district may be subdivided into three single-member districts or one single-member and one two-member district for the purposes of electing members of the House of Delegates. This facilitates representation of different jurisdictions (especially rural counties) and maximizes representation of different interests within the legislature, whether they are political subdivisions, economic interests, the protection of a particular partisan interest, or the maintenance of incumbents.

Within the legislature, the dominant Democratic party has for many years split into various coalitions, the patterns changing over time and with different issues and candidacies for statewide office. These multiple dimensions of conflict are reflected at times in conflict between Baltimore City and the rest of the state, at other times in Baltimore City alliances with Prince George's County Democrats or with those from other areas of the state. Conflict has also existed within the more populous jurisdictions, based on economic, religious, and racial and/or ethnic divisions, as well as on rivalries between political leaders or well entrenched clubs.

THE 1982 REDISTRICTING PLAN

In 1982 the governor and legislature confronted a changed population distribution within the state, with Baltimore City and the suburban counties closer to Washington and Baltimore having lost population and the outer rim of suburban counties surrounding Baltimore and adjacent to Washington having experienced considerable population growth. On April 13, 1981, Democratic Governor Harry Hughes appointed a five-member Advisory Committee on Reapportionment and Redistricting to assist him in developing a redistricting plan.[4] The committee was chaired by William James, state treasurer and former president of the state Senate, and included as members the presiding officers of the state Senate and the House of Delegates. The committee, having conducted hearings throughout the state, submitted its proposals to the governor on December 8, 1982. After two hearings chaired by the governor on the proposal, the plan was introduced in the House of Delegates as House Joint Resolution 32 (HJR 32) on January 13, 1982. The governor's plan was approved by the legislature on February 26, 1982.[5]

Several distinct interests were served by the plan which was adopted. Representation in Baltimore was set at nine districts, a decrease of two from the 1970s redistrictings. In the 1982 plan, eight of the nine Baltimore City districts were below the absolute population mean of 89,723, although in no case did the divergence exceed 5 percent. Four of the districts had a black majority, four had a white majority, and one was almost equally divided between black and white residents. In this plan, none of the district boundaries

crossed over into Baltimore County.[6] The plan protected the interests of a number of ethnic, racial, and religious groups, which could remain assured of representation in the legislature. It also reflected the interests of incumbents in the legislature, many of whom were leaders of local political clubs which represented ethnic, racial, or religious groups in the city. To summarize, the legislative districting plan for Baltimore City was a carefully crafted compromise among a number of competing political interests.

In Prince George's County, the boundaries of new districts were drawn so as to create one black-majority district and two which had an almost even split between black and white citizens[7], guaranteeing for the first time black representation in the legislature from that county. Two of these Prince George's County districts elected African Americans to the legislature in 1982, and in 1986 three elected black legislators.

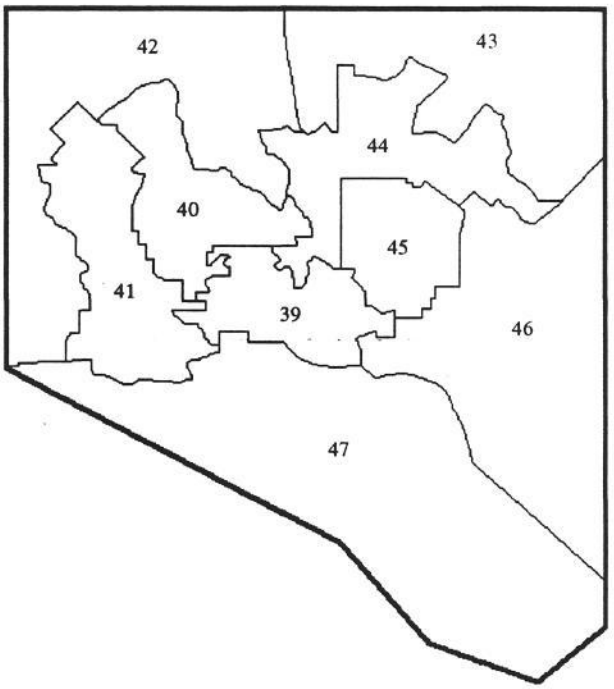

Figure 1. Baltimore City Districts.

Both the Baltimore City and Prince George's County redistrictings are examples of concentration gerrymandering, serving in both cases to promote minority representation in the legislature. These districts also reflected the interests of the political clubs and party factions dominant in particular geographic areas. The nine districts within Baltimore City are shown in Figure 1.

As with previous redistrictings, the drawing of lines began at one end of the state (the west) and proceeded across the state. In order to accommodate the interests of the major jurisdictions, one outer suburban county had to be carved up to provide the necessary number of citizens (89,723) for a few legislative districts in the larger suburban jurisdictions. In 1982, the outer suburban county carved to pieces was Howard County, which lies between the Baltimore and Washington metropolitan areas. It was divided between two districts and among four subdistricts, with one subdistrict being joined to part of Montgomery County, one to part of Prince George's County (both these counties are suburbs of Washington, DC), and one with parts of another outer suburban county (Carroll) which is part of the Baltimore metropolitan area. The fourth subdistrict consisted entirely of residents of Howard County.[8]

The legislative districting plan required that in any district in which members of the House of Delegates are elected at large from more than two counties or parts of two counties, no county may have more than one resident delegate.[9] Three districts were covered by those requirements. This requirement maximizes representation of separate, rural counties in the legislature through having a delegate residing in each county in the district, provided of course that the district contains no more than three counties. For example, one Eastern Shore district consisting of four counties elects delegates from three of the four counties.

Legal Challenges to the 1982 Redistricting

Ten petitions were filed in opposition to the 1982 redistricting act with the state Court of Appeals.[10] Four were consolidated into two cases which focused on the same challenged districts.

Decisions in federal court cases have established a definition of equality which presumes that state legislative district population size will be within plus or

minus 5 percent of the population mean. In addition to the equal protection clause of the federal constitution, challenges to the state legislative redistricting were based on the equal population size, compactness, and respect for natural boundaries and for the boundaries of political subdivisions requirements of the state constitution. In addition, violations of "communities of interest," which might be one interpretation of natural boundaries, and of the reapportionment and redistricting procedures specified in Maryland law were also alleged.

The state Court of Appeals appointed Judge Albert Menchine, a retired judge of the Court of Special Appeals and prior to that a Baltimore County court judge, to serve as a special master, hearing the arguments, examining the evidence presented in each of the ten challenges to the 1982 redistricting law, and preparing a report for the Court.

Two petitions challenged the districting of Montgomery County, one of the five largest jurisdictions in the state which is located adjacent to Washington, DC.

Another challenge was filed by citizens of Howard County, who objected to the dismemberment of their county into four legislative subdistricts in order to accommodate the interests and maximize the representation of other suburban counties.

Three challenges to the law focused on the districting plan for the City of Baltimore.

The drafting of districts for Baltimore County was also challenged on the grounds that the districts were not compact and ignored natural boundaries and the boundaries of political subdivisions within the county.

Several residents of southern counties on the Western Shore of Chesapeake Bay (an area known as Southern Maryland) challenged the plan as it related to Districts 28 and 29 and their subdistricts for the House of Delegates.

One individual petitioned to have the entire plan contained in HJR 32 overturned because it used multimember districts for the House of Delegates. The petitioner argued that these violated the equal protection clause.

After considering the oral arguments and the evidence, Judge Menchine concluded that the only challenge which had merit was that to the composition of Districts 43 and 44 in Baltimore City. He proposed alterations to those districts which would remedy the supposed constitutional defect in the plan. After consideration of the special master's report and the oral arguments presented before the Court on June 1, 1982, the Court decided that none of the petitions established any violation of the state or federal constitutions.[11]

Drafting of a congressional redistricting was largely left to the incumbent members of Congress (six Democrats and two Republicans). Of course, preservation of the incumbents was a primary concern.

Other Electoral Consequences of the 1982 Redistricting

The 1982 election resulted in an overwhelmingly Democratic legislature. In 1978, 15 Republicans had been elected to the House of Delegates and eight to the state Senate. In 1982, 17 Republicans were elected to the House and six to the Senate. In 1986, 17 Republicans were victorious in House elections and seven in Senate elections. In 1990, Republicans elected 25 to the House and seven to the Senate. The poor performances of Republicans are a consequence of a number of factors, including the overwhelmingly Democratic voter registration in the state, weak local Republican party organizations, and the lack of viable Republican candidates with local office-holding experience.

Back to the Future

Redistricting as a consequence of the 1990 census presents no unusual tasks. The size of the legislative chambers will remain the same, with 47 districts each containing one senator and three delegates. The state has, however, experienced some growth in population since 1980. More importantly, it has experienced a

significant redistribution of population. Preliminary estimates are that Baltimore City will lose two state legislative districts and that the outer suburban areas will gain several legislative seats. Estimates also indicate that the white population in Prince George's County decreased by 100,000 while the black population increased by a like amount. As a consequence, at least one additional black-majority district, and probably more, will be created in that suburb of Washington. Howard County, carved into four parts in the 1982 redistricting, has grown sufficiently in population that it will not be used to accommodate the interests of other suburban counties in the 1991 redistricting. The probable candidate for dismemberment is Carroll County, an outer suburban county northwest of Baltimore. Some of the dislocations within the legislature made necessary by population shifts will be accommodated by retirement of several senior members of the legislature, particularly within the Baltimore City delegation. Respecting political boundaries of counties in drawing legislative districts will present a greater challenge than in the past; for example, some legislative districts in the Baltimore area will probably include both Baltimore City and Baltimore County precincts.

An examination of reapportionment and redistricting in Maryland provides clear evidence that the creation of legislative districting rules, whether in the state constitution or in public laws, is a political act. The implementation of those rules in a particular plan is also very much a political act, brought into being by numerous interests pursuing different goals.

NOTES

1. See M. Margaret Conway, "Maryland," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 148-52.
2. Maryland Constitution, Art. III, Sec. 4.
3. *In Re Legislative Districting*, 299 Md. 658 (1982), note 15, p. 681.
4. Art. III, Sec. 5, of the Maryland Constitution requires the governor to prepare and present to the legislature, no later than the first day of the regular session in the second year following every census, a plan for redistricting the legislature. If the legislature has not adopted an alternative plan by the 45th day after the opening of the regular session, the governor's plan becomes law.
5. Maryland Annotated Code, State Government, 2-202, and HJR 32 (1982).
6. Ibid. See also *Legislative Reapportionment Plan of 1982*, presented by Harry Hughes, Governor, January 13, 1982.
7. Ibid. Also letter to the author from Karl Aro, Legislative Reference Service, Maryland General Assembly, dated May 29, 1990.
8. Maryland Annotated Code, State Government, 2-201.
9. Maryland Annotated Code, State Government, 2-201d. See also *Legislative Reapportionment Plan of 1982*.
10. See *In Re Legislative Districting*, 299 Md. 658 (1982), for a summary of these challenges to the 1982 redistricting plan.
11. *In Re Legislative Districting*, 299 Md. 658.

MASSACHUSETTS

JOHN C. BERG

Massachusetts gave the term "gerrymander" to the world in 1812, and the state's politicians have continued to practice the art of drawing district lines for political purposes. However, the nature of those purposes has changed over the years. The original gerrymander was a partisan animal, part of a plan to bolster the Democratic-Republicans against the Federalists. In the 1980s the Democratic party dominated the legislature and the congressional delegation so thoroughly as to make partisan gerrymandering secondary; instead, incumbent protection and race became the dominant issues. This was the pattern in each of the three major redistrictings of the 1980s, including redistrictings for the state's congressional districts in 1981, the state Senate in 1987, and the state House of Representatives in 1988.

The 1980 census cut the Massachusetts share of the U.S. House of Representatives from 12 to 11 members, and all 12 incumbents—10 Democrats and two Republicans—wished to keep their seats. In the event, the district of one of the Republicans, Margaret Heckler of Wellesley, was eliminated; ironically, it is generally agreed that this was not the legislature's intention. However, the legislature intended to create a district in which Heckler could defeat first-term liberal Democrat Barney Frank, who had antagonized the legislative leadership when he served in the Massachusetts House. The resulting 4th District was certainly a gerrymander. (See Figure 1.) In shape, it resembled a performing seal, with the liberal suburban enclave of Brookline and Newton—Frank's official residence—held aloft at the tip of the tail, joined by Heckler's Wellesley to the column of the body, all carefully balanced on one flipper—the town of Westport on Massachusetts's southern coast. Frank had served one term to Heckler's eight, and only 30 percent of the voters had been in Frank's old district, 70 percent in Heckler's. But Frank campaigned tirelessly, made ties to industrial workers in Fall River, won the endorsement of the National

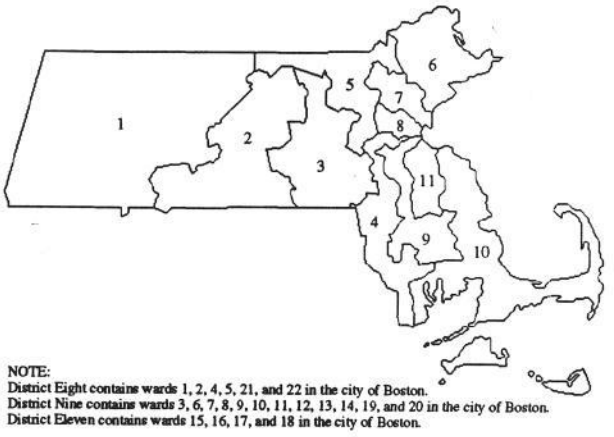

Figure 1. 1982 Massachusetts Congressional Districts.

Organization for Women against the state's only woman in Congress, tied Heckler to the Reagan administration (at its low point in popularity in 1982), and beat Heckler by 40,000 votes.[1] This, too, was in the Massachusetts tradition; the original gerrymander, created by the Democratic-Republicans in 1812, was won by the Federalists in 1813.[2]

Aside from the Frank-Heckler confrontation, other 1981 changes in congressional districts aroused little controversy. However, this does not mean that there were no gerrymanders. For example, the 9th and 11th Districts both began in working-class city neighborhoods and fanned out to the suburbs, enabling two urban Democrats, Joseph Moakley of South Boston and Brian Donnelly of neighboring Dorchester, both to serve. The resulting districts were neither compact nor the embodiment of a community of interest. If the 4th District resembled a performing seal, the 9th looked like nothing so much as a donkey. However, these were not *new* gerrymanders, but simply the continuation of the previous pattern,[3] and so they aroused little attention in 1981.

Redistricting of the state legislature has been more controversial. It has been more frequent, more has

been at stake, and there has been more room for political chicanery. However, it has not been strongly partisan. There have not been enough Republican legislators for attempts to eliminate them to be worthwhile, and Republican incumbents have often chosen to ally with their Democratic colleagues for mutual preservation of safe seats, sometimes over the objections of their fellow partisans on the Republican State Committee.

Like one of its early citizens, Henry David Thoreau, Massachusetts marches to the beat of a different drummer. Most states apportion their own legislatures on the basis of the decennial federal census; but Massachusetts conducts its own state census in years ending in five. Legislative districts based on this census go into effect on "the first Wednesday in the fourth January following the taking of said census,"[4] and remain in effect for ten years. Thus, a census was taken in 1985 and elections held in the new districts in 1988, with those elected taking office in 1989. The state census had been criticized as expensive and inaccurate, but was required by the state constitution until the census provision was repealed by constitutional amendment in 1990.

The situation was complicated further in the 1960s and 1970s by a number of constitutional changes. The Massachusetts House of Representatives was redistricted in 1963, 1967, 1973, and 1978. Except for the first, which should have been the regular 1957 redistricting but which was delayed by politics, each of these redistrictings was required by a change in the constitution: in 1967 the basis of representation was changed from the number of legal voters to the number of inhabitants; in 1973 multimember districts were eliminated; and in 1978 the size of the House of Representatives was reduced from 240 to 160, making for the most painful redistricting of all.

Meanwhile, the 40-member state Senate was redistricted in 1960, 1970, and 1973. After the 1973 redistricting, the dominant issue was the successful attempt to create a Senate district for the black community in Boston. Opposition to the black district came primarily from Democratic incumbents, all white, whose seats would be safer if the city's black voters were divided up among them; the black district was created only after Republican Governor Francis Sargent had vetoed one plan and asked for amendments to another; Sargent actually wrote the plan finally adopted by the Democratic legislature.[5]

The state census of 1985 thus marked something of a return to normalcy; for the first time in at least four decades, both houses were to be redistricted more or less on schedule. However, normalcy is a relative term; the census and redistricting were anything but smooth.

Massachusetts Secretary of State Michael J. Connolly—himself a former state representative from Boston—set the tone when he refused to accept the City of Boston's census figures. The state census is actually conducted by city and town officials. They report their findings to the state, which certifies them and adds them up. Boston reported a population of 620,889, but Connolly, citing a 1984 federal estimate of 570,719, claimed that the city had inflated its count.[6] The dispute was only resolved when the legislature created a commission, appointed by the governor, to come up with an official figure. On May 15, 1987, the commission concluded that Boston's real 1985 population had been 601,095, a figure which would cost Boston at least one House seat; the commission's conclusion was immediately attacked as a political compromise by the Republicans, who asserted that the real total had been between 580,000 and 590,000. The new Boston figures changed the state total to 5,746,441, or 35,915 per representative and 143,661 per senator.[7]

The Massachusetts Constitution required the new districts to be in place in time for the 1988 election. This left the redistricting committees, headed in the House by Democrat James Brett of Boston's Dorchester section, and in the Senate by Democrat John Brennan of suburban Malden, with about nine months to come up with a plan and get it enacted.

At this stage, and throughout the redistricting battle which followed, there were four major issues: party,

region, race and ethnicity, and incumbency. For the press and the public (at least that relatively small portion of the public which pays attention to such matters), each of the first three was to become important at some time and for some people. However, for the legislature itself there was never any question that incumbent protection was to be the overriding imperative. As Brennan put it, "The one common bond that runs across the ideological spectrum is that we are all very concerned about what our districts look like and want a reasonable expectation of getting reelected." The speaker of the House, Democrat George Keverian of Everett, openly discussed the desirability (as he saw it) of a "buyout." "It doesn't matter who will lose their seat. I would prefer that person move up to another job. I'd be happy to know that person would be a judge. I'd prefer that but I can't control that." [8] As we shall see, Keverian's preference—widely shared by other legislators, of course—corresponded closely with the results of the redistricting.

Among the other three major issues, party and region were related. Boston had lost population to the suburbs to its southeast, particularly in Plymouth County, and to Cape Cod a bit further south. Coincidentally, the area which had grown was one of the state's few Republican enclaves. Of course, many of these new suburban and exurban voters were themselves Democrats—in fact, the same Democrats who had moved out of Boston—but the Republicans still hoped to gain at least two House seats from the redistricting. This had given a partisan tinge to the dispute over Boston's census count, and raised Republican suspicions over any attempt to help the Boston representatives hang on to their seats.

In the Senate, redistricting chair John Brennan had one and only one goal, incumbent protection. As he explained his plan to a reporter from the *Boston Globe*, "it was a political decision. I did not want two incumbent senators running against one another for the same seat." [9] Despite the need to reduce Boston's delegation from eight senators to seven, and to accommodate population shifts elsewhere in the state, Brennan achieved this goal. In several cases he managed to go a little further, ridding incumbents of troublesome nests of opposition within their old districts, and adding lumps of voters expected to be more compatible. This strategy paid off in practical terms. Although Brennan's plan contained some extraordinary gerrymanders and blatant political manipulations, only one of the 40 senators objected to the plan, and it was enacted quickly. Moreover, because Brennan had adhered to strict mathematical guidelines, his plan withstood a court challenge (unlike that for the House, as we shall see later on).

The sole objection within the Senate came from the state's only black senator, Boston Democrat Royal Bolling, Sr. Bolling represented the black Senate district created after long controversy in 1973. While his seat was protected under the new plan, he objected to the loss of "the heart of the black community"—precincts 1, 2, and 3 of Ward 9, which were transferred to the Senate President, Democrat William Bulger of South Boston. The loss would not hurt Bolling, who got equally supportive voters to replace those lost; but he and other black leaders argued that the precincts would not be well represented by Bulger, who was not perceived as sympathetic to black concerns. While Bolling's complaint got some media attention, the plan was not changed; ironically, Bolling himself lost his seat (to another black candidate) when he forgot to file his nomination papers in time.

Brennan's real ingenuity came in cutting Boston from eight Senate districts to seven without eliminating any incumbents. This was only possible because one of the city's eight senators, Democrat William Keating, actually lived in suburban Sharon. Brennan gave Keating some new territory in the south (where the population had grown the most), and divided his 53,000 Boston constituents among the other seven Boston senators. Brennan was also able to help out a couple of conservative Boston Democrats who were in trouble for injudicious, if not homophobic, statements they had made during the debate on a gay rights bill.

Brennan's political machinations drew some critical comments from the press, and even provoked some

public outcry. However, his plan had two essential characteristics. First, it protected the seats of the senators who would have to vote for it; and second, it passed the constitutional test of numerically equal districts. Thus it was enacted quickly, and was upheld in a later court challenge. Critics could criticize the plan, but they could not defeat it.

The House leadership, too, sought to protect incumbents. But redistricting there did not go as smoothly. The Democratic leadership moved quickly to defuse Republican concerns about partisanship. One month before the final House plan was ready, Brett made it clear that he had every intention of creating the two new southeastern districts the Republicans wanted.[10] Perhaps more significantly, incumbent Republicans found their needs attended to. This was simply practical politics. With 126 of the 160 seats held by Democrats,[11] Brett and Keverian did not need to worry about increasing their margin of control in the House, but wished to minimize opposition there. They did this very successfully; on July 13, 1987, the House adopted Brett's proposed new district lines by a vote of 151-1, with the only "no" vote coming from a Democrat, William Galvin of Boston (whose district had been cut in two).

The House plan was passed routinely by the Senate, out of reciprocity, and signed by the governor. But all was not well. The Black Political Task Force (BPTF), supported by the Rainbow Coalition, the Massachusetts Latino-Democratic Committee, and the Asian Political Committee, sued in federal court, claiming that the plan was gerrymandered against racial minorities;[12] the Republican State Committee sued as well, claiming that the "new districts were mathematically unbalanced."[13]

The plaintiffs made three arguments. First, they maintained that the Boston census, even as revised by the commission, was inaccurate, with the BPTF also asserting that the census had overestimated the population of white precincts and underestimated minority precincts. Second, the BPTF and its partners argued that Boston's population was about one-third nonwhite, but that the 18 districts were gerrymandered so that only two or three black candidates, and no Asians or Latinos, were likely to be elected. The Republicans joined in enthusiastically, pointing out that Latino districts could also be created in the heavily Democratic cities of Lawrence and Springfield. Finally, both sets of plaintiffs claimed that the plan violated the Supreme Court's one person-one vote rule in that 62 of the 160 districts were more than 5 percent above or below the median population.

The legislative leadership, now joined in defense by the secretary of state and the attorney general, argued that this degree of population variance was necessary in order to keep communities together, that—in the words of a subsequent editorial in the *Boston Globe*—"it is not faceless blocks of numbers that are represented, but actual people who are identified as members of political communities."[14] Given the New England tradition of town government, it was argued that these political communities corresponded to cities and towns; however, this was essentially the same argument that had been made unsuccessfully against the original Supreme Court decision on the one man-one vote doctrine.

The alliance among black, Latino, and Asian organizations on the one hand and Republicans on the other is part of what appears to be a national policy on the part of the Republican party.[15] Typically, the Democratic party has sought to spread black and Latino voters, who tend to vote Democratic, over several districts. This improves the overall prospects of the Democrats, but also makes it more likely that the Democrats elected will be white. Black and Hispanic organizations have sought to concentrate minority group voters in order to create districts in which their candidates are likely to win. This usually means taking blocs of solid Democratic voters away from Democratic incumbents, and creating new districts which may be 80 to 90 percent Democratic. The advantages of this for the Republicans are often great enough to overcome that party's usual aversion to affirmative action, and to bring them into coalition with their ideological

opposites, as was the case in the Massachusetts lawsuit.

However, the Republicans were not firmly united themselves. The party's state committee saw itself very badly outnumbered in both houses of the legislature, and with little prospect for improving its position. As a party, the Republicans stood only to gain from radical changes in district lines, which would lessen the advantage of incumbents, and therefore of Democrats. Thus the state committee called for rigid adherence to mathematical equality among districts, which would reduce the flexibility of Brett and Brennan in protecting incumbents.

But things looked different to the Republican legislators. No doubt they too would have liked to become the majority party, but this was at best a remote prospect. Meanwhile, the immediate goal of most was to keep their own seats, and this could be done most easily through the Democrats' incumbent protection plan; hence most Republican legislators had actually voted for the plans the Republican State Committee was suing to overturn. This was to require delicate negotiations as the suit progressed.

On February 2, 1988, a panel of three federal judges invalidated the redistricting plan for the House (the Senate's redistricting was upheld), ruling that the variations in population were "inordinate," "intolerable," "pervasive," and therefore unconstitutional. Secretary of State Connolly was ordered not to release House nomination papers on February 16, as previously scheduled.[16]

The court rejected the claim that minority voters were undercounted and gerrymandered against. However, the minority plaintiffs had also joined in the purely mathematical arguments; as a result, the court on February 8 ordered the BPTF to propose its own districting plan for the City of Boston. The Republicans were ordered to propose a plan for the rest of the state. This order came at the request of the Democratic House leadership, and was opposed by the plaintiffs; but it was to become an important resource in bargaining for another minority district.[17]

Significantly, while the plaintiffs hailed their victory, the House Republican leadership was more ambiguous. The State Committee, which had at first said there would be no difficulty in submitting the alternative plan ordered by the court, drafted a plan but asked the court for an extra ten days after consulting some of the Republican incumbents. This request was denied, and no Republican proposal was submitted.[18]

The BPTF and its allies responded aggressively to their part of the court's order. They submitted two plans: one had 17 districts entirely within the Boston city limits, while the other allowed for districts which crossed the city line. However, the highlight of both proposals was the creation of six districts in which black, Hispanic, or Asian candidates might stand a good chance of winning. Although the BPTF had lost its case on the issue of minority underrepresentation, it hoped to use the issue on which it had won—numerical equality—to give it bargaining power on behalf of the other goal. Alan Rom, the BPTF's lawyer, announced, "If the plan is adopted, then the lawsuit is over. If they don't, we will have a trial.[19]

Brett released his second plan on Saturday, March 12. He asserted that the new plan had only five districts more than 5 percent above or below the state mean population, and called for quick action in order not to delay the fall election. The plan was released at a public hearing, with no advance distribution, on a Saturday, and scheduled for a vote two days later.[20] Brett got his quick action from the House, which passed the new plan, 141-11, on Monday, March 14;[21] but the new plan fared even worse than the first as it ran into heavy opposition and ultimately failed to pass the Senate.

Brett had continued to make incumbent protection his primary goal, and had pursued that goal by fine-tuning his previous plan, shifting precincts and breaking up towns and cities in order to come closer to numerical equality. Otherwise, the new districts were much the same. The BPTF claimed that, under the new plan,

candidates who were not white would still be likely to win only the two seats already held by black incumbents, with some chance of picking up a third if a black candidate could defeat Thomas Finneran, a white Democrat from Dorchester whose district would become slightly over 50 percent black. The BPTF and its allies continued to argue that one-third of Boston's districts should be winnable by racial minority candidates, if the city's delegation was to reflect the racial composition of its population, and announced their intention to sue a second time.[22] Meanwhile, the Republican State Committee insisted that the new plan had 33 districts outside the permitted 10 percent variation in population, despite Brett's claim that there were only five.[23]

Federal Judge Douglas P. Woodlock hinted that the second plan, too, might be thrown out by the court;[24] but as it happened, it never got that far. The leaders of state Senate, embroiled in an unrelated controversy with House Speaker George Keverian, decided to drop the principle of reciprocity and use the redistricting bill as a political hostage. Senator Brennan began to voice doubts about the plan's constitutionality, and gleefully pointed out that one town, East Brookfield, had not been put in any district, while another, Petersham, was listed in two different ones.[25] After a week of negotiations, Democratic Senate President William Bulger declared, "They want us to embark on a course of passing a measure that everyone knows is unconstitutional. Well, they're asking too much. We won't be put into this terrible position we find ourselves in."[26]

The House gave in. Brett's third plan, which accommodated Republican and BPTF objections, sped through both houses of the legislature on March 31; on Friday, April 1, it was signed into law by Lieutenant Governor Evelyn Murphy, and the federal injunction against the release of nominating papers was lifted later that day, giving aspiring candidates slightly over one month to collect the necessary 150 signatures.[27]

The final plan met the mathematical objections which had been the basis of the lawsuit, but another change had more political significance. The BPTF negotiated a drastic redrawing of the 5th Suffolk District, in the Dorchester section of Boston, which increased its black population from 29 to 44 percent and its Hispanic population from 13 to 20 percent. The BPTF, recognizing the need to build coalitions, tacitly agreed that it would support a Hispanic candidate for the new district.[28]

This agreement cleared the way for the elections. House candidates need only 150 signatures on their nominating papers, so the delay did not impede getting on the ballot.[29] The results were more or less expected: little change in the partisan balance, a slight increase in the number of representatives from racial minorities, and strong protection of incumbents. The Democrats went into the election leading the Republicans 127-33 in the House, and 32-8 in the Senate.[30] They gained one seat in the House, while the balance in the Senate stayed exactly the same.

The new district designed for a Hispanic was won by a Latino, Democrat Nelson Merced. Merced faced two white and three black candidates in the Democratic primary, and a black independent in the general election, but got the endorsement of the BPTF and the Rainbow Coalition. He got a 40 percent plurality in the primary, 400 votes ahead of his nearest opponent, and won with 64 percent in the general election.

The legislative leaders had made it clear from the start that they wanted to protect incumbents, and they succeeded. Brennan's record in the Senate was perfect; every incumbent who filed for reelection won, a total of 28 of the 32 Democrats and six of the eight Republicans. Brett did not do quite as well in the House. Still, 110 of the 127 Democratic incumbents kept their seats, as did 30 of the 33 Republicans. Of these, 83 Democrats and 14 Republicans—61 percent of the House membership—did not have to face an opponent from the other major party. Although the Republican/BPTF lawsuit had caused a few perturbations, the ability of legislative leaders to gerrymander for incumbent protection had been firmly demonstrated once again.

The 1990 federal census will not be used for the state legislature, since it has just been redistricted. However, the lines for congressional districts will have to be redrawn, and the state will probably lose one of its eleven seats. For a time, the legislative leadership had hoped that Barney Frank, who has been under investigation for charges involving homosexual prostitution, would resign—thereby making their task easier. However, Frank is running for reelection in 1990, and is expected to win. Their next best hope is that the state's only Republican representative, Silvio Conte, will retire. If worst comes to worst, they may actually have to eliminate an incumbent—but so far no one is even speculating about that.

In 1990 Massachusetts voters elected William Weld the state's first Republican governor since 1974, and voted out a larger number of legislative incumbents than usual—although preliminary analysis suggests that this was due more to the state's fiscal crisis than to the 1988 redistricting. They also voted to amend their state constitution to eliminate the state census; this will require another redistricting in time for the 1994 election. Predicting Massachusetts politics is always risky; but increased partisanship seems likely. The Republicans, buoyed by their success in 1990, are likely to put more stress on gaining seats, and less on protecting their incumbents; and Weld will be able to veto any plan the party finds unacceptable. On the other hand, the Democrats still hold majorities in both houses, and incumbents will still want to keep their jobs. A return to electoral competition is possible, but it is far from certain.

NOTES

1. Michael Barone and Grant Ujifusa, *The Almanac of American Politics, 1984; The President, the Senators, the Representatives, the Governors: Their Records and Elections Results, Their States and Districts* (Washington: National Journal, 1983), pp. 546-48.
2. Leroy Hardy, *The Gerrymander: Origin, Conception and Reemergence* (Claremont, CA: Rose Institute of State and Local Government, 1990), p. 3.
3. The 9th got its present shape in 1971 when suburban state Senator Robert Cawley tried to design a district where he could defeat incumbent Louise Day Hicks. However, Hicks beat Cawley in the Democratic primary, while losing to Moakley in the general election. Moakley had run as an Independent for tactical reasons, and rejoined the Democratic party after the election. Cf. Marc Eichen, "Massachusetts," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 153-60.
4. The Constitution of the Commonwealth of Massachusetts, Art. CI, section 1.
5. Cornelius Dalton, John Wirkkala, and Anne Thomas, *Leading the Way: A History of the Massachusetts General Court, 1629-1980* (Boston: Office of the Massachusetts Secretary of State, 1984), pp. 317-18.
6. *Boston Globe*, January 1, 1987, p. 27.
7. Ibid., May 16, 1987, p. 10.
8. Both Brennan and Keverian are quoted in ibid., February 1, 1987, p. 32.
9. Quoted in Peter B. Sleeper, "Panel Head to Recommend Hub Lose 1 of Its 8 Senate Seats," ibid., June 28, 1987, p. 35.
10. Robert A. Jordan, "Southward Drift in House," ibid., June 13, 1987, p. 15.
11. John C. Berg, "Citizen Power, Corporate Power: Interest Groups in Massachusetts," in Ronald Hrebenar and Clive Thomas, eds., *Interest Groups in the Northeastern States*, forthcoming. There was one Independent, and the Republicans held 33 seats.
12. Peter B. Sleeper, "Minorities to Contest Redistricting," *Boston Globe*, July 15, 1987, pp. 17, 59.
13. William F. Doherty, "US Panel Hears Challenge to Redistricting Plan," ibid., December 8, 1987, p. 27.
14. "One Community, One Vote," ibid., February 8, 1988, p. 18.
15. Cf. Cheryl Miller, "GOP Woos African Americans for Redistricting Alliances: As States Gear Up to Redistrict Legislative Jurisdictions, the GOP Claims Their Party and African Americans Can Gain More Seats by Joining Forces," *Focus: The Monthly Magazine of the Joint Center for Political and Economic Studies* 18 (April 1990): 7.
16. Peter B. Sleeper and William F. Doherty, "Plan to Redistrict House Is Nullified: Ruling Leaves State's Elec-

tion Uncertain," *Boston Globe*, February 3, 1988, pp. 1, 24.

17. Peter B. Sleeper, "District Foes Told to Map New Plans: African American Group, GOP Face Feb. 16 Deadline," ibid., February 9, 1988, pp. 19, 26.

18. Ibid.; Peter B. Sleeper, "Opponents Offer Redistricting Plan," *Boston Globe*, February 17, 1988, p. 68; "GOP Is Denied Extra Time for House Redistricting Plan," ibid., February 19, 1988, p. 28.

19. Rom is quoted in Sleeper, "Opponents Offer Redistricting Plan," p. 68.

20. Peter B. Sleeper, "Panel Finishes Redrawing House Districts," ibid., March 9, 1988, p. 25.

21. Ed Quill, "Redrawn Districts Elicit 'No' Calls," ibid., March 16, 1988, p. 21.

22. Peter Howe, "Redistricting Plan Is Unveiled to Chorus of Boos," ibid., March 13, 1988, p. 30.

23. Quill, "Redrawn Districts," p. 21.

25. Peter J. Howe, "Senator Fires New Volley at House Districts Plan," *Boston Globe*, March 20, 1988, p. 47; Bruce Mohl and Peter Sleeper, "Redistricting Sparks Legislative Feud," ibid., March 22, 1988, pp. 1, 20.

26. Quoted in Bruce Mohl, "Accord Over Redistricting Evaporates on Beacon Hill," ibid., March 30, 1988, p. 44.

27. Bruce Mohl, "Legislature OK's Redistricting Bill," ibid., April 1, 1988, p. 15; "Redistricting Order Lifted by Judge: State Issues Election Papers," ibid., April 2, 1988, p. 22.

28. Robert A. Jordan, "The Potential in the 5th," ibid., July 2, 1988, p. 25.

29. One incumbent, Boston Democrat Byron Rushing, did fail to hand in enough signatures. However, no one else filed for his seat; Rushing won the Democratic nomination with 688 write-in votes, and was unopposed in the general election. State Senator Royal Bolling—also a Boston Democrat—collected signatures but forgot to hand then in by the deadline, so was not listed on the ballot. However, Bolling did have a primary opponent, Bill Owens, and was unsuccessful in his write-in campaign.

30. There had been 127 Democrats and one Independent elected to the House in 1986. However, the Independent, Barry Trahan of New Bedford, switched his registration and ran for reelection as a Democrat. He was defeated in the primary by Robert M. Koczera, who was unopposed in the general election.

MICHIGAN

WILLIAM P. BROWNE AND DELBERT J. RINGQUIST

Michigan, when it comes to questions of who represents whom and what, is best thought of as a four-part composite. What constitutes that composite, however, is located half in seven southeastern counties and half in the state's remaining 76—or outstate—counties. This division, because it causes political conflict, is very important to understand at the onset when considering Michigan apportionment.

The urban center of the state remains Detroit, a city that has lost significant population percentages for over three decades. From 1980 through 1990, that loss was 14.6 percent. This included a more than 50 percent loss of white residents, an already existing minority in the city. Nonwhites in Detroit increased at an 8.3 percent rate, accelerating the city's status as a political enclave for people of color.[1] Despite these changes, Detroit's 11.2 percent of Michigan's population keeps the city politically prominent.

The growing seven-county suburban area surrounding Detroit, with approximately 38 percent of the state population, has taken on even more political importance, though. The concentration of population in just seven southeastern counties leaves about 51 percent of the state's population living outstate, on more than 90 percent of Michigan's land mass.

The unevenness characteristic of urban Michigan produced an overall decline of 0.2 percent in metropolitan populations over the 1980s. The state's 61 rural counties grew at a 4.1 percent rate, in contrast. But, like with cities, this average is also deceiving. While 24.7 percent of the population lived in the predominantly white small towns and low-population-density countryside, growth was concentrated in much higher percentages in the northwest lower peninsula. In effect, less than 10 percent of the state population was made up of rural residents living in moderate to high growth areas. Other rural counties, like many urban ones, were either stable or lost residents in the last decade.

What these figures suggest geographically is a very fragmented and divided Michigan. Citizens are represented as a part of one of four regional types; but, within each of the regions, except today's Detroit, great internal diversity exists. This helps explain why reapportionment politics is of special consequence within Michigan. Reapportionment is not just a partisan battleground. It is also a series of contests where powerful urban, suburban, and rural interests still struggle as they have historically for a representative voice in state government and, to a lesser degree, within Congress. Their struggle is made all the more intense because both political parties and interest groups, especially geographically based ones, are relatively strong and competitive within the state.[2]

Michigan politics, as a consequence, produces an uncommon interplay of influential parties and equally influential interests.[3] Control of a state Senate or House district is always, but not only, of partisan concern. While obvious attempts are made by both Democrats and Republicans to maximize their seats in the legislature, more subtle efforts aim at winning seats for specific interests.

Black leaders target seats in Detroit and surrounding Wayne County because winning a larger Detroit delegation brings more policy rewards home from Lansing. Suburban contests aim at securing safe seats for labor Democrats, development-minded business leaders, or moderate-income tax resisters. Traditional agricultural and extractive industries, newly settled rural emigrants, emerging rural employment centers, and environmentalists are all examples of Michigan interests that look to the value of creating a district where a friendly legislator—often regardless of party—can best be cultivated.

It was for these reasons, as well as the changing partisan alignments that have been shifting between the state's urban and rural areas, that the authors of this essay once discovered what we initially felt to be a peculiar legislative preoccupation. In doing research in the Michigan legislature in the mid-1980s, we found the attentions of individual legislators divided between the problems of current policymaking, positioning themselves for the next election, and securing a longer term district constituency for coming reapportionment.[4] We, after reflection, were not surprised by the inclusion of this third component. The Michigan legislature is, after all, a highly professional one where incumbents stay or move through to the upper legislative body, often for decades. They must, of course, plan for such longevity; and careful legislative careerists do attempt to influence how reapportionment will affect them. In Michigan, present reapportionment rules, or more precisely what we will show to be a lack of such rules, allow them to do so. This adds a personalized incumbency dimension as well as the already mentioned partisan and interest group ones to Michigan's politics of redistricting in the 1990s.[5]

Into the 1980s: Following the Bouncing Ball

The 1980s began with population trends and reapportionment commission politics both seeming to duplicate the 1970s. But, in a surprise move, the partisanly balanced Michigan Supreme Court backed even further away from exercising leadership on reapportionment. In seeking to reflect an image of professionalism, independence, and nonpartisanship, justices simply said no when the commission deadlocked again. They would not decide.

Specifically, in a May 21 order, the Court ruled all remaining reapportionment provisions of the 1963 constitution invalid.[6] This action abolished the reapportionment commission and charged the state legislature, with gubernatorial approval, with the task of developing a reapportionment plan. A subsequent decision on May 24, in *Agersteard v. Austin*, ruled congressional districts in conformity.[7] But with the executive and legislative branches split between parties, no plan for the state legislature was developed within the court's allotted time.

Because the 1982 elections were drawing near, the Court turned to a single agent for drawing district lines. Appointed as Special Master was Bernard Apol, a retired state elections director. Apol's task was at least made easier in that the court set forth eight clear guidelines for judging district lines and, in review, his performance. Guidelines, which were to remain in effect no later than 1990, mandated that: (1) districts be compact and contiguous; (2) districts have no more than a 16.4 percent population variance; (3) districts not break county lines unless necessary to stay within that population variance; (4) the plan shift the fewest possible number of cities and townships whenever county lines were broken; (5) the Court approve the plan with the fewest county line breaks as long as the population variance was assured; (6) counties with two or more districts break city or township lines only for reasons of population variance; (7) the plan create equal-population districts whenever city or township lines were broken; and, finally (8) the plan divide cities or townships with two or more districts for maximum compactness and a population range of 98 to 102 percent for each.

Apol, with mandated urgency, began by reworking the 1972 Ryan plan. When completed, the 1982 plan met all criteria and, after hearings, was approved by the court. Apol totally disregarded incumbency in his plan, an approach that explains the hostility still directed against the use of a Special Master.

Political leaders, under those conditions, were not content to see Apol's compromise as an acceptable one for the long term. The legislature, with an open invitation from the Supreme Court to reapportion at any time, spent 1983 attempting to do so. With Democratic control of the legislature and with Democrat Blanchard in the governor's office, a new plan seemed likely.[8] Political events proved difficult, though, even when work began in the spring. Black legislators, angered by the loss of four House and two Senate seats under Apol, lobbied their Democratic caucus hard and

long. Other Democratic senators in turn wanted special concessions for their votes. The governor's economic plans to revitalize the state economy and increase taxes became an added factor. Not only did that set of concerns consume time, Blanchard also chose not to prioritize reapportionment because of the need to maintain bipartisan support on those critical issues. But public reaction to the successfully passed tax increase eventually proved fatal to the second reapportionment of the decade. Two Democratic state senators who voted for the governor's tax package were recalled by district votes. The illness of a third effectively provided a Republican Senate majority of 18-17, with the likely prospect of two new Republicans being elected in January 1984.

Only in the final hours of the 1983 legislative session was a Democratic plan passed, the measure being appended to a bill on Detroit election law.[9] To pass it, however, numerous concessions were made to Senate Republicans, protecting their incumbency, enhancing their constituent bases, gerrymandering their district lines, and trading votes on future legislation. Nine Republicans subsequently voted for the bill. The governor quickly signed it. While the legislature's bill cut Apol's population variance from 16.24 percent in the House and 16.34 percent in the Senate to less than 10 percent overall, it did not make for compact and contiguous districts. It did, however, minimize incumbent losses as proposed by Apol.

But to complete this frenzy of events, the state Supreme Court again intervened. In June 1984, the reapportionment bill was ruled unconstitutional after being challenged by dissenting Republican party leaders. All seven of the justices voted against.[10] Ironically, questions of propriety and fairness played no part in their decision. The Court ruled that the procedures followed were illegal; that a nongermane boundary provision could not be passed when appended to an unrelated bill.[11] Eventually, the Court reinstated the Apol plan. Legislators, for the rest of the decade, with the Senate the lone state institution in Republican hands, waited and positioned themselves for the next federal census.

State Politics in the '80s

Redistricting Michigan for the 1980s produced some intriguing and consequential state politics. First and foremost, it increased the intensity of political conflict within the state. Reapportionment, when brought to the legislature, gave first consideration to the needs of incumbents and, in so doing, triggered angry reactions. The series of deals struck at the end of the 1983 legislative session required that Democrats gain support from a large number of Republican legislators in order to put the bill into immediate effect. Individual incumbent Republican legislators were willing to go along with a bill that left statewide advantage to the Democrats in exchange for enhanced electoral majorities in their own districts. Republican party leaders were obviously unhappy and worked throughout the rest of the decade to restore party discipline. The perception of many Democrats was that the Republican party had broken faith by either encouraging incumbents to back out on their final votes for the compromise or by allowing the leadership to challenge the agreement in court. Democrats felt they had a commitment for no court challenge on the technicality of germaneness. Thus Democrats, like Republicans, were irritated by the Grand Old Party's lack of cohesion. On the whole, the 1980s reverted to the most decidedly partisan decade in Michigan since the '50s.

The second observation to be made about 1980s reapportionment is that it produced more a regional than a partisan impact. The court order allowing a variance of 16.4 percent resulted in some significant regional winners and losers. The 17 House districts within the city of Detroit had an average population size of 77,700, or 92.3 percent of the average-size district (84,210). This meant that, collectively, these districts represented 110,670 fewer citizens than if their population had been divided equally statewide. The 7th House District had the lowest population of any in the state, 91.8 percent of the statewide average.

The best evidence of gerrymandering can be seen by looking at victory margins and what they mean to the distribution of seats by party for each house. (See Table 1.) The Supreme Court guidelines in 1982, leading to

Table 1. Comparison of Democratic Vote and Democratic Seats Won in the Michigan Legislature, 1982-90.

	HOUSE		SENATE	
ELECTION YEAR	DEM. VOTE (%)	DEM. SEATS (%)	DEM. VOTE (%)	DEM. SEATS (%)
1982	58.2	58.1	57.7	52.6
1984	47.9	50.9		
1986	55.2	58.2	54.7	47.4
1988	51.2	55.5		
1990	52.4	55.5	52.0	47.4

the 16.24 percent variation in Senate district sizes and maintaining local unit boundary lines, meant that outstate districts were usually won by margins of about 15 percent. Democrats won inner-city Detroit districts by margins exceeding 80 percent, though. In 1982, this meant that a 57.7 percent vote for Democrats statewide meant a 52.6 percent Senate margin in seats for the Democrats. In 1986, after reapportionment, the Democrats had a 54.7 percent majority vote statewide, while losing a majority of the Senate seats (18-20) to the Republican party. In 1990, the same Republican majority was elected while Democrats dropped to 52 percent of the popular vote. The landslide electoral majorities concentrated in urban districts by the Democrats diluted the effect of their voting strength.

The data for the House in the 1980s' elections suggest that Democrats were not as adversely impacted by court guidelines after districts were reapportioned as they were in the Senate. They even gained an advantage. In each election following the imposition of the court-ordered reapportionment plan, there were more seats won than the percentages of statewide vote would suggest would happen. In 1984, Democrats won 47.9 percent of the vote but 50.9 percent of the seats in the House. In the 1988 and 1990 elections, Democrats won 51.2 and 52.4 percent popular majorities and captured 55.5 percent of House seats in both years.

But despite the resurgence of the Democratic party, and despite the renewed partisan intensity of the 1980s, the district data indicate that incumbents and the unique character of districts are more prized today than is party competition. Michigan voters get to choose very little. An examination of the competitiveness of districts following the 1982 reapportionment (Tables 2 and 3) suggests that competition was greatest immediately following the adoption of new boundaries. The number of House seats won by less than a 10 percent split in the popular vote declined by nearly half over the decade (23-12). Competitiveness declined by nearly 50 percent, to less than 11 percent of all House districts in 1990. Yet, at the same time, the number of landslide elections, defined by the winner gaining more than 70 percent of the votes cast, remained relatively stable. In the four elections from 1982 through 1990, 47, 51, 48, 51, and 48 seats were won in landslide elections. This means that approximately 45 percent of House seats appear incredibly safe ones.

The Senate is similar, if less pronounced, in these tendencies. The number of Senate seats won by less than 10 percent dropped from 12 to 5 from the 1982 to the 1986 election. Only 13 percent of district races were truly competitive in 1986, while 18 percent were competitive in 1990. Meanwhile, the number of landslide elections increased from 10 to 13, or to 34 percent of all districts, from 1982 to 1986, and back to 10 seats in 1990. So far, into 1990, it seems that much of the democratizing spirit of the reapportionment revolution has been left unfulfilled by changes in Michigan politics.

Prospects for the 1990s

The stage has been set for reapportionment battles without much new room to maneuver. Two congressional seats will be lost. Reason suggests that they will be from Detroit adjacent areas as West Michigan

Table 2. Competitiveness of Michigan House Districts, 1980-90.

	COMPETITIVE		NONCOMPETITIVE	
ELECTION YEAR	45 TO 55	40 TO 44 AND 56 TO 60	35 TO 39 AND 61 TO 65	30 TO 34 AND 66 TO 70
1980	10	11	19	18
1982	23	16	12	13
1984	20	15	12	13
1986	12	8	14	28
1988	12	5	17	25
1990	12	11	17	22

boundaries squeeze east. However, the need to protect black seats and those of powerful committee chairs makes that a problematic result. Mid-Michigan legislators may be targeted for losses. Detroit does stand to lose one of its five state Senate seats and, in all likelihood, four of 16 in the state House. The outer suburbs of Detroit, the greater Grand Rapids region of Southwest Michigan, and the northwest corner of the lower peninsula could at best make nominal gains in representation. All are generally Republican pockets of strength.

Without extensive population shifts outside Detroit, future reapportionment is most likely to operate incrementally. If Democrats had won control of both state houses and the governorship in the 1990 elections, a legislative plan quite clearly would have emerged in 1992 based on past Democratic party demands. Population variance would have been minimized; and compact and contiguous district characteristics would have been de-emphasized. New areas of population growth would have been benefited in ways that their residents would have liked. Few gains would have been forthcoming for Republican areas. But, even with a once hopeful chance, that scenario will not occur.

A Democratic plan, however, would not have been easily negotiated even with that party in control. Black legislators from Detroit would have insisted on special consideration, perhaps even some redetermining of census figures. Their interests were already well positioned to obtain favors and at least avoid a heavy loss of seats. Not only did Detroit members delay action in 1983; Detroit Mayor Coleman Young and the National Association for the Advancement of Colored People (NAACP) sought and secured judicial standing on reapportionment issues before the state Supreme Court in 1982.[12]

The near certainty of Democrats controlling the House always made it all but impossible for a Republican plan to be implemented. Even with Republican retention of Senate control and a Republican gubernatorial victory in the 1990 election, that will prove impossible. The state Supreme Court probably will find itself with two or more plans but no certainty as to who will arbitrate them. Without a reapportionment commission as an option, and with bipartisan dissatisfaction with the work of a Special Master, no one knows for certain what will be decided or even what rules and guidelines will be given to whoever arbitrates. The only certainty is that incumbency and interest politics will be important in some way, perhaps even with Republicans offering Detroit legislators gains that Democrats cannot meet.

That situation creates considerable discomfort in Michigan with the future of state reapportionment. Dealmaking is suspect—and openly complained about—by anyone who may lose in the bargain. Intense partisan activity to control the state Supreme Court by 1992 generates equally great dissatisfaction in a state that prides itself on an independent judiciary.[13] Those feelings have generated considerable discussion of reapportionment options from state political leaders, but few proposed reforms. Public Sector Consultants, a respected state policy consulting firm, has raised the alternative of returning to proportional representa-

Table 3. Competitiveness of Michigan Senate Districts, 1982-90.

	COMPETITIVE		NONCOMPETITIVE	
ELECTION YEAR	45 TO 55	40 TO 44 AND 56 TO 60	35 TO 39 AND 61 TO 65	30 TO 34 AND 66 TO 70
1982	12	4	6	7
1986	5	8	2	11
1990	7	6	7	8

tion.[14] As with other, less publicized, alternatives, however, little support has been found. Almost no public attention has yet been focused on reapportionment problems in a state where the economy and social issues dominate media reports.

Despite their complaints and expressed fears, it appears that most state partisans, interests, and legislators will prefer to immerse themselves in minipolitics. That means getting whatever they can from the long series of deals that will be cut and court cases that will be raised before reapportionment is settled for Michigan in the 1990s. It promises, in this regard, to be a long decade having plenty of political scares but no grand or consensual reapportionment plan.[15]

NOTES

1. This and most of the following are population estimates, since 1990 U.S. census data on these subjects is still unavailable at the time of this writing. Information on estimated population was supplied by economist Mark Haas, Michigan Department of Commerce, and demographer Larry Rosen, Michigan Department of Management and Budget.

2. William P. Browne and Delbert J. Ringquist, "Michigan Interests: Diversity and Professionalism in a Partisan Environment," in Ronald J. Hrebenar and Clive S. Thomas, eds., *Interest Groups in the Midwestern States* (Ames: Iowa State University Press, 1991).

3. Clive S. Thomas and Ronald J. Hrebenar, "Interest Groups in the States," in Virginia Gray, Herbert Jacob, and Robert B. Albritton, eds., *Politics in the American States: A Comparative Analysis* (5th ed.; Glenview, IL: Scott, Foresman/Little, Brown, 1990), pp. 127-28.

4. This material is referred to throughout William P. Browne, Kenneth VerBurg, et al., *Michigan Government and Politics* (Lincoln: University of Nebraska Press, 1991).

5. For a discussion of reapportionment politics in Michigan prior to the 1980s, see Karl A. Lamb, "Michigan Legislative Apportionment: Key to Constitutional Change," in Malcolm E. Jewell, ed., *The Politics of Reapportionment* (New York: Atherton Press, 1962); Karl A. Lamb, William J. Pierce, and John P. White, *Apportionment and Representative Institutions: The Michigan Experience* (Washington, DC: Institute for Social Science Research, 1963); and Kathleen L. Barber, "Michigan," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 161-69.

6. *In re Apportionment of State Legislature - 1982*, 413 Michigan 96-223 (1982).

7. *Agersteard v. Austin*, Eastern District of Michigan, CA No. 1-40256 (1982). Variation was left at 514,559, a figure pushed to the limit in two districts. See *Michigan Congressional Districts: 1982 Apportionment Plan* (Office of the Secretary of State, Circular 505-232, August 1983).

8. Hugh McDiarmid, "Dems Dug Own Grave on Reapportionment," *Detroit Free Press*, June 21, 1984, sec. B, p. 1.

9. Joanna Firestone, "Lawmakers Redraw Their District Lines," *Detroit News*, December 23, 1983, sec. A, pp. 1, 5.

10. *Anderson v. Oakland County Clerk*, 419 Michigan 142, 313 (1984).

11. This technicality was not a mistake. No time existed to draft and read a new bill as the sessions closed. So Democrats hoped that the deal they struck with incumbents would forestall litigation. They were wrong in anticipating a monolithic state Republican party.

12. Pat Shellenbarger, "Mayor Young, NAACP Gain Districting Role," *Detroit News*, February 25, 1982, sec. B, p. 8.

13. Browne, VerBurg, et al., *Michigan Government*. See especially the chapter on the courts.

14. Proportional representation has been received with the same lack of public and policymaker enthusiasm that characterized reform proposals for the 1980s. See, for example, Robert S. LaBrant and Alan L. Mann, *Citizen Redistricting Plan: A Proposal for Reapportionment in Michigan* (Lansing: Michigan State Chamber of Commerce, 1979).

15. We thank the several anonymous state political leaders and observers who provided us with this conclusion as well as much of the other information contained in this chapter.

MINNESOTA

CRAIG GRAU

The state of Minnesota, like many other states, gives the state legislature power to redistrict state legislative and congressional districts. To reapportion these districts in the 1980s, however, federal judges were needed to complete the task.

Section 3 of Article 4 of the Minnesota Constitution empowers the state legislature to reapportion. It reads:

> At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. Senators shall be chosen by single districts of convenient contiguous territory. No representative district shall be divided in the formation of a Senate district.[1]

Federal judges, however, have been very much involved in reapportionments in Minnesota. This was true in the 1950s and 1960s, and it was true in the 1970s as well.[2]

THE LEGISLATURE TRIES

In 1981 political power in Minnesota was divided. The Democratic-Farmer-Labor party (DFL) had a majority of seats in the two houses of the state legislature, 70-64 and 45-22. The Independent-Republicans (IRs) held the governorship, both U.S. Senate seats, and five of the eight U.S. House seats. These five U.S. House seats included one (of the three seats) in the major metropolitan area of Minneapolis-St. Paul and four (of the five) seats outside the major metro area in greater Minnesota. Any plan passed by the DFL-controlled legislature required approval of the IR governor.

By early March of 1981, two reapportionment plans had emerged in the Minnesota House of Representatives for the congressional districts. But the legislature adjourned its 1981 session without taking any action on redistricting either the U.S. House seats or the state legislature. By mid-July a federal panel of three judges had been appointed to step in if needed. The judges gave the legislature until March 12, 1982, to redraw the state legislative and U.S. congressional district lines.[3] Republican Governor Quie suggested that the legislature draw the congressional lines during its December 1981 special session. He favored making only slight changes to the districts that had a 5-3 Republican advantage.[4]

The Minnesota House passed a congressional bill in January 1982, making only slight changes to the districts (as the governor suggested) with bipartisan support, 104-24. The Minnesota Senate, however, passed a bill mainly along party lines (40-23), setting up four districts in the major metropolitan area and four in greater Minnesota.[5]

Reapportioning the state legislature was proceeding more slowly. With central cities declining in population, DFLers favored finger districts out to the suburbs. Some Republicans were maintaining that DFL leaders did not want "to go through the painful job of reapportioning themselves."[6] The court panel of two Democratic appointees and one Republican was standing in the wings.

THE COURT DECIDES AGAIN

On March 11, 1982, the federal panel presented their reapportionment plans for the U.S. House and the state legislature. The two plans the court maintained were related. Community and compactness seemed to be important criteria.[7]

Judges Gerald Heaney and Harry MacLaughlin set forth the four-four U.S. House plan, which was conceptually similar to that adopted by the state Senate. The seven-county major metro area was essentially allotted four seats, as was greater Minne-

sota (64,129 people were added to the metro area districts for equality purposes).[8] Minneapolis and St. Paul were the centers of two districts, as had been the case in the past, but the northern suburbs obtained one seat, as in the southern suburbs. The court argued that its decision "reorganizes to the extent possible the community of interests that metropolitan residents share."[9] The districts were drawn very tightly. The maximum deviation from the ideal was 36 people, or 0.00706 percent.[10]

Judge Donald Alsop dissented on the congressional reapportionment plan. He contended that the new plan deviated from those made by the legislature and approved by the governors in 1961 and 1971. A plan similar to those of the past, he noted, had been passed in a bipartisan manner by the Minnesota House, in which neither incumbents nor a large number of voters would be removed from their districts.[11]

All three judges agreed to the reapportionment of the state legislative districts, but Alsop filed a concurring opinion.[12]

As presented by the court, districts were drawn "where practicable, to include residents of the major metropolitan area within districts entirely in [the] seven-county metropolitan area which consisted of people with a community of state legislative interests different from those in nonmetropolitian Minnesota."[13] The areas outside the declining central cities in the major metro area increased their number of seats by three in the state Senate and six in the state House. Boundaries of Minneapolis, St. Paul, and Duluth were respected for state House districts,[14] but that also meant their populations could not dominate districts by slicing into suburban areas.

The court concentrated minority population in four Twin Cities districts. The district of Minnesota's only African American legislator remained much the same. So that he would not be running against another incumbent, there was "a jog about six blocks long by three blocks wide."[15] to exclude the other incumbent. The court stated that it did take incumbents and the districts they served into account. Judge Alsop objected to this in a separate opinion. He felt that this criterion was added late in the procedure. (He had questioned why it was not similarly important in the opinion on the U.S. House reapportionment.) He also noted that although a "politically fair" test had been suggested by some parties, it was not enunciated.[16]

The state legislative reapportionment found positive reaction among some Independent-Republicans, especially legislators in the state House of Representatives. They were reported as being "elated by the new plan."[17] Drawing of the boundaries around the Twin Cities wasn't going to help DFL fortunes, but with some reflection DFL House leaders were more upbeat.[18]

It was the congressional districts that drew the most lightning—from the Independent-Republicans. The reported consensus was that the new reapportionment would result in three DFL districts, three IR districts, one leaning IR, and an open district leaning DFL.[19] Prior to reapportionment, however, the Republicans had a 5-3 advantage. Under the new districts, two incumbent Republicans were in the same district. William Frenzel, dean of the congressional delegation, declared in a reference to Judge Gerald Heaney: "Elbridge Gerry lives and his name is Heaney . . ."[20] The congressional plan was appealed by the Republican House delegation.[21]

In an editorial the *Minneapolis Tribune* found the congressional plan fair. The paper argued,

> It recognizes the realities of the state's population pattern by giving the metropolitan area its own representatives in Congress, who can effectively concentrate on metropolitan issues and needs. At the same time, it maintains an equal voice for rural Minnesotans.[22]

The U.S. Supreme Court affirmed the lower court's design two months later in a three-sentence decision.[23]

Initial Results

The worst fears of the Republicans were realized in the 1982 congressional elections, but not all of their troubles could be blamed on the new districts. They carried the one leaning to them, and so did the DFL carry the new district leaning its way. The Republicans, however, lost one of their solid districts. So the U.S. House delegation that had had a 5-3 IR majority was now 5-3 DFL. All congressmen elected in 1982 were reelected in 1984, 1986, and 1988.

The state legislature has been more fluid. When the 1983 session began, the DFL not only had the governorship but seven more seats in the House and two less in the Senate than in 1981.[24] In 1984, only the House was elected and the IRs gained control, 69-65. They sustained severe losses, though, in 1986, and the DFL once again controlled both houses by 1987, 83-51 and 47-20. They were still in control in the 1989 House, but their margin had dropped to 80-54. (The DFL-controlled Senate was not up for election in 1988.) From 1982 through the rest of the 1980s, the DFL controlled most of the statewide government offices as well, but not the U.S. Senate seats.

The 1990s

The 1990 elections in Minnesota contained some surprises. The Independent-Republicans gained the governorship, but lost a U.S. House seat and a U.S. senator. The DFL maintained control of both houses of the state legislature. They now had a 6-2 majority of the U.S. House seats. As in 1981, the IRs held the governorship while the DFL controlled the state legislature.

With control of state government split, it might be easy to foresee court redistricting in Minnesota's future. Unlike the 1970s and 1980s, the Reagan-Bush era court appointments, though, may make DFLers more hesitant to turn to the courts for redistricting.

Redistricting will be necessary. Shifts in population occurred during the 1980s. Preliminary 1990 figures indicate that the suburbs of the Twin Cities grew substantially. Given eight districts in the U.S. House, the two districts that reflect the suburbs of the Twin Cities had populations 22.2 percent and 19.4 percent in excess of the ideal district population. All other districts were below the ideal, especially the northeastern Minnesota district which contains the Mesabi Iron Range (10.3 percent below the ideal) and the southwestern district (12.2 percent below the ideal), which is heavily agrarian.[25]

If the legislature does perform its constitutional task in 1991, one might hope that the legislative parties would compete over an objective criterion of partisanship as suggested by political scientist Charles Backstrom and others.[26] In the 1990s it's time for competing plans on partisan neutrality. The people, the media, and academics should encourage legislative political parties to offer partisanly neutral reapportionment plans. The parties should be judged on their fairness. Otherwise, the elected officials will continue to be portrayed as simply perpetuating their self-interest.

Alternatively, the legislature could continue to allow the federal judges to reapportion the state. Backstrom found them to be fair in their 1970s reapportionment of the state legislature,[27] and the 1980 state legislative reapportionment plan drew little partisan criticism.

NOTES

1. *Minnesota Legislative Manual, 1987-1988*, p. 28.
2. Charles Backstrom, "Minnesota," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 171-74.
3. "Remapping Deadline Ordered," *Minneapolis Star*, October 9, 1981, p. 15A.
4. "New District Lines Ordered," *Minneapolis Tribune*, December 5, 1981, p. 14C.

5. "Redistricting Bill Advances," ibid., January 22, 1982, p. 3B; "Drawing District Lines," *Minneapolis Star*, January 28, 1982, p. 4D.
6. Betty Wilson, "Legislature Suffers Redistricting Pains," ibid., January 22, 1982, p. 4D.
7. *La Comb v. Growe*, 541 F.Supp., 148-49, 151 (1987).
8. Ibid., pp. 148-49.
9. Ibid., p. 148.
10. Ibid., p. 149.
11. Ibid., p. 154-56.
12. Ibid., pp. 160-61.
13. Ibid., p. 161.
14. Ibid., p. 161, 163.
15. Jim Ragsdale, "Twin Cities Losing Some Clout; 25 Legislators Face Stiffer Race," *Minneapolis Tribune*, March 12, 1982, p. 6A.
16. *La Comb v. Growe*, pp. 156, 165, 167, 168.
17. Ragsdale, "Twin Cities Losing Clout."
18. Ibid., and "DFL Leaders Expect to Keep House Reins Under Redistricting," *Minneapolis Tribune*, March 14, 1982, p. 9A.
19. Lori Sturdevant and Steve Berg, "Judges Redraw State Political Maps," ibid., March 12, 1982, p. 9A.
20. Ibid.
21. "GOP Congressmen to Fight Redistricting," ibid., March 19, 1982, p. 7B.
22. "A Reasonable Reapportionment Plan" (editorial), *Minneapolis Tribune*, March 19, 1982, p. 10A.
23. "Top Court Lets State Districting Plan Stand," *Minneapolis Star and Tribune*, May 18, 1982, p. 9A.
24. Legislative results from: *Minnesota Legislative Manual*, 1981-1982, p. 55; 1983-1984, p. 58; 1985-1987, pp. 66-67; 1987-1988, pp. 60-61; and 1989-1990, pp. 60-61.
25. Minnesota State Planning Agency, "Minnesota Congressional District Populations, 1990 Census Data," PI 94-171 Data (February 25, 1991).
26. Charles Backstrom, Leonard Robins, and Scott Eller, "Issues in Gerrymandering: An Exploratory Measure of Partisan Gerrymandering Applied in Minnesota," *Minnesota Law Review* 62 (1978): 1121-59.
27. Backstrom, "Minnesota," p. 172.

MISSISSIPPI

CHERYL BONNER

CONGRESSIONAL REDISTRICTING

The congressional redistricting of Mississippi is marked by much litigation. Twice in the 1980s, Mississippi's congressional districts had to be adjusted as a result of lawsuits by African American residents attempting to establish African American representation in the Mississippi congressional delegation.

Although African Americans composed 36 percent of Mississippi's statewide population in 1980, not a single African American had occupied a Mississippi congressional seat since John R. Lynch during the 1880s.[1] Of particular concern was the "Delta district."

The Delta area contained the largest concentration of African American people in the State,[2] but no political representation was provided for them. Historically, from 1966 to 1980, the Delta region had been divided horizontally across three of the five congressional districts during reapportionments conducted by the state legislature. Thus, while the population of the Delta region was always a majority African American population, the reapportionment practice of dividing this region did not give African American voters a majority in any of the state's congressional districts, and no African Americans were elected to the congressional delegation. It was this lack of political representation which led to the litigation in the 1980s.

THE VOTING RIGHTS ACT AND MISSISSIPPI REDISTRICTING

In accordance with the Voting Rights Act, Mississippi was required to submit its 1980 redistricting plan to the U.S. Department of Justice. As this plan had made few changes from the court-drawn 1966 plan and Department of Justice-endorsed 1972 plan, approval seemed assured.[3] In the spring of 1982, however, the U.S. Attorney General's office issued an objection to the plan, stating that the plan had diluted African American voting strength by carving three white districts out of the Delta region.[4]

Soon after the Justice Department's objection, several African American Delta residents filed two class-action lawsuits requesting an injunction against the implementation of the reapportionment plan. In *Brooks v. Winter*,[5] the plaintiffs petitioned for a court-drawn plan with a Delta district that was at least 60 percent African American in voting-age population and 65 percent in overall African American population.[6] Known as the "65 percent rule," this guideline had been used in other jurisdictions to effect proper representation of a minority community: it did so by accounting for the discrepancy between minority and white voters in registration and turnout for elections via a 65 percent threshold of minority population.[7]

The court issued a plan keeping the Delta district intact, but refused to follow the 65 percent rule. The Simpson Plan,[8] as the court plan soon became known, constructed two African American districts, but diluted the African American voting strength with white regions. The 2nd or "Delta" Congressional District combined the African American Delta area with six white counties, creating a district with a 53.77 percent African American population, and 48 percent African American voting-age population.[9] The 4th Congressional District contained a 45.25 percent African American population.[10]

In issuing a plan which contained two "high impact" districts—districts with at least 40 percent African American population—the court believed that African Americans would have substantial influence in the election of two representatives, although an African American representative would not be elected in either district.[11] (See Figure 1.) The Simpson Plan proved acceptable to neither side, however, and both the plaintiffs and defendants appealed to the United States

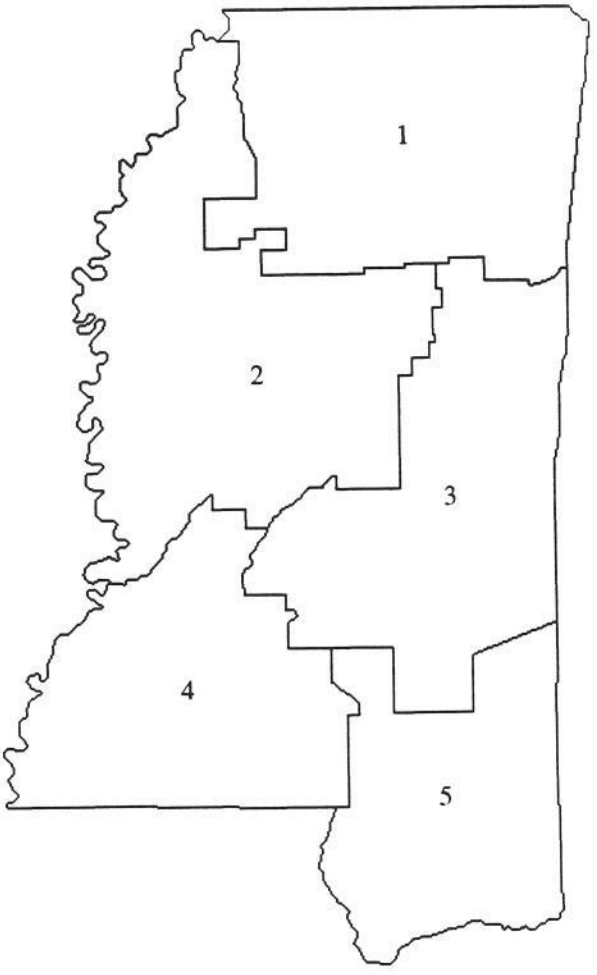

Figure 1. The Simpson Plan: Court-Ordered Interim Redistricting for the U.S. Congress in Mississippi.

Supreme Court. The plaintiffs argued that the court had erred in not adopting the 65 percent rule as a guideline in the plan; and the state argued that the court should have used either the 1981 plan or the 1972 plan for the 1982 congressional elections.[12] Also intervening in the appeal was the U.S. Department of Justice, which filed an *amicus curiae* brief. In its brief, the Justice Department stated that the Simpson Plan was in line with the requirements of the Voting Rights Act, but that the case could conceivably be remanded for reconsideration in light of the 1982 Section 2 amendment to the Act, which prohibits any voting law that has a racially discriminatory intent.[13] Following the advice set forth in Justice's brief, the Supreme Court sent the case back into district court—but it maintained the Simpson Plan for the 1982 elections.

Remanded District Court Decision

Upon hearing the case a second time, the district court ruled in favor of the plaintiff Delta residents, holding that the Simpson Plan did indeed dilute African American electoral strength by attaching predominantly white counties to African American Delta regions. With its finding that the Simpson Plan violated Section 2 of the Voting Rights Act, the court adopted a new plan that attempted to redress the electoral problems by using criteria geared to increase African American representation, including the creation of a rural Delta district with a African American voting age population majority, and the achievement of high impact districts without splintering cohesive African American populations.[14] Thus, the resulting plan increased the African American voting age population of the 2nd District from 48.05 percent to 52.83 percent, and increased the overall African American population from 53.77 percent to 58.30 percent.[15]

Upon the publicizing of the decisions, still another objection from a previously silent party, the Mississippi Republican Executive Committee, was made.[16] The Republican Executive Committee charged that the amendment to Section 2 of the Voting Rights Act was unconstitutional.[17] In a previous decision, the Supreme Court had held that under the 14th and 15th Amendments and Section 2 of the Voting Rights Act, *proof* of discriminatory intent was required.[18] Thus, the Republican Executive Committee charged, the Section 2 amendment eliminating the requirement of showing proof of discriminatory intent exceeded the powers of Congress under the enforcement clause of the 15th Amendment.[19]

The district court refused to hear the Executive Committee's suit, and all three parties—the Republican Executive Committee, the plaintiff Delta residents, and the defendant Mississippi state officials—decided to file individual appeals to the Supreme Court. The Mississippi state officials joined the Republican Executive Committee in contesting the constitutionality of the amendment to Section 2 of the Voting Rights Act. Both groups wanted a return to the earlier "Simpson Plan." The plaintiff Delta residents again

appealed for a 65 percent African American voting-age district.

The Supreme Court, however, without oral argument, put an end to all litigation when it summarily affirmed the district court's decision. Mississippi then adopted the second district court-drawn plan.[20] (See Figure 2.)

Through all the litigation, then-current officeholders in four of the five Mississippi districts were not affected: Jamie Whitten, Sonny Montgomery, Wayne Dowdy[21], and Trent Lott[22] maintained their seats. In 1986, under the new plan, Democrat Mike Espy, the first African American representative to be elected to Congress from Mississippi since the late 19th Century, was voted into the Delta district seat.

During the decade of the 1980s, Republicans, at one time or another, held seats in three of the state's five districts.[23] By 1990, however, Democratic incumbents occupied all five districts, and there is now little chance of a Republican joining Mississippi's delegation, particularly given Mississippi's new congressional district map. The 1990 redistricting made little appreciable change in current boundaries and is not expected to have any impact on the 1992 elections. It was approved by Mississippi's legislature in December 1991, and then by the Justice Department in February 1992.[24]

State Legislative Redistricting

Litigation also set the stage for state legislative redistricting during the 1980s. Prior to the 1980 reapportionment, Mississippi used a multimember districting system. A series of lawsuits during the late 1970s, however, saw the state change to a single-member districting process.

Multimember to Single-Member

Congressional redistricting dilemmas of the 1970s and 1980s were replicated in the redistricting of state legislative districts: the key problems were created by the demand for political equality and additional African American districts.[25]

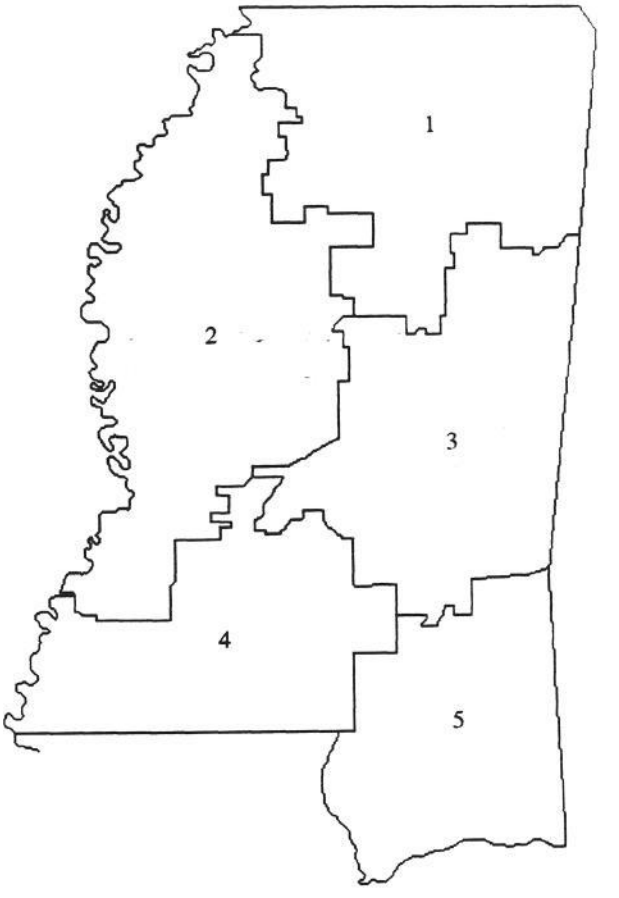

Figure 2. Mississippi Congressional Districts: Final Judgment, January 6, 1984.

In 1975, Mississippi submitted its reapportionment plan to the U.S. Department of Justice for review. The Justice Department, citing Section 5 violations of the Voting Rights Act, subsequently rejected the plan: "We are unable to conclude, as we must under the Voting Rights Act of 1965, that the implementation of [the state legislative plans] does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."[26] After the rejection of the plan, the Mississippi district court then directed the implementation of several single-member districts in regions with high African American population for the 1975 elections. And in 1976, the district court provided for a plan which saw single-member districts implemented for the entire state.[27]

Though African American litigants saw the court's action as a major victory, focus now turned from African American vote dilution to racially discrimina-

tory gerrymandering. Litigation was sponsored in an effort to achieve African American representation in the legislature. The rest of the decade saw much conflict over district lines, a struggle which was to continue into the 1980s.

The state legislative problems, however, were complicated by numbers—both the number of districts and the population variations between districts. Ideally, from a population equality perspective, lower-house districts in 1981 should have contained 20,660 persons and upper house districts 48,480 persons. In contrast to congressional districts, with their hundreds of thousands of residents, state legislative redistricting required much finer tuning of the balances between African Americans and whites. Congressional districting with whole counties and large populations (504,200-person ideal district population for congressional districts) was difficult; but the state legislative districting was even more challenging. The single-member district requirement, however, gave license to the splitting of counties, which opened up new perspectives.

During the 1970s, the pressures for change were controlled by multimember districts and the dispersal gerrymanders which served to dilute the African American vote.[28] After single-member districts were established for the 1979 election, however, these key mechanisms were weakened. And then, the 1980 census mandated that the single-member districts be adjusted.

African American representation slightly increased when special elections to fill vacancies were called in 1979. The significant change occurred with the regular four-year elections with single-member districts in 1979.[29] Suddenly, the Mississippi legislature had 17 African American members (two state senators and fifteen representatives).[30] By the 1987 elections the number of African American representatives had edged up to 22.[31]

The total number of districts per region had not changed significantly, but analysis reveals not only the creation of single-member districts with concentration of African Americans in former multidistrict counties, but often a shift of the once-horizontal districts of the Delta area to vertical districts. To meet Department of Justice standards, the districts ran vertically (to concentrate African Americans to meet affirmative action standards), whereas previously the districts were horizontal (to balance strategically the western Delta counties with more white voters in the more easterly counties). Thus, the dispersal gerrymanders were replaced by concentration gerrymanders.[32]

The status quo nature of the reluctant incremental change is revealed by the basic stability of African American representation after the major adjustments of the late 1970s. District representation did not change significantly, or in any way approach numbers that the total African American population would seem to require. The composition of the districts partly explains the problem: safe districts do not encourage competition or encourage "established" politicians to appeal to reconciliation. This has long been true of most white incumbents; today, it appears to be true, as well, of many nonwhite incumbents.

As the 1991 adjustments approached, the same representative dilemmas existed. Demands for more representation continued, often couched in unrealistic terms and justified on the grounds of proportional ethnic representation. The legislative status quo, the product of the intense judicial-political struggles of the 1960s and 1970s, proved as resistant to change as ever.

Felix Frankfurter once told reformers that if they wished to achieve their goal of fair representation, they must take their case to the public and sear legislative consciences. Perhaps it was always unrealistic to expect incumbents to surrender power out of conscience. Certainly, in the 1990s as in earlier decades, there was abundent evidence of incumbent self-interest in Jackson's redistricting politics, but little sign of legislative conscience.

NOTES

1. Frank R. Parker, "The Mississippi Congressional Redistricting Case: A Case Study in Minority Vote Dilution," *Howard Law Journal* 28 (1985): 399.
2. Ibid.
3. Ibid., p. 403.
4. Ibid., p. 404.
5. *Brooks v. Winter*, 461 U.S. 921 (1983).
6. Parker, "Mississippi Congressional Redistricting," p. 405.
7. Ibid.
8. *Jordan v. Winter*, 604 F. Supp. 809 (1984).
9. Parker, "Mississippi Congressional Redistricing," p. 405.
10. Ibid.
11. Ibid, p. 406.
12. Ibid.
13. Ibid.
14. *Jordan v. Winter*, 604 F. Supp. 814 (1984).
15. Ibid.
16. TheRepublican Executive Committee had been named earlier as a defendant in the lawsuits so that the district court ruling would have jurisdiction over party primary elections.
17. Parker, "Mississippi Congressional Redistricting," p. 409.
18. *Mobile v. Bolden*, 446 U.S. 55 (1980).
19. Parker, "Mississippi Congressional Redistricting," p. 409.
20. *Jordan v. Winter*, 604 F. Supp. 814 (1984).
21. Democrat Mike Parker succeeded Wayne Dowdy in the 4th District following Dowdy's unsuccessful 1988 Senate bid.
22. In 1988, Republican Congressman Trent Lott moved to the Senate. Republican Larkin Smith filled Lott's 5th District seat.
23. "Mississippi," *Congressional Quarterly*, February 29, 1992, p. 76.
24. Ibid.
25. Thomas B. Hofeller, "Mississippi," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 175-80.
26. Section 5 objection telegram from J. Stanley Pottinger, Assistant Attorney General, to A.F. Summer, June 10, 1975, quoted in Frank R. Parker, *African American Votes Count: Political Empowerment in Mississippi After 1965* (Chapel Hill: University of North Carolina Press, 1990), p. 122.
27. Ibid., p. 24.
28. Ibid., pp. 108-9.
29. Mississippi is one of the few states with four-year terms in both houses. Also, the elections are scheduled in off years, e.g., 1979, 1983, 1987, and 1991.
30. Parker, *African American Votes*, p. 138.
31. Ibid., p. 141.
32. Leroy Hardy, *The Gerrymander: Origin, Conception, and Re-emergence* (Claremont, CA: Rose Institute of State and Local Government, 1990).

Missouri

John J. Carter and David A. Leuthold

Prior to 1966 the two chambers of the Missouri General Assembly contrasted sharply in the equity of their apportionment, but the House of Representatives was malapportioned since each county was guaranteed at least one member.[1]

The State Senate

The comparatively equitable apportionment of the state Senate reflected a decision by authors of the 1945 constitution which established a bipartisan commission system for apportioning the Senate. The state central committees of the two major political parties each submit to the governor lists of 10 nominees to serve on the Senatorial Apportionment Commission. The governor then selects five commissioners from each party's list to compose the 10-member commission. Seven votes are required to approve a redistricting plan. If a commission fails to agree on a plan within six months, the task is turned over to a panel of six judges appointed by the state Supreme Court, which selects two judges from each of the state's three appellate circuits.

Republican senators met and agreed upon a list of names for the party's state central committee to submit to the governor as potential appointees for the commission. This action indicated the close relationship that came to prevail between Republican senators and Republican commissioners. Senator Richard Webster, senior Republican in the chamber, took an active role, closely supervising the work of a Senate employee who served as staff assistant for the Republican commissioners. This close relationship asserted by senators probably denied the Republican governor the gubernatorial role that had helped previous commissions build the necessary seven-vote coalition.

Democrats were badly divided by a fight over the election of the president pro tem, the principal Senate leadership post. In a closely divided caucus, liberal Senator Phil Snowden won the nomination for the pro tem post over the more conservative Senator Norman Merrell. On the floor, however, Merrell accepted Republican votes to win the post over Snowden, leading to a situation in which Democrats distrusted each other. The Snowden forces won all nominations for the Senatorial Apportionment Commission.

The tasks facing the commission were formidable. St. Louis city had lost population, so that the city's share of Senate seats, all Democratic, would drop from about 4.5 to about 3.1. Similarly, Jackson County (Kansas City), with almost all Democratic senators, would lose about half a seat. New seats would need to be established in suburban areas and in central Missouri.

In addition, party expectations would make agreement difficult. Democrats had controlled the Senate continuously for 32 years, usually by margins of 2-to-1 or better, and continued to hold a 23-to-11 advantage. Republicans, however, had been winning half the statewide elections, so they felt that they were entitled to a higher proportion of Senate seats. Thus, Republicans were trying to get many more seats, perhaps 17 or 18 of the 34 (at least 14), but Democrats were only prepared to concede 12 seats, plus some swing districts.

When the commission failed to agree, the Supreme Court picked a panel of six judges, selecting one Republican and one Democrat from each of the three appellate court circuits. The judges held three public hearings, then drew up and submitted a plan. The judges clearly were not as oriented as commissioners had been to helping certain prospective senators.

In the subsequent elections, 22 of 34 senators were reelected, eight did not run again, and four were defeated. Democrats won two of the three open seats.

The four senators who were defeated included two Democrats who lost to Republican opponents in Republican-leaning districts, and two weaker Democrats who lost in their own primary. Republicans had hoped to pick up the two latter seats against the stronger challengers. Throughout the decade, Republicans held only 11 to 13 seats, despite the redistricting and despite a major effort in 1982 to win many more legislative seats. The number of African American senators was unchanged, remaining at three.

The State House of Representatives

House reapportionment commissions are composed of two members—one Democrat and one Republican—appointed by the governor from each United States congressional district. Each party's congressional district committee nominates two persons from whom the governor selects one. Adoption of a reapportionment plan requires the assent of a seven-tenths majority. If a commission fails to agree to a new set of districts within six months, the task is turned over to a panel of six judges selected from the three Missouri courts of appeal by justices of the state's Supreme Court.

The House Reapportionment Commission accomplished more in its first meeting than the 1971 commission had in six months, agreeing immediately to select a chairman by the flip of the coin, with the Republicans winning. A second major move by the 1981 commission was to hold all meetings except public hearings behind closed doors. Despite protests by newspapers, the attorney general ruled that the decision to exclude the press and public was not a violation of the state's open meetings law.

The final plan announced by the commission included 13 districts—seven in St. Louis city—in which two incumbents were pitted against each other. In 12 of those 13 districts two incumbent Democrats were pitted against each other, and in the 13th a Democrat and Republican incumbent were forced to run against each other. Thirteen districts had no incumbent. African Americans in St. Louis County complained that their 130,000 population should have entitled them to control of four seats, but that they could only win one or two seats under the commission plan. A commission member responded by saying that there was "no way you can start creating African American districts there," because they were too integrated in St. Louis County. Kansas City African Americans complained that six of their Kansas City African American legislators were thrown into three districts, thus eliminating three of the incumbents. One oddity of the plan was the Boone County "doughnut," a district formed when the commission created a new district of all the suburban areas surrounding the city of Columbia.

In 1982, Republicans won seven and Democrats won six of the open seats. In the one contest between a Republican and a Democratic incumbent, the Republican won. After the 1982 election, the 163 representatives were distributed as follows:

- 73% returned to office.
- 10% ran for higher office.
- 4% lost to another incumbent.
- 5% lost to a nonincumbent.
- 8% retired from politics, at least for 1982.

Democrats, who had held 111 seats before redistricting, held 110 afterwards, despite a major effort by Republicans to win additional legislative seats. During the rest of the decade, Democrats held between 104 and 109 of the 163 seats. African Americans had held 16 seats prior to redistricting, and 12 afterwards, increasing to 15 by the end of the decade.

Congressional Districts

The state General Assembly is responsible for redistricting the congressional seats, with the state House of Representatives traditionally taking the leadership role. The redrawing of districts by the Democratic legislature often resulted in a Democratic advantage. For example, in the period from 1954 through 1972, Republican congressional candidates received 37 to 46 percent of the statewide vote in every election, yet Republicans were elected in fewer than 20 percent of the congressional races. Part of the reason for the Democratic success was that several of the Demo-

cratic congressmen were sufficiently conservative to hold on to seats with conservative constituencies.

The General Assembly found itself faced with the task of redrawing Missouri's congressional districts in such a way as to reduce the number of total districts from ten to nine. Democrats, who controlled both chambers of the state legislature by 2-to-1 margins, found themselves in disagreement over how best to redraw the three St. Louis metropolitan districts to take account of the 24 percent loss in population there since 1971. On the other hand, Republican state legislators were rallied by the need to protect the districts of two first-term Republican congressman.

After much debate during the spring of 1981, the Senate's reapportionment committee voted to recommend a plan which provided for only two St. Louis metro districts. This plan would have forced William Clay (D), the state's only African American congressman, into a primary race against the popular Richard Gephardt (D) in a new district which most observers believed would favor the white Democrat. The Senate declined to act on this proposal after St. Louis-area African American leaders organized public forums and letter-writing campaigns critical of the plan, and two African American St. Louis area senators threatened to filibuster the plan on the Senate floor.

Within a week of the close of the regular legislative session, the Missouri Farm Bureau filed suit in federal court, asking that a panel of judges be appointed to reapportion Missouri's congressional districts. On June 29 the Eighth U.S. Circuit Court of Appeals appointed three federal judges to redraw Missouri's districts. Two Democrats and one Republican were appointed.

Republican Governor Christopher Bond, possibly concerned about the work of a judicial commission composed of a majority of Democrats, called the legislature into a special redistricting session in October. On November 17 the House adopted another plan which would have preserved the existing three St. Louis metro districts, with the 1st District carefully drawn to ensure inclusion of enough African American and other traditionally Democratic voting groups to protect the political future of African American congressman William Clay.

However, the Senate's leadership, which had failed to endorse any plan during the regular session, now publicly endorsed the idea of allowing the already appointed judicial commission to redraw the districts. With no drive by the Senate leadership to adopt a plan, the Senate went on to defeat the House-approved plan and also voted down two different versions of the Senate committee's plan, which would have reduced the number of St. Louis metro districts from three to two. The special session ended on December 17 with no approved redistricting plan.

Less than one month after the end of the legislature's unsuccessful special session, the judicial commission ratified a plan which was very similar to the one previously adopted by the House. Dividing along partisan lines, the federal judges voted 2-to-1 to adopt a plan which preserved three St. Louis metro districts and achieved the required reduction in the size of Missouri's congressional delegation by dismembering the 8th District of freshman Republican Wendell Bailey.

Overall, nine of the state's incumbent congressmen sought reelection in 1982 and eight were reelected. Richard Bolling (D) retired and the 5th District (Kansas City) was won by Democrat Alan Wheat, giving Missouri a second African American congressman. Six of the eight incumbents reelected in 1982 won with over 55 percent of their district's vote. The exceptions were Gene Taylor, who got only 51 percent of the vote in the largely unaltered 7th District, and Bill Emerson (R), who received 53 percent of the vote in the heavily modified 8th District.

Having failed to complete the remapping of the congressional districts in both 1971 and 1981, the General Assembly proposed an amendment to the state constitution in 1982 which would have turned future congressional redistricting duties over to a bipartisan

commission similar to those used for the redistricting of state House and Senate seats. Despite the lack of any organized opposition, the amendment was defeated, receiving the support of only 44 percent of the Missouri voters. The most likely explanation is that the proposal was surrounded by too many unpopular amendments on the ballot. At the November 1982 election, voters were faced with 13 statewide proposals, and approved only three. Two of the rejected proposals were resubmitted and passed two years later, and a third was passed later in a revised version.

1981 Gerrymandering

Were the 1981 districts gerrymandered? The prospects that partisan gerrymandering occurred were slight in the case of House reapportionment, since lines were drawn by a bipartisan commission with 19 of the 20 members approving, or in the case of the Senate, since lines were drawn by a bipartisan judicial commission with all six judges agreeing. On the other hand, some people felt that the congressional redistricting designed by the federal judicial panel was gerrymandered. The panel was composed of two Democrats and one Republican, and the result of the first election was the elimination of one of the state's Republican congressmen.

One measure of gerrymandering is the distribution of seats compared with the distribution of votes. During the 1982 through 1988 elections, Republicans won the following proportions of the votes and seats, respectively:

- For the Missouri House - 41 percent and 33 percent
- For the Missouri Senate - 40 percent and 36 percent
- For the congressional seats - 44 percent and 39 percent.

The data indicate that the Republican proportion of seats in the case of congressional seats was comparatively close to the proportion of votes, suggesting that there was little partisan gerrymandering by the federal judicial panel.

A possible form of gerrymandering by bipartisan commissions would be the drawing of noncompetitive districts heavily favoring one or the other party, thereby leaving voters without an effective general election choice. The election results indicated such patterns in Missouri. A common measure of competitiveness is the proportion of districts in which the winning candidate received 55 percent or less of the vote. In elections from 1982 through 1988, only 9 percent of the state House races and 6 percent of the state Senate races were competitive, using this measure. In contrast, 25 percent of congressional races were competitive.

Redistricting in the 1990s

Reapportionment of the Missouri House of Representatives will again be complicated by the unwieldy size of the commission itself, the limited coalition-building role available to the governor, and the continuing loss of population by the state's urban centers. In 1981, Jackson County (Kansas City) was entitled to 21 seats, with an additional seat divided between Jackson and Cass Counties. Based on 1987 data, it appears that Jackson County will lose between one and two seats. Under the 1981 plan, St. Louis city held 15 seats, but the 1987 population would entitle it to only 13.

Redistricting the Missouri Senate should probably be less difficult in 1991, but will still present substantial problems. The likelihood of Senate Democrats being divided by a battle over the president pro tem's office seems remote, reducing that reason for conflict. The population changes are not as great as in 1981, but even so, St. Louis city and county together will lose about 0.4 of a Senate seat and Jackson County (Kansas City) will lose about 0.1 of a Senate seat. More important will be the loss of population among rural districts in the northern part of the state, and the gain in population by rural districts in the southern part of the state. This statewide pattern will require the redrawing of many districts.

A factor which may prove important in the 1991 reapportionment concerns the judicial commission system which now serves as a backup procedure for

both the House and Senate reapportionment commissions. The appellate court judges who would redraw the districts if either bipartisan commission failed to do so are appointed by the Missouri Supreme Court, and the membership of that court is rapidly shifting in favor of the Republican party. By the fall of 1991, at least five of the seven judges serving will have been appointed by Republican Governor John Aschroft. This fact may turn out to be a powerful incentive for Democratic commissioners from all regions and factions to work harder to build successful coalitions within the redistricting bodies, but it may also increase the demands made by Republicans, who would find their bargaining positions within the commissions strengthened.

A similar question may arise with regard to the composition of the panel of federal judges which would do the congressional redistricting if the General Assembly again failed to agree. In 1981, two of the three judges appointed by the Eighth Circuit Court were Democrats, but a large percentage of the federal judges serving Missouri in 1991 will have been appointed by Republican presidents. If the general assembly fails to redraw successfully the state's congressional districts in 1991, the partisan balance of the judicial panel which would redistrict the state is much more likely to favor the Republican party.

Reapportioning Missouri's congressional districts in 1991 promises to be a difficult undertaking for the Democratic-controlled General Assembly. At this writing, it appears that the state will retain nine congressional seats. However, the case of 1971 illustrates that even stability in the congressional delegation does not insure that the General Assembly will be able to redraw the districts. Nevertheless, not having to reduce the size of the congressional delegation will certainly improve the legislature's chance of success.

NOTES

1. For a history of redistricting in Missouri before 1980, see John J. Carter and David A. Leuthold, "Missouri," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 181-85.

MONTANA

JERRY W. CALVERT

As Montana enters the 1990s, it remains one of the few states in which the state legislature does not have the authority to draw political district lines. Rather, as provided for by the 1972 state constitution, redistricting is under the authority of the Montana Districting and Apportionment Commission.[1] The commission is composed of five members. Two members (one each) are appointed by the majority and minority leaders of the House of Representatives and two are appointed by the same leaders in the state Senate. Consequently, appointment of the initial four insures a partisan balance, since the Democratic and Republican legislative leaders will appoint supporters of their respective parties. The constitution provides that the four commissioners thus appointed will select the fifth and final member, who will also serve as chairperson. If the four cannot agree by majority vote in selecting the chair, a majority of the Montana Supreme Court will make the selection.[2]

Once installed, the Montana Districting and Reapportionment Commission is charged with the task of drawing the two congressional and 150 state legislative district boundaries and is bound in doing so by criteria set forth in the 1972 Montana constitution, which requires that the commission form only single-member districts that are "compact and contiguous" and which are as nearly as equal in population as practicable.

After it completes its work, the commission submits its plan to the next regular session of the Montana legislature for review and comment. The legislature, however, has no authority to change or modify the commission's reapportionment plan. After the commission has reviewed legislative input, it must submit a final plan to the secretary of state within 30 days. Upon the formal filing of the plan with that office, the plan becomes law and the commission is dissolved.[3]

With the creation of the second Districting and Reapportionment Commission in 1980, partisanship surfaced once more as it had in 1973-74. The Democratic and Republican legislative leaders had each selected their two appointees to the body. But the four commissioners could not agree on the fifth person, who would serve as chair, and after the time limit had passed, the Montana Supreme Court exercised its authority to select the fifth commissioner. The Court selected Eugene Mahoney, a Thompson Falls attorney, as the chair. What made the Mahoney appointment controversial was the fact that he had been a candidate for the Democratic nomination for governor in 1968, and thus had an established partisan record. Nonetheless, Mahoney's appointment did not violate the limiting criterion set forth in the constitution, which only bars currently serving public officials from appointment.[4]

In deciding where to draw legislative district lines, the 1980 commission said it would build districts according to the criteria of compactness, contiguity, and equality laid out in the 1972 constitution. To meet the standard of equality, the commission agreed that the average deviation from equality should not exceed $\pm$5.00 percent. The ideal House district would therefore have 7,867 inhabitants (a range of 8,260 to 7,474) and the ideal Senate district would have 15,734 (a range of 16,520 to 14,947).

In trying to achieve the ideal of population equality, however, the commission said it would be guided by several modifying criteria. First, the commission would give consideration to maintaining existing government boundaries. Second, an attempt would be made to respect natural geographic boundaries. Third, where it was possible, the commission would try to preserve current state legislative district lines. And finally, the commission would consider the variable of "community of interest" in creation of legislative districts.[5] In defending its plan, the commission said:

> The Commission never formally attached a relative weight to the individual criteria, although constitutional and legal requirements obviously took precedence. Rarely did a district satisfy all the criteria, and districting decisions often required the application of a balancing test among competing interests. Often it was necessary to apply this balancing test not only to choices for individual districts but to regional and statewide repercussions of district choices.[6]

The plan submitted by the commission showed an average deviation from perfect equality for the 100 House districts of ±3.06 percent, with the range from the largest to the smallest for the 100 House districts being 10.94 percent (from +5.78 percent above perfect equality to -5.16 percent below). For the 50 Senate districts, the mean deviation was +2.14 percent, with the maximum from +5.14 percent to -5.04 percent. Only seven House districts and three Senate districts exceeded the +5.00 percent deviation standards set by the commission.[7]

Even though the 1980 plan had small population deviations from the ideal, partisan fires were kindled by a GOP appointee to the commission, who charged that Eugene Mahoney's presence had created a 3-2 Democratic advantage on 57 out of 61 divided votes during the commission's deliberations. Further, some residents of Gallatin County in southwest Montana charged that the county had been shortchanged in the process. It was alleged that the county, which tended to be a swing county with a Republican tilt, was entitled to more representation based on its increasing population, but that it had been denied its fair share because the commission had decided to allow heavily Democratic Silver Bow County to keep its current number of state legislators even though the area had suffered a decrease in population. Gallatin County plaintiffs also alleged that the commission had violated its own community-of-interest criterion by joining the southern half of the county to an adjacent rural county in a new legislative district in which there was no community of interest.[8]

Those who saw a partisan bias in the commission's redistricting plan now attacked on two fronts. First, in the state legislature, Senate Bill 286 was introduced. The bill called again for the abolition of the commission and its replacement in this instance by a 12-member legislative committee composed of six legislators from each party. The committee would submit a plan to the legislature as a whole, which would have the power to approve, modify, or reject any or all of the proposed plan. Senate Bill 286 passed the Senate by a margin of 28 to 20, and then was killed in the House by a vote of 43 to 55.[9]

Following closely on the heals of the abortive attempt to abolish the commission, a group of residents of Gallatin County filed suit in federal district court, charging that the plan submitted violated their rights under the equal protection clause of the 14th Amendment. Rather than asserting that an alleged gerrymander had taken place, the plaintiffs took the more cautious course of complaining that the population disparities in the plan were sufficiently great to violate the principle of "one person-one vote."

On October 4, 1983, a three-judge federal court panel ruled against the plaintiffs. The court believed that the commission had made a good-faith effort in trying to meet the standard of equal districts, given the quality of the census data available to it. Responding directly to the plaintiffs' allegation that alternative plans would have been less skewed, the court said it was its conclusion that any alternative plan, including the one being pushed by the petitioners, would have produced greater deviations from equality than the one approved by the commission.[10] The decision was not appealed.

Since the 1983 decision, control of each house of the state legislature from election to election has never been certain. In the three elections following that case, in the House of Representatives each party won control once, and in the third election the results produced a 50-50 split in the chamber. In the Senate, the 1986 election produced a 25-25 partisan split, that session being preceded by one of Democratic control

after the 1984 election. After 1988, Republican control was reasserted.

At the time of this writing, the Districting and Reapportionment Commission for 1990 has been created. At the end of the 1989 session of the Montana Legislative Assembly, the House and Senate party leaders selected the four commissioners allocated to them. These four finally settled on a chairperson, retired Montana Supreme Court Justice Frank Haswell. Haswell had been nominated by the two GOP appointees, and after all other nominees were rejected on 2-2 votes, one of the Democratic appointees joined the two Republicans, reasoning in part that Haswell appeared to have a reputation of nonpartisanship and that it would be preferable to decide on a chair instead of giving the choice to the Montana Supreme Court by default. In March 1990, however, Justice Haswell died before the commission could begin serious deliberations, and once more, the four partisan-appointed commissioners had to select a chair. Once again, one of the two Democrats on the commission joined with the two GOP commissioners to appoint another retired Supreme Court Justice, L.C. Gulbrandson. Like Haswell, Justice Gulbrandson had a long career of service on the bench and appeared to have kept his distance from any overt political party connections.[11]

In summation, redistricting will always be a political process to a greater or lesser extent. Montana has tried to minimize the influence of self-interested partisan considerations by removing the authority to redistrict from the state legislature and giving it over to an "independent" commission. This body's authority and independence is centered on the fact that its plan, once submitted, cannot be altered by the legislature. The legislature can give advice, make suggestions, or threaten retaliation, but it cannot change the plan. On balance, this has proved be a workable system for the state of Montana.

NOTES

1. For a description of reapportionment politics in Montana before the 1980s, see Ellis Waldron, "Montana," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Restricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 186-92.
2. James Lopach et al., *We The People of Montana* (Missoula: Mountain Press Publishing Co., 1983), pp. 65-66, 298-99.
3. Ibid., pp. 298-99.
4. Ellis Walden and Paul Wilson, *Atlas of Montana Elections, 1889-1976* (Missoula: University of Montana, 1978), p. 239.
5. *Report and Recommendation of the Montana Districting and Apportionment Commission*, December 1982 (Helena: Montana Legislative Council, 1982), pp. 9-12.
6. Ibid., p. 12.
7. Ibid., p. 20.
8. *Bozeman Daily Chronicle*, January 6, 24, 1983; *Billings Gazette*, January 20, 31, 1983.
9. *History and Final Status of Bills and Resolutions of the Senate and the House of Representatives, 48th Legislature* (Helena: Montana Legislative Council, 1983), pp. 96-97.
10. *McBride v. Mahoney*, 573 F.Supp. 913 (1983).
11. *Great Falls Tribune*, May 9, 1989, April 20, 1990.

NEBRASKA

ROBERT SITTIG

In late May 1981, the two major reapportionment laws passed the Nebraska legislature on nearly unanimous (44-3 and 37-6) votes. This degree of agreement on such a contentious matter is quite unusual in American legislatures. Much of the reason for this in Nebraska is its nonpartisan election system for legislators, first adopted in 1936.[1] And after the elections, a nonpartisan attitude carries over in the organization and operation of the body. Another factor which complicates reapportionment matters—protection of incumbents—in American legislatures was of considerable evidence and importance in Nebraska in 1981.[2]

Nebraska's population during the 1970s lagged behind national growth rates. The 1980 census had the state at 1.57 million, up some 90,000 from 1970. This was sufficiently high to keep the state's three-member U.S. House delegation the same; it was last reduced (by one) in 1960, and prior to the 1930s it numbered six. The growth and migration patterns in the state did not seem to affect significantly the relative size of the congressional districts, so only minimal alteration of U.S. House lines became necessary. The basic demographic changes were these: in the outstate (central and west) area, a continued drift from the countryside to nearby towns and cities; a steady population increase in the second largest city, Lincoln; and sharp central-city to suburban migration in the state's largest metropolitan area, Omaha/Douglas-Sarpy Counties.[3] Taken together these shifts had offsetting impacts between and among the congressional districts. Initial population variance between the largest and smallest U.S. House districts was only 2.37 percent, and this was reduced to 0.23 percent by merely shifting one entire county (Thayer), and a portion of another (Cass), from and to the central-Lincoln district. There was some conflict between two of the incumbents, some of the affected residents, and partisan adherents inside and outside the legislature, but the final product was achieved quite easily.

The redistricting of state legislative seats presented a much stiffer challenge to the legislature, because the disparities in population were much greater, and the legislators were rearranging electoral units from which they would be running. Legislators number 49 in Nebraska, and they serve four-year staggered terms. The 1980 census showed the population of the largest district (Omaha suburbs) at 115 percent above the "ideal," and the smallest one (Omaha central) to be 35 percent below the norm. At the same time, however, many districts were quite close to the average needed; for example, only 19 of the other 47 districts fluctuated as much as 15 percent above or below the ideal size. Change was needed, but for many districts, only slightly adjusted boundaries were in order.

The official process began with the referral of the reapportionment bills to committee.[4] This precipitated a rare challenge and an unsuccessful floor fight. Disagreement came largely from two sources: sitting members of the Government Committee, who expected to receive the bill as they had in the past, but who were denied in 1981 when it was assigned to the Miscellaneous Subjects Committee (MSC); and a number of Democrats who were apprehensive about the unusual involvement by state and national Republican party leaders in the 1980 election in overt ways. (The effort apparently paid dividends because twice the average number of incumbents were defeated [five] and all were Democrats.) To allay Democrats' concerns, the MSC chair pledged that all plans submitted, regardless of source, would be considered, and the leadership's recommendation was upheld, with partisans in each party splitting on about 2-1 lines.[5]

About a dozen different plans—some partial, some complete—were submitted to the MSC and discussed in a series of public hearings. Nebraska is one of the few states which requires standing committees to hold a public hearing on all legislative bills; this uses up large

amounts of legislative time but it has become hoary tradition. The profferers included: legislative staffers; both political parties; one large interest group (the Chamber of Commerce); and some half-dozen ad hoc legislator caucuses. The MSC had adopted guidelines affirming such goals as compactness, population balance, and adherence to community boundaries and character. Nearly all disagreements were resolved before the calendar deadline for the committee report. One persistent dispute came in the Omaha delegation, where an entire district needed to be transferred from the central city to the suburbs, and the equivalent of another shifted in the same direction; the timely retirement of a central-city senator eased such transfer. Another continuing quandary involved six outstate incumbents in two adjacent areas, as they sparred over the marginal shadings of their otherwise nearly intact districts; in the end, they reluctantly agreed to a "compromise" negotiated by the leadership. Turnover is higher than average in the Nebraska legislature (nearly 25 percent), and since most is due to voluntary withdrawal or retirement, the reapportionment process has some artificial flexibility.

The MSC proposal sailed through its floor tests with but a single small alteration. Among its provisions were: nearly all of the medium-sized cities were kept intact; no incumbents were placed in the same district; and there was an overall improvement in district compactness even though a few districts were blatantly gerrymandered to accommodate incumbents or to satisfy other political realities.

More specifically, population in the new districts ranged from 34,668 (Omaha metro) down to 29,885 (Omaha central city), a variance of 14.8 percent; this was nearly six times greater (2.5 percent) than in 1971, and migration trends are such that the smallest district should be in the suburbs and the largest in the central city. However, no litigation ensued, so it is moot whether the courts would have gone along with this seemingly high level of variance.

On the matter of protecting incumbents, five were defeated in the 1982-84 election cycles, and this is about average. Of the five, only one was confronted with a markedly redrawn district; in two others, district change was moderate, and in the other two it was minimal. Thus, reapportionment apparently had only a slight effect on incumbent reelection rates.

Compactness is another major goal of reapportionment, so the author of this essay did a "desktop" comparison of each district's geographical shape before and after the 1981 reapportionment; it is clear that in the aggregate there was considerable improvement. These evaluations were then grouped, and the tentative conclusions are as follows: 13 districts were made more compact; 21 districts were fairly compact both before and after; ten were quite lacking in compactness both before and after; and five were less compact than before. Thus, by about a 2-to-1 margin, district compactness improved as a result of the reapportionment.

However, some clear examples of gerrymandered districts were evident. One outstate county (Hall) contains a medium-sized city with its own district, but the rural area around it was divided up among three other districts. Also perplexing is the belt or "necktie" link in one district (31); it was crafted to connect two suburban areas in the Omaha metro region and narrows to territory about ten blocks wide and 20 blocks long. There is also a "circle the wagons" district (25) which includes all the smalltown/rural area outside the city of Lincoln. On the other hand, the legislature did reduce to a considerable extent the unwieldiness of an existing Lincoln district (46) which formerly had two disparate segments laced together by a stretch of uninhabited railroad track. (See Figures 1 and 2.)

Looking ahead to the 1991 reapportionment cycle, some features seem likely. Census figures indicate the state's population is neatly flat (up 0.5 percent) and that a west-to-east, rural-to-urban drift, which had been slowed considerably in the 1970s, has surged again. This should translate into about two state legislative seats being reallocated or shifted toward the metropolitan areas, especially Omaha and Lincoln. The 1991 reapportionment bill has been returned to the Government Committee, thus ending the jurisdictional aber-

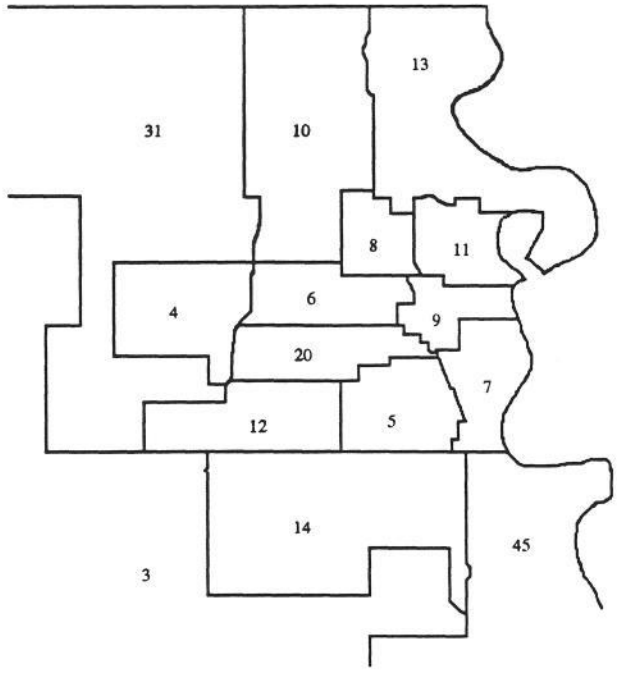

Figure 1. 1982 State Legislative Districts for Omaha and Vicinity.

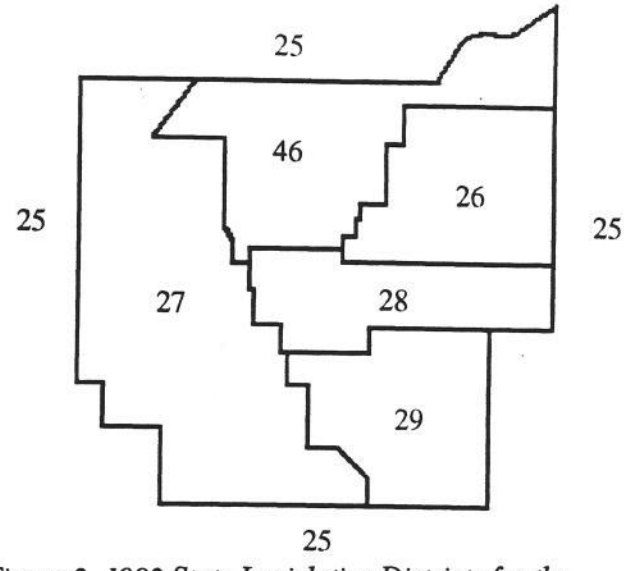

Figure 2. 1982 State Legislative Districts for the Lincoln Area.

ration which occurred in 1981. Reapportionment guidelines have been adopted, one of which sets a maximum deviation of 10 percent between the largest and smallest state legislative districts. If this degree of deviation occurs, it would be an improvement over the 1981 record, but still well beyond the court-protected deviation for U.S. House districts (1 percent), or that achieved (2.5 percent) in the 1971 state legislative remapping.

The partisanship factor has continued to change during the 1980s, and probably will be of greater importance than in 1981. There has been a steady shift in electoral fortunes towards the Democratic party, and this was shown in the 1990 election results when the Democrats picked up two more seats in the legislature (for a total gain of five since 1981) and recaptured the governor's office. During organizational proceedings in the legislature, the Government Committee ended up with an equal number from each party (four). Thus, a degree more partisanship can be anticipated, since the Democrats have a more viable base to negotiate from than was the case in 1981.

Finally, the actual shaping of districts to achieve an even higher degree of compactness is something the legislature needs to strive for; this would add to their record of partial success in this endeavor in 1981.

NOTES

1. The change also included a single-chamber provision, but unicameralism did not affect the reapportionment process in any significant way in 1981. Despite an official nonpartisan election arrangement, tacit partisans win nearly all the contests. In 1981-82, the lineup was 32 Republicans, 16 Democrats, and but a single Independent.

2. For a discussion of reapportionment politics in Nebraska prior to the 1980s, see Robert Sittig, "Nebraska," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 193-98.

3. The larger cities in Nebraska have had unusually broad annexation powers since the 1920s; the city councils annex by ordinance, and no popular vote is conducted. Lincoln continued to exercise such powers during the 1970s, whereas Omaha was less inclined to do so, and their populations were affected accordingly.

4. Bill referral is also handled in a nonpartisan fashion; the collective leadership—eight in number—makes the

assignment but the choices can be challenged. A handful of the 500-700 referrals is challenged each session, but floor overrides are rarely successful.

5. Geography rather than party ratio controls the allocation of committee seats in the nonpartisan legislature. The state is split into four regions and each is assigned two seats per committee; members are then selected by caucuses in each region. In this instance, the MSC ended up with six nominal "Republicans," whereas the Government Committee had four.

NEVADA

A. COSTANDINA TITUS AND JERRY L. SIMICH

Nevada, like many western states, had to be dragged, kicking and screaming, into the modern age of legislative reapportionment. While the state's original constitution of 1864 provided that the federal census "shall serve as the basis of representation in both houses of the legislature," this was far from the case in practice. [1] From the beginning, statutes in direct violation of the constitution provided for a legislature in which each county had one senator in the upper house and at least one assemblyman in the lower. These unconstitutional arrangements lasted until 1950, when they were finally formalized through constitutional amendment. The amendment failed, however, to repeal the clause requiring apportionment by population, but the incompatibility of the two provisions did not disturb the political establishment and went virtually unnoticed by the public.[2]

As a result of this system, Nevada was close to the bottom in terms of representativeness among state legislatures prior to court-mandated reapportionment.[3] A paltry 8 percent of the state's voters could theoretically elect a majority of the Senate, while it took only 29 percent to control the Assembly. Voters in the small rural counties had disproportionate power in both houses; and the Republican party, despite its minority registration, had a lock on the Senate. Nonetheless, most residents throughout the state, and incumbent legislators of both parties, held politically conservative values, including a strong, pervasive bias against federal intervention in state matters. These predispositions fueled a tenacious resistance to the population-based apportionment called for by the U.S. Supreme Court.

REDISTRICTING IN 1981

In contrast to the earlier redistricting efforts in Nevada, the process in 1981 was relatively free of conflict. The only major controversy involved drawing the boundaries for the new congressional seat Nevada received due to its growth in population during the previous decade, up 63.8 percent over 1970, from 488,738 to 800,493. Nevada had been represented by only one congressman since joining the Union, so the state legislature was forced to draw congressional district boundaries for the first time. The debate was over whether to divide the state with a north-south line through the two population centers of Reno and Las Vegas, or with an east-west boundary. Operating on the "bird in the hand" principle, the Democratically controlled legislature (15 to 5 in the Senate and 26 to 14 in the Assembly) opted for the latter, giving the Democrats a guaranteed victory in the southern district, where their registration outnumbered Republicans 89,455 to 52,540.

Because of population distribution in the state, the two resulting districts varied greatly in size and demographics. District 1, in the south, included most of Clark County, while District 2 covered the remainder of the state. The population of District 1 was 400,636 and of District 2, 399,857. District 2 included 63,451 persons from Clark County, which accounted for 15.6 percent, or more than one-sixth, of the total population of the district. Unfortunately, those residents in the northeast corner of Clark County, which lies in District 2, have little in common with their fellow constituents in the northern and rural areas of the state; furthermore, because of the great size of the district, they often feel ignored and forgotten by a representative who hails from, and thereby concentrates on, the north. If the population boom in the south continues, however, this balance may shift and Nevada could see both representatives coming out of Clark County.

Within the state legislature itself, protecting incumbency was again a major concern. Facing the tremendous population increase, especially in the south (with Clark County up 69 percent over 1970), the legislature had to choose between simply redistricting or adding

Table 1. County Representation in the Nevada Legislature, 1961-81.

	% OF POPULATION			ASSEMBLY SEATS			SENATE SEATS			% OF SEATS IN LEGISLATURE		
COUNTY	1961	1971	1981	1961	1971	1981	1961	1971	1981	1961	1971	1981
Clark	44	56	58	12	22	24	1	11	12	24	55	57
Washoe	30	25	24	9	10	10	1	5	5	19	25	24
Rural	26	19	18	16	8	8	15	4	4	57	20	19

new seats to the body. Dominated by Clark County with 33 of the 60 seats, the legislature, rather than redistributing the existing seats, ultimately added one Senate seat and two Assembly seats in the south. This served both to accommodate the burgeoning south and to protect incumbents. Such a scheme worked to the advantage of the rural counties as well, which were doomed to lose seats under the simple redistricting option. As it turned out, Washoe County, whose numbers did not change, was the relative loser in the process, "an unusual event in Nevada's political history," according to Eleanore Bushnell, retired professor of political science at the University of Nevada, Reno.[4] (See Table 1.)

After the 1981 redistricting process, the ideal Senate district served 38,056 residents and the ideal Assembly district included 19,028, with the largest ratio of disparity among the Senate districts at 8.5 percent and at 10.2 percent for the Assembly.[5] No lawsuits were filed following the 1981 redistricting, and Nevada seemed to have accepted the "one person-one vote" principle at last. In fact, redistricting was no longer viewed with political trepidation because during the two decades since the inception of court-camdated redistricting, it had wrought few substantive changes in terms of policy directives emanating from the legislature.

Redistricting in 1991

The 1991 redistricting process will again revolve around accommodation of the significant population growth which has been occurring since the last census throughout the state, but especially in the south and the mining boom areas of rural Nevada. The dynamics will be quite different from 1981, however, because although Clark County holds a majority of the seats in both houses (24 of 42 in the Assembly and 12 of 21 in the Senate), the seats are split by party (four Republicans and eight Democrats in the Senate and 10 Republicans and 14 Democrats in the Assembly). While both houses are once again controlled by the Democrats, the margin is only one vote in the Senate and two in the Assembly. Furthermore, leadership is split geographically, with Jack Vergeils of Las Vegas heading the Senate and Joe Dini of Yerington heading the Assembly. Combined with the new, extremely complex, and therefore controversial technology involved in the redistricting process, and the current demand by the courts for greater accuracy, these factors portend an exciting redistricting debate in the 1991 session.[6]

As in 1980, the major question facing the legislature will be whether to simply redistrict the 63 existing areas or to reapportion the legislature by adding new seats to accommodate the population increase. If the state's head count comes close to the projected 1.24 million, a 63-seat legislative arrangement would require a shift of two Assembly seats and one Senate seat from the Washoe-Carson area to Clark County, with rural representation remaining virtually the same. If the goal, as in the past, is to protect incumbents, however, it is possible that the legislature will have to increase its size to 72 or even 75 members, whereby most of the new seats would go to Clark County with a couple in the rural area.[7]

Several factors will have to be taken into account before a redistricting decision is reached. Of primary concern to northern legislators will be the possible loss of representation in certain geographical areas, especially Reno. Given the south's increasing ability to dominate statewide races, such as for governor and

attorney general, Reno's hold on legislative seats will become more important than ever. Rural delegates will certainly focus on the immense size of their districts should lines be redrawn and no new districts added. The population size of each district will also be a consideration; for example, even under a 75-member plan, the number of residents per Assembly district would increase by approximately 6,000 over 1980, with Senate districts doubling and quadrupling that increase, depending upon whether they are single-member or multimember districts.

Another important factor in fiscally conservative Nevada, where legislators took a beating over a retirement increase voted in 1989, will be the direct and indirect costs of adding new members. Related to this financial concern over salaries, postage, staff, etc., will be the questions of adequacy of space in the legislative building and the need for major remodeling to make the chambers, which are currently designed for a maximum of 25 senators and 48 assemblymen, accommodate more delegates.

In addition to the state legislative districts, the congressional seats will also have to be addressed. There is some speculation that Nevada, as the fastest growing state in the country, will qualify for a third representative, but this is not likely. Some politicos have also raised the possibility of revisiting the issue of a north-south line rather than the current east-west boundary, but most legislators seem inclined to retain the current concept. If indeed this is the case, a greater percentage of Clark County will become part of the "northern" District 2, up from 15.6 percent in 1981 to at least 24 percent, according to population estimates, in 1991.

In both legislative and congressional redistricting efforts, a goal of the state will be to obtain greater population equality. In the past this was difficult because of the use of large enumeration districts, which in 1980 ranged from zero to 6,000 persons, in the rural areas. For 1990, however, the Census Bureau has block-numbered entire counties, increasing the level of detailed census data in Nevada from slightly less than 9,000 blocks in 1980 to some 30,000 blocks in 1990. This information will enhance efforts to reduce population disparity among districts and avoid lawsuits.

Conclusion

The history of redistricting in Nevada is basically the story of Clark County's political coming of age. Over the years, southern legislators who originally resisted court-mandated arrangements based on population have come to see the process as one which benefits their interests. Meanwhile, the northern and rural areas have been forced to accept a major change in the power structure which they controlled for over a century. And 1991 will see this trend continue. With the most precisely drawn districts ever, regardless of their number, Clark County will increase its potential power over the state's affairs. While legislative directives are not likely to be altered drastically over the next decade, given the generally conservative nature of the population and the increase in Republican registration in Clark County, southern legislators are bound to use their clout to effect such changes as locating more state agencies in the south; returning more tax dollars to the south (where Clark County currently contributes 60 percent of the state's revenues and gets back only 40 percent); and funding more equitably the campuses of the University at Reno and Las Vegas. The south's ability to accomplish these shifts will be enhanced by the weakening of the old Reno-rural coalition; faced with typical problems of increased urbanization, such as traffic, crime, and air pollution, Reno is finding that it has more in common with Las Vegas than with the "cow counties."

NOTES

1. Nevada Constitution, Article 15, section 13.

2. For a detailed history of reapportionment in Nevada prior to 1980, see "Nevada," in Eleanore Bushnell, ed., *Impact of Reapportionment on the Thirteen Western States* (Salt Lake City: University of Utah Press, 1970), pp. 185-205; "Reapportionment and Responsibility," in Eleanore Bushnell, ed., *Sagebrush and Neon* (Reno: University of Nevada Press, 1976), pp. 99-116; and Eleanore

Bushnell, "Nevada," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 199-208.

3. Voluntary reapportionment in 1960 had left the Senate intact with one delegate from each county but had addressed the matter of population in the Assembly. Although each county was still allowed at least one assemblyman, Clark and Washoe for the first time attained a majority in the lower house with 57 percent of the seats, up from 40 percent during the previous session. While this scarcely approached an equitable scheme (the counties' combined population accounted for 75 percent of the state), it at least recognized that population-based apportionment was becoming a major issue nationwide and made some concessions accordingly, even if only in hopes of forestalling more drastic changes.

4. Bushnell, "Nevada," in Hardy et al., *Reapportionment Politics*, p. 207.

5. For disparity figures by reapportionment session, see William D. Swackhammer, *Political History of Nevada* (Carson City: Secretary of State's Office, 1986), p. 159-85.

6. Author Titus, state senator from Clark County District 7, serves on the joint reapportionment committee in the state legislature, which has already begun discussing these matters during the interim prior to the 1991 session.

7. The maximum number of legislators allowed by the Nevada Constitution is 75. Article 15, section 6.

New Hampshire

William M. Gardner

Although the last two times the New Hampshire legislature was involved in redistricting (1965 and 1971) there was little controversy, the peace and harmony did not continue when the legislature was constitutionally mandated to do another redistricting following the 1980 decennial federal census.[1] Whereas during the two previous redistrictings there were no partisan floor debates, no vetoes, and no court challenges, the 1982 legislative session had several of all three. Before it was over there were strident and sometimes bitter partisan debates, several vetoes, and three separate court challenges—one in the state Supreme Court and two in the U.S. District Court.

During the regular 1981 legislative session, the House and Senate began the redistricting process. The president of the Senate and speaker of the House each appointed special reapportionment committees in their respective bodies to carry out the constitutional requirement that redistricting be done after each federal census.[2] Since the state's population had increased 19.8 percent since the last redistricting, with most of the growth concentrated in the towns in the southern part of the state, there would be, by necessity, substantial change in the legislative districts. Controversy began to surface immediately as the number of changes in legislative districts became more apparent and the House decided, because of its other workload, to defer any action on redistricting until a special legislative session would meet during the next year.

When the legislature reconvened, four separate redistricting bills were introduced: one for the congressional districts, one for the Executive Council districts, and one each for the House and Senate.[3] The congressional districts were almost equal in population already because the state was roughly cut in half from top to bottom and the population increase over the ten years was almost equal in both. Only two towns were affected, both moving from the 1st or eastern district to the 2nd or western district. Neither congressman objected and the redistricting bill passed without opposition. The same was true for the councilor districts. There are five executive councilors, each representing 20 percent of the state, and they were in agreement with the few changes needed to put their districts in balance.

By the end of February 1982, only the House and Senate were left to complete. The Republican leadership of each chamber had an agreement that one body would not interfere with the legislative redistricting of the other. Therefore, the House would not make any changes to the Senate bill and the Senate would not make any changes to the House bill. The minority leadership, however, did not agree to this plan. The House Reapportionment Committee presented its final proposal for the House redistricting early in February of 1982, and it consisted of using, for the first time in New Hampshire, the concept of floterial districts in some areas of the state. The U.S. Supreme Court has defined the term floterial district as a

> legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitled the entire area to another seat in the particular legislative body being apportioned.[4]

An example of a floterial district would be as follows—two towns, A and B, each have one and one-half times the number of residents for one state representative. Under the former system, it would be one district and together they would elect three representatives. Under the floterial concept, there would be three districts, with town A electing one representative, town B electing one representative, and the two together electing one which would be the floterial district.

The House redistricting legislation was approved by the special reapportionment committee on a party-line vote—12 Republicans in favor to seven Democrats in opposition. The minority was not opposed to the floterial concept per se, but rather to the political makeup of several districts, and felt the alternative minority proposal was closer to the one man-one vote principle. The majority committee position was stated by its chairman, Russell Chase, who said, "After eight months of study, the majority position was a most correct and fair solution."[5] In addition, House Speaker John Tucker sent a letter to all House Republicans on the morning of the vote, asking for their support:

> Today's vote on the unanimous Republican Committee's position on reapportionment may well be the most crucial vote you will ever cast because the result of today's action will be a matter of law for the next ten years. The Majority Report of the committee reflects a painstaking, thoughtful deliberation which was conducted over several months. The Majority Report deserves our united Republican support. Throughout both the regular and special session, the overwhelmingly consistent support to the Majority Committee position has been the key factor in the Republican leadership role in state government. Your past support has been genuinely appreciated and your continued support today is more important than ever.

The majority position prevailed on the House floor on a party-line vote, and six days later the Senate, also along party lines, voted to approve the House plan.[6] The plan consisted of 175 House districts, 15 more than the previous redistricting, including 53 single-member districts vs. 33 previously. In addition, there were 20 floterial districts made up of roughly one-third of the towns and cities of the state.

With the final passage of the House redistricting bill, the next battleground became the governor's office. The House Democratic leadership implored fellow party member Governor Hugh Gallen to veto the bill, while the Republicans sought his approval. In the end, the governor signed the bill but only after he felt there was an agreement with the speaker to further review certain districts. According to the speaker, a review was made, resulting in no changes. As a result, many Democratic House members, led by their minority leader, were severely critical of the governor and refused to work for his reelection. He was defeated in the general election later that year.

After the governor's signature, when the bill became law, several minority-party House members joined with the Democratic state committee chairman in a suit filed in the U.S. District Court, challenging the constitutionality of the new law.[7] Less than a week before the filing period began on June 2, 1982, a three-judge panel ruled that the House redistricting plan was not unconstitutional and would stand. This decision was upheld on appeal by U.S. Supreme Court Justice William Brennan on the day the state filing period began.

The Senate redistricting bill went through an equally dramatic process. Unlike the House, the Senate has all single-member districts. The Senate reapportionment committee voted along party lines, as did the full Senate, which had three roll call votes before final passage. When the bill went to the House for its approval, the Democrats tried to make changes but were unsuccessful.[8] This time the governor did exercise his veto, and it was sustained by a vote of 14-10 in the Senate when the majority failed to get the necessary two-thirds to override. After the failure to override, Senate President Robert Monier filed a request with the New Hampshire Supreme Court, asking it to implement the provisions of the Senate redistricting plan, notwithstanding the successful gubernatorial veto, because there were only two weeks before the filing period for state offices and not enough time for the legislators to act.[9] The Democrats countered with their own request, filed with the New Hampshire Supreme Court and with the U.S. District Court, offering their alternative plan instead and requesting that the Senate be required to meet and resolve the issues before the state filing period began.[10] This argument was successful with the state Supreme Court, and the senators from both parties agreed to meet and attempt to work out a revised plan that both

sides could agree to support. This effort was successful and, because there was not enough time for enactment by the legislature before the filing period began, the new plan was presented to the Court, and the judges allowed the secretary of state to accept candidate filings based on the plan as agreed upon by the parties and the Court. As part of the stipulation, both parties agreed to enact legislation implementing the senatorial districts as expeditiously as possible—which they did, subsequent to the actual filing period.

Although the House and Senate plans were finally in place, several of the 13 cities had not redistricted their ward lines, and so legislation calling for local referenda to change ward lines had to be approved by the House and Senate. All 13 cities were losing representatives because they had not shared in the population growth to the extent the towns had, which added to the controversy because most Democratic legislators came from the cities. The new plan reduced the number of city representatives from 179 to 156. The House and Senate redistricting bills had used the existing ward lines for the 1982 election, with the new lines to be implemented for the 1984 election. Each of the city bills was debated along party lines, with the majority Republican position prevailing. But as a result of the stinging criticism the governor received for his signing of the House reapportionment plan, he successfully vetoed every city redistricting bill. Thus the final House and Senate plans for 1984 and beyond had to wait until after the election and the next legislative session. With the governor's defeat for reelection and a new Republican governor, each of the city redistricting plans was reintroduced and passed into law during the next legislative session, in 1983. Thus the Senate and House plans would be in effect for the 1984 through 1990 elections.

During the many debates over the House and Senate redistricting proposals, each party claimed it was defending the one man-one vote principle, and each accused the other of tilting its proposals in its own favor. Since the governor was a Democrat and the Republicans had a majority in the House and Senate (although not a veto-proof majority), each side was fairly positioned. When redistricting was finally completed in 1983 with passage of the city ward plans, the House Democratic minority leader estimated his party would lose over 30 seats as a result of the new districts. Unlike what happened after the 1971 redistricting, when the minority party actually ended up gaining seats in the House and Senate, the first election subsequent to this new redistricting was devastating to the minority party in the House and Senate. In 1984, the Democrats lost 56 House seats, for the biggest loss this century—far above the 30-seat loss predicted by the minority leader. Only 103 Democrats were elected out of 400 House members and only six Democrats out of 24 senators. Only three Democratic senators who had a Republican opponent were elected.

Although some will argue the cause of these Democratic losses was gerrymandering through redistricting, others will point to factors such as the reduced number of Democratic legislators from the cities because of the population changes; or the national trend with President Reagan's popularity and coattails from the New Hampshire straight-ticket ballot, where you can vote once at the top of the ballot for all candidates of the same party. One telling fact, however, was that the loss of Senate Democrats equaled that of the House, yet the Senate redistricting was shared equally by the two parties. In subsequent elections, however, Democratic party members increased fractionally more in the Senate than in the House, as shown in Table 1.

Looking ahead to 1991 and the next legislative redistricting, it is likely that the cities will again be the losers when the population count is completed. Not that their

Table 1. Party Strength in New Hampshire State Legislature and Congressional Delegation, 1980-88.

YEAR	HOUSE	SENATE	U.S. HOUSE
1980	240R, 160D	14R, 10D	1R, 1D
1982	239R, 159D, 2I	15R, 9D	1R, 1D
1984	297R, 103D	18R, 6D	2R, 0D
1986	267R, 133D	16R, 8D	2R, 0D
1988	281R, 119D	16R, 8D	2R, 0D

population figures will be down, but rather the increase will not match those of the smaller towns, particularly in the southern section of the state.

NOTES

1. For a discussion of reapportionment politics in New Hampshire prior to the 1980s, see Janelle Hobbs and Blake Isaacson, "New Hampshire," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 209-215.
2. *Journal of the New Hampshire Senate 1981*, Vol. 1, pp. 379-80 (April 14, 1981) (cited hereafter as *Senate Journal*, followed by year); *Journal of the New Hampshire House 1981*, p. 867 (May 14, 1981) (cited hereafter as *House Journal*, followed by year).
3. *House Journal 1981*, p. 13 (November 17, 1981); *Senate Journal 1981*, p. 16 (November 17, 1981).
4. *David v. Mann*, 377 U.S. 686, n. 2.
5. *House Journal 1982*, p. 54 (February 4, 1982).
6. *Senate Journal 1982*, pp. 178-80 (April 8, 1982).
7. U.S. District Court for the District of New Hampshire, *Boyer v. Gardner*, C 82-287-D, May 1982.
8. *House Journal 1982*, p. 495 (April 8, 1982); *Senate Journal 1982*, pp. 182-91 (February 10, 1982).
9. New Hampshire Supreme Court, *Monier v. Gallen*, 82-208, May 1982.
10. U.S. District Court for the District of New Hampshire, *Boyer v. Monier*, May 1982.

NEW JERSEY

ERNEST C. REOCK, JR.

Prior to 1965, New Jersey's traditional pattern of legislative representation for more than 70 years was based on county units. The state Senate consisted of one senator from each of the 21 counties. The lower house, known as the General Assembly, included 60 members apportioned among the counties on the basis of population and elected at large within the counties. In 1960, the senator from Essex County represented 19 times as many constituents as the senator from Cape May County. In the General Assembly representation was more equally apportioned, with a ratio of only three to one between the largest population per Assembly member and the smallest.

CHANGING THE RULES: THE 1960S AND 1970S

In the early 1960s, the case of *Jackman v. Bodine* resulted in state court decisions declaring the traditional system of representation unconstitutional. This led ultimately to a limited constitutional convention in 1966 where the apportionment sections of the state constitution were rewritten. The major elements of the new system included:

1. A Senate of 40 members, elected in most cases at large from a variable number of Senate districts composed of whole counties, with seats apportioned among the districts by the method of equal proportions.

2. A General Assembly of 80 members, elected at large from two-member Assembly districts drawn within each of the Senate districts.

3. Restrictions in drawing the General Assembly districts providing that:

   a. Districts must be formed of compact, contiguous territory, with no district to have less than 80 percent nor more than 120 percent of the average statewide population per member.

   b. No county or municipality could be divided unless it contained at least 1/40 of the state's population.

   c. No county or municipality could be divided among a number of Assembly districts larger than one plus the whole number obtained by dividing the population of the county or municipality by 1/40 of the state's population.

4. Senate terms of four years; General Assembly terms of two years.

5. A 10-member bipartisan Apportionment Commission, consisting of five members appointed by the state chairman of each of the two major parties, to draw the districts and carry out the apportionment. In case of deadlock, the chief justice of the state Supreme Court would appoint an eleventh member.

While these provisions continue as a part of the state constitution, litigation following their use in 1967 and 1971 resulted in substantial modification by judicial interpretation. The bipartisan Apportionment Commission remains, but the pattern of representation required by the courts now requires division of the state into 40 legislative districts, with one senator and two members of the General Assembly elected from each district. The 40 percent range of population between districts permitted by the constitution has been narrowed considerably, with 11.9 percent being considered too high and 4.24 percent being commended by the court. Restrictions on the fragmentation of counties have been invalidated, but the sanctity of municipal boundaries has been upheld as a check on gerryman-

dering and to promote municipal relationships with the state government. The use of contiguous territory remains as a mandatory requirement, but the courts have endorsed political balance and the protection of incumbents as of greater importance than compactness.

The major impact of the changes made during the 1960s and 1970s was to shift the balance of power from rural to suburban legislators. With the same districts being used for the Senate and the General Assembly, there is little difference in the orientation of the two houses. A second effect of the changes was to increase the power of incumbency, with three-quarters of the incumbents being reelected in the late 1970s.

The districts eventually implemented and in use for much of the 1970s had a population range from smallest to largest of 4.24 percent of the ideal district size, according to the census of 1970. During the 1970s, however, some areas of the state lost population, while others gained rapidly. By the end of the decade some districts were approaching twice the population of others, and the necessity for revision of the districts was obvious.[1]

The 1981 Process

Democrats controlled the governor's office and both houses of the legislature in 1981. However, the constitutional requirement for a bipartisan Apportionment Commission effectively wiped out the Democrats' advantage.

The constitutional process starts with the appointment, by November 15 of the census year, of five commission members by each state party chairman. On the Republican side, the 1980-81 delegation consisted of two county party chairmen, two legislators, and one state party committeeman. For the Democrats, three legislators, the executive director of the state party, and a local county party committee member made up the apportionment team.

The New Jersey Constitution specifies that the work of the 10-member commission must be completed by February 1 of the year following the census, or within 30 days after receipt by the governor of official census results. If this deadline is not met, the chief justice of the state Supreme Court is to appoint an eleventh member to the commission. Official census figures were received in New Jersey on the last day of February 1981, which gave the original Apportionment Commission only until the end of March to complete its work.

With the census data finally available, each side concentrated on developing its own plan. It was not until March 24 that the two sides met and exchanged proposals, and this was not done in open public session. The New Jersey Open Public Meetings Act requires that all deliberations involving a majority of the members of a public body be held in public, with adequate public notice. To avoid this requirement, only a minority of the members of the commission ever appeared in the room at the same time. During the last week in March, a number of meetings were held, with agreement on redistricting some areas of the state. In addition, the Republican delegation agreed to allow the Democrats to draw the districts in the most urban areas of northeastern New Jersey in return for a free hand in designing the suburban and rural districts in the northwest.

Nevertheless, by March 31, there was no overall agreement, and Chief Justice Robert N. Wilentz appointed Donald E. Stokes, dean of the Woodrow Wilson School of Public and International Affairs at Princeton University, as the commission's eleventh member. Stokes formed his own small staff and began meeting alternately with representatives of the two party delegations.

A new deadline now began to appear. New Jersey elects its entire legislature in the odd-numbered year following each decennial census, so 1981 was crucial. The state holds its primary election on the Tuesday following the first Monday in June. Counting back from the primary election date to the deadline for filing nominating petitions and to the last statutory date by which the secretary of state must notify local election

officials of legislative district boundaries, placed the deadline for final action by the Apportionment Commission at April 13. In the absence of agreement by that time, substantial changes would have to be made in the election timetable.

The meeting schedule intensified as the deadline approached, culminating in an all-day meeting on April 12. Throughout the day, in order to preserve the right to meet in private, the two delegations never came face-to-face. During the day, Dean Stokes presented his own plan, which he considered to be fair and reasonable, and he challenged the two party delegations either to accept it or to come up with their own modification. He said that he would vote with the delegation that came closest to his own plan, so long as the changes were fair and reasonable. Ultimately, the Democrats agreed to the Stokes plan with only a few minor revisions, while the Republicans argued for more substantial modifications. Stokes then indicated that he would favor the Democratic alternative.

The final formal meeting of the Apportionment Commission was held in Trenton as a regularly advertised and constituted public meeting on the morning of April 13. The vote for the plan of districts was six to five, Stokes voting with the five Democrats and all five Republicans in opposition.

The 1981 Districts

The legislative districts approved by the Apportionment Commission in April 1981 went into effect for the elections of that year. Their populations varied from a low of 179,376 (-2.6 percent) to a high of 193,539 (+5.1 percent), for a range of 7.7 percent in 1980 population. No municipalities were divided except Newark and Jersey City, both of which had populations far exceeding the average size of a district. However, each of these cities was cut into three segments, thus violating the letter of the constitutional restriction which would have imposed a maximum of two segments in each case. The districts were all formed of contiguous territory. Although there was a tendency toward long, narrow districts, often to protect incumbents, none of the districts appeared to be obvious distortions of the compactness directive. In five cases, four incumbents were placed in new districts having only three legislative seats available.

As might have been expected from an evenly balanced, politically constituted Apportionment Commission, there was a strong effort made to draw "safe" legislative districts. Over the decade of the 1980s, 26 of the 40 districts have remained in full control of one party or the other. Of these, 14 have been Democratic districts and 12 have been Republican. The remaining 14 districts have either changed their party orientation or have elected split three-member delegations (one senator and two Assembly members). There has been at least one split delegation in every legislature, with the number peaking at seven after the 1987 elections.

A second characteristic of the 1981 legislative districts has been encouragement of the "incumbency factor." The proportion of incumbents returned to office in each election had increased during the 1970s to about three-quarters. This percentage increased further in several elections of the 1980s, as shown in Table 1. Actually, the percentages shown in the table are an understatement of the incumbency factor, because they are based on persons leaving the legislature for any reason, rather than just those being defeated in a primary or general election.

With the exception of the 1981 General Assembly election, the districts drawn in that year have always resulted in a legislative majority for the party which has gained a majority of the statewide popular vote. During the deliberations of the Apportionment Commission, Dean Stokes introduced a modification of this comparison, which he called a "fairness test." If the vote in each legislative district is adjusted for the statewide trend in that election, so that it simulates a 50 percent-50 percent split of the popular vote, then a truly neutral set of districts should produce an even split of the legislature. For example, if the Democrats gained 51.1 percent of the statewide vote and received 44 seats in the General Assembly, then reducing their vote in each district by 1.1 percent should result in their victory in only 40 contests.

Table 1. The Incumbency Factor: Incumbent Legislators Reelected to the New Jersey Legislature, 1981-89.

	SENATORS		ASSEMBLY MEMBERS	
ELECTION YEAR	REELECTED	LEFT LEGISLATURE	REELECTED	LEFT LEGISLATURE
1981	23 (63%)	15	61 (76%)	19
1983	32 (80%)	8	71 (89%)	9
1985			59 (76%)	19
1987	38 (95%)	2	62 (78%)	17
1989			71 (89%)	9

Note: Totals do not always add up to 40 and 80 seats because of vacancies.

Table 2 shows an application of this "fairness test" to the elections of the 1980s. The results indicate that the 1981 legislative districts appear to favor the Democrats. The reason for this is readily apparent if voter registration and turnout are examined. While the districts must be drawn to attain population equality, this does not necessarily result in equal numbers of registered voters or of ballots cast. Democratic party strength is concentrated in urban legislative districts which have low registrations and very low turnouts. For example, the 29th District in Newark, which is the most Democratic district in the state, in 1988 had only 37.5 percent of its estimated population registered to vote, compared with a Republican district, the 16th, which had 62.8 percent registered. Furthermore, only 58.1 percent of the registered voters in the 29th District actually voted, while 75.1 percent of those in the 16th District cast their ballots. Given the voting patterns in New Jersey, if legislative districts are drawn with reasonably equal total populations, any test which compares statewide votes cast for a party's candidates to seats won in the legislature will show that the districts favor the Democrats.

Congressional Districts

New Jersey reached its peak representation in the House of Representatives when it was allocated a 15th seat after the 1960 census. Although population growth continued through the 1960s, it slowed during the next decade and, in December 1980, the state was notified that its House delegation would be reduced to 14 members. The party balance in 1981 was eight to seven in favor of the Democrats, but one Republican member indicated early on that she intended to vacate her seat to run for the U.S. Senate.

Even if the state had retained all 15 seats in the House, it was generally acknowledged that the varying patterns of population growth in different parts of New Jersey would have required a revision of the congressional districts. The largest district population in 1980 (2nd District, 610,529) exceeded the smallest (10th District, 426,370) by 37.5 percent of the mean average. Reduction of the delegation to 14 members merely complicated the task of redistricting.

No bipartisan Apportionment Commission exists in New Jersey for the redrawing of congressional districts. Instead, the responsibility remains with the legislature and the governor's office. In 1981, both were controlled by the Democrats, and the Democrats were ready to make the most of the opportunity.

With the next congressional election not due until 1982, there was less time pressure than for state legislative districts. Although various proposals were introduced by individual legislators, it was not until the latter part of 1981 that the official Democratic bill was introduced. By this time action was urgent since, although the Democrats had retained control of both houses of the legislature in the 1981 elections, they had lost the governor's office in an extremely close election. After some fumbling with districting plans that had obvious flaws, even from a partisan viewpoint, a law finally was enacted and signed by outgoing Governor Brendan T. Byrne on January 19, 1982, just

Table 2. The "Fairness Test": Democratic Statewide Vote for Legislative Candidates, Seats Won in Legislature, and Number of Seats Won if District Vote Adjusted for Statewide Trend.

	STATE SENATE			GENERAL ASSEMBLY		
ELECTION YEAR	DEMOCRATIC VOTE (%)	DEMOCRATIC SEATS WON	DEMOCRATIC SEATS IF STATEWIDE 50% VOTE	DEMOCRATIC VOTE (%)	DEMOCRATIC SEATS WON	DEMOCRATIC SEATS IF STATEWIDE 50% VOTE
1981	50.3	22 (55.0%)	22 (55.0%)	49.7	43 (53.8%)	43 (53.8%)
1983	52.3	23 (57.5%)	21 (52.5%)	51.1	44 (55.0%)	44 (55.0%)
1985	--	--	--	42.9	30 (37.5%)	43 (53.8%)
1987	51.5	24 (60.0%)	22 (55.0%)	45.4	38 (47.5%)	47 (58.8%)
1989	--	--	--	53.4	44 (55.0%)	38 (47.5%)

Note: Adjustment made in statewide percentages for lack of candidates in some districts.

hours before he was succeeded by Republican Governor Thomas H. Kean.

The plan of districts adopted by the Democrats had very low population variations, with the largest district population exceeding the smallest by only 3,674 persons, or 0.7 percent of the mean district average. What was most striking to the layman, however, was the configuration of the districts. One district (the 7th) came to be known as "the fish hook," and similar names were applied to other districts. One was described by a Democratic staff member as "contiguous only because it is connected by a 100-foot-wide beach peninsula with water on both sides." A spokesman for Common Cause commented that "Governor Gerry would be very, very proud." A Republican legislator, later to become a member of Congress, called the plan "the most blatant, arrogant gerrymandering I have ever seen." In two instances, two Republican incumbents were placed in the same district, and in another case a Republican was matched against a popular Democratic incumbent in a basically Democratic district.

Despite the outlandish shapes of many districts, the plan was not to be struck down on the grounds of gerrymandering, but rather because other plans which had earlier been made available to the legislature had smaller population variations. Soon after the Democratic districts were approved, a suit challenging the plan was filed in federal court by a group which included several Republican members of Congress (*Daggett v. Kimmelman*). On February 26, 1982, a three-member federal district court held a hearing on the plan and soon thereafter the districts were declared unconstitutional. The court rejected a defense argument that the population variations were lower than the statistical errors contained in the census. The court held that the population variations in the plan were not unavoidable. An interesting sidelight was that a portion of the defense of the plan now rested with a Republican attorney general. The Democrats, however, provided their own defense representation.

Although the federal district court enjoined any further primary or general elections using the Democratic districts, this order was stayed by Justice William Brennan, pending an appeal to the U.S. Supreme Court. The districts then were used in the election of 1982. While early speculation had been that the plan would result in the election of 10 Democrats out of 14 contests, the voters thought otherwise. All but one of the Republican incumbents were reelected, even though two of them were not residents of the districts in which they ran. The Democrats did pick up one seat in another district to gain a nine-to-five edge, with redistricting probably having an impact.

The U.S. Supreme Court heard the appeal from the district court level on March 2, 1983 (*Karcher v. Daggett*). In June, the Court made its decision, and by a five-to-four vote it upheld the lower court, declaring the Democratic plan of districts to be unconstitutional. The decision by Justice Brennan called for congres-

sional districts to be as nearly equal in population as practicable, with the state required to justify any deviations from absolute equality as necessary to achieve some legitimate goal. New Jersey's plan was not regarded by the Court as a good faith effort to achieve population equality.

The case then shifted back to the federal district court, which held additional hearings in early February 1984, and received proposed new plans of districts. Later that month it issued its decision, which adopted and directed the implementation of a districting plan proposed by the Republican plaintiffs. This plan reached a new level of population equality, with the largest congressional district differing from the smallest by only 26 persons, according to the 1980 census. In order to achieve this degree of equality, the drafters of the plan divided two medium-sized municipalities between districts. The impact of this plan, which has been used since the election of 1984, was an immediate reduction in Democratic representation from nine to eight members of Congress, as a long-time Democratic incumbent was defeated in an overwhelmingly Republican district. The eight-to-six balance has remained in every subsequent election.

The 1991 Process

The situation in 1991 will be remarkably similar to that which prevailed in 1981. Population has continued to move from the heavily urbanized northeastern part of the state to the outlying suburban and surburban-rural areas of central New Jersey. State legislative districts vary in 1988 estimated population from a low of 176,077 (29th District) to a high of 230,907 (9th District), for a range of 28.4 percent.

Again, the state is faced with the possible loss of a seat in the House of Representatives. Recent projections show that New Jersey will either just retain or just lose its 14th seat, depending on the projection method used. The present congressional districts vary from an estimated 504,970 in 1988 population (10th District) to 613,410 (4th District), for a range of 19.7 percent. By 1990, these variations will be significantly higher.

The political situation also is similar to that which existed in 1981. Democrats control both houses of the state legislature and the governor's office. They almost certainly will try to capitalize on this when it comes time to redraw the congressional districts. Whether they will be able to do this more discreetly and effectively than they did in the 1980s remains to be seen. The actual enactment of the districts probably will not come until 1992, although, if the Republicans win either house in the legislative elections scheduled for 1991 in new state districts, there may again be a hurry-up redistricting by a lame-duck legislature in late 1991 or the first weeks of 1992.

At the state level, the Apportionment Commission provides some safeguards against partisan gerrymandering. The 10 original members will be appointed by November 15, 1990. The odds are that an eleventh member again will be necessary to break a party-line deadlock and achieve a balanced and fair plan of legislative districts.

The 1990 election was fought in an atmosphere of tax revolt, occasioned by the Florio administration's $2.8 billion tax increase of 1990. No state offices were contested. However, Democratic U.S. Senator Bill Bradley, expected to win reelection easily against an unknown candidate, refused to take a position on the state tax increases, and was barely elected with 51.6 percent of the two-party vote. Several Democratic members of Congress came very close to defeat, but managed to survive with reduced majorities. All incumbents were reelected.

The state legislative districts were redrawn in March 1991 by the State Apportionment Commission.

NOTES

1. For a discussion of New Jersey reapportionment before 1980, see Ernest Reock, "New Jersey," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 216-19.

New Mexico

Fernando V. Padilla

Three issues from the 1970s complicated redistricting in 1982.[1] One, conservative House Democrats in 1978 joined Republicans to form a cross-party coalition that dominated House reapportionment processes. Two, only seven Senate terms ended in 1982. Three, precinct populations were *estimates* based on a "votes-cast" formula that underestimated minorities in low-voter-turnout precincts and overestimated Anglos in high-voter-turnout precincts.

Congressional Reapportionment

Based on the 1980 census, New Mexico gained a third seat in Congress. Its two districts were divided north to south, with Bernalillo and most Hispanic counties in the north and most Native Americans in the south. Both chambers agreed on a central, four-county district based around Albuquerque, with 434,141 people (within 0.04 percent of the ideal), including 2.6 percent Native Americans, 2.3 percent African Americans, and 37 percent Hispanics. The House and Senate split on the makeup of the two other districts. Senate Republicans wanted north and south districts that favored reelection of incumbent Joe Skeen, and Democrats wanted a liberal Democrat. The House coalition plan divided the state diagonally northeast to southwest; it split Hispanic northern counties between the two districts. The northwest district favored an Anglo conservative Democrat, represented mining and energy interests, and included most Native Americans. A conference committee approved the Senate version, but placed Lincoln County in the southern district and Hispanic Colfax County in the north. The northern district was 21 percent Native American, 0.5 percent African American, and 39 percent Hispanic. The southern district was 1 percent Native American, 2.8 percent African American, and 33.6 percent Hispanic.[2]

State Senate Redistricting

Both houses agreed to the same process used in 1972: regional clustering of contiguous counties, not violating the boundaries of clusters, and not interfering with the other chamber's plan. Each cluster had to come within 5 percent of the population ideal of a whole number of districts. In the Senate, districts ranged from 29,470 persons to 32,572, with an ideal size of 31,021. Two factors complicated Senate redistricting. One, the 1980 election changed the partisan lineup from 32-10 Democratic to 22-20 Democratic. Democrats adopted a strategy to accommodate as many incumbents as possible. Incumbents chose their own precincts, but when conflicts arose Democrats won. Two, with only seven Senate terms ending in 1982, the fragile Democratic majority needed the four votes of the Democrats with expiring terms to pass a reapportionment bill.

Two controversies involved the northwest cluster: one, which counties to include; and two, a second Navajo seat. First, Democrats placed Los Alamos and Sandoval Counties in the northwest, creating a cluster with one Democratic and five Republican incumbents. Second, with 63,981 Native Americans in San Juan and McKinley Counties, they were entitled to two Senate districts. Native Americans were over 8 percent of the state's population; however, they held only one seat in each house, including that of Senator Joe Pinto, a Navajo. Senator Stoddard's new district ran from Los Alamos into the heart of the Navajo reservation. No road ran the length of the district even though it was connected by contiguous precincts. Republicans urged Democrats to create a second Navajo seat by giving Senator Stoddard one or two precincts in Rio Arriba County. Democrats responded that the four other Republican incumbents had selfishly created districts to ensure their own reelections.[3]

State House of Representatives Redistricting

House redistricting was dominated by conservative ideology, not partisanship. The cross-party majority split the House along traditional New Mexican lines,

pitting conservative Anglo, Protestant, eastside areas, which had not grown very much, against the liberal, Hispanic and Native American, Catholic north, which grew the most during the 1970s. Furthermore, most coalition leaders were eastsiders from Otero County. Although held together by ideology, the coalition was shaky at best. Coalition leaders did not want their members to talk to or be seen with loyalists; they feared losing their majority. A good deal of friction existed between leaders, with the coalition perhaps "as loose as personalities." One Republican refused to join the coalition. He felt that blurring partisan differences would hurt Republicans.[4]

In spite of weaknesses, the coalition held together very well on redistricting. Moreover, its work showed extensive computer pre-session planning by Republican consultant Dennis Stevens. Democrats appeared in disarray, demonstrating a lack of advance planning. They held only one meeting of Bernalillo County's 14 Democrats, in October 1981, with Brian Sanderoff, an aide to the governor. House districts ranged from 17,682 to 19,544 persons, with an ideal size of 18,613. The governor played a very limited role in January. Compared to the Senate's spirit of accommodating incumbents, the coalition protected its members and punished its enemies. Since there were northern conservative Hispanic Republicans in the coalition, antagonism toward Hispanics was ideological, not racial. Loyalists individually negotiated district lines with coalition leaders, further dividing Democrats. The major issue was which counties to include in each cluster.

Judicial Challenge

Democrats, Hispanics, and Native Americans challenged the votes-cast formula and the dilution of minority voting strength in state and federal courts. Another suit challenged the extension of the seven Senate terms.[5] In addition, the FBI began probing precinct and voting records of four populous counties with large Hispanic and Native American populations and the U.S. Department of Justice later intervened on the side of these minorities.

The 1972 election was held under provisional plans, using a votes-cast formula to estimate precinct populations. The votes-cast formula underrepresented low-voter-turnout precincts, but the estimated populations of all precincts within a county equaled the total county population. The votes-cast formula for use in 1972 was upheld in state and federal district courts. The legislature made the "provisional" plans permanent in 1973.[6]

The head of the Division of Government Research advised the legislature that a 1982 redistricting plan based on the votes-cast formula would lose in court. However, the director of the Legislative Council Service advised reapportionment committees that the courts were concerned only with the weight of each vote, not the number of children, prisoners, or aliens. Except for congressional districting, the legislature never seriously considered an alternative to the votes-cast formula in drawing state legislative district lines.[7]

Senator Manny Aragon (D-Albuquerque) presented census-based precinct population estimates which showed that the votes-cast formula discriminated against minorities. The ten Bernalillo County precincts with the highest percentages of Hispanics underestimated their populations by 35 percent and the ten precincts with the fewest minorities overestimated their populations by 68 percent. In addition, the votes-cast populations for Native American reservations at San Felipe Pueblo and Santo Domingo Pueblo were 260 and 750, respectively, whereas the census figures were 2,100 and 2,900, respectively.[8]

On April 5, the three-judge federal district court prohibited state legislative candidates from filing for the June 1 primary election, and the following day the court declared the House and Senate redistricting plans void. It held that the formula

> causes substantial variations between the numbers derived thereby and United States census figures. This comes about by reason of the inclusion of the *total vote cast* as an element of the formula. These variations are not constant throughout the coun-

> ties, districts or precincts. With respect to House districts . . . the maximum deviation of actual population from the population ideal is 94 percent. With respect to Senate districts, the maximum deviation from the population ideal is 83 percent. The disparities have such consequence that we conclude that the "votes cast formula" is constitutionally impermissible. [Emphasis in original.][9]

The court also voided term extensions for senators and prohibited the state from holding its primary until the legislature was redistricted. On appeal, Justice Byron White restored the June 1 primary for all *non*-legislative races.[10]

Using census data, New Mexico spent nearly $2,000,000 to estimate each precinct's population. The Census Bureau estimated precinct populations for the seven largest counties representing nearly two-thirds of the state's inhabitants. Plaintiffs and the state's demographers estimated the other 26 counties' precinct populations, with differences resolved by a referee. Native Americans complained that the census figures also undercounted their populations. For example, the Bureau of Indian Affairs counted 1,826 people at San Juan Pueblo and 3,297 at Isleta Pueblo while census figures were 1,224 and 2,672.[11]

State Senate Redistricting

Bipartisan incumbent accommodation continued in the Senate. The crucial swing votes were the four Democrats whose terms would expire in 1982 and Navajo Senator Joe Pinto. Seven Senate terms were extended to 1984, but a Republican challenge came within two votes of winning. A Republican amendment to force appointed Democratic Senator Lucy Brubaker to run in 1982 also barely lost.[12]

Northwest cluster redistricting grew into a debate over Navajo representation because greater stress was placed on ethnic minority communities of interest. Senate Democrats, over the objections of Senator Pinto, created a new reservation-based, overwhelmingly Navajo, "exclusive[ly] Indian" district without an incumbent. Senator Pinto's district was only 51 percent Native American and he was paired with incumbent Republican Senator W. S. Eoff. Senator Pinto moved to the new district and was easily re-elected. Republicans favored four districts 51 percent Native American rather than a safe one. Democrats replied they could have created two or three safe Native American districts which would have hurt Republican incumbents, and they protected three Albuquerque Republican incumbents living close together who could have been placed in one district.

The June 1982 Court-ordered Reapportionment: State House of Representatives Reapportionment

The Senate Republican minority leader stated, "[T]he plan was molded in a genuine spirit of accommodation . . . ."[13] By comparison, House redistricting politics was acrimonious. The coalition retaliated against Representative Al Valdez, a plaintiff, by trying to move him out of his district. Senate Democrats drew their own district lines and let Republicans remap the rest. In the House, the coalition mapped out all districts. Some loyal Democrats from smaller counties negotiated their district lines, but the coalition refused to negotiate or show their maps to Bernalillo County Democrats.

The first issue was whether the state legislative primary was a separate primary independent of the June election or an extension of it. A number of legislators were concerned that losing county, state, or congressional candidates in June would run against them in August if it was a separate primary. The House decided it was a separate primary, but few losing candidates ran again. The second issue was creating districts with near equal numbers of people. On the basis of census figures, districts with too many people tended to be working-class Democratic and minority, and those with too few people tended to be middle-class Republican and Anglo. Census-based redistricting was the Achilles heal of coalition eastsiders, whose area had not kept up with population increases in the rest of the state. In the plan finally approved, coalition districts in the southern cluster had 4 percent fewer people than noncoalition districts. The third issue defined "communities of

interest" as racial and ethnic minorities instead of mining and energy. The two northwestern counties had a population 46 percent Native American. The coalition created two safe Navajo seats and a possible third. Native Americans charged that incumbent protection denied them at least three safe seats. In January, Roswell Hispanics were divided among three districts. In their suit, Hispanic plaintiffs cited Roswell as an example of "cracking" minority voting strength. In June, four of the five Hispanic precincts were placed in one district 50 percent Hispanic, and it did elect a Hispanic. [14]

Governor Bruce King was more active in June. The coalition wanted to draw only ten Democratic districts in Bernalillo County, loyal Democrats wanted 14, and the governor wanted and got 13. He kept threatening a veto, and loyal House Democrats demonstrated they would sustain it. In the end, King signed the bill.

Congressional elections went as expected. The northwest district elected liberal Hispanic Democrat Bill Richardson, the southeast reelected Republican Joe Skeen, and the central district reelected Hispanic Republican Manuel Lujan. There were no state Senate elections. Thirteen members of the House retired after the June reapportionment, including five Republicans and three loyal Democrats paired with incumbents in districts more than 50 percent new. Five lost in the August primary and three more lost in the general election.[15]

With 21 new House members, the partisan lineup changed from 41 Democrats and 29 Republicans in 1982 to 45 Democrats and 25 Republicans in 1983. Several key coalition leaders were defeated by loyal Democrats, but both sides claimed 35 votes. Governor Toney Anaya denounced continued dominance by the coalition. When the 1983 session started, the Democratic caucus unified to elect loyalist leader Raymond G. Sanchez as speaker of the House.[16]

The 1984 Elections and Court Reapportionment: The State Senate

Governor Anaya's non-consultative style irritated many senators. In 1984, four Democrats, including two Hispanics, joined 19 Republicans to block the governor's budget. This group dominated the Senate for the remainder of 1984. Hispanic Senator Ronald Olguin (D-Albuquerque), who opposed the governor, was defeated in the primary. The Senate went from 23 Democrats and 19 Republicans in 1984 to 21 members each in 1985, when four Democrats lost in the general election. Republicans got two Democratic votes to control the Senate. Democrat Les Houston was elected Senate president pro tem, but Republicans took control of all committees. Democrats regained control when they won 26 of 42 seats in 1988.[17]

Minorities challenged the June 1982 redistricting plan in federal court because the House used "cracking" and "packing" techniques to dilute minority voting strength. In June 1984, the federal district court held that the 1982 plan was "a racially-motivated gerrymander" that violated the Voting Rights Act by fracturing the voting strength of minorities.[18] The court redrew boundaries for 16 districts in 14 counties, including three new districts with large Native American majorities. In the general election, Native Americans won four of the five districts in which they were a majority. Results of judicial redistricting for Hispanics were more ambiguous. Hispanics decreased in membership from 21 to 18.

The fragility of the House coalition was demonstrated by the results of the 1984 election. Although Republican membership increased by two, former coalition leaders Republican Hoyt Pattison and Democrat George Fettinger were defeated for reelection. There was talk of reviving the coalition but the group lacked leadership. Representative Sanchez was reelected speaker.[19]

Redistricting in the 90s

In most respects, the 1992 redistricting is expected to focus on partisan issues. However, one technical issue remains. As part of the 1984 settlement that found

New Mexico in violation of the Voting Rights Act, the state signed a consent decree which mandated it participate in the Census Bureau's block boundary suggestion program. New Mexico must prove that precinct boundary lines follow physical features. The block boundary suggestion program allows a state to suggest precinct and census block boundary lines that follow physical features. However, rural township range boundaries do not follow physical features and the state has not participated in the block boundary suggestion program. Moreover, having been found in violation of the Voting Rights Act, New Mexico is a preclearance state that must receive approval from the U.S. Justice Department to change political boundaries. To meet preclearance requirements it must provide a political history of the proposed new precincts, a history which may not exist.[20]

NOTES

1. For a historical summary of New Mexico reapportionment before 1980, see Richard Folmar, *Legislative Reapportionment in New Mexico, 1884-1966* (Santa Fe: Legislative Council Service, 1966), and Fernando V. Padilla, "New Mexico," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 220-31.

2. Paul L. Hain, F. Chris Garcia, and Robert U. Anderson, "New Mexico Reapportionment, 1982," in Richard Santillan, ed., *The Hispanic Community and Redistricting* (Claremont, CA: Rose Institute of State and Local Government, Claremont McKenna College, 1984), pp. 126-30; telephone interview with Dean Paul Hain, Texas A&I University, February 1991.

3. Ibid.; Hain et al., "New Mexico Reapportionment," pp. 133-35; HVECS/House Bill 3, approved January 16, 1982, Chapter 2.

4. Telephone interview with Professor F. Chris Garcia, University of New Mexico, December, 1990; telephone interview with Robert U. Anderson, Director, Division of Government Research, University of New Mexico, February 1991; telephone interview with Hain.

5. *Sanchez v. King*, 550 F.Supp. 13 (1982). The three-judge federal district court merged four cases: *Frank I. Sanchez et al. v. King*, Civil Number 82-67-M; *Raymond Vargas et al. v. Hooper*, Civil Number 82-180-C; *Ronald G. Olguin et al. v. Hooper*, 82-219-JB; and *Patricia M. Marsh v. King*, Civil Number 82-246-JB.

6. For a technical discussion of the "votes cast" formula, see James M. Schermerhorn and Michael A. Stoto, "Measuring a Redistricting Plan's Deviation from Population Equality and Its Effect on Minorities: New Mexico's Experiment with a 'Votes Cast' Formula," *University of California at Davis Law Review* 17 (1984): 591.

7. Hain et al., "New Mexico Reapportionment," pp. 123-24; telephone interview with Anderson.

8. Hain et al., "New Mexico Reapportionment," pp. 122-23.

9. *Sanchez v. King*, 550 F.Supp. 13 (1982); *King v. Sanchez*, 459 U.S. 801 (1982). The rejection of the "votes cast" formula could have been predicted by *Travis v. King*, 552 F.Supp. 554 (D. Hawaii, 1982).

10. Hain et al., "New Mexico Reapportionment," pp. 125-26.

11. Ibid., pp. 141-44; telephone interview with Anderson.

12. Telephone interview with Hain; Hain et al., "New Mexico Reapportionment," pp. 143-44.

13. Ibid., p. 147.

14. Ibid., pp. 147-58; telephone interviews with Anderson and Hain.

15. Hain et al., "New Mexico Reapportionment," pp. 160-62.

16. Ibid., pp. 162-63; telephone interviews with Garcia, Anderson, and Hain.

17. Hain et al., "New Mexico Reapportionment" (1984 Postscript), pp. 1-2.

18. *Sanchez v. King*, unreported decision cited ibid., p. 1.

19. Ibid., p. 3.

20. Telephone interviews with Anderson and Seckler.

New York

Jeffrey M. Stonecash

Politicians battle over redistricting as if it matters. Political parties in particular are very concerned about the shape of district maps. They assume how they draw boundaries will have a major impact on their ability to take control of a house. But how much can they affect their electoral prospects? New York provides an important test of the effect they can have. In 1974, due to Watergate, Democrats gained control of the Assembly for one of the few times in the twentieth century. Since 1900, Democrats had held the Assembly for only 12 years. They were able to retain the control they gained in 1974 through the 1980 elections. This represented the first time the Democrats had a role in the redistricting process in the twentieth century. Redistricting presented a crucial opportunity for the Democrats to solidify their position.

The Republicans also faced an important challenge. The party had been experiencing a long-term slide in enrollment across the state for the last several decades.[1] Republicans had not held the governor's chair since the 1974 elections. The Senate was the last state institution under the control of Republicans, and they had to try to use their current control to make sure they did not lose the Senate during the 1980s.

The legislature had the legal power to enact a new districting plan, and the divided control that prevailed set up the potential for a major battle. The battle was likely to be particularly focused and intense because of the tradition of strong parties in the legislature. Parties and their leaderships completely dominate the legislative process. That dominance includes the allocation of resources and the control over legislation within the houses. Losing control over a house and becoming the minority party banishes a party to ineffectiveness, a position neither party wants to experience.

The Goals

At its simplest, the goal of each party was to maintain its number of seats and control in its own house. But the parties in each house had different challenges. The Senate Republicans, faced with the prospect of their electoral base eroding over the 1980s, wanted to maintain their number of seats, even though their vote proportion might decline.

For the Democrats, there were multiple and more ambitious goals. First, they wanted to retain the incumbents from the seats won in 1980, and they wanted to make them more electorally secure. They sought to increase their vote proportion for incumbents. Second, they wanted to carve out districts Democratic candidates might win in 1982 and the future.[2] If the districts were attractive enough to Democrats, they might even be able to prompt some Republican incumbents to retire. Even if the Democrats could not force out Republicans in newly drawn districts, they might create districts in which Republicans might find it difficult to be quite so conservative. If so, Republicans in these districts might be more inclined to temper their criticisms of Democratic programs, such that Democrats would not be subject to as much intense criticism. These specific goals are all part of trying to enhance Democratic numbers and control, and reduce Republican prospects and opposition.[3]

The Battle Over Redistricting in 1982

In New York, redistricting plans originate in the legislature. There is not a permanent independent commission which has authority over redistricting. Despite this power, the legislature lost control over redistricting once in the 1960s because the partisan battles over the issue produced such a stalemate. Fear of a repeat of that loss of control played a role in the 1982 redistricting. Redistricting in 1982 began with a recognition that the 1970s had produced population

shifts. The 1980 census revealed that areas of the state outside New York City had gained relative to the City, and New York City would have to lose five Assembly seats and two Senate seats. The size of the Assembly was capped by law at 150. The Senate had been capped at 60, but the Senate expanded to 61 in 1982 due to a clause in the constitution allowing one more senator to be added. Because of these caps, population and seat increases in any area would require reductions in other areas of the state. The primary population growth had occurred in the suburbs of Long Island and the areas north of the City. Coping with these population shifts affected each house differently. It made the task of Senate Republicans easier. New York City is heavily Democratic, and having fewer seats to contest there could only help Republicans. This made the task of Assembly Democrats more difficult. They would have fewer seats to contest in their strongest area. Areas outside New York City had historically not elected many Democrats.

The 1982 redistricting began as the 1960s redistricting had begun. Each house prepared separate and different district maps for both houses. The Senate Republicans proposed a plan which appeared to maximize their potential seats in both houses. The Assembly Democrats proposed a different plan which looked as if it would allow them to win more seats in the Assembly, and would allow Senate Democrats to increase the number of seats they held.[4] Neither house would accept the plan of the other. As the year progressed, the courts became involved. The courts soon set deadlines as to when plans had to be adopted.[5] As the deadline approached, each house held out for its own plan. After missing several court-ordered deadlines, and faced with the prospect of losing control of redistricting, the legislature agreed to follow essentially the same rule as that used in the 1960s. Each house drew its own boundaries.[6] The parties agreed, in effect, to a tradeoff in which the majority party in each house could seek to carve out a ratification of the status quo in each house.[7]

The "ratification" was not the same in each house, however. As noted earlier, the Senate was trying to preserve its dominance.[8] The Assembly Democrats, on the other hand, were presented with a unique opportunity.[9] They could use this power to solidify and increase their control over the Assembly. The question is: How successful was each house in achieving its objectives?

Table 1. Senate Seat Changes for Republicans Before and After Redistricting.

PARAMETER	1980	1982	1984	1986
Republicans				
Percent Vote	55	52	55	55
Percent Seats	55	57	59	57
Change in % seats from prior year	-3	+2	+2	-2

The Consequences: The Senate

Prior to the 1982 election, the Senate Republicans had averaged 52.6 percent of the two-party vote for 1972-1980, the years the prior redistricting plan was in effect. If the unusual year of 1974 (Watergate) is excluded, the average was 53.5. Table 1 indicates the proportion of seats won in the elections of 1980-86. If redrawing boundaries is to have any impact, it should show up in elections after the new district boundaries go into effect. In the case of the Senate, at least two changes are possible. Given their declining proportion of party enrollment, the Republican party might just be able to maintain the situation that had prevailed throughout the 1970s when the Republicans held a continuing 35-26 edge in the Senate. On the other hand, if the Republicans were particularly adept at boundary drawing, they might be able to increase the proportion of votes and seats they received. Apparently the Republicans could achieve only the more modest goal. As Table 1 indicates, there was no noticeable change after the 1982 elections. The proportion of votes and seats remained essentially the same for the three elections of 1982-1986. In the 1982 election Republicans lost one seat in New York City, but they gained one seat upstate. The stability of the distribution of seats for the parties by areas of the state is shown in Table 2. There was almost no shift in the bases of the parties.

Incumbents played a major role in this stability. In the 1982 elections, 58 of the 60 incumbents ran for office.

Table 2. Distribution of Senate Seats by Party and Area, Before and After Redistricting.

AREA	1980			1982		
	TOTAL NO.	DEM.	REPUB.	TOTAL NO.	DEM.	REPUB.
Long Island	8	0	8	9	1	8
New York City	26	20	6	25	20	5
Upstate	26	5	21	27	5	22
TOTALS	60	25	35	61	26	35

No Republican incumbents retired, and only one incumbent (a Republican) was defeated. The goal of the Republicans in redrawing the boundaries was to preserve and strengthen their incumbents. This meant increasing their proportion of the vote won. Table 3 indicates the vote proportion for incumbents who won in 1982 for each party. The consequence of redrawing the boundaries was apparently to "pack" the districts of each party's incumbents and increase their vote proportions.[10] The effect was greater for Republican incumbents, as should be expected. Their average increase in the proportion of the vote was 7.6, while it was only 1.5 for Democratic incumbents.

Redistricting was a success for Republicans in the Senate. They preserved their hold on the Senate and strengthened their incumbents. The status quo prevailed.

The Consequences: The Assembly

The Assembly presents a very different situation. The goal of Democrats was to alter the pro-Republican bias of the 1970 redistricting pattern. The Democrats had acquired power in 1974 due to Watergate. The Democrats experienced a significant increase in the proportion of seats they held after the 1974 elections. The crucial matter is what they were able to achieve in the 1982 elections with a new redistricting map. Since the 1974 elections the Democrats had experienced stability in the proportion of seats held, but they wanted to increase that proportion. The impact of the new lines was immediate, and is shown in Table 4. The number of Democrats in the Assembly increased from 88 in October 1982 to 98 in January 1983.[11] The proportion of seats held increased from 59 to 65 percent and stayed at 63 percent for the next two elections. The overall percentage of the vote won by Democrats did not change as much, however. What the Democrats were able to accomplish was a substantial increase in their yield from the votes they received.

The intriguing matter is how this change came about. What brought about this increase in Democrats? Two questions are particularly important: Where did the Democrats pick up seats, and how did margins of victory of candidates change after redistricting? Table 4 presents the change in seats by party for the three major areas of the state. The areas are Long Island and upstate, where the population increased, and New York City. As a result of redistricting, New York City lost five seats, while Long Island picked up one and upstate picked up four. The first two areas had traditionally elected far more Republicans than Democrats.

Table 3. Vote Proportions for Senate Incumbents Before and After Redistricting.

PARAMETER	NUMBER	PROPORTION OF VOTE	
		1980	1982
Republicans who:			
Continued	32	58.1	65.7
Retired in '82	0		
Lost in '82	1	58.0	
Began in '82	1		61.0
Democrats who:			
Continued	25	79.4	80.9
Retired in '82	2	90.3	
Lost in '82	0		
Began in '82	3		74.2

Table 4. Distribution of Assembly Seats by Party and Area, Before and After Redistricting.

AREA	1980			1982		
	TOTAL NO.	DEM.	REPUB.	TOTAL NO.	DEM.	REPUB.
Long Island	21	8	13	22	9	13
New York City	65	58	7	60	59	1
Upstate	64	22	42	68	30	38
TOTALS	150	88	62	150	98	52

The success of Democrats with this change in district locations is clear. The shifts are shown in Table 4. In Long Island the Democrats picked up the new seat for a net gain of one. In New York City there were seven Republicans before redistricting. Two retired. Four of them ran and lost. Only one Republican incumbent ran and won, and that was in a conservative area of the City (Staten Island). Even though there were five fewer seats in New York City, Democrats still picked up one seat. Upstate they were equally successful. No incumbent Democrats lost upstate, while four Republican incumbents were defeated by Democrats. Of the four new districts, Democrats picked up two. Finally, several retiring Republicans were replaced by Democrats. The net shift was a pickup of eight seats for Democrats. The overall change was from 88 to 98 seats for Democrats.

Table 5. Vote Proportions for Assembly Incumbents Before and After Redistricting.

PARAMETER	NUMBER	PROPORTION OF VOTE	
		1980	1982
Republicans who:			
Continued	41	69.0	73.2
Retired in '82	15	65.3	
Lost in '82	8	63.6	43.9
Began in '82	11		58.3
Democrats who:			
Continued	74	70.2	75.0
Retired in '82	12	79.2	
Lost in '82	0		
Began in '82	24		65.3

Unlike the Senate, significant change occurred in the Assembly. How did this change come about? Table 5 presents the vote proportions for different categories of Assembly members. As with the Senate, the focus is on changes from 1980 to 1982. Assembly members are grouped according to whether they were incumbents who continued from 1982 to 1983, incumbents who retired, incumbents who were in office in 1982 but lost in the 1982 elections, or new Assembly members who took office in 1983. The vote proportions by group are revealing of what redistricting did in New York.

A substantial number of incumbents (115 of 150) continued from 1982 to 1983. The percentage of incumbents seeking and winning reelection in New York has been high (averaging about 90 percent) since the early 1900s, and a high level continued in 1982.[12] The voting results suggest again that there was considerable "packing" of districts with voters favorable to the respective parties. For incumbents of both parties, the proportion of the vote increased from 1980 to 1982. Republican incumbents increased their proportion by 4.2, and Democrats by 4.8.

Interesting changes also occurred in the other categories. Eight Republicans ran for reelection and lost. On average, they experienced a drop in their vote proportion of about 20 percentage points. Given the relative stability of the overall proportion of the vote going to Republicans across the two elections (50 percent in 1980 and 45 percent in 1982), this drop is unlikely to reflect a general drop in support for Republicans. It is more likely to reflect the impact redistricting had in creating new and inhospitable districts for these incum-

bents. For Democrats, no incumbents ran and lost, so there is no change to assess.

The difference between retiring and new legislators is also revealing. Fifteen incumbent Republicans retired and 11 new Republicans entered in 1982. Those who retired averaged 65.3 percent of the vote in 1980, while new Republicans averaged only 58.3 percent. The new Republicans were clearly less secure than the older ones. Redistricting had cost Republicans seats, and it also created new districts which presented some problems for Republicans.

For Democrats, a similar contrast between old and new members developed, but for different reasons. The Democrats replaced 12 retiring members with 24 new ones. Some of these were in New York City, and they won by large margins. There were 12 new Democrats in New York City after the 1982 elections, and their average vote proportion in 1982 was 73.6 percent. But the bulk of gains for Democrats was outside New York City, in areas where Democrats historically had not done well. The vote proportions of these new Assembly members outside New York City were not large in 1982. There were 12 new Democrats outside the City, and their average proportion of the vote in 1982 was 56.7. This is why the average vote proportion of new Democrats was 10 points below that of continuing Democrats in 1982. In subsequent years, some of these new members from 1982 increased their vote proportions, but they started relatively low in 1982 because many of them were in new territory for Democrats.

Conclusions

The 1982 redistricting established the partisan division of power in the New York legislature for the 1980s. It allowed the Republicans to continue to control the Senate, but consigned them to a difficult situation in the Assembly. It allowed Democrats to gain stronger control over the Assembly, but left them just out of reach of controlling the Senate. Redistricting also established the broad outlines of subsequent policy debates in the state. During the last decade, Senate Republicans have consistently taken more conservative positions in policy debates than Assembly Democrats. The governor's office has been held by Mario Cuomo, a relatively liberal Democrat, since 1982. Legislative sessions each year regularly revolve around conservative and liberal bargaining positions taken by the Senate and Assembly, respectively. In the case of New York, at least, this divided control has contributed to a clear, relatively focused, debate between the parties.

It is a battle which may not change much with redistricting in 1990. The legislative parties, and particularly the Republicans, have developed well-financed and sophisticated campaign committees which devote their resources and attention exclusively to legislative elections.[13] They raise large sums of money (two to four million dollars per legislative party in each house per election cycle in 1988). They are very effective in mobilizing resources to concentrate on close races.[14] Unless there is a major national event which creates a general, significant shift in partisan voting (such as Watergate, or a severe recession), this stability of divided partisan control may well prevail through the 1990s.

NOTES

1. Jeffrey M. Stonecash, "An Eroding Base: The GOP's Upstate Foundation Is Showing Some Cracks," *Empire State Report*, May 1986, pp. 53-58. For a discussion of redistricting in New York before 1980, see David Schulz and Richard Lehne, "New York," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 232-40.

2. E.J. Dionne, Jr., "Redistricting Likely to Have Major Impact on the Island," *New York Times*, January 17, 1982, XXI, 1: 5, 11; E.J. Dionne, Jr., "Power Shift Seen in State Redistricting," ibid., February 10, 1982, p. B2; and E.J. Dionne, Jr., "L.I. in Key Role in Redistricting," ibid., February 14, 1982, XXI: 1.

3. John Omisinski, "Assembly GOP Down and Buried," *Empire State Report*, December 6, 1982, pp. 298-300.

4. Jeannie Cross, "Reapportionment and the Muddle It Made," ibid., June 28, 1982, pp. 245-49.

5. E.J. Dionne, Jr., "State's Redistricting Battle Headed for Court Decision," *New York Times*, February 9, 1982, p. B2.

6. E.J. Dionne, Jr., "Districting Plan Drawn in Albany; Some Incumbents May Lose Seats," ibid., May 9, 1982, p. A1.

7. John Omisinski, "Of Andymander and Stanleymander," *Empire State Report*, December 1981, pp. 509-13. The concern with maintaining the status quo carried over into how drawing congressional districts was handled. The state lost an odd number of seats in Congress. The legislature divided the losses so that each party experienced two losses, and a new district was created which pitted two incumbents against each other. The seat was generally regarded as winnable by either party.

8. E.J. Dionne, Jr., "Democrats Start 2-Year Drive to Win State Senate," *New York Times*, August 15, 1982, p. 44.

9. E.J. Dionne, Jr., "State Assembly's Democrats Try to Dominate, as Republicans Try to Survive," ibid., August 22, 1982, p. 44.

10. Leroy Hardy, *The Gerrymander: Origin, Conception and Reemergence* (Claremont, CA: Rose Institute of State and Local Government, 1990), pp. 12-16.

11. Josh Barbanel, "Democratic Edge Rises in New York Assembly," *New York Times*, November 3, 1982, p. B4.

12. Jeffrey M. Stonecash, "The Pursuit and Retention of Legislative Office in New York: 1860-1988," unpublished paper, 1991.

13. Diana Dwyer, and Jeffrey M. Stonecash, "Where's the Party? Assessing the Health of State Political Parties," revision of a paper delivered at the New York State Political Science Association Meetings, Albany, April 1990.

14. Jeffrey M. Stonecash, "Working at the Margins: Campaign Finance in New York Assembly Elections," *Legislative Studies Quarterly* 13 (November 1988): 477-93; and Jeffrey M. Stonecash, "Campaign Finance in New York Senate Elections," *Legislative Studies Quarterly* 15 (May 1990): 247-61.

North Carolina

J. Oliver Williams

The last quarter-century of redistricting has been of an almost revolutionary nature in North Carolina, although it is less than obvious that the partisan effects have been substantial. Equality in numerical representation, however, has moved light-years away from the inequalities that existed prior to court-induced changes in the state's legislative districts. And the benefits of equitable population representation have flowed to the state's urban citizens, with considerable loss of representation in small-town and rural areas.

Until the federal courts entered into North Carolina's legislative districting, in 1965, the state's legislative districts had a history of extensive deviation from numerical equality.[1] For two decades prior to the 1960s, the General Assembly made no effort to redistrict. When changes were made after the 1960 census, districts for senators and representatives were left greatly unbalanced from equal representation standards. The range of deviation for members of the House of Representatives was +116.61 percent to -88.10 percent. A constitutional provision that guaranteed at least one representative to each of the state's one hundred counties, and urban-rural fights over representation, were the culprits. In the Senate, deviations from fair representational standards were not nearly as severe as in the House, although they were far from standards acceptable in later decades.

North Carolina's state legislative districts were declared invalid in *Drum v. Sewell* [2] when the federal court also declared as violating the Fourteenth Amendment the state's constitutional provision guaranteeing every county at least one representative. The apportionment plans that the General Assembly adopted in late 1965, in response to the court decision, moved the state toward the present-day standards of equality of representation. The range of deviation was less than 15 percent in both House and Senate districts.

Population shifts within the state and increasing standards of representation, continued to fuel the redistricting tasks of the General Assembly after both the 1970 and 1980 censuses of population. In both decades, adjustments were necessary in the electoral districts of both chambers. By 1980, the legislature was working with a 5 percent deviation rule, and representational plans for both chambers were brought successfully to within that range. The House deviated from -4.99 to +4.98, and the Senate from -4.95 to +4.82.

The politics of redistricting has been dominated by the Democratic party, which has had firm control of the legislature throughout the twentieth century. The party also controlled the executive branch each time that redistricting occurred, giving the Democratic party exclusive control of representational policy. The party's domination of the process ends, however, with the decade of the eighties. The Republican party now controls the governorship, and the Democrats will not have a chance to regain the office before redistricting is accomplished. The North Carolina governor, however, has no veto over redistricting or any other legislation.

Democratic influence in the redistricting process is also vulnerable to Republican gains in General Assembly representation in the 1990 elections. The Republican party has steadily increased its representation in the legislature, gains obtained mainly from growing Republicanism in the region and the coattail effects from GOP gubernatorial and presidential voting. From a low of 15 percent of the seats in the House at the beginning of the decade, the Republican party was able to increase its representation to 38 percent at the end of the 1980s. Additionally, Republican legislators were able to bankroll their increased representation in the 1988 General Assembly by gaining a leadership role with the help of dissident Democrats. Through a

fusion effort, the GOP played a key role in House leadership selection and gained significant power on legislative committees. Fusion politics and continued electoral success could give the Republican party its first influence over legislative representation in the twentieth century. The process, as a result, is likely to be highly partisan.

Racial Gerrymander

In achieving the equal population standards that became the norm of the 1970s and '80s, the North Carolina General Assembly resorted to mixed patterns of single-member and multimember legislative districts, largely as a way to avoid the splitting of counties among legislative districts. But in devising a plan of mixed districts, legislators became vulnerable to claims of vote dilution by racial minorities. In *Gingles v. Edmisten*[3] the court considered a claim by African American citizens that the 1982 redistricting plan fractured or submerged the strength of minority voters. Plaintiffs claimed that the North Carolina legislative districts made use of multimember districts to submerge the African American vote in areas with substantial white voting majorities, and utilized single-member districts to fracture concentrations of nonwhite voters into separate voting minorities. The suit challenged one single-member district and six multimember districts on the grounds that the redistricting plan impaired African American citizens' ability to elect representatives of their choice, in violation of Section 2 of the Voting Rights Act of 1965. The court held that, in light of the lingering effects of official discrimination and the substantial racial polarization in voting, the creation of multimember districts resulted in the submergence of African American voters. Additionally, the court held that the plan's single-member districts unlawfully diluted African American voting strength by fracturing concentrations of African American voters. The federal district court applied the "totality of circumstances" test to hold that the North Carolina redistricting plan violated the Voting Rights Act in all of the disputed districts. The test of discriminatory effects used in the North Carolina case includes a determination that the political processes leading to nomination or election are not equally open to participation by members of a protected class; that its members have less opportunity than others in the electorate to participate in the political process and elect representatives of their choice; as well as consideration of the extent to which members of a protected class have been elected to office in a district. The U.S. Supreme Court found that all but one of the challenged 1982 multimember districts were characterized by racially polarized voting; a history of official discrimination in voting matters as well as housing, education, and employment; and campaign appeals to racial prejudice.[4] (One district where African-Americans had enjoyed electoral success failed to meet the "totality of circumstances" test.)

In the *Thornburg* decision, the Supreme Court developed a three-part test that a minority group must meet in order to establish a vote dilution claim under Section 2 of the Voting Rights Act. The test requires that a minority group prove that: (1) it is sufficiently large and geographically compact to constitute a majority of a single-member district; (2) it is politically cohesive; and (3) in the absence of any special circumstances, bloc voting by the white majority usually defeats the minority's preferred candidate.

The Court endorsed, but did not mandate, several statistical tests for specifying racially polarized voting, sometimes referred to as racial bloc voting. Since it is generally unknown how members of each race vote for particular candidates, the court relied on statistical techniques to establish how minorities and whites voted predominantly in the challenged districts and, additionally, included testimony from expert witnesses familiar with local politics and voting behavior. One technique which the Court applied was "homogeneous precinct analysis." This technique is used to identify racially segregated precincts and determine how the members of the predominant race in each of these precincts voted. The results are used to estimate the voting behavior of other members of that race throughout the challenged district. There are limitations to use of this technique, inasmuch as it depends on small and potentially unrepresentative precinct samples and it assumes that white and nonwhite voters

living in racially mixed (nonhomogeneous) precincts will vote the same way as members of that race in homogeneous precincts. In *Thornburg*, the Court also used bivariate regression analysis, which examines the relationship between the racial composition of a precinct and the percentage of the vote a candidate receives in that precinct.

As a result of the voter dilution challenge to North Carolina's 1980s districts, the General Assembly enters the 1990 redistricting with clearer standards of how issues of minority voting rights are involved in legislative representation. The *Gingles* case also identified for lawmakers the legislative districts where the Court, in applying its "totality of circumstances" test, would likely find merit in any further voter dilution challenges. With racial gerrymandering issues more clearly decided, redistricting issues in the 1990s are likely to turn to political gerrymandering. The increasing partisanship in the legislature, and the Court's finding of political gerrymandering to be justiciable, raise the spectre of political frays over districting in this decade.[5]

Congressional Redistricting

By shifting and dividing counties, nearly perfect numerical representation was achieved in congressional districts in the 1980s. In a redistricting plan adopted in 1982, the eleven North Carolina districts deviated by only 0.3914 percent from the district population norm and ranged only from -0.9484 to +0.8133. To achieve this degree of representativeness, the General Assembly shifted nine counties from the 1970 districts, and took the unprecedented step of dividing four counties among districts. The division of counties, which had never occurred before, resulted in counties being split along township lines. The division of counties was used largely to equalize rural districts. Shifting of entire counties was necessary in the urban Piedmont counties, with the most radical changes occurring in the 4th (Raleigh) and 6th (Greensboro) Districts. In the process of redrawing the 4th District, the contiguous 2nd District underwent considerable carving, with the new 2nd District gaining Durham County and the city of Durham. (See Figure 1.)

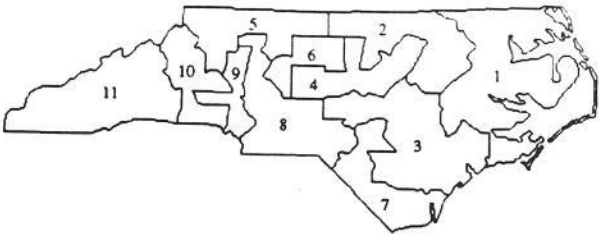

Figure 1. North Carolina Congressional Districts, Redistricting of 1982.

If North Carolina gains a twelfth congressional seat after the 1990 census (which is possible), issues of preserving incumbent congressmen and creating a predominantly racial minority district most likely will emerge. Interest in a district with high minority concentration has been fueled by a change in state election laws (1988) which enables a candidate to capture a party nomination with a 40 percent plurality in the primary.

NOTES

1. For a discussion of redistricting in North Carolina before 1980, see J. Oliver Williams, "North Carolina," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 241-49.
2. F. Supp. M.D.N.C., 1965.
3. 590 F.Supp. 345 E.D.N.C., 1984.
4. *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986).
5. *Davis v. Bandemer*, 478 U.S. 109 (1986).

North Dakota

John E. Monzingo

State legislatures have the responsibility for apportioning congressional districts as well as districts from which state legislators are elected. Since 1972, North Dakota has had only one member of the United States House of Representatives and, therefore, apportionment of congressional districts has not been an issue. Reapportionment of the state legislature, however, is a different matter; allocation of representation has been a continuing problem.[1]

From 1911 to 1959, only minor changes were made in the allocation of legislative representation. In 1959, the legislature, responding to calls for more equitable representation for the cities of North Dakota, proposed a constitutional amendment. This amendment fixed the existing senatorial districts permanently in the constitution, and provided that each Senate district have at least one House member and that each county in multi-county districts have at least one House member. The remaining House seats were to be apportioned according to population after each federal census. The amendment also provided for a commission made up of the chief justice of the state Supreme Court, the attorney general, the secretary of state, and the majority and minority leaders of the House. The responsibility to reapportion would fall to this commission if the legislature failed to do it. By a substantial margin, the people approved this constitutional amendment.[2]

If the amendment's purpose was to settle the reapportionment argument once and for all, it was a miserable failure. There followed a period of intense controversy, one in which the major arena of action shifted from the legislature to the courts. The legislature failed to reapportion itself in 1961 and 1971, but did adopt a plan in 1965. This plan was ruled unconstitutional by the federal district court, which replaced it with a multi-senator plan for the 1972 election. The legislature again reapportioned itself in 1973, but the plan was referred and defeated by a vote of the people. The district court then reinstated the 1972 plan, which in turn was ruled unconstitutional, in part because of the multi-senator districts. Finally, the district court established a plan which was used in the elections of 1976 and 1980.[3]

The district court plan was the starting point for reapportionment when the legislature met in 1981. It provided for a Senate of 50 members and a House of Representatives with a membership of 100. All the districts were represented by one senator except the combined District 40-50, which included Minot Air Force Base and part of the city of Minot. It was accepted that low voting turnout by transient military personnel constituted an "important and significant state consideration" which justified a multi-senator district.[4] Based on 1970 census data, the population of the districts ranged from 3.16 percent above the ideal district population to 3.10 percent below the ideal district population.[5]

The legislature which reapportioned in 1981 was heavily Republican. Republicans controlled 41 of the 50 seats in the Senate and 73 of the 100 seats in the House. In addition, the Republican party had been able, in 1980, to elect its first governor since 1960.

The specific responsibility for reapportioning was in the hands of the Joint Committee on Reapportionment, made up of six members of the House of Representatives (five Republicans and one Democrat) and five members of the Senate (four Republicans and one Democrat). In drawing up the reapportionment plan, the committee followed certain guidelines. Historically, the area south and west of the Missouri River has been recognized as a distinct geographical unit. District lines were not to cross the Missouri if this could be avoided. Population deviation between districts was to be kept below 10 percent. Districts were to be

compact and contiguous. Where possible, district lines were to coincide with political subdivision boundaries. Also, where possible, existing district boundaries were to be maintained. Multimember Senate districts were to be kept to a minimum. And finally, the North Dakota Constitution limited the size of the Senate to 54 members and the House to 108 members.[6]

Between the years 1970 and 1980, the population of North Dakota increased by 34,903, to a total of 652,717. The area southwest of the Missouri increased by 10,990, the city of Bismarck and its immediate vicinity increased by 12,127, and Fargo increased by 13,184.[7] In order to accommodate these changes with as little change in other districts as possible, it was decided to add three new districts, increasing the size of the Senate to 53 members and the size of the House to 106.

In drawing the lines of two of the new districts, the committee followed fairly closely the recommendations of Floyd Hickok, a geographer from the University of North Dakota who had contracted to present alternative plans for reapportionment. When drawing the lines for the new District 51 in Fargo, however, the committee followed none of the recommendations offered by Hickok.[8] The new district was created out of part of District 21, which was heavily Democratic,[9] and enough of District 46, which was heavily Republican, to create what appeared to be a safe Republican district.

This could be interpreted to be within acceptable range of practice in reapportioning, but what the committee then went on to do in Districts 44 and 45 went beyond what was acceptable. District 44 was a heavily Republican district; District 45 was a swing district. The committee shifted 2,482 predominantly Republican citizens from the north side of District 44 to District 45, and shifted 2,468 predominantly Democratic citizens from the south side of District 45 to District 44.[10] It does not take much imagination to conclude that the intention was to make both districts safe for Republican candidates.

Table 1. Party Strength in the North Dakota Legislature in the 1980s.

ELECTION	SENATE	HOUSE
1980	41R, 9D	73R, 27D
1982	32R, 21D	51R, 55D
1984	29R, 24D	65R, 41D
1986	26R, 27D	61R, 45D
1988	21R, 32D	61R, 45D

The Joint Reapportionment Committee came close to achieving its goal of creating districts of approximately the same population. The deviation in population between the districts was just over 10 percent, with the largest district having a population of 12,813 and the smallest district having a population of 11,590.[11]

The outcomes of elections in North Dakota in the 1980s (Table 1) were the result of many factors in addition to reapportionment in 1981. Superficially, it might appear that the reapportionment of 1981 allowed the Republican party to retain some of its power in the legislature in spite of electoral gains made elsewhere by Democrats. However, traditions of nonpartisanship and ticket splitting, as well as gerrymandering, could account for the Republicans doing well in legislative races when the Democrats were successful in most other races.

Other factors played an important role in the outcome of elections in North Dakota in the 1980s. The North Dakota economy is dependent on agriculture and energy production. During the 1970s, the economy was strong. Agricultural exports were up and the energy crisis meant that coal production rose and an oil exploration boom occurred in the Williston basin. During the 1980s, agriculture was hit by a strong dollar, which reduced exports, and then by a drought. The energy boom ended with the oil glut. North Dakota in the 1980s fell on hard times.

In 1981, the Republicans had such a large majority in both houses of the North Dakota legislature that it would have been surprising if they had been able to maintain that advantage. In the election of 1982, the Democrats won a majority in the House of Represen-

tatives. They were in the minority again after the 1984 election, but gained seats in both 1986 and 1988. In the Senate, the Democrats made gains in the elections of 1982 and 1984, and captured a slim majority of the seats in the election of 1986. They were able to widen this majority in 1988.

The most serious obstacle to a smooth reapportionment, however, is the population changes that have taken place in North Dakota during the 1980s. North Dakota gained population during the 1970s because of the energy boom, but in the 1980s, low energy prices and low farm prices caused considerable out-migration. In addition, there was a movement from the west and north to the southeast, and a movement from rural areas to urban areas. As a consequence, there will have to be major changes in district lines, with rural areas losing absolute as well as relative representation. The west river area is especially vulnerable.

The losses and shifts of population, seen in the context of the political culture of North Dakota, make one pessimistic about the ability of the legislature to reapportion itself at all in 1991. North Dakota has what political science professor and Lieutenant Governor Lloyd Omdahl refers to as a "very participatory political culture."[12] North Dakota has the highest proportion of elected officials to population of any state in the union: ten times greater than the national average.[13] Part of this political culture is reflected in the relatively large North Dakota legislature. Rural legislators, reflecting their own as well as their constituents' interests, are going to be reluctant to agree to any reapportionment which diminishes rural representation. It has been proposed, as an economy measure, that the legislature reduce the number of Senate districts from 53 to 40, the minimum number allowed by the constitution.[14] While previous efforts to reduce the number of elected officials in the state have failed, the fact that such a proposal is being considered may, at least, prevent the enlargement of the legislature.[15]

Table 2. Party Strength in the North Dakota Legislature From the Four Largest Urban Areas.

YEAR	REPUBLICAN	DEMOCRATIC
1981	33%	33%
1983	40%	32%
1985	39%	31%
1987	41%	29%
1989	41%	30%

Rivalry between the eastern and western parts of the state and between urban and rural areas will also add to the difficulty of reapportionment. Both of these rivalries are concentrated in the resentment against Cass County, the southeastern county in which Fargo is located. Resentment against "Imperial Cass" was not helped by the fact that Fargo gained population in the 1980s and the western part of the state, which suffered disproportionately from the effects of the slump in oil prices and the drought, lost population.[16]

The shift in population from rural to urban areas within the state may give the Republican party an advantage once the legislature is reapportioned. When one compares the strength of each party in the legislature, measured by legislators elected from the four largest cities in North Dakota (Bismarck, Fargo, Grand Forks, and Minot), the reason becomes apparent. (See Table 2.)

Considering all of these factors, it would not be surprising if the next reapportionment in North Dakota is done by the federal courts.

NOTES

1. For a fuller discussion of reapportionment in North Dakota prior to the 1980s, see Anne Ames, "North Dakota," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 250-55.

2. Richard Dobson, "Reapportionment Problems," *North Dakota Law Review* 48 (Winter 1972): 283.

3. *Chapman v. Meier*, 407 F.Supp. 649 (1975).

4. *Chapman v. Meier*, 420 U.S. 1, 27 (1974).

5. *Chapman v. Meier*, 407 F.Supp. 649, Appendix B, 670-1 (1975).

6. North Dakota, *Journal of the House of the Forty-Seventh Legislative Assembly, 1981*, pp. 2435-36 (cited hereafter as *Journal of the House*).

7. Floyd Hickok, *Reapportionment of the North Dakota Legislature: A Report to the Joint Reapportionment Committee* (Grand Forks: University of North Dakota, Bureau of Governmental Affairs, 1981), Introduction-1.

8. Ibid., sec H.

9. The full name of the Democratic party in North Dakota is the Democratic-Nonpartisan League. For the sake of brevity, it will be referred to as the Democratic party.

10. *Journal of the House*, p. 2859.

11. Floyd Hickok, *1980 Census Data by Legislative District: Everything You Ever Wanted to Know About Your Legislative District* (Grand Forks: University of North Dakota, Bureau of Governmental Affairs, 1982).

12. "If You Want to Get Elected, Try N.D.," *The Forum* (Fargo, ND), February 28, 1990, p. A10.

13. North Dakota has 223 state and local officials for every 10,000 people. U.S. Department of Commerce, Bureau of the Census, *1987 Census of Governments, Vol. 1: Government Organization, No. 2: Popularly Elected Officials* (Washington: Bureau of the Census, 1990), p. 3.

14. "Reinbold Proposes Legislative Shake-up," *The Forum*, February 14, 1990, p. C1.

15. In the 1960s, a move to eliminate township governments was defeated, and in the 1980s the voters turned down a proposed constitutional amendment to eliminate the office of state treasurer.

16. North Dakota Census Data Center, *Population Bulletin Series*, Vol. 5, No. 8 (1988) (Fargo: Department of Agricultural Economics, North Dakota State University).

OHIO

DAVID L. HORN

As Ohio approaches congressional and legislative redistricting for the fourth time since the "one person-one vote" court rulings of the 1960s, its population and demographics show little significant change. The state grew in population by only 1.3 percent during the 1970s, and preliminary estimates show a small decline (of 0.4 percent) for the 1980s. This decline, in conjunction with large population increases projected for the "Sunbelt" states, has led to a projected loss of two congressional seats following the 1990 census, reducing Ohio's delegation from 21 to 19.

The share of the population residing in metropolitan areas decreased slightly in the 1970s: from 81.7 percent to 80.3 percent. For the 1980s, mid-decade estimates show population declines in seven of the state's eight largest counties, the largest being in the counties of Mahoning (-4.8 percent), Cuyahoga (-3.5 percent), and Summit (-3.2 percent). The exception is Franklin County, a center of "white collar industry," where a 4.4 percent population increase is projected. The African American percentage of Ohio's population, which increased from 9.1 to 10.0 percent during the 1970s, appears to have remained static during the 1980s.

The national decline in partisan allegiances, documented by the Center for Political Studies,[1] continues to be well demonstrated in Ohio, with residual party loyalties based more upon ethnic and social origins than upon ideology or issues. This dealignment of the electorate has been matched by a continued blurring of the ideological/issue distinctions between Democratic and Republican politicians. This blurring was evidenced in the Ohio General Assembly during the late 1970s and 1980s, by cross-partisan alignments on issues such as lobbyist disclosure, mandatory beverage container deposits, capital punishment, horse racing tax breaks, congressional redistricting, legislative pay raises, and abortion. Given this fuzziness over what the major parties stand for, it is hardly surprising that the Ohio electorate has continued its independent ways.

In the 1981 volume *Reapportionment Politics*, Kathleen Barber traced the history of Ohio apportionment and districting to the eve of the 1981 struggle.[2] Reaction to the Democrats' 1971 legislative districting plan, and to their attempted congressional districting gerrymander of 1975, gave critical impetus to a small but persistent reform effort. The reformers' proposal was for the state to define the "best plan" in terms of objective, quantifiable criteria, and to mandate that whatever plan best met such criteria must be adopted. In September 1978, this proposal was introduced in the Ohio House by Democratic Representative Dale Locker and bipartisan cosponsors. In November, Democrats won control of the Apportionment Board, so they stonewalled Locker.

The Republicans, facing another Democratic party gerrymander in 1981, took Locker's proposal, made changes in it (the most important being an "escape clause"), organized a front group called the Committee for Fair and Impartial Redistricting (FAIR), and tried, in 1979, to qualify the measure, by initiative petition, for the statewide ballot. The Republicans resumed their effort in 1980, but technical defects in their petitions stymied them a second time.

THE FAIR III CAMPAIGN

The debacle over the 1980 FAIR petitions caused some bitter feelings in Republican circles as they geared up for a third attempt in 1981. Joan W. Lawrence, former state president of the League of Women Voters, and one of the reformers' inner circle, became FAIR's vice-chairperson. Governor James A. Rhodes, who had remained aloof from the previous FAIR efforts, now lent active support. At news conferences around the state on April 27, FAIR spokespersons, with representatives of the Ohio Council of

Churches, the League of Women Voters, and the Farm Bureau, launched their third drive. They hired a public relations firm to collect the required signatures at 25 cents each.

Now, however, a new and very serious problem loomed: time. Had FAIR passed in 1979 or 1980 there would have been no problem; but were it to pass in 1981, a districting database would have to be prepared by the secretary of state in just 42 days. The entire procedure could be sabotaged if the secretary of state dragged his feet. As it happened, the secretary of state was Democrat Tony Celebrezze, who had ample incentive to drag his feet. To avoid this threat, the crafters of FAIR III had to assign the task of preparing a database to someone who would have incentive to expedite it: the only statewide Republican office holder, Governor Jim Rhodes. It was a fateful decision.

Distrust of Governor Rhodes was high among many Ohioans. Democrats asserted without evidence that he would be able to manipulate the districting outcome by the way he prepared the database. The Democrats had gerrymandered the lone African American Republican out of his Ohio House seat in 1971, so all African American legislators were now Democrats. These legislators charged that FAIR would "adversely affect" African American representation in the Ohio legislature.

The Democrats' first and second lines of attack upon FAIR were race and Governor Rhodes. These issues led to the Ohio Council of Churches switching its stand on FAIR from support to opposition, and the American Civil Liberties Union (ACLU) switching from support to neutrality. Democrats were then given opportunity for a third line of attack. The Locker proposal had contained no provision inhibiting splitting of counties. Its crafters could see no way to maximize compactness and minimize splitting of counties and cities at the same time. This deficiency was carried over into the FAIR amendment. It was detected and seized upon by the Democratic party leadership. Disregarding the fact that Ohio's counties and cities had been split willy-nilly in the 1971 legislative and congressional districting plans which they had prepared and/or voted for, Democrats hammered away at this aspect of FAIR and produced hypothetical maps depicting square districts cutting counties and cities to pieces.[3]

Despite these setbacks, FAIR was leading in the polls and enjoying nearly unanimous support from the state's editorial writers. Then the influential Cleveland *Plain Dealer* broke ranks. On May 26 it said, "FAIR's method is a wholesome alternative to the backroom bargaining that is now the rule." On October 21, however, it came out with an editorial headed "NO on State Issue 2." This editorial cited the lack of time to draw new districts before January 15, 1982, and the lack of a provision inhibiting division of counties and cities. It also saw merit in "preserving the seats of some of Ohio's most senior congressional representatives," which was an issue that should not "be casually tossed into a free-for-all redistricting scheme."

With a $300,000 TV budget, FAIR was airing three ads throughout the state. One showed a group of politicians in a smoke-filled room cutting up a map of the state; a second showed the League of Women Voters president in front of the statehouse endorsing the issue; a third featured a sequence of endorsements from leading newspapers in the state. The cash-strapped Democrats apparently lacked the resources to fight back. Then, four days before the election, their counterattack appeared in the form of ads on TV stations in major urban areas. The ads said:

> Major utilities, big oil companies, and insurance companies are spending a million dollars in corporate profits to change how we traditionally elect our congressmen and legislators.
> Why? To gain more influence for themselves. Wonder what big business expects in return? How about higher utility bills, higher gasoline prices, higher interest rates and corporate tax breaks paid for by higher property taxes.
> Aren't we already paying too much? Vote no on State Issue 2.[4]

In the final weeks before the balloting, the rhetoric intensified and the charges got wilder. Senate Democratic leader Harry Meshel charged that FAIR's supporters' tactics "are the most hypocritical, deceitful, disgusting abuse of the electoral process I have ever seen." [5] Meanwhile, state Democratic party Chairman Paul Tipps charged that FAIR "is specifically targeted to remove ethnic and African American representation from the Ohio General Assembly and the U.S. Congress." [6]

On Tuesday, November 3, 1981, Ohio voters rejected FAIR (Issue 2) by 58.3 percent to 41.7 percent. Many factors contributed to the measure's defeat; but the deciding one could have been the presence of another initiated proposal on the ballot (Issue 1), a measure to permit private insurance companies to sell workers compensation, that went down by the biggest margin of defeat of any ballot issue in Ohio history (79.1 percent to 20.9 percent). The morning after the election, Ohio Republican party chairman Earl Barnes said, "I was given poll information late Monday night that showed we were up by five points. . . . But in the same poll there was great concern there would be some slopover because of the [predicted] massive defeat of Issue 1. . . . Well, there sure was." [7]

The 1981 Legislative Districting Plan

Meanwhile, the Democratic party had been pursuing the elusive goal of successfully redrawing state legislative districts. In February, Tipps sent a letter to party contributors asking for $350,000 to pay for computer time and other technical services required to create the new districting plan. The task was less challenging than the one the Democrats had faced in 1971. In that year, they needed to pick up five seats to control the House and four to take over the Senate. Now they were six seats over a majority in the House, but needed to pick up two seats to regain control of the Senate.

The other factor making the job easier was the relaxed population standard the courts were now applying to legislative districting in the wake of *Mahan v. Howell*.[8] In 1971 the Democrats were operating under the assumption, in the wake of *Kirkpatrick v. Preisler*,[9]

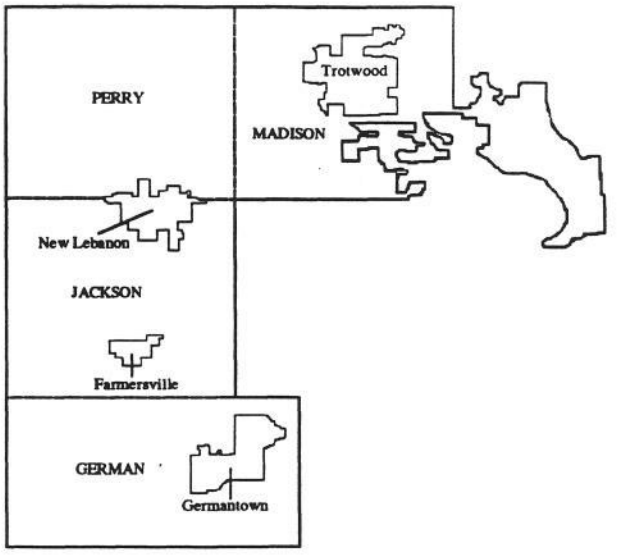

Figure 1. Ohio House District 37.

that they should have all districts within a population variance of ±1 percent. In their House plan, this led them to split 30 counties, in addition to the 16 that had to be split because they were larger than a House district. Now the Democrats had only to satisfy the Ohio Constitution requirement of a +5 percent variance, and they ultimately produced a plan that split only seven counties beyond the 18 that were larger than a House district.

To maintain control of the 99-member House, all the Democrats had to do was protect the 56 incumbents the party already had. With support of about 50 percent of the state's electorate, there was a limit to how thinly the party could spread its strength, and it had pretty well achieved that with its 1971 plan. As one Republican put it, "You can only put so much water in a glass." [10] Control was the object, and you don't have any more control with 70 seats than you do with 60. Therefore, Democratic House incumbents were simply asked (with apparently one exception) what they wanted to have in their districts, and the party tried to give it to them. Sometimes this did require strangely shaped districts. Figure 1, for example, shows a Montgomery County district apparently tailored to further the reelection prospects of Representative Edward Orlett, a legislator close to House Speaker Vern Riffe.[11] Another such district, shown in Figure 2,

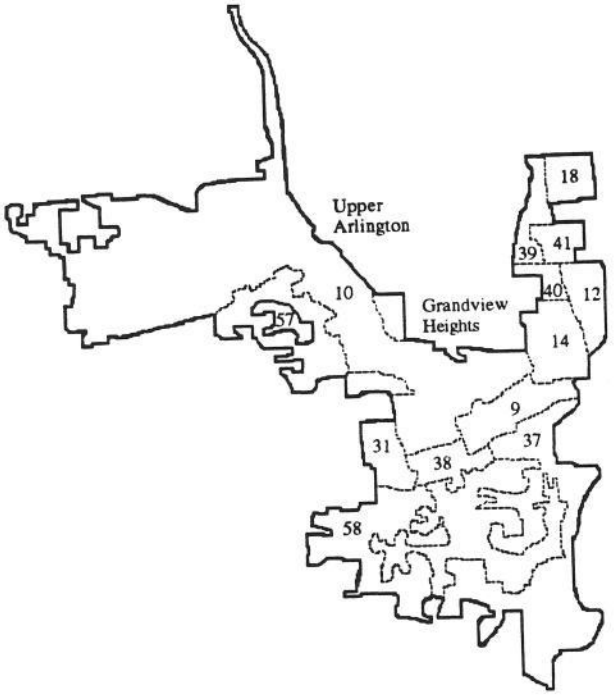

Figure 2. Ohio House District 30 (Numbers Are of Columbus City Wards).

was good news to Representative Mike Stinziano, another legislator in the favor of his party's leaders.[12]

The Democrats' plan for the Ohio House paired Republican incumbents in five districts. Four other Republican incumbents were paired with Democratic incumbents in districts advantageous to the Democrat. Eight of these nine cases occurred in the large urban counties. There was just one case where Democratic House incumbents were paired, and that took place in HD 15, dominated by the white liberal community of Cleveland Heights. A segment of Cleveland's African American community, containing the residence of incumbent minority Democrat Thomas Bell, was grafted onto this district. If Bell ran again, he would likely lose the primary to Representative Mary Boyle or another white liberal. In the 1971 plan, Cuyahoga County had 16 districts, held by nine white Democrats, four African American Democrats, and three Republicans. A population loss of 223,000 during the 1970s reduced the county's delegation by two seats. But despite this overall loss, the county's African American population increased by 40,000. When the 1982 elections were over, the county's new delegation consisted of ten white Democrats, three minority Democrats, and one Republican.

The Senate presented a bigger problem for the Democrats. Five Republican senators were put in districts with each other. Three others were put in Democratic-oriented districts. Election outcomes are determined by other factors besides the way district lines are drawn. Table 1, however, suggests a consistent advantage to the party in control of districting. Table 1 also shows that uncontested seats are at a minimum following redistricting, but rise sharply as the decade progresses and the futility of challenging incumbents becomes manifest. The opposite trend applies to open seats, which are most numerous following redistricting but diminish as the decade progresses.

Table 2 shows some of the reasons for the frustration Democrats have experienced in retaining control of the Senate, even with control over districting. Seat/vote tabulations are of much less value in Senate elections due to the fact that, with four-year staggered terms, only half of the Senate is elected in any one election.

Table 1. Election Outcomes Under the Democrats' 1981 Districting Plan for the Ohio House.

YEAR	PARTY SPLIT, DEM/REPUB	% DEM VOTES	% DEM SEATS	UNCONTESTED SEATS, DEM/REPUB	OPEN SEATS	INCUMBENTS REELECTED/RUNNING	% INCUMBENTS REELECTED
1982	62/37	56.2	62.6	1/1	25	66/75	88.0
1984	59/40	51.0	59.6	1/6	10	86/89	96.6
1986	60/39	55.4	60.6	2/17	14	84/87	96.6
1988	59/40	54.6	59.6	5/20	5	92/94	97.9
1990	61/38	53.7	61.6	2/0	8	87/91	95.6

Table 2. Election Outcomes Under the Democrats' 1981 Districting Plan for the Ohio Senate.

YEAR	THIS ELECTION: PARTY SPLIT, DEM/REPUB	% DEM VOTES	% DEM SEATS	MAKEUP OF SENATE FOLLOWING ELECTION, DEM/REPUB*	UNCONTESTED SEATS, DEM/REPUB	OPEN SEATS	INCUMBENTS REELECTED/RUNNING	% INCUMBENTS REELECTED
1982	11/6	56.6	64.7	17/16	0/0	5	12/12	100
1984	4/12	46.4	25.0	15/18	0/0	5	8/11	72.2
1986	11/6	55.7	64.7	15/18	1/2	4	12/13	92.3
1988	3/13	43.2	18.8	14/19	0/0	2	13/14	92.9
1990	9/8	50.1	52.9	12/21	0/1	3	13/14	92.9

*Includes holdover senators.

The Legal Battle

Their experience in 1971 taught Republicans a painful lesson about the importance of venue to legal strategy. On September 10, 1981, they filed suit in federal district court in Columbus, with Joan Lawrence as first plaintiff and Governor Rhodes and the other four members of the Apportionment Board as defendants.[13] The Republicans believed they would be most fairly treated in the U.S. district court in Columbus (the Ohio Supreme Court was under Democratic control), and that they were now protected against a repeat of the 1971 scenario. They complained of a "deliberate and premeditated violation . . . of plaintiffs' rights" under the 14th Amendment, and asked that the court issue mandatory guidelines—those guidelines being those outlined in the FAIR amendment. In early 1982 the district court's Judge Kinneary met with the opposing lawyers and announced that he would not grant the defendants' motion to dismiss, and that he was prepared to ask the Sixth Circuit for a three-judge panel to hear the case. The Republicans, having run out of money, had to decline the invitation and the case was dismissed.[14]

Congressional Districting

While the new legislative districting plan had to be promulgated by October 5, 1981, a new congressional districting plan was not absolutely necessary until March 25, 1982—the filing deadline for the June 8 primary. Passing a congressional districting bill is a trauma for most legislatures, especially when the number of districts has to be reduced. Ohio is no exception.

The parameters of the situation were these: The existing 23-member delegation consisted of 13 Republicans and 10 Democrats. This delegation had to be reduced to 21 members. Two Republicans were going to retire, but all 10 Democrats wanted to stay in Congress. The 18-15 division in the Senate was close enough so that just two recalcitrant Republicans could block an arrangement made by their party leaders that was not to their liking.

As the filing deadline neared, two Republican party leaders filed suit in federal court (*Flanagan v. Gillmor*), asking the court to draw new boundaries if the legislature failed to pass the congressional districting bill (H.B. 20) in time.[15] Intense negotiations on the night of March 22-23 produced a compromise that accepted the Democrats' plan for Cleveland, while giving the Republicans pretty much what they wanted everywhere else.

Two Democratic constituencies were sufficiently upset with H.B. 20 to continue the fight: the powerful Communications Workers of America (CWA) union and central Ohio African Americans. Before *Flanagan v. Gillmor* could be set aside, they intervened in the suit and converted its original Republican plaintiffs into defendants. On March 26 they alleged that (1) the new congressional districts were sufficiently unequal in population as to violate the one person-one vote standard, and that (2) the districts "purposely diluted and denied the voting rights of Ohio's African American citizens" by splitting the Columbus African American community between Districts 12 and 15. Also on March 26, a separate suit was filed by Cuyahoga County residents (the "Starr plaintiffs") who chal-

lenged the "crazy quilt" districts in the county and the fragmenting of political subdivisions.[16] On April 9 supporters of the county's congressman, Louis Stokes, moved to join the Republicans as defendants. On April 13, the two cases were consolidated in the Southern District, and a trial took place on April 19-21.

On May 25 the court issued an opinion and order stating that the plaintiffs had failed to prove purposeful race discrimination in the drawing of the districts; and that it would hold in abeyance a ruling on the population equality question until it "had the benefit of the Supreme Court's final decision" in a relevant New Jersey case that was now pending. The 1982 elections could proceed under the plan. Those elections produced a new delegation lineup of 11 Republicans and 10 Democrats.

The New Jersey case whose ruling was awaited was *Karcher v. Daggett*.[17] The Supreme Court's June 22, 1983 ruling set in motion a new round of litigation. In September and October, 1983, briefs were submitted arguing whether Flanagan was analogous to Karcher. The ACLU *amicus curiae* brief included a plan showing how much narrower population variances could be obtained while splitting fewer counties and achieving more compactness. The court heard oral argument on December 21 and took the case under advisement. On January 30, 1984, it ruled in favor of plaintiffs,[18] saying that Ohio, like New Jersey, had failed to demonstrate that its population variances, small though they may be (the population difference between the largest and smallest districts was 3,161 persons, or 0.62 percent; the New Jersey variance was 0.69 percent.), could not have been even smaller; and that no legitimate state interest would have to be sacrificed to make them so. The court ordered the legislature to come up with a new plan within 45 days.

The state appealed to the Supreme Court, obtaining a stay of the order. On June 4, the high court summarily affirmed the trial court. Then the state argued that there was no time to pass a new plan and have it in place in time for the November 6 election. On August 11, the court agreed with the state that the November 6 election would have to go ahead under the current plan, despite arguments pointing out that the state had had since January 30 to draw a new plan and had failed to act.[19]

The second Reagan landslide swept four Democratic senators out of office, and the Republicans regained control of that chamber despite the Democrats' best cartographic efforts in 1981. Now the only chance to get a new map advantageous to Democrats would be during the post-election meeting of the legislature in November and December. Time ran out.

When the 116th General Assembly convened in January 1985, the Senate was again under Republican control. The plan mandated by the court's new April 15 deadline would have to reaffirm the political status quo, with minor adjustments to bring population variances as close as possible to zero. As introduced in January, the bill describing the new districts (H.B. 160) featured a population spread of 1,641 persons. However, it was not referred to a standing committee. On March 12 it was suddenly referred to the House Elections Committee, which held a hearing on March 13 and approved it 9-1.[20] The bill voted by the committee had a population spread of 12 persons and split 26 counties—four more than H.B. 20. The House passed the bill, 88-10, a week later, and sent it to the Senate. On March 26, the Senate Ways and Means Committee held a hearing, and unanimously approved the bill after hearing opposing testimony from the ACLU's Benson Wolman. The full Senate approved H.B. 160 by a vote of 28-4.[21] The elections of 1986, 1988, and 1990 were held under the H.B. 160 districts.

Another Reform Effort

The reformers learned some things from the FAIR debacle. One was that they would have to revise their proposal to include an inhibition against splitting counties and cities. Their solution was to establish a minimum value of compactness and then choose whatever plan above that threshold created the fewest county fragments; if a tie resulted, they would choose the plan with the fewest city fragments; if a tie persisted, choose the plan with the highest minimum compact-

ness. These revisions were incorporated in a resolution that maintained the existing 33 Senate and 99 House districts.

The new resolution (S.J.R. 30) was sponsored by Democratic Senator Gene Branstool and Republican Senator Robert Ney, chairman of the Senate Elections Committee. The resolution was introduced in the Senate on October 29, 1985. It was heard by the elections committee in November and then referred to a subcommittee, where it spent the winter and early spring. On May 20, 1986, the full committee marked up the bill and voted 5-4, along party lines, to recommend passage.[22] But a floor vote promised for May 22 did not happen. The Senate returned on June 1 for a final day's work before summer recess. No vote occurred on that day, either. The Senate returned in November for further floor sessions. No vote occurred at that time, either.

Prospects for the Future

Reform resolutions were reintroduced in 1987 and 1989, bringing to seven the number of consecutive sessions of the Ohio House in which districting reform measures had been introduced and stonewalled. Unlike the 1970s, when the election determining control of the 1981 apportionment board occurred three years prior to the drawing of new districts, the apportionment board election for 1991 occurs in 1990—just one year prior to redistricting. This rules out the option of the losers trying to reform the system by another initiated ballot proposal. The compressed time frame contributed to the defeat of FAIR, and it would do likewise even for a much sounder proposal in 1991. The next realistic opportunity for this option will occur in 1999, when once again the reformers and apportionment board losers will have three years' time.

Both party leaderships were confident they would control the board after the 1990 elections; neither was interested in reform. As the election unfolded, Democrat Tom Ferguson consistently led in the race for auditor, while Republican George Voinovich led in the race for governor. The race for secretary of state between incumbent Democrat Sherrod Brown and Republican Bob Taft was close, but on November 6 Taft emerged the winner—giving his party control of the apportionment board for the first time in 20 years.

Republicans controlled the Ohio Supreme Court 4-to-3, but both justices up for reelection in 1990 were Republicans. Both won, so Republicans maintain control of that body. Democrats are still firmly in control of the Ohio House and Republicans in control of the Senate. Even during the Reagan landslides of 1980 and 1984, House Democrats lost only six and three seats, respectively. This year (1990) they gained two. Eleven of the 17 Senate seats up for election were held by Democrats, and they had little prospect of unseating any of the six Republicans. Their two most vulnerable seats were on the block. They lost one of them, as well as a supposedly safe seat in Cleveland, so their numbers have declined to 12. Divided control of the legislature means that the 1991-92 congressional districting struggle will result in another bipartisan deal over which Democrats and which Republicans get safe districts, and which two incumbents are eliminated (if there are no retirements).

Judicial relief from gerrymandering will probably be sought by the losers of the districting battles. *Bandemer* has given them some hope, but not much. The fact that the Supreme Court let stand the district court's ruling in *Badham v. Eu*[23] should give more cause for pessimism. But the history of the struggle over districting has featured so many unexpected turns of events, so many new opportunities for the reformers to advance another step or two, that it is safe to predict they will not give up and go away.

NOTES

1. Philip E. Converse, "The Concept of a Normal Vote," in *Elections and the Political Order* (New York: John Wiley & Sons, 1966), p. 13; and Barbara Hinckley, *Congressional Elections* (Washington: Congressional Quarterly Press, 1981), p. 63.
2. Kathleen Barker, "Ohio," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 257-62.
3. Akron *Beacon Journal*, August 5, 1981, p. 1; Columbus *Citizen-Journal*, October 5, 1981; Cleveland *Plain Dealer*, September 11, 1981, p. 40-A.
4. Columbus *Citizen-Journal*, October 30, 1981, p. 9.
5. Columbus *Dispatch* (date unknown).
6. "Dear Friend" letter from Paul Tipps, dated September 29, 1981.
7. Columbus *Citizen-Journal*, November 5, 1981.
8. 410 U.S. 315 (1973).
9. 394 U.S. 523 (1969).
10. State Chairman Earl Barnes quoted in Cleveland *Plain Dealer*, February 15, 1981, p. 31-A.
11. "Rating the Legislators," *Columbus Monthly* , September 1984, p. 45.
12. Ibid., p. 119
13. *Lawrence v. Rhodes*, Civil Action No. C-2-81-1112, U.S. District Court for the Southern District of Ohio, Eastern Division, September 10, 1981.
14. Plaintiffs moved to dismiss the case on February 3, and the motion was granted on February 16.
15. *Flanagan v. Gillmor*, Case No. C-2-82-173, U.S. District Court for the Southern District of Ohio, Eastern Division, filed February 16, 1982.
16. *Starr v. Rhodes*, Case No. C-2-82-394, U.S. District Court for the Northern District of Ohio.
17. 462 U.S. 725 (1983).
18. Columbus *Citizen-Journal*, January 31, 1984.
19. "Civil Liberties," Summer 1984.
20. Columbus *Citizen-Journal*, March 14, 1985, p. 28.
21. *Senate Journal*, April 2, 1985, p. 211.
22. *Senate Journal*, May 23, 1986, p. 1593.
23. 694 F.Supp. 664 (N.D. Calif., 1988)

OKLAHOMA

FRED R. MABBUTT

The subject of representation is a core issue of democracy, and the problem of legislative redistricting has been a recurrent challenge to democracy's well-being. In this respect, the history of redistricting in Oklahoma represents an important case study of how effectively recent line-drawing is doing in terms of holding the public trust.

The Oklahoma Constitution, drafted and adopted in 1907, is one of the most detailed and lengthy of all state constitutions, going so far as to provide a specific description of the boundaries of each of the state's 77 counties.[1]

In the Oklahoma Constitution, provisions dealing with the legislature are found in Article V. Sections 9 through 16 of that article deal with the manner and methods of apportionment.[2] Several features of this system are important to understand. The provisions for the apportionment of the state Senate are separate and distinct from requirements regarding the House of Representatives.

Under the state constitution, representation in Oklahoma's House of Representatives was based on a ratio formula, computed by dividing the state's total population by 100 (the number of seats in the House), and assigning representatives to counties in accordance with that ratio. The constitution allowed counties to be combined to meet the ratio standard, but limited any one county to a maximum of seven representatives.

Historically, after each census, an apportionment act was passed by Oklahoma's House of Representatives. Beginning with the 1931 apportionment, however, the redistricting laws provided at least one seat to each of the state's 77 counties, even though the populations of many of them fell below half the ratio prescribed by Section 10(h) of the Oklahoma Constitution. The result was that, numerically, the rural citizens of Oklahoma had more representation in their legislative bodies than their urban counterparts.

A number of court challenges to Oklahoma's redistricting processes, beginning in 1944, were denied by the Oklahoma state Supreme Court on the grounds that an individual citizen had no standing to sue in such cases.[3] Frustrated by the judges, advocates of Oklahoma's Section 9(a) egalitarian promise turned to the initiative process of the Oklahoma Constitution in 1961. Their proposal for a Legislative Apportionment Commission was defeated, however, by nearly a 2-1 margin. America's classic urban/rural schism allowed Oklahoma to have a rural senatorial district which had as few as 13,125 voters, compared to an urban district which had as many as 346,038 voters. In other words, conservative, rural regions, compared to urban centers, were overrepresented by a factor of about 25-1 in Oklahoma.[4]

THE IMPACT OF THE REAPPORTIONMENT DECISIONS IN OKLAHOMA

Lawmakers in both chambers of the Oklahoma legislature represent single or multi-county districts. The size of both houses has varied over time: the Senate began with 44 members and increased to 48 in 1965, after court-ordered reapportionment; the House began with 109 representatives in 1907, increased to a high of 123 in 1953, and then reached its present level of 101 members following the 1971 reapportionment. Like most states, Oklahoma found that it was in violation of the Supreme Court's mandate of "one man-one vote." What followed was a period of intense litigation. After reviewing the reapportionment decisions, the circuit court finally adopted the "Model C" plan put forward by the Bureau of Government Research at the University of Oklahoma.[5]

The attorney general's acceptance of the circuit court's plan significantly redrew the political legislative map of Oklahoma. The greatest changes took place in Oklahoma and Tulsa Counties. Rather than seven House members, the two had now reached 19 and 15, respectively. Various multi-county House districts disappeared as county lines were breached in the drawing of new district lines.

Reapportionment in conformity with the reapportionment decisions began in a timely fashion in the 1970s. Both House and Senate districts relied on computer programming to design new districts as nearly equal in population as possible. Both sets of districts came close to the "ideal," with population variance of only ±0.5 percent. In spite of that, the 1971 apportionment acts did not go unchallenged, as the National Association for the Advancement of Colored People argued that minorities were gerrymandered out of their fair representation by the Oklahoma legislature's use of gross population data, rather than concern for the racial distribution of the population. In dismissing the suit, the U.S. District Court applied the principle that:

> Color-conscious approach to districting if designed to aid the African Americans is constitutionally permissible and if designed to harm African Americans is impermissible, but a color-conscious approach is never mandated.[6]

The three most recent decennial census reports for Oklahoma show a substantial gain in population for all urban counties but a decrease for some rural counties. This recent trend toward urban and metropolitan growth and rural outmigration has had visible impact on the composition of the Oklahoma legislature, especially for the Republican party. The majority of Senate Republicans during the 1970s were elected from metropolitan or urban districts; indeed, by 1975, all of them came from districts with at least one city over 10,000 in population.[7] In addition, the minority groups of women (three) and African Americans (four) in the 34th legislature came entirely from metropolitan districts.

Reapportionment in the 1980s

During the 1980s, Oklahoma might have been classified as a modified one-party Democratic state.[8] The 1990 census has stirred a new battle to win control of the lawmaking bodies in Oklahoma. Although still in a minority, Republicans hope to increase their ranks in the Oklahoma legislature; indeed, the GOP national chairman has put a top priority on state campaigns. On the other hand, national Democrats have been so confident about Oklahoma that their campaigns traditionally have skipped the state in order to focus on big states like Texas and California. The Democratic "Project 500" for the state, nonetheless, will need to take the redistricting campaign seriously because the GOP lost six of the legislative seats in Oaklahoma by a total of 500 votes, and one by only 20 votes.[9]

The Oklahoma House presently has 70 Democrats and 31 Republicans; the state Senate favors the Democrats by a margin of 35-15. The new district alignments will help determine whether the partisan balance in the congressional delegation remains at four Democrats and two Republicans. Moreover, the 1990 Oklahoma census comes at a time when there is occurring a heavy shift of the state's population to the south and west, but not to the boom-bust oil country.

No matter what the population trends may be, gerrymander is the name of the game. While Democrats controlled the legislature, Republicans were counting on an executive veto which would throw the matter into the hands of the courts. That hope evaporated in November 1990, when the Republican incumbent governor was defeated by Democrat David Walters. After the head counters, statisticians, and the politicians do their number on redesigning the legislative districts, the lawyers will take over. Indeed, Oklahoma Republicans see this as a crucial ingredient in their effort to become competitive with the Democrats in Oklahoma.[10]

Another Republican effort to wrest control of Oklahoma's state legislature from the Democrats occurred in September 1990, when Oklahomans approved by a 2-1 margin a measure that would limit

legislative service in the state to 12 years. It was a warning shot heard around the nation, and given support several months later when California voters approved a similar measure. The measures in both states are being challenged regarding their constitutionality. The grounds for the challenges in both states are that the initiatives violate constitutional prohibitions against dealing with more than one subject in an initiative. A second grounds for challenge concerns the voters' right to vote for the legislators of their choice.

Oklahoma Redistricting in the 1990s: Conclusions

The Supreme Court requirement of "one man-one vote" has not been changed since it was applied to all of our states a generation ago, but gerrymandering has weakened the effort to make American legislatures more representative. Rather than radically redrawing district lines, the Oklahoma legislature as a rule has attempted to preserve the status quo. Despite Republican cries of "gerrymander," the Democratically dominated legislature has redrawn lines in the past to favor incumbents irrespective of party.

If the Oklahoma term limitation initiative meets the test of constitutionality, both parties may begin to feel that they have little to lose by taking plans seriously which advocate utilizing "natural community borders" created by freeways and computer programming to make legislative districts more representative.[11]

NOTES

1. For a description of redistricting in Oklahoma before 1981, see J. Allen Singleton, "Oklahoma," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 266-70.

2. *Jones v. Freeman*, 146 P. 2d 564 (1944).

3. Oklahoma State Legislative Council, Research Department, *Thumbnail Statistical Data on Three Proposed Constitutional Amendments*, Report No. 61-2, September 15, 1961 (Bureau of Government Research, 1959), pp. 6-7; Bureau of Government Research, *Oklahoma Government Finance* (Norman: Bureau of Government Research, 1962), especially chapter 4 and the appendix.

4. *Moss v. Burkhart*, 220 F. Supp. 149 (1963); 378 U.S. 558 (1964); and 233 F. Supp. 323 (1964).

5. *Dunn v. State of Oklahoma*, 343 F. Supp. 320 (1972).

6. Ibid. The Senate apportionment similarly was challenged abortively in *Ferrell v. State of Oklahoma*, 339 F.Supp. 73 (1972).

7. David Averill, "A New Puzzle," *Tulsa World*, April 24, 1990, p. D1; Malvina Stephenson, "Oklahoma Braces for Congressional Redistricting," ibid., January 1, 1990, p. 1.

8. Thomas R. Dye, *Politics in States and Communities* (Englewood Cliffs: Prentice Hall, 1991), p. 132; Walter R. Mears, "GOP Targets Gerrymander," *Tulsa Tribune*, June 14, 1990, p. 14A.

9. Chuck Ervin, "GOP Barely Joins Battle in Crucial Election Year," ibid., July 22, 1990, p. B1; "Bush Raps Demo District Lines," *Tulsa Tribune*, March 1, 1990, p. 13C.

10. John Greiner, "Ready or Not, Here It Comes: Redistricting Looms for Controversy-Wary Legislators," *Daily Oklahoman*, February 5, 1990, p. 1; Samuel A. Kirkpatrick, *The Legislative Process in Oklahoma* (Norman: University of Oklahoma Press, 1978), chapter 1.

11. Stephen Schwartz, "Role for Freeways in Reapportionment," *San Francisco Chronicle*, October 31, 1990.

OREGON

WILLIAM M. LUNCH

Oregon has a national reputation for political iconoclasm, and generally has lived up to this reputation in recent redistricting. Redistricting following the 1980 census was not free of conflict, but the level of controversy was much lower than in most other states.[1] In part, the relative calm in Salem was a function of moderation in both political parties, but it was also aided by population growth patterns which did not require radical surgery on state legislative districts. Even the creation of a new congressional district—the fifth one for the state—proved fairly easy. But those involved in Oregon politics are not sure that a similar experience following the 1990 census can be expected.

BACKGROUND: FROM STATEHOOD TO ONE PERSON-ONE VOTE

Reapportionment has not always been a non-controversial topic in Oregon. During the postwar period, as the state became much more urbanized, substantial political conflict was focused on redistricting plans. In 1950, a serious effort was made to redress malapportionment through an initiative, but the measure failed at the polls. In 1952, with the results of the 1950 census available, it had become clear that malapportionment was substantial. The Young Republican and Young Democratic organizations joined with the League of Women Voters to propose a reapportionment initiative. With broad support, the measure passed easily. The initiative provided that the legislature should be required to reapportion itself (and congressional districts) by July 1 of the year following the census. If the legislature failed to reapportion—or if the legislative plan was faulty—responsibility would shift to the secretary of state. The state Supreme Court was given original jurisdiction over any challenges; challenges were made likely because standing to sue was given to any qualified voter. An additional measure was referred to the voters in 1954, allowing the division of large counties.

These postwar changes served the state well in later years. Oregon was the only state in which redistricting was not required in the aftermath of *Baker v. Carr* and subsequent cases. Because of the upheaval during the early fifties, adjustment to the "one person-one vote" standard was less traumatic in Oregon than in perhaps any other state during the sixties.[2]

That does not mean redistricting was easy. For example, in 1971, a number of state constitutional requirements and long-standing political customs were effectively nullified by federal judicial requirements, enforced by the Oregon state Supreme Court.[3]

CONTEMPORARY REAPPORTIONMENT AND REGIONALISM

The most recent redistricting, of course, followed the 1980 census. As a result of rapid population growth, Oregon gained a seat in the U.S. House of Representatives. Changes in congressional delegations, either additions or deletions, are often the raw material for particularly nasty battles over apportionment, but in this instance, the process was relatively smooth. But to understand what happened in 1981 (and to anticipate 1991), it is helpful to have the outline of regional differences in the state.

Recognizing that there are localized differences which can be very significant, it is still possible to distinguish four regions within Oregon politics. These are: (1) the Portland metropolitan area; (2) the Willamette Valley; (3) the Oregon coast; and (4) central, eastern, and southern Oregon. (See Figure 1.)

Plans for redistricting, to the extent that they cross intra-state regional lines, will result in districts which are politically more heterogeneous than districts contained within one region. Because of a provision in the state constitution, there had been a rule prohibiting the division of counties in legislative districts. This rule

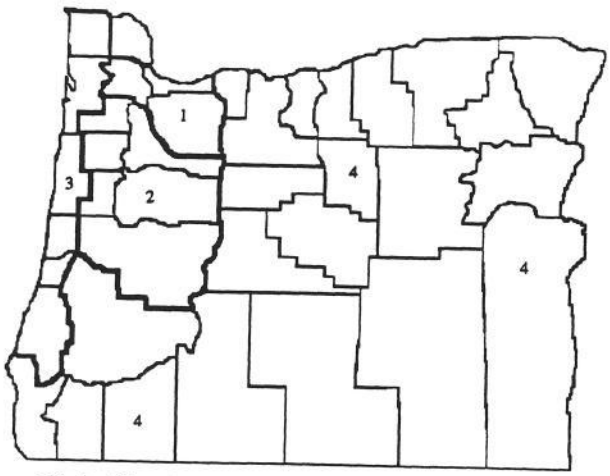

Figure 1. Regionalism in Oregon.

was voided, as a practical matter, by the cases starting with *Baker v. Carr*. Since the mid-sixties, then, citizens in many Oregon districts have had less and less in common with others in their districts except for their shared legislators. This is, of course, a national pattern and an outgrowth of the need to meet exacting standards for population parity under the one person-one vote standard.

(1) The Portland Metropolitan Area: The Portland metro area extends into three counties: Multnomah, the largest county (by population) in the state; Washington County, just west of Multnomah and the fastest growing during the decade of the eighties; and Clackamas County, south and east of Multnomah County. Although central Portland, like most other American inner cities, has been declining in population for many years, the metropolitan area has been growing. Indeed, at times in the late seventies and late eighties, the strains associated with fast growth became political issues as growth limits were debated in the metro area and more generally throughout the state. During the early eighties, however, Oregon suffered from a very severe recession and the public image of growth became largely positive for a time.

The Portland metro area contains roughly 40 percent of Oregon's population. With the establishment of the one person-one vote standard, Portland and its suburbs weighed very heavily in both houses of the state legislature. One possibility which did not materialize in the redistricting process in 1971 or 1981, but which could appear in 1991, is a Democratic plan for pie-shaped state Senate or (more likely) U.S. House districts which would maximize the influence of the metro area. The city of Portland is heavily Democratic, so redrawing lines to move even a few urban neighborhoods could have substantial political impact. This did not happen, according to those involved in the 1980-81 redistricting, in no small measure because of the political culture of restraint which characterizes much of Oregon state politics.[4]

(2) The Willamette Valley: South from the Portland metro area, on both sides of the Willamette River, lies the Willamette Valley. It is still a rich agricultural area, but its politics are dominated by numerous small- to medium-sized towns and cities which are scattered throughout the valley. Near the southern end is Eugene-Springfield, the state's second largest metropolitan area, with about 125,000 residents. The combination of the University of Oregon faculty and students with many blue-collar lumber-mill workers makes the area strongly Democratic. About 40 miles north of Eugene is Corvallis, where Oregon State University is located. Corvallis is mildly Democratic, but can and does swing to the Republicans at times. Another 40 miles north and somewhat east is Salem, site of the state capitol. The city of Salem leans Democratic, but the surrounding Marion County is strongly Republican. This type of urban-rural division is routine up and down the Willamette Valley. North from Salem there are a number of small towns and, as one approaches Portland, exurban residential areas multiply until they merge imperceptibly into the metropolitan area.

Historically, the Willamette Valley was the area which drew migrants from New England and the Middle West to Oregon during the nineteenth century. At that time, the valley contained most of Oregon's population. Today, the valley (south of the metro area) has about one quarter of the state's population. Traditionally, the valley was heavily Republican. The ancestral Republicanism of the area began to recede during the

postwar period. During the sixties and seventies, the valley shifted towards the Democrats. During the decade of the eighties, the Republican party has come back somewhat, particularly in the state House. These shifts are reflective of state politics in general, as can be seen in the partisan balance in the state House since the mid-sixties.

3) The Oregon Coast: The coastal area in Oregon is small in population, but distinctive politically. Partially as a result of a history of intense labor-management conflict, including armed clashes, the coast has had a strong tradition of class politics. This has usually helped the Democratic party. In redistricting politics, the regional distinctiveness of the coast has been important at times, but because the population is relatively small—little more than 200,000—even some state Senate districts on the coast must extend quite far inland.

(4) Central, Eastern, and Southern Oregon: The area east of the Cascades and south of the Willamette Valley is still heavily dominated by natural-resource industries such as timber and agriculture. This is the area included in the 2nd Congressional District in Oregon, which is geographically huge but sparsely populated. The entire area—larger than a number of states—contains only about half a million people. The rise of the environmental movement has helped Democrats west of the mountains, but in eastern and southern Oregon environmentalism has had the opposite effect. Just as mountain states such as Idaho and Colorado have moved toward the Republicans, so have eastern and southern Oregon. For purposes of redistricting, this area constitutes a community of interest, despite its huge size. It is likely to be kept together within one congressional district.

1981 AND THE PROSPECTS FOR 1991

Redistricting in Oregon in 1981 was almost unnaturally easy, as noted earlier in this chapter. One reason may have been that while Democrats controlled both houses of the state legislature, the governor and the secretary of state were both Republicans. If the legislature failed to redistrict itself, the task would move, under the 1952 provisions, to the secretary of state. On the Republican side, the secretary of state and the governor did not want to be seen as "playing politics" with redistricting. So the norms of fair play, which have been quite real in the informal rules of the political game in Salem, were reinforced by practical political considerations on both sides.[5]

In 1979, there was a statutory change, specifying informal norms widely accepted among legislators, such as equal population among districts, contiguousness, and that communities of interest should not be divided.[6] In 1981, following these guidelines, it was decided to proceed with state legislative, specifically state House, reapportionment first, state Senate districts second, and the new congressional districts last. Geographic divisions parallel to those described above were established, with an additional division of southern Oregon (Jackson, Josephine, Curry, and Coos Counties, and most of Douglas County) as distinct from eastern Oregon.

The 1980 census data were not available until April 1, 1981, and the redistricting task had to be completed by July 1, so time was very short. State House districts were determined, largely by consensus, until 59 (out of 60) had been drawn. The last seat was essentially a remainder left over in the Willamette Valley. It was in an agricultural area and so a community of interest could be perceived, but there were few links between the small towns in the district, and perhaps most notably, it would be very difficult to get from one part of this district to another on the existing road system. As a result of this, it was dubbed the "helicopter district," meaning that the legislator elected there would almost need a helicopter to see his constituents conveniently.

Once the House districts had been drawn, the state Senate districts followed rather easily, because each Senate district consists of two House districts. The new 5th Congressional District was essentially drawn by taking excess population from the margins of the adjoining districts in the mid-Willamette Valley. Early in the process there was a proposal to create a

congressional district anchored on the coast, but this was seen as a personal effort by a coastal legislator to create a district from which he could run for Congress, and the idea was dropped. As eventually drawn, the new district ran from the southern Portland suburbs south through the valley to Lane County and east in Clackamas and Marion Counties to the Cascades. Though registration in the new district slightly favored the Democrats, in practical terms it was a marginally Republican district.

Near the end of the reapportionment process, there were two serious controversies. In northeast Portland, there is an African American community. In 1971, this area was divided among four state House districts. Leaders in the area objected in 1981, and after some dispute between the state House and the Senate, an African American-majority House district was created by a conference committee. A more difficult problem was that the relative shrinkage of population in the urban core of Portland meant that one state Senate seat needed to be moved to one of the suburban counties (Washington or Clackamas). The simplest solution, to shift an existing Senate district to the suburbs, was stopped because the governor objected. Governor Vic Atiyeh, a Republican, wanted a genuinely new—and thus open—seat created in the suburbs because he believed it would be taken by the GOP. The resulting dispute almost produced a stalemate that would have sent the plan to the secretary of state, but at the last moment a Portland senator volunteered to change the date of his election. Though the practical effect of this was to leave one state Senate district without representation for two years, the compromise paved the way for the legislature to pass and the governor to sign the redistricting bill.

One effect of the bill, leaving a Senate district without representation for two years, became the prime basis for five legal challenges to the bill. The state Supreme Court agreed that the hiatus in representation was impermissible and, in late September, sent the task of redistricting to the secretary of state, Norma Paulus. She had only a week to produce a plan to meet state constitutional requirements and so, except for small alterations to meet the Court's objections, Paulus essentially reproduced the legislative plan. The Paulus plan was also attacked in court, but this time the Supreme Court accepted the plan as revised.[7]

The time constraints in 1981 were so severe that the legislature crafted (and in 1986 the voters approved) a revision in the state constitution. It gave the Secretary of State and the state Supreme Court a few more weeks in the event of challenges to the legislative redistricting plan in 1991.

A number of participants and close observers doubt that redistricting in 1991 will go as smoothly in Oregon as in 1981. For the first time in 20 years, the GOP gained control of a house in the state legislature. In the 1990 elections, the Republicans gained control of the state House of Representatives, 32 to 28. The state Senate moved in the opposite direction, Democratic control being increased by one seat to 20 to 10.

As the redistricting process starts, Oregon has a new governor, but she is of the same party as the previous chief executive. The incumbent Democratic governor, Neil Goldschmidt, withdrew from the race rather unexpectedly in February 1990. Democrats quickly united behind Barbara Roberts, the secretary of state, but she was given little chance against the moderate Republican attorney general, Dave Frohnmayer. In late spring, however, following the primaries, an "independent" candidacy was announced by anti-abortion activists associated with the religious right. They were angry with Frohnmayer's pro-choice position. The practical effect of the independent candidacy was to split the Republican vote. In November, a Libertarian candidate drew 2 percent of the vote, the independent candidate 13 percent, Frohnmayer 39 percent, and Roberts 46 percent.

Down the ballot, however, the impact of the anti-abortion candidacy in most districts was to increase the GOP vote. So, ironically, on election day, the angry independents had the effect of strengthening their mainstream GOP adversaries, notably in the state House. These changes are likely to contribute to a

stalemate concerning redistricting. It seems unlikely that either party will be capable of pushing through a partisan map. Moreover, the data needed for redistricting will not arrive from the Census Bureau until April, and the deadline for the legislature is July 1. That gives the legislature only three months. If the legislature fails, redistricting falls to the secretary of state. After Barbara Roberts was elected governor, she named a young Portland legislator, Phil Keisling, to be her successor as secretary of state. Keisling was widely regarded as one of the brightest freshman legislators during his first term in 1989. Some observers in Salem believe that Keisling was selected from a list of potential appointees in large measure because of the intellectual power he could bring to redistricting.

More generally, partisan divisions in Oregon have been growing during this decade, in part because urban-rural differences have become more pronounced in the state. Campaign spending is higher in state legislative races than in earlier years and many legislators are now essentially professionals, though many are reluctant to admit it. Polarization along ideological lines seems more intense than in the past, though the state is still rather innocent in this regard compared to many others. Nonetheless, it is quite possible that the largely consensual redistricting of 1981 could be replaced in 1991 by a tougher, more partisan approach, albeit tempered by the state's informal but real norms of fair play in politics.

NOTES

1. See Bob Benenson, "House of the Future at Stake in 1990 Legislative Contests," *Congressional Quarterly*, November 4, 1989, p. 3002.

2. The unusual prophylactic effects of the reapportionment battles in Oregon during the fifties are discussed by Ward E.Y. Elliot, *The Rise of Guardian Democracy* (Cambridge: Harvard University Press, 1974), chapter 7 and pp. 361-66.

3. For a history of redistricting in Oregon before 1980, see Donald G. Balmer, "Oregon," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 271-75.

4. See, for example, Pam Ferrara and David Buchanan, *The Almanac of Oregon Politics, 1989* (Corvallis: Postal Instant Press, 1989), which includes a description of the 1981 reapportionment on pages 2-4. For specific references, see their entry for each district.

5. Interview with state Rep. Tony Van Vliet, May 30, 1990. More generally, see Balmer, "Oregon".

6. See Ken Elverum, *Recent Reapportionment Efforts in Oregon* (Salem: Legislative Research, 1987), p. 9. (This is a document published to provide background for state legislators on reapportionment.)

7. This description of the "end game" in reapportionment in 1981 is largely taken from ibid., pp. 13-17.

PENNSYLVANIA

HARRY BASEHART

Unlike most states, Pennsylvania does not give a constitutional role in formulating or approving state legislative district lines to its General Assembly. The 1968 Constitution of the Commonwealth of Pennsylvania establishes a Legislative Reapportionment Commission to draw new lines, after each federal decennial census, for the state's 50 senatorial and 203 representative districts. The commission approach, as it manifests itself in Pennsylvania, prevents the legislature from being consumed with the politics of redistricting and makes it unlikely that one party can control where all the new lines will be drawn. Nevertheless, the realities of the process in 1971 and 1981 indicate that political factors still play a dominant role.[1]

Because the Legislative Reapportionment Commission was used to redistrict in both 1971 and 1981, and will be used in 1991, its membership and operating procedures will be described here in some detail. The commission consists of five members. The first four are the majority and minority leaders of both the Senate and House of Representatives, or designees appointed by each of them. These four members select the fifth member, who also serves as chairman. The chairman cannot be a local, state, or federal official holding an office for which compensation is received. If a fifth member cannot be agreed upon within 45 days, the Pennsylvania Supreme Court is authorized to make the appointment.

Once the commission has been certified and the population data as determined by the federal census are available, the commission has 90 days to complete a preliminary redistricting plan and file it with the secretary of the Commonwealth. The commission then has 30 days to correct its plan. During the same 30-day period, "any person aggrieved" by this plan may file "exceptions" with the commission. If there are exceptions, the commission has another 30 days from when the exceptions are filed to revise its preliminary plan and file a final plan. After the final plan is announced, appeals may be filed, within 30 days, with the Supreme Court. If there are no appeals, the plan becomes law at the end of 30 days. Otherwise, the plan becomes law when the Court has decided the appeals. If the Court decides to rule in favor of an appellant, the Court is required to issue an order directing the commission to redraw the lines so they are consistent with the Court's decision.[2]

Finally, the state constitution requires single-member districts that are to be as nearly equal in population as is practicable and composed of compact and contiguous territory. In addition, boundaries of political subdivisions should not be broken unless it is absolutely necessary.[3]

THE 1980S

The census of 1980 revealed that 44 percent of the Senate districts deviated from the new ideal population for each district (237,334) by at least 10 percent. The smallest district was 22.1 percent under the ideal and the largest was 20.3 percent above. The figures for the House revealed even larger disparities: the smallest district was 30.6 percent under the ideal (58,456) and the largest was 46.7 above. And, 51.7 percent of the districts deviated from the ideal by 10 percent or greater. According to the 1980 census, the city of Philadelphia's population dropped by 14 percent and the city of Pittsburgh had approximately a 10 percent drop. Delaware County, outside of Philadelphia, also lost population. The big gainers were Bucks County, located northeast of Philadelphia, and the counties of Chester, Lancaster, York, and Cumber, all located in a line west of Delaware County and south of the state capital of Harrisburg.

The Legislative Reapportionment Commission was constituted in January and February of 1981. The legislative members selected the Dean of the Univer-

sity of Pennsylvania School of Law, James Freedman, as the chairman.[4]

A rather loose "sunshine law" allowed the commission to conduct much of its deliberations behind closed doors, as had been done in 1971,[5] but a general outline of how the commission worked can be pieced together. First, the chairman of the commission wanted a plan that emphasized population equality, with district deviations close to 1 percent. Second, there was to be no decrease of African American representation in the legislature. Third, input for the plan might come from individual legislators and county party chairmen, but the greatest influence would be exerted by the legislative party leaders on the commission and their staffs. Fourth, when the party leaders went head-to-head, the chair would resolve the conflict. Fifth, the process should involve cooperation and give-and-take. (For example, because of population losses, eight House seats were lost in the heavily Democratic areas of Philadelphia and Allegheny County, but the Republicans absorbed two of these losses even though they could have insisted that all of the losses be Democratic.) Finally, incumbent legislators were to be protected.

In announcing the final redistricting plan, which was approved unanimously by the commission, the commission chairman said, "I believe this is the closest any state in the nation has ever come to absolute equality in the reapportionment process."[6] Indeed, the figures are amazing: the total range of deviation of the highest and lowest district from the ideal district in the Senate was only 1.93 percent, and in the House it was 2.81 percent.

One Senate seat in Philadelphia was eliminated and a new seat was carved out of Lancaster and Chester Counties. No Senate incumbents were pitted against each other and no other area of the state lost a Senate seat. Interestingly, Philadelphia's lost Senate seat was vacant because the incumbent had resigned his seat to run in a special congressional election, which he won. Philadelphia lost five House seats and Allegheny County, three. This meant that 16 incumbent representatives were placed in districts with other incumbents. Pittsburgh and Allegheny County did not fare as well as they had in the Senate; adjacent Westmoreland County picked up a new seat, and two other districts reached farther into Allegheny County than under the previous plan.

It is clear that suburban and rural areas gained representation and big-city areas lost, continuing a trend in the shift of population that had started in the 1950s and and had continued in the 1960s. Residents of Philadelphia, for example, found that under the new plan they now had fewer representatives in both chambers than the four surrounding suburban counties. There was also the expectation that the Republican party would benefit, because its strength was greatest in the areas that gained additional legislative seats.

The most striking manifestation of gerrymandering is the degree to which incumbent legislators were protected. Not only were very few incumbents placed in the same districts (6.3 percent), but most lines were drawn to help incumbents win reelection. Evidence for this can be found by looking at changes in the shape of districts and at the success rate of incumbents in the 1982 general election (which will be discussed later).

One of the more interesting changes in a district's shape occurred in Senate District 2 (Frank Lynch, D) in Philadelphia, where the newly created district was described as resembling an arrow. The tail of the arrow was located in the "lower Northeast, the shaft through a part of North Philadelphia and the point in center city."[7] Basically, the area of "South Philly," with portions of North Philadelphia and the center city, made up the old district. (See Figure 1.)

Congressional Districts in the 1980s

Between 1950 and 1980, Pennsylvania lost nine congressional seats: three after the 1950 census, two after 1960, two after 1970, and two more after 1980. The 1980 census found that the state's population rate of growth was only 0.2 percent, compared to an 11.4

Figure 1. Philadelphia Senatorial Districts Under the 1981 Redistricting Plan.

percent rate nationwide. Pennsylvania now has 23 members of the U.S. House of Representatives. The drawing of congressional districts is controlled by the governor and the legislature, and both were in Republican hands when new congressional districts were drawn in 1981.

Redistricting efforts started in the legislature as soon as the new census data were available in April 1981, continued past the primary filing deadline of February 16, 1982, and resulted in a plan being enacted, under the threat of a federal court-ordered plan, in March 1982. The Republicans, enjoying majority control of both the state House and the Senate, did not have an easy time drawing new congressional districts. The problem was particularly acute in the Senate, where Democrats were able to present a united front against Republican plans; and Republicans were consistently faced with a couple of members who would not support various plans that were considered because of the way they would affect local politics or interests.[8] In the election of 1982, the Democrats held on to 13 seats, the same number they had had before redistricting; Republicans dropped from controlling 12 seats to controlling 10.

The Commission's Plan in the Courts

Two legal challenges to the commission's redistricting plan developed. One, *In re Reapportionment Plan for the Pennsylvania General Assembly*,[9] consisted of a number of appeals to the Pennsylvania Supreme Court that objected to the final reapportionment plan adopted by the commission. The second challenge, *Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission*,[10] centered on the allegation that the plan diluted the influence of Hispanic voters in Philadelphia.

The dominant concern in the appeals made to the Pennsylvania Supreme Court was that the integrity of local governmental units had been ignored by the numerous splittings of political subdivision boundaries that occurred during the process of drawing new district lines. As noted earlier, this is a criterion that is recognized in the state constitution.

The brief submitted to the Court by Common Cause of Pennsylvania noted that 235 political subdivisions were split into two or more House districts, an increase of 39 percent when compared to the 1971 plan; splits to form Senate districts numbered 45, an increase of 19 percent.[11] Common Cause argued that there were good reasons to avoid splitting political subdivisions, because people living within a local political jurisdiction possessed common interests.

The Pennsylvania Supreme Court, however, ruled in favor of the commission's plan by a vote of 4-3. The Court argued that the overriding criterion was population equality: "the clear constitutional directive is that reapportionment shall strive to create districts as equal, not as unequal, as possible."[12] The majority noted that the Senate plan preserved the boundaries of 41 of the 67 counties and all but two municipalities. The House plan preserved the boundaries of 19 counties and all but 87 municipalities.[13] The Court also

noted that it was not going to substitute its judgment for the commission's when it was apparent to the majority that the plan had met constitutional requirements.

Each of the dissenting justices submitted a separate opinion, but the theme was common, and was expressed best by Justice Larsen, who said that the commission and the Court majority had elevated population equality "to the sole consideration of reapportionment, and have wholly ignored the facts alleged by the various petitioners in this case." [14]

The drawing of lines in the city of Philadelphia was the focus of the case brought by the *Hispanic Coalition on Reapportionment* and decided by the U.S. District Court for the Eastern District of Pennsylvania in April 1982. Although unsuccessful in convincing the court that intentional vote dilution had occurred, this case is important to discuss because it reveals some of the politics involved in the process of developing new district lines. The background for the allegation of vote dilution is that the Hispanic population of Philadelphia had increased from approximately 25,000 in 1970 to approximately 63,000 in 1980. This was more than an adequate number of people for a House district. Furthermore, the Hispanic population was concentrated in the north-central area of Philadelphia, which would make it easy to create a Hispanic-majority district.

At the time that the Hispanic Coalition brought its suit, it was necessary to have evidence of *intent* to discriminate in order to win a favorable decision. The closest the coalition could come to proving intent was to cite the suggestions on how the lines in Philadelphia should be changed that were made by David Glancey, chairman of the Democratic Party City Committee. According to Glancey, the splitting of the Hispanic community was part of a strategy that envisioned an outcry from that community that would force the commission to make adjustments in the lines so as to create an Hispanic district. The ripple effect of this, it was hoped, would result in more district lines being drawn that favored the Democratic party.[15]

The court ruled against the plaintiffs and concluded that the commission had actually tried to accommodate the interests of the Hispanic community by creating a district with a 40 percent Hispanic population. The court's view is captured in this statement: "the usual mark of success in reapportionment is that no interested group is completely happy with the result." [16]

The Impact of Reapportionment on Legislative Elections

For the 1982 and subsequent elections, the overall distribution of Democratic and Republican legislators in the House of Representatives and the Senate was about as close to even as it was possible to achieve. (See Table 1.) It appears that the commission process of drawing lines in Pennsylvania has not seriously handicapped either party. In fact, a bipartisan reapportionment commission has created, at least in the 1980s, bipartisan control of the legislature, with a Democratic majority in the House and a Republican majority in the Senate.

Although the parties are very competitive in terms of gaining control of the two legislative houses, competition between the parties at the legislative district level is not nearly as keen. The large number of safe districts is the most prominent feature of legislature races in Pennsylvania. Table 2 shows a decrease in the number of competitive districts and an increase in the number of safe districts after redistricting. During the last three elections, in both houses, at least 80 percent of the districts have been classified as safe.

The finding of Table 3 is apparent: incumbents who are candidates in the general election rarely lose. In 1988, no incumbent lost in the Senate and only three incumbents lost in the House. (Incidentally, a large proportion of incumbents did run in the 1988 general election: 18 of 25 Senate incumbents [72 percent], and 177 of 203 House incumbents [87.2 percent].) The reelection success of incumbents in Pennsylvania compares very favorably to that of the U.S. House of Representatives, where incumbents have dominated postwar elections at usually the 90 percent level.[17]

Table 1. Party Representation in the Pennsylvania Legislature and Congressional Delegation, 1980-88.

YEAR	LOWER HOUSE	UPPER HOUSE	CONGRESSIONAL DISTRICTS
1980	103R, 100D	25R, 25D	12R, 13D
1982	100R, 103D	27R, 23D	10R, 13D
1984	100R, 103D	27R, 23D	10R, 13D
1986	100R, 103D	27R, 23D	11R, 12D
1988	99R, 104D	27R, 23D	11R, 12D

In summary, a vast majority of the legislative districts created in 1981 are safe, with the candidate of the winning party receiving 60 percent or more of the vote. However, when individual races are aggregated to the state level, each party ends up controlling one house of the legislature by a very slim, but extremely stable, margin. It seems reasonable to conclude that a *bipartisan* commission, with the tie-breaker selected by the partisan members, may encourage the creation of safe districts. Why create competitive districts where neither party is sure who will win? Additionally, an equal number of representatives of both parties drawing the lines makes it difficult for one party to create a substantial majority of districts inclined to elect its representatives.

The 1990s

If one thing seems certain about redistricting in the 1990s, it is that the controversy surrounding the use of criteria in drawing new district lines will not abate. Objections to the 1981 plan centered almost exclusively on the belief that the commission, in its pursuit of population equality, neglected other requirements in the Pennsylvania Constitution. It is conceivable that the Supreme Court's minority view, which argues that more attention should be paid to the additional criteria, could become the majority view. It is also possible that the members of the 1991 commission will decide to give greater weight to these criteria. If requirements in the state's new "sunshine law" apply to the Legislative Reapportionment Commission—and that is not clear at this time—the commission will have to hold more

Table 2. Competitiveness of Pennsylvania Legislative Districts, 1980-88.

	PERCENTAGE OF SEATS WON WITH MAJORITY VOTES OF 50-55%, 55-60%, OR GREATER THAN 60%					
	UPPER HOUSE			LOWER HOUSE		
YEAR	50-55%	55-60%	>60%	50-55%	55-60%	>60%
1980	16	28	56	15	13	72
1982	24	4	72	10	15	75
1984	4	16	80	8	10	82
1986	4	16	80	5	8	87
1988	4	16	80	6	8	86

Table 3. Incumbent Reelection Success Rate in the Pennsylvania Legislature, 1980-88.

	INCUMBENTS REELECTED (%)	
YEAR	UPPER HOUSE	LOWER HOUSE
1980	84	96
1982	94	97
1984	100	99
1986	100	100
1988	100	98

open meetings. And, more open meetings would require the commission to explain more fully the criteria used in its decisions. If this happens, a reasonably good process of redistricting the state legislature would be made better.

I wish to express my appreciation to the many fine people in Harrisburg, Pennsylvania, who shared their insights on reapportionment and provided me with information on the Pennsylvania General Assembly. The Pennsylvania State Archives provided access to materials collected by the 1981 Reapportionment Commission. Finally, I wish to acknowledge Janice French's valuable assistance in analyzing election returns that were obtained from the State Legislative Electoral Data Project, Interuniversity Consortium for Political and Social Research, University of Michigan.

NOTES

1. For a fuller discussion of reapportionment in Pennsylvania prior to the 1980s, see Sidney Wise, "Pennsylvania," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 276-79.

2. Constitution of the Commonwealth of Pennsylvania, Article III, Section 17.

3. Ibid., Section 16.

4. The other members of the commission were: Robert Jubelier (R), Senate majority leader; Edward Zemprelli (D), Senate minority leader; Samuel Hayes (R), House majority leader; and James Manderino (D), House Democratic whip.

5. Wise, "Pennsylvania," p. 279.

6. *Altoona Mirror*, August 20, 1981, p. 1.

7. *Philadelphia Bulletin*, August 21, 1981.

8. An excellent series of articles on congressional redistricting is contained in the *Philadelphia Inquirer*. Particularly noteworthy are articles appearing on the following dates: March 29, 1981, p. B-1; November 15, 1981, p. G-1; February 5, 1982, p. A-1; March 2, 1982, p. A-1.

9. *In re Reapportionment Plan for Pennsylvania General Assembly*, 497 Pa. 525 (1982).

10. *Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission*, 536 F. Supp. 578 (1982).

11. Brief for Petitioner (Common Cause) in the Supreme Court of Pennsylvania, Middle District, 118 M.D. Misc. DK 81, December 4, 1981, p. 9.

12. *In re Reapportionment Plan for Pennsylvania General Assembly*, 497 Pa. 525, 536 (1982).

13. Ibid, 539.

14. Ibid, 542.

15. This is described in more detail in *Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission*, 436 F. Supp. 578, 580 (1982).

16. Ibid, 586. On October 4, 1982, the Supreme Court upheld this decision.

17. Gary C. Jacobson, *The Politics of Congressional Elections* (2nd ed.; Boston: Little, Brown and Company, 1987), pp. 26-29.

RHODE ISLAND

MAUREEN MOAKLEY

"Rhode Island still perseveres in that impolitic, unjust, . . . and scandalous conduct, which seems to have marked all her public counsels . . . " So said George Washington at the Constitutional Convention, after the state declined to send a delegate.[1]

Washington's comments remain an apt characterization of the politics of Rhode Island today, and the reapportionment controversies of the early 1980s were no exception. Indeed, these battles were fairly typical in a state where issues of representation have a long, contentious history. This essay will explore the issues of the 1980s and then consider the prospects for the 1992 plan.[2]

REDISTRICTING IN THE 1980S

The Rhode Island Assembly, which is directed by the state constitution to redistrict itself, is a governing body wherein decisions are highly political and reflect the priorities of the leadership of each house. The governor is institutionally weak; thus, most governors of either party steer clear of redistricting debates, regarding them as no-win situations. (The exception was during the 1960 debates, when the governor took a strong stand in favor of town-based apportionment.)

In addition, since the Democrats first took control of both houses in 1958, they have retained overwhelming majorities in both houses. (See Table 1.) The GOP made some meager gains in the early 1970s, but these appeared to erode after the Watergate scandal. Since that time, the Republican party has put so little effort into recruiting candidates for legislative seats that it is routinely the case that over 50 percent of state legislative elections are uncontested.

In this context, the "politics of accommodation" tends to characterize the redistricting process. For the Democrats, this means that legislators who work with the leadership are usually protected. In tight situations, leaders ask for voluntary retirements or offer government jobs to legislators whose districts have to be redrawn. (One should note that since legislative pay is under $400 annually, this option is often well received.) However, mavericks who buck the leadership are likely to suffer the adverse effects of redistricting. For Republicans, accommodation means going along with the leadership. Since their first priority usually is to retain their own seats, they are not inclined to press for more equitable representation for their party, lest they find their own districts more competitive. For the leadership, the dynamics of the process encourage a tendency to be blatantly political.

All of these factors were apparent in the events surrounding the redistricting of the 1980s. In the lower house, the essential dilemma was how to protect the seats in the older cities, especially Providence, which had lost population over the past decade to the more rural and Republican parts of the state. Here the leadership was able to use the court ruling in *Sweeny v. Notte*, which struck down a strict town-based apportionment system, and carefully cull sufficient representation from the surrounding Democratic towns to keep most of the party's districts. While this highly political plan was challenged in court, the assembly leadership prudently took great pains to retain an expert defense team, and in *Holms v. Farmer* (1984)

Table 1. Partisan Divisions in the Rhode Island Legislature and Congressional Delegation, 1980-88.

YEAR	SENATE	HOUSE	U.S. HOUSE
1980	43D, 7R	82D, 18R	1D, 1R
1982	29D, 21R	85D, 15R	1D, 1R
1984	38D, 12R	77D, 22R*	1D, 1R
1986	38D, 12R	80D, 20R	1D, 1R
1988	41D, 9R	85D, 20R	0D, 2R

*One legislator elected with no ties to either major party.

the Rhode Island Supreme Court ruled that the House plan violated neither the one person- one vote rule nor the compactness requirement.

Events in the Senate were more contentious. Faced with the necessity of eliminating one Senate district in the city of Providence, majority leader Rocco Quattrocchi decided to place two mavericks in the same Senate district. One, a Democrat, was from an old political family and was an outspoken opponent of the existing Senate leadership. The other was the Republican minority leader who represented a visible and vocal reform constituency. Both were influential Jewish residents of Providence's East Side, a wealthy bastion of the Old Guard, who continually challenged the more parochial orientations of most members of the legislature.

Both legislators challenged the Senate plan. In *Licht v. Quattrocchi* (1982), the Rhode Island Supreme Court invalidated the plan on the grounds that it violated the one person-one vote requirement of the federal Constitution and the compactness requirement of the Rhode Island Constitution, and invidiously discriminated against a recognizable racial group. Moreover, as a result of the suit, Senate elections were enjoined until July of 1983. As a result of the publicity surrounding the case, the press dubbed the sitting senators "Rocco's Robots" for going along with such an obviously political plan. The voters, in turn, took the Democrats to task by voting Republican. In that election, the number of Republicans in the Senate went from 7 to 21. Since that time, however, Republican gains have eroded to more normal levels; in 1990 the GOP held only 5 of 50 seats in the upper house. (See Table 1.)

A state constitutional convention in 1986 amended the constitution to reflect previous court rulings on compactness and the one person-one vote requirement. At that convention, the leadership of the Assembly enjoyed considerable indirect influence, and several proposals which would have shifted the responsibility for redistricting from the legislature to appointed bipartisan groups or the state board of elections were all defeated.

Issues in the 1990s

While the Democrats still hold an overwhelming majority in the Assembly, the leadership of both houses is in a severely weakened position. Beyond the normal parochial character of legislative politics (to which Rhode Islanders appear to be inured), scandals of major proportions have had voters' attention since early 1991. One scandal concerns the failure of the state's credit unions while a second involves revelations of gross abuses of the state's pension system. As the investigations unfold, members of the legislature and the leadership of both houses are involved at every juncture.

In this climate, plans for redistricting are likely to proceed cautiously, with the legislators avoiding any appearance of impropriety. The 1992 plan will not require any reduction of the number of districts in Providence but will require some adjustment to protect smaller Democratic cities around the state which have lost population to outlying areas. Given the weak position of the Republicans in the legislature and the GOP's general disregard for legislative seats, if the leadership proceeds prudently, a serious partisan challenge is unlikely.

A more likely arena of contention is racial. The results of the 1990 census revealed that Hispanics are now the largest minority in the state—outnumbering African Americans in the state and the city of Providence. While African Americans have acquired representation in the legislature, an Hispanic has yet to be elected. At the present time, this group lacks any visible and unified leadership and has yet to mount a campaign for representation. But given the attention the issue of African American and Hispanic representation has received nationally since the U.S. census data were released, this issue has the potential to pose significant problems for a beleaguered Democratic leadership.

Congressional redistricting will require only minor changes, since population shifts will not affect the

state's two federal districts, which are essentially divided on a north-south axis through the city of Providence. There are plans to draw the new line in such a way as to place state Representative Patrick Kennedy, who is the son of U.S. Senator Edward Kennedy, in a congressional district now held by a Republican. The hope is that Kennedy, who is a vocal outsider in the state legislature, will move "up and out" to the U.S. Congress.

Under these circumstances, reform groups like Common Cause have gained considerable visibility in the press, renewing efforts to secure reform of the existing redistricting system. The Assembly leadership has refused to consider various proposals, arguing that without another constitutional convention, any change in the redistricting procedure would violate the state constitution. Reform groups are not likely to be successful because, perversely, the problems in the credit unions and the pension systems (as well as huge budget shortfalls) are so immediate that, in the whole scheme of things, political elites and voters are unlikely to give much consideration to an issue like redistricting.

Thus it appears that, at least into the 1990s, political gerrymandering will continue to be a fact of political life, and George Washington's characterization of Rhode Island politics will remain a fairly apt description of politics in the Ocean State.

NOTES

1. Cited in Darrell West, "Stalled Realignment: Party Change in Rhode Island," in *Party Realignment in the American States* (forthcoming, Ohio State University Press).

2. For a discussion of redistricting in Rhode Island prior to the 1980s, see William Leiter, "Rhode Island," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 285-92.

South Carolina

David S. Mann

Several profound ironies characterize South Carolina redistricting in the 1900s and are likely to resurface in the 1990s. Some aspects are conventional tales of party and power politics, but others are unanticipated consequences of civil rights legislation from the 1960s. There are several fascinating stories here, perhaps the most significant of which is that for the first time, the Senate in South Carolina reapportioned to a system of single-member districts.[1]

The Voting Rights Act of 1965-1982

While the 1965 Voting Rights Act was initially designed to remedy obvious discrepancies between African American and white voter registration in targeted southern states, the 1982 revisions of the act ended those original provisions, including the requirement that states covered by provisions of the act submit all proposed laws covering voting to the U.S. Department of Justice for approval. South Carolina always has been "covered by the provisions of the act," with the General Assembly and other elected leaders in the state on record as reluctant to comply.[2]

States may comply with the Voting Rights Act through alternative routes. Most commonly, when changes in state laws respecting voting are passed, the Justice Department is notified. On matters regarding redistricting and reapportionment, simply reporting to the Justice Department is not enough. Seeking preclearance for redistricting plans that have passed the legislature is the most common approach. If the Justice Department, under preclearance, rules the plan not to be valid, it can sue or it can simply ask the state to submit a new plan. A state may sue at that point.

The alternative route is for the state to go directly to a three-judge district court in the District of Columbia circuit. There the state can seek declaratory judgment, arguing that a legislature-approved plan conforms with the Voting Rights Act. The standards ostensibly are the same for the three-judge district court and for the Justice Department.[3] If the state loses, the state may appeal directly to the United States Supreme Court.

For the 1980s, the three redistricting actions taken by the General Assembly and the state of South Carolina were met with, in the words of the late United States Supreme Court Justice Stone, "exacting judicial scrutiny"[4] by the Justice Department and the three-judge district court for the District of Columbia circuit.

Redistricting the House

The South Carolina lower house has 124 seats. Single-member districts were devised for this body in the 1970s, but the integrity of county boundaries has almost always been sacred. The current speaker of the House, Robert J. Sheheen, was chair of the House Judiciary Committee in 1980-81. His description of the process follows:

> The first priority . . . is to find a majority—you have to have a majority to vote for the plan. . . . Secondly, you have to be very cognizant of the racial factor and what impact that would have on South Carolina. So not only do you have to have two-thirds, but you also have to be able to handle any floor amendments that will ultimately come up. . . . Testing the plan would include not only the pre-election review [of the district] but also the post-election review. . . . Thirdly, there [are] the geographical locations. In some areas there might be a dramatic effect in joining two areas together. This is due to the changing makeup of the populations. Fourthly, some consideration must be paid to the tradition of geographic locations.[5]

The planning stages included local meetings with legislative delegations and their constituents, and county meetings, with time given to respond to tentative plans. Some counties sent representatives to the state capitol

Table 1. Makeup of the South Carolina House of Representatives, 1981-90.

YEARS	DEMOCRATS	REPUBLICANS	WHITES	AFRICAN AMERICANS	WOMEN	REELECTED
1981-82	106	18	109	15	9	100
1983-84	104	20	104	20	9	99
1985-86	95*	28	100	16	7	96
1989-90	84	40**	108	16	13	99

*One vacancy, a black Democratic member having been elected in a special election to the state Senate.

**Shortly after the session started in 1989, four Democrats announced they were switching party preference to Republican.

in Columbia. Though everyone knew that the Voting Rights Act would be coming up for reconsideration in the U.S. Congress in 1981-82, the assumption that prevailed in the House was that the Voting Rights Act would be reenacted. The plan passed both houses of the General Assembly and went to the Justice Department, where the plan was given preclearance.

The electoral consequences of House reapportionment are shown in Table 1. Republican party strength increased in the 1980s, perhaps because of—certainly not in spite of—the fact that political party was not seen to be a criterion for drawing district lines in the House. Republican party strength in the House virtually doubled. However, part of that growth has resulted from party switches—announced after the 1988 election—by four incumbent Democratic House members. That notwithstanding, Republicans numerically held a "veto-proof" number in the House in 1990, where that notion would have been unheard of a decade ago. In the words of Bobby Bowers, the director of the Division of Research and Statistical Services for the State Budget and Control Board, and the state's demographer:

> I don't really think it [political party] was a criterion. It may be inherently there, but it never has really reared its head. . . . [The] Republican party was interested in protecting Republicans, as was the Democratic party interested in protecting Democrats.[6]

Very little change occurred in the way of African American representation in the House after the 1981-82 reapportionment. After the first post-redistricting election, as Table 1 shows, four additional African Americans were elected. However, after the next election, in the fall of 1984, the number dropped to just about what it had been before redistricting.

Other comparisons are worth noting briefly. The seniority system is *not* a factor in the South Carolina House. Committee members, but not committee chairs, are appointed by House leaders. The three most recent speakers of the House have appeared to recognize competence rather than seniority as a significant criterion for legislative leadership.

Turnover appears to be consistent in the House for the 1980s. About 25 or so new members appear for each two-year session. So, with the caveat that some House members in South Carolina run for the Senate, and bearing in mind that for so long the Palmetto State was one-party Democratic dominant, the House (and, to a lesser extent, the Senate) has a more stable membership than the average for the 50 states.

The number of lawyers in the House has remained about the same. That is significant because of the widely held perception among House members that lawyers are, with rare exceptions, the key legislators. Interestingly, the number of retired persons and the number of women holding House seats has increased. The increase in the number of retirees "is paralleled in almost all states as the nation acquires an increasingly

large and active population of retirees. The trend is more evident in South Carolina because of the dramatic increase in retirees moving into the state." [7]

Redistricting the Senate

The biggest story about reapportionment in the 1980s in South Carolina was the switch from multimember districts which maintained county integrity to single-member districts. There are 46 Senate seats, the constitutional origins being the state's 46 counties. This design was a classic "little federal plan," which was overruled by *Reynolds v. Sims* in 1964. All who were interviewed for this essay stated that the conversion to single-member districts was the "most dramatic occurrence" in the 1980s. Then-Senator Tom Smith was the unofficial floor leader for the Senate plan. According to Smith, after the decision was made to change to single-member districts, "The first priority was to get a plan that you could pass, with as many people who were happy with the plan as possible." [8]

There was intense pressure to create districts where African Americans could be elected as senators. There had not been an African American senator in South Carolina since the end of Reconstruction. The NAACP had proposed a plan to create 13 African American-majority districts, but eventually it adopted a different plan with nine African American-majority districts, seven of which had African American populations of 59 percent or more.

Bobby M. Bowers, the state demographer, stated:

> We had formalized a number of [criteria]: contiguousness, compactness, communities of interests, but the overriding [criteria] are the constitutionality of one person-one vote and the section [of the Voting Rights Act] not diluting African American voting strength. Protection of incumbents is permissible provided that it does not violate the constitutionality of the other voting rights requirements.[9]

As with the House, political party was not relevant to Senate redistricting. There were only six Republicans in the Senate in 1983 out of the 46 seats. There were some who believed that the House could hold the Senate hostage because some House members were not-so-secretly interested in Senate seats. However, no senator was interested in running for a House seat. The main component in everyone's mind, other than protecting incumbents, was generating African American districts. "[T]he rivers of change thought it was important to increase minority representation" [10]

The Senate agreed on a single-member district plan only after a special session was called in the fall of 1983. The legislation passed through a conference committee and was signed by Governor Dick Riley on November 14, 1983.

As stated above, there are two strategies available to comply with the Voting Rights Act: preclearance from the Justice Department or declaratory judgment from a three-judge District Court in the District of Columbia circuit. The Senate Subcommittee on Reapportionment instructed Mr. Terrill Glenn, who was retained as the chief litigator, to seek declaratory judgment through the three-judge district court. Justice Department lawyers, with intervener NAACP lawyers, worked with the Glenn team for months. Over 100 depositions from state and local officials and interest groups were obtained. The Justice Department opposed the motion for summary judgment. According to Professor Butler and Mr. Glenn, the case should have been very easy to decide. The Senate had gone from multimember to single-member districts; the plan called for nine African American-majority districts where there had been none before.

The motion for summary judgment was denied in a surprising fashion. Less than an hour after oral argument, the three-judge district court issued a 15-page written opinion, which indicated to some, including Professor Butler, that the court simply was not going to allow the plan to pass. "The pressure finally got to people in a position to make a decision about this case [and] they finally [decided to settle]. . . . [T]here were not any changes that resulted in any additional African American elected officials." [11] The General Assembly

Table 2. Makeup of the South Carolina Senate, 1981-90.

YEARS	DEMOCRATS	REPUBLICANS	WHITES	AFRICAN AMERICANS	WOMEN	REELECTED
1981-82	41	5	46	0	2	35
1983-84	40	6	46	0	3	33
1985-86	36	10	42	4	2	29
1989-90	34	12	41	5	2	38

ratified the agreement in time for elections to proceed as planned in 1984.[12]

The South Carolina voter registration system does not include political party designation. The primaries are run by the parties, not the state. By voting in a primary, one implicitly swears an oath that he or she will not participate in the other party's primary, which may or may not be on the same day.

> We could take the two primaries' data, but that really wouldn't give you any indication of party strength. . . . We do have registration by race. . . . [Governor] Campbell a shoo-in in 1988 [sic: 1986] in some areas, [President] Bush even more so, but then the Democratic House member would clean the clock of his opponent. . . . You can take the primary results and look at certain precincts to see if they are Democrat or Republican, but as far as whether rights are being violated, you would have a very difficult time looking at registration . . . .[13]

Table 2 displays the results of Senate redistricting. More surprising than the fact that there are now five African American senators is the fact that there are 12 Republicans where there had been only six prior to reapportionment. Perhaps the two sets of changes are related. African Americans may have a better chance of winning election through single-member districts than with an at-large district-wide election scheme.

It would appear that African American Senate districts were deliberately drawn with high enough percentages of African American population to have elected as many as nine African American senators—although they eventually produced only five. The big winners in the neighboring districts were Republicans. A case could be made for the following statement: for every African American senator there is a new Republican senator where there had been none before. Again, a partial explanation rests with the difference between single-member and multimember districts, where candidates in the latter are chosen at-large. The data are very clear but are difficult to visualize, because the districts were county-contiguous in the multimember scheme and are not now.

Other patterns are worth noting briefly. First of all, the seniority system is alive but not well in the South Carolina Senate. The decade of the eighties saw three of the four most senior senators depart the scene. Closely related to seniority is turnover. There is little doubt that single-member districts help explain the larger-than-average turnover in the Senate for the 1984 election. Some of the turnover was at or near the top, but was as a result of aging rather than redistricting. One cannot help but observe that in the most recent election, 38 senators were returned to office, the highest number in the 1980s. So the fact that there were 10 new senators in 1985 may have been a temporary anomaly. Perhaps the difficulties facing Senate leadership now stem from the fact that the results of both aging and single-member districts occurred simultaneously.

Predictably, the number of lawyers in the Senate has slightly declined since 1980. There were 26 then, there are 23 now. Still, with 50 percent of the body's members in the legal profession, one cannot argue about lawyers dominating debate and influence. In the early 1980s, lawyers were perceived by that body to be the most respected legislators in the upper house.

To summarize briefly the Senate's reapportionment story in the 1980s is not easy. The effects are profound and have yet to achieve their full impact.

Redistricting Congress

Congressional redistricting in South Carolina faces the same Voting Rights Act hurdles as does redistricting of the General Assembly. Observers have noted that this reapportionment was not as difficult as that of the Senate but was more difficult than that of the House.

Speaker Sheheen directed a plan of congressional redistricting through the House:

> All you have to do is read case law and realize that an approved plan is going to have to meet mathematical certainty. . . . The House adopted a plan that was as close to mathematical certainty as possible. We had to split counties, even though the original plan did not.[14]

The consequence of congressional redistricting in 1981 was insignificant. The census data provided the same number of seats for South Carolina as in the past, and with only minor changes in population, mostly in the coastal areas, the district shapes changed only slightly.

Predictions for the 1990s

One of the three redistricting predictions for the 1990s is easy; the other two are more problematic but are worthy of extensive discussion. The House will be relatively easy, Senate reapportionment and congressional redistricting will be much more difficult.

House

Said Robert J. Sheheen in March 1990:

> If I am reelected [note: he was] and if I am reelected as speaker, I will play a predominant role for two reasons. One, unless something changes, the chair of House Judiciary will be a Republican, David Wilkins. He has no experience in doing redistricting. Second, I have done it before, and I think I have established some credibility, and the House will look to me as a leader there.[15]

In 1981, one of the first actions taken by Mr. Sheheen was to control the flow of information about remapping through the Judiciary Committee. The same process is likely to occur in 1991 if Sheheen is in control. Though he carefully and modestly hedges his future, it will be a real surprise to everyone if Sheheen is not speaker in 1991. Of the three redistricting processes in the 1980s, the House was the easiest to accomplish; it will also be the easiest to accomplish in 1991.

Senate

In some sense, this redistricting will be easier than it was in the 1980s, because the Senate now is in single-member districts where it was not before. Perhaps the Senate should consider expanding the number of seats in that body to 48 or 50, which was an idea posed in a conversation the author had with former Senator Tom Smith. However, that would require a constitutional change, which is not likely to be forthcoming.

One issue may be whether there will be a push for more African American-majority Senate districts. Senator Kay Patterson chairs the Legislative African American Caucus. She says, "We have districts now where African Americans are not elected, so . . . I don't want to spend all my time creating African American districts where we aren't electing the ones we already have."[16]

There are philosophical aspects to this policy prediction. First, when federal courts become involved in redistricting, their views are more strict in terms of population variance than if there is no litigation. In other words, if a plan preclears through the Justice Department, there is more leeway for population variance than if the federal courts are ruling on a plan. However, because the Justice Department is not a judicial body *per se*, it has more flexibility to approve (or to deny approval of) any redistricting plan.

As was discussed earlier, and with some supporting empirical evidence, the more African American dis-

tricts and the larger the African American majority in a district, the more total number of Republican districts there are likely to be. Redistricting in South Carolina, at first glance, is an African American and white issue. Behind the scenes, however, it may be viewed as a Democratic and Republican issue.

The first aspect of this issue relates to the federal government and the Justice Department. That any executive-branch institution would function to assist others of similar party or philosophic persuasion is not news. In some sense, this is like *affirmative action gerrymandering*. One source for this essay indicated on sound authority that the Justice Department will "put everything else secondary to creating more and African Americaner districts." [17]

The Justice Department would be expected to interpret the Voting Rights Act in the direction of proportional representation, because the eventual outcome would be to increase the number of Republican districts. Couple that with the history of party politics in South Carolina, which is beyond the scope of this essay, and the consequences follow directly.

As African Americans come to dominate Democratic politics in the state, there will be more defections of white Democrats to the Republican party. Some members of the General Assembly have switched already, as was noted earlier. There have been no switches *to* the Democratic party among the seated members of the General Assembly. What some fear, confidentially, is that the Democratic party will become a party largely of African Americans and the Republican party will become a party solely of whites. Some whites might feel quite ideologically comfortable there because they were more like old Dixiecrats anyway.

Congressional

The same pattern holds here as for the Senate. There is already a public push by the Legislative African American Caucus and the NAACP to press for an African American-majority congressional district in 1991. The coastal and Pee Dee regions are those where African American populations are largest. Those population centers are the likely targets for an African American congressional district. Philosophically, and consistent with the Voting Rights Act in addition to retrogression, is the notion of maintaining constituent consistency. This criterion was emphasized by several of those interviewed. It would appear that creating an African American congressional district might deleteriously affect that criterion. In the past, instances of blatant *party-based* gerrymandering have been challenged in court. Nevertheless, an African American-majority congressional district will be drawn in South Carolina. This will result in some radically different-looking districts from those of the previous decade.

One might conclude by pausing to reflect on the dissenting opinion of Justice Frankfurter in the first reapportionment case the Supreme Court addressed, *Baker v. Carr*. The judge was suggesting that the issues of redistricting were political, and not rightfully able to be resolved by the judiciary:

> The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements. . . . In effect, today's decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty States. . . .[18]

NOTES

1. For a fuller discussion of reapportionment in South Carolina prior to the 1980s, see Robert H. Stoudemire, "South Carolina," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 293-98.

2. The apparent reality, at least as it affects South Carolina, is that different standards apply. One belief is that

the Justice Department considers South Carolina to be a "rogue state" and all redistricting schemes will be given most close attention. "They have an outmoded view of Southerners. They would not concede that life has changed very much in the South in the last 20 years." Interview with Professor Katharine Butler, April 24, 1990. See also K.I. Butler, "Constitutional and Statutory Challenges to Election Structures: Dilution and the Value of the Right to Vote," *Louisiana Law Review* 42 (1982): 851.

3. Interview with Speaker Robert J. Sheheen, March 6, 1990.
4. *U.S. v. Carolene Products Company*, 304 U.S. 144, 152 (1938).
5. Interview with Sheheen.
6. Interview with Bobby Bowers, April 10, 1990.
7. G.T. Broach, "Reform and Function: Continuity and Change in the South Carolina General Assembly," paper presented at the Annual Meeting of the South Carolina Political Science Association, Aiken, South Carolina, April 1990, p. 7.
8. Interview with Tom Smith, April 10, 1990.
9. Interview with Bowers.
10. Interview with Butler.
11. Ibid.
12. A second suit was in the works, this time filed by the Republican party, which wished to postpone the elections. The claim was that there wasn't time to campaign for district seats for office seekers and compete fairly in the fall election. The suit was dismissed.
13. Interview with Bowers.
14. Interview with Sheheen.
15. Ibid.
16. Phone interview with Senator Kay Patterson, May 9, 1990.
17. Confidentiality was guaranteed for this quote.
18. 369 U.S. 186, at 267-68 (1962).

South Dakota

Alan L. Clem

South Dakota's relatively low population entitles it to but one seat in the U.S. House of Representatives, which means that its state legislature need not worry about redrawing the boundaries of congressional districts for the 1990s. But the legislature does have to redistrict itself.

The state's constitution has, since long before the *Baker v. Carr* decision of 1962, stipulated that population is to be the basis of apportioning seats in both chambers of the state legislature. By statute, the legislature in redistricting itself operates on the basis of several districting principles.[1] Of fundamental significance are: (1) adherence to standards of population deviance as established by judicial precedent; (2) preservation of existing county, township, and municipal boundaries; (3) protection of minority voting rights as provided in the Voting Rights Act of 1965; and (4) compactness and contiguity of territory. Considerations of lesser significance are preservation of historical districting patterns, equalization of size (area), and "socioeconomic considerations."

In recent decades, South Dakota has made several significant adjustments in state legislative apportionment.[2] In 1965, after *Baker v. Carr* and several related decisions had come down from the U.S. Supreme Court, the South Dakota state legislature redrew the boundaries of Senate and House districts to comply with the equal-population criterion. The state continued to have 35 senators and 75 representatives, and continued the practice of using a number of multimember legislative districts. In the 1971 redistricting act, the state legislature reduced the number of representatives from 75 to 70, so that there would be two representatives for each senator.

In the 1982 general election, South Dakota voters approved a constitutional amendment which required that each of the state's 35 state senators be elected from a single-member district, and also provided that the legislature could determine whether the representatives were to be elected from single-member or dual-member districts. Since that time, the dual-member system has been used for the House of Representatives. In the wake of the 1982 constitutional change, the legislature made a new apportionment, which still exists at this writing. The only differences in the present system, compared to that existing in 1982, are the breakups of the former multimember districts in the three most populous counties (Minnehaha, Pennington, and Brown).

The present apportionment places 25 of the 35 districts to the east of the Missouri River and 10 districts in the West River area. Only eight of the state's 66 counties are divided into more than one district. Looking at the present apportionment from another perspective, three categories of districts can be identified: (1) 11 districts are less than one full county in extent; (2) 11 districts are composed of complete counties, from as few as one county to as many as five counties; and (3) 13 districts are combinations of full counties and parts of other counties (the largest district, the 27th, encompasses six complete West River counties and part of a seventh county).

In the summer of 1990, a seven-member interim legislative leadership committee was to prepare the groundwork for 1991 redistricting legislation by considering general questions of apportionment theory and strategy. The committee commenced dialogue with Indian tribes with an eye to addressing the representational concerns of this minority group, which constitutes something less than 10 percent of the state's population. The tribes may be expected to look favorably on the single-member district system, since a system based on districts containing 10,000 inhabitants would be likely to produce more seats for a concentrated minority than one with districts of 20,000

inhabitants. Many Indians do not live on reservations, but it is in the reservation counties where Indian concentrations are most likely to receive legislative representation.

The state constitution commands that reapportionment legislation be passed prior to December 1 of the year following the decennial federal census, which in the present case means December 1, 1991. Failing this, redistricting would be worked out by the state's Supreme Court. It is likely, then, that after the 1991 legislative session, which will end in March before final census data are expected to be available for use in redistricting the state, the executive board of the Legislative Research Council will appoint an interim committee to recommend a redistricting plan. Then a special legislative session would be called for November 1991, to consider the interim committee's recommendation and, hopefully, complete action on a new apportionment law before the December 1 constitutional deadline.

There is a proposal that in the new apportionment the 35 Senate districts should be divided into two separate House districts, so that the entire legislature would be based for the first time on single-member districts exclusively. With the 1990 census expected to report a South Dakota population somewhat above 700,000, the typical state senator would have a constituency of about 20,500 and the typical state representative a constituency of about 10,250.

With single-member representative districts, there would be the likelihood of one Democrat running against one Republican for each seat, rather than the present arrangement of having two Democrats running against two Republicans for two seats. The present dual-member system makes it unclear who is running against whom and reduces the sense of a one-on-one relationship between a particular member and a particular constituency, as with U.S. representatives across the nation. South Dakota's present dual-member House districts encourage strange and incongruous political games and strategies. In the past, candidates have had cause to wonder whether it is prudent to urge their backers to vote for the other candidate of the same party—their fellow Democrat or Republican might win the last seat and leave them out in the cold.

A straightforward single-member district system would simplify and clarify legislative contests and would make it likelier that political party leaders and members would back all the party's candidates. It is also worth noting that single-member districts are preferred by the courts because multimember districts can dilute minority representation and are thus suspect from a constitutional point of view. The state's Native American population has been particularly sensitive to this matter.

It seems appropriate to express the hope that partisan considerations will be downplayed in legislative redistricting, with no attempts to pack or crack the voters of the opposing party. The political party caucuses, the press, and the courts all have roles to play in maintaining an equitable and workable apportionment system.

The author wishes to thank William O. Farber, professor emeritus of political science at the University of South Dakota, and Terry Anderson, director of the South Dakota Legislative Research Council, for their thoughtful and knowledgeable help in the preparation of this essay.

NOTES

1. South Dakota Compiled Laws 2-2-19.
2. For a description of reapportionment in South Dakota prior to the 1980s, see Alan L. Clem, "South Dakota," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 299-301.

TENNESSEE

STEPHANIE BELLAR

The decade of the 1980s was both more and less conflictual in Tennessee redistricting than the 1970s. On the one hand, there was the addition of a new congressional district which sparked partisan debate; on the other hand, the major object of the General Assembly was to protect incumbent legislators, which mitigated some of the partisan politics. The balancing act necessary to accomplish partisan gain at the congressional level and accommodate the, then, current configuration of power was complicated by a divided party in government.

REDISTRICTING IN THE 1980S

The political context for the 1981 redistricting was as it had been during the 1972-73 reapportionment battles: the Republicans controlled the executive while the Democrats controlled the legislature.[1] The Democratic party's dominance of the legislature was an issue in the 1980 election evidenced by Governor Alexander's attempt to target certain members of the legislature in the hopes of gaining Republican party control over at least one of the two chambers.

Governor Alexander's efforts were largely unsuccessful. There was no change in the partisan composition of the state Senate. In the state House, there was a marginal effect. Democrats lost two seats but the gain was split between the Republicans and the Independents.

Alexander's victory, limited as it was, was also short-lived. In 1982, the Democrats recaptured the two lost seats, thus returning the House to the 1978 balance of partisan power. More importantly, the Democrats made gains in the Senate, where they captured two additional seats. This election brought the Democratic control of the Senate close to what it had been in 1976, the last year of a Democratic party surge in Tennessee. Democrats who had been comfortable in their control of the legislature in 1980 were even better situated to control the business of the state in 1982. They did their job well.

The battle over reapportioning the congressional districts, while intense, was settled early in the process. Essentially, the prize was the new congressional seat. When the plan was developed, it was not fully clear that the Democrats would emerge with six of the nine seats. Indeed, there was speculation that the Republican governor failed to veto the plan because state GOP strategists saw some potential for the Republicans to capture seven of the nine seats. That potential never materialized and Democrats dominated the congressional delegation throughout the decade of the eighties.

Turning attention to the state chambers redistricting plan, the battle was just as intense as the congressional districting plan and much longer in duration. Moreover, the issues were further complicated by the shift in population throughout the state. The population growth that necessitated a new congressional seat was, in some ways, a double-edged sword. This was because the growth occurred in the middle and eastern parts of the state. Furthermore, the western part of the state, which was Democratic, lost representation as state residents moved eastward to follow economic opportunity. The challenge to the Democratic leadership was to devise a plan which would protect incumbents, protect the party, and mitigate the effects of the population boom in the solidly Republican east and the Republican-leaning middle part of the state. The Democrats' task was formidable and only partially successful.

The first state redistricting plan was finished by July of 1981. This plan clearly was negotiated by the leadership to protect incumbents. The plan was a combina-

tion of concentration of "them" with some elements of concentration of "us." This plan was also successfully challenged; Chancellor Robert S. Brandt ordered the legislature to redraw the 1981 apportionment plan. In his ruling, Chancellor Brandt argued that the one man-one vote federal requirement must be balanced with the state constitutional provision of not sp litting counties.[2] The 1981 plan had eliminated the only Independent senator's district in western Tennessee, split Washington County in eastern Tennessee, and crossed the county lines of Davidson County more than once. The effect of these lines undoubtedly w as to protect partisan incumbents.

In the House, the situation was even more telling. Here, legislators had split 53 of the state's 95 counties; again, they concentrated current partisan voters to protect incumbents.

The state Supreme Court upheld Chancellor Brandt and ordered reapportionment for the 1984 elections. In the ruling[3] the bench suggested that it would tolerate population deviations up to 14 percent. The Court further specified that no urban county could be joined to a neighboring county. The Court was seeking to prohibit an obvious gerrymander such that suburban areas would be placed in the district of a rural county. What the Court did, regardless of its intentions, was to protect the political strength of rural counties.

The representatives quickly went to work on the new plan. By early summer, both chambers had developed the court-ordered plan. Republicans opposed the plan, particularly in the Senate, where only two Republicans voted for the proposal. There was good reason for their opposition, as the plan was a clear example of a dispersal-form of gerrymander. A Republican leader of the Senate was forced out by redistricting him into another GOP district.

In the House, the plan was so divisive that over one-half (57 of 99) of the membership sued to have the plan overturned. That a majority of the membership would seek a judicial remedy of a plan approved less than a month previously was unusual, and points to the confusion surrounding the 1984 apportionment. While it is impossible to discern the motives of all the plaintiffs, the suit was generally based on the argument that the apportionment too severely violated the federal bench mandate of one man-one vote. The plan, which was signed by the governor, allowed for an overall population variance of 14 percent.

The federal court of appeals rejected the challenge. The bench accepted the 1984 plan, arguing that the guidelines established by the state Supreme Court had been followed. In fact, the court of appeals suggested that the plan was in accordance with the state constitution and reflected rational state policy.

This ruling was surprising for two reasons. First, the population variance was very large. However, the federal bench has accepted even larger dispersion in other states. Secondly, and perhaps more telling for Tennessee politics, this was the first Tennessee House reapportionment plan to be upheld by a federal court in almost 30 years.

The immediate partisan effect of the ruling was negligible. Examination of Table 1 shows there was no partisan change in either chamber for the 1986 term. However, as can be seen for 1988, Republican party strength in the lower chamber grew. The redistricting plan, coupled with the shift in population, was in some part responsible for the House Republican showing. What cannot be seen in Table 1 is that there was more turnover than is suggested by the absolute increase in the number of Republican representatives. Indeed, while Republicans won some previously Democratically controlled seats, they also lost some seats to Democrats. This is not to suggest that elections have become more competitive. In 1988, over 60 members of the House ran without partisan opponents (as had been the case also in 1986).

Previously in this essay, the shift in population was emphasized. The importance of this shift is shown in the 1988 elections. Gains by the Republicans were made in two places: middle Tennessee and the suburbs of Memphis. Middle Tennessee is the growth area in

Table 1. Party Representation in the Tennessee Legislature and Congressional Delegation, 1980-88.

	HOUSE			SENATE			U.S. HOUSE	
YEAR	REPUB	DEM	IND	REPUB	DEM	IND	REPUB	DEM
1980	39	58	2	12	20	1	3	5
1982	38	60	1	11	22	--	3	6
1984	37	62	--	10	23	--	3	6
1986	37	62	--	10	23	--	3	6
1988	40	55	--	11	22	--	3	6

this state. Traditionally, the middle part of the state had been supportive of the Democratic party. But the Democrats' support is waning. It appears that the same phenomenon is happening in Shelby County. That is, those who can are moving outward from Nashville into surrounding counties in the middle part of the state, and out of the city of Memphis into greater Shelby County; and these voters appear to lean Republican.

The courts' insistence that counties not be unnecessarily divided, and that urban areas not be apportioned for a dilution of minority representation, prohibited blatant examples of gerrymandering. Indeed, the courts were so forceful in their language that the General Assembly had to be attentive to the state constitution as well as the mandates from the federal bench. Moreover, in the court rulings there is a foretelling of the reapportionment issues for the 1990s.

Redistricting in the 1990s

In Tennessee, as across this nation, redistricting for the 1990s will be clouded by and fought over due to the problems with the census. The stakes are high.

First, there is the partisan issue. Democrats are likely to control both the executive and legislative branches. And, since Democrats dominate the congressional delegation an elementary understanding of politics tells us that they will seek an apportionment plan which strengthens their position. Their problem is that Republican partisan identification is increasing; it is now close to 40 percent of the Tennessee population. It will take more than a simple division of voters into carefully crafted districts to guarantee the Democrats safe districts in Tennessee.

As it is unlikely that the Republicans can capture the governor's seat in 1990, their strategy seems to be to concentrate on the gains made in 1988. This will be a difficult task, as they do not have the presidential election to politicize voters. What they do have, to their benefit, is scandal at the congressional level and state level. Congressman Harold Ford, a Democrat out of Memphis, is under investigation for bank loans made to him over the past several years. At the state level, the GOP has the opportunity to capitalize on the Rocky Top scandal. Briefly, this is a situation involving prominent Democratic legislators who are under investigation for accepting bribes and kickbacks from bingo operations, an activity declared illegal in Tennessee.

Second, there is the rural-urban issue. In many ways the state misidentifies itself as a largely rural, agrarian state. This misperception, tacitly accepted in the 1984 apportionment plan, stems from the dominance of rural political representation in Tennessee. To the extent that the Democratic party draws a substantial portion of its strength from rural areas, it perpetuates some of this myth. Furthermore, the Republicans have their rural faction which has been a bedrock of strength for them. They, too, have reason to continue to talk about and treat Tennessee as rural and traditional. Finally, there is the role of the courts in applying the standards of the state constitution. All of these factors work towards the protection of the political integrity of counties. This suggests that the 1991 apportionment plan for the state chambers will depart from the one man-one vote ideal.

It is impossible to predict what effect the numerical dispersion will have on minority representation. Currently, representation in the General Assembly is proportional to the state population. The courts have shown sensitivity to the importance of not diluting the voting strength of the African American population. As of now, there is reason to believe that the 1991 plan will include political representation for the state's major minority group.

In short, it appears that the 1991 plan will have to grapple with the institutional arrangements that favor rural areas of the state. Until those institutional barriers are corrected, it is doubtful that there will be a close approximation of the one man-one vote principle in Tennessee.

NOTES

1. For a fuller discussion of reapportionment in Tennessee prior to the 1980s, see Richard L. Wilson, "Tennessee," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 302-310.
2. *News Free Press*, September 9, 1982, p. B-3.
3. 656 S.W. 2d 836 (Tenn. 1983).

TEXAS

DONALD D. GREGORY

The early reapportionment-redistricting struggle in Texas exhibited classic characteristics of "silent gerrymandering" through both constitutional restrictions and legislative inaction.[1]

REDISTRICTING IN THE 1980S

The redistricting struggle in the Texas legislature was best described by one haggard House member during an eight-hour debate which finally ended at 4:30 A.M., when he said that this was a time of "self-preservation." When the 140-day session began in January, the Democrats outnumbered the Republicans 114-36 in the House and 24-7 in the Senate. However, for the first time since the Reconstruction era, a Republican, William P. Clements, sat in the governor's office. A coalition of conservative Democrats and Republicans had begun to play an influential role in major legislative issues during the 1970s, and their goals were likely to clash with the moderate-liberal wing of the Democratic party and the aspirations of minority group members. In addition, the conservative Democratic speaker of the House, Billy Clayton, was accused of being too accommodating to the GOP on policy issues, and his critics feared that he would sell out to the Republicans.

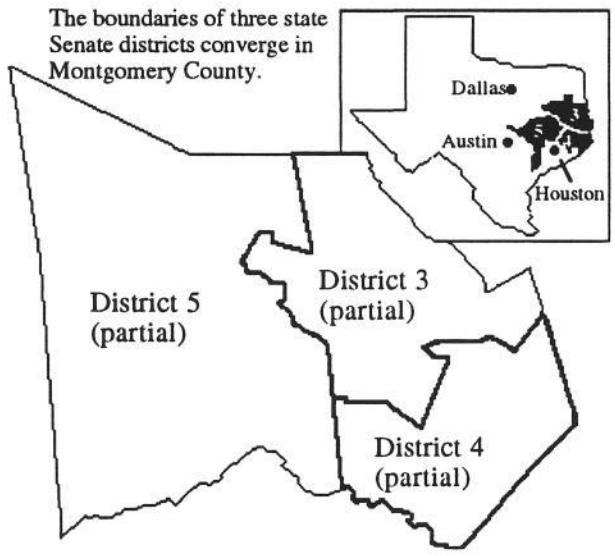

Figure 1. Montgomery County Senate Districts.

"Team players" were appointed by the leadership to the House and Senate redistricting committees. By tradition, each house of the legislature would devise its own map for its members, and there would be only token opposition when the respective redistricting bills reached the other body. Also, the bills were held in committee until late in the session in order to avoid open warfare among the members. The self-preservation issue was evidenced by the fact that the Harris County delegation initially split into four factions on the redistricting issue: white Democrats, Republicans, Hispanics, and African Americans.

With about one week remaining in the session, the Texas Senate plan emerged from committee with a design which was generally favorable to incumbent Democrats. Two Republican incumbents were paired in Dallas County, and a special seat for African Americans was crafted in Harris County ("concentrations-of-them-and-us"). "Dispersal-of-them" took place when a Republican area, fast-growing Montgomery County north of Houston, was divided among three rural Senate districts held by incumbent Democrats. (See Figure 1.) Similar "cracking" of urban counties to increase population in rural Senate districts took place throughout the state.

The House battle pitted a conservative Democratic-Republican coalition against the moderate-liberal-minority factions. The initial committee plan favored the Republicans with as many as 10 pairings of incumbent Democrats from rural districts. Speaker Clayton, backing the committee plan, hinted that anyone who voted against his plan would not be appointed to the important conference committee. One rural Democrat who lost his district lamented that he should have used his seniority to get on the

redistricting committee instead of appropriations. Both the House and Senate bills passed on the last day of the session.

Meanwhile, a parallel struggle erupted over congressional lines, because the state had gained three additional seats to raise its apportionment to 27. Each party proposed self-serving packages, with a Republican plan for a 10R-17D division and a Democratic plan for a 6R-21D division. A compromise was reached to give the Republicans eight seats and retain 19 for the Democrats. Fourteen of the 24 incumbents had served in the legislature, and most of them traveled frequently to Austin to attempt to influence the lines and their political futures.

Sweetheart gerrymandering took place to insure that incumbents were protected and not paired. One example of elongated gerrymandering was District 6, a north-south, narrow, over-200-mile-long district running from Tarrant County (Ft. Worth) in the north to Montgomery County in the south. (See Figure 2.) It was said that if the veteran incumbent congressman drove through his district with both car doors open, he would probably kill all his constituents. Montgomery County, north of Houston, had been added to rural East Texas District 2 in 1971 to raise its population up to acceptable numbers. With the district's incumbent congressman heading for prison following a bribery conviction, the incumbent Texas senator for East Texas made sure that the 1971 congressional map reflected a "projection gerrymander," and he captured the congressional seat in 1972. The growing Republican population in Montgomery County during the 1970s resulted in a "dispersal gerrymander" in 1981, and the county was divided among three congressional districts.

As the session came to an end, the main stumbling block was a veto threat by Governor Clements. The question was whether Dallas County would continue to have two Democratic districts held by whites with a large minority influence in both districts, as proposed by the legislature, or would have one solidly African American district with a Republican likely to gain the

Figure 2. Congressional District 6.

other seat, as advocated by Clements. The conference committee could not reach a compromise, and the legislature adjourned without passing a congressional plan.

The legislature passed a new congressional district bill during a July special session, and it was signed by the governor in August. A lawsuit in federal court challenged the plan concerning discriminatory districting.[2] After the Justice Department raised objections to the composition of two South Texas districts for packing a huge percentage of Hispanics into one district (80.4 percent) with only 52.9 percent in an adjoining district, the court altered boundaries in these two districts and also made changes in two Dallas County districts. The legislature had opted to continue with two minority-influenced districts and rejected the governor's proposal. However, the judges rejected the legislature's lines and created a predominantly African American district, much to the delight of the Republicans. On appeal, the U.S. Supreme Court held that the Dallas changes were not justified, and the Democrats were able to retain their districts.[3] In 1983, the legislature

adopted a plan with modifications in the Dallas-Ft. Worth and South Texas areas which passed review by the federal courts and the Justice Department.

Redistricting of the legislature was more complicated. After adjournment on June 1, 1981, the governor signed the House redistricting bill, but vetoed the Senate plan for allegedly gerrymandering urban areas to hurt Republicans and deny a predominantly African American district for Dallas County. This action triggered the formation of the Legislative Redistricting Board (LRB). Meanwhile, several members of the legislature filed suit charging that the plan cut the boundaries of 34 counties, 24 with surplus population.[4] For example, Nueces County (Corpus Christi), with a high Hispanic population, was entitled to 2.82 representative districts but was given only one district wholly within the county, and the surplus population was divided between two neighboring counties.

In the fall of 1981, the five-member Legislative Redistricting Board, consisting *ex officio* of the lieutenant governor, attorney general, speaker of the House, comptroller of public accounts, and commissioner of the general land office, convened to draw lines for both the House and Senate. Much of the deliberation took place in the absence of Comptroller Bob Bullock, who was undergoing treatment in California for alcohol abuse. The Senate plan, sponsored by Lt. Gov. William P. Hobby, contained major alterations to the original plan vetoed by Clements. Minorities fared better because it retained a newly created African American-majority seat in Harris County and increased the percentages of minority population in a number of other districts. No incumbent senators were paired, but gerrymandering was evident in urban districts such as Harris County. Under the previous plan, the county had six districts—four wholly within the county and two crossing lines into surrounding counties. The new plan gave it eight districts, but only two were totally within the county and six overlapped (three were dominated by Harris County and three were not). Speaker Clayton sponsored the House plan, and the Redistricting Board adopted a plan with significant reductions in the number of House districts crossing county lines.

The Senate plan was immediately challenged by the Republican party, which claimed that (1) "qualified electors" instead of population should have been used for calculations, and (2) population growth patterns should have been taken into consideration when drawing lines. A state district judge, however, rejected both claims.[5] Another challenge was made in federal court by Republicans, local governments, and minority groups against both LRB plans, for allegedly violating the Fourteenth and Fifteenth Amendments.[6] MALDEF, the Mexican American Legal Defense and Education Fund, also intervened in the litigation. While the suit was in progress, the Justice Department found both plans in violation of the Voting Rights Act. Because of an impending filing deadline for the primaries, the court adopted the Senate plan without changes and modified the House boundaries in El Paso and Bexar Counties for the 1982 House elections only.

The legislature met in regular session in 1983 and adopted the temporary House plan as the permanent plan for the decade. The Senate passed a simple resolution rather than a bill in order to avoid new elections for all senators. MALDEF-negotiated changes were adopted in eight districts in Harris and Bexar Counties. All these changes were acceptable to the Justice Department and the courts.

The final 150 House districts varied in population between 90,147 and 99,589, for an overall deviation range of 9.95 percent. The 31 Senate districts ranged from 459,006 to 454,848, for an overall deviation of 1.78 percent. Congressional districts ranged from 527,805 to 526,333, for an overall range of deviation of only 0.28 percent.[7]

The 1990s: A Look Ahead

From 1981 to 1989, the composition of the Texas legislature continued to change. Female membership rose from 13 to 19. Hispanics increased from 17 to 25, and African Americans rose by one from 14 to 15. Republicans gained greater voting power as their

numbers increased from 43 to 65. The GOP believed it had been gerrymandered unfairly in 1981, so when Governor Clements won reelection in 1986, his party moved forward with a plan to win at least one house of the legislature by 1990. However, after the 1988 election, the Democrats in the Senate held a 23-to-eight majority, with only half of the seats up in 1990. Despite a $750,000 commitment by GOP-oriented political action committees in the final weeks of the 1988 races, the Republicans gained only two House seats. Their numbers later rose to 60 in the lower house because of two special election victories and one party switch, but they will need to gain 16 more seats in 1990 to gain control. The one-third-plus Republican House membership allowed Clements to wield an effective veto threat during the regular and special sessions of 1989 and 1990, but this should not be a factor in 1991 because the legislature usually passes the redistricting bill on the last day of the regular session.

Democratic House Speaker Gib Lewis of Ft. Worth has tried to operate the House on a nonpartisan basis by appointing Republicans to key committees and to chairmanships, but the GOP still made a strong but unsuccessful bid to unseat him in his home district in 1990—so he may be less accommodating to the Republicans if he is reelected as speaker in 1991. Lt. Gov. Hobby retired after 18 years in that post, and his successor is former Comptroller Bob Bullock, a seasoned veteran Democrat. In the governor's race, Secretary of the Treasury Ann Richards defeated newcomer Republican Clayton Williams, so all five members of the Legislative Redistricting Board will be Democrats. Therefore, the Democratic party should be in the driver's seat during the 1991 redistricting battles.

Congressional changes will likely benefit the Republicans. The state is expected to gain three new seats, raising the Texas delegation count to 30. Most of the faster growing districts in the state are held by Republican incumbents, with District 26 in the Dallas-Ft. Worth area being one of the fastest growing in the nation. Of the six congressional districts with more than 50 percent combined African American-Hispanic minority population, two have not grown at the national average and will need additional minority population in order to retain minority members.

Finally, the involvement of the Justice Department in preclearance should increase the legislature's sensitivity to minority claims for more representation. However, the party most likely to have the last word on the issue of redistricting will be the judiciary. A trip to the courthouse has become an accepted practice in the volatile arena of Texas redistricting politics, and 1991 should be no exception.

NOTES

1. See Ronald G. Claunch, Wesley S. Chumlea, and James G. Dickson, Jr., "Texas," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 311-17.
2. *Seamon v. Upham*, 536 F. Supp. 931 (1982).
3. *Seamon v. Upham*, 456 U.S. 37 (1982).
4. *Clements v. Valles*, 620 S.W. 2d 112 (Tex. 1981).
5. *Upham v. White*, Travis County, October 1981, no published opinion.
6. *Terrazas v. Clements*, 537 F. Supp. 514 (1982); 581 F. Supp. 1319 (1983); 581 F. Supp. 1329 (1984).
7. See Texas Legislative Council, *District Profiles*, Texas House of Representatives, Texas Senate, U.S. Congress, Information Report No. 88-5, November 1988 (2 volumes).

UTAH

ROBERT BENEDICT

In the 1980 elections, Utah voters reaffirmed their affinity for the Republican party. Ronald Reagan received 73 percent of the state's vote, while the Republicans achieved their goal of a "veto-proof legislature." The lone exception was again the governor's office: Democrat Scott Matheson was reelected to his second term with 55 percent of the vote.[1]

Seeking to avoid political oblivion on the redistricting issue, Matheson issued an executive order to create a Utah Advisory Commission on Reapportionment. The seven-member panel issued a 90-page report. While a number of the commission's suggestions were not adopted, and some state legislators complained of the commission's "intrusion" on the issue, the commission did provide a high-profile alternative with which to help judge the legislature's efforts.[2]

The redistricting process displayed three different cleavages in 1981: urban versus rural, executive versus legislative, and, at the very last stage, a cleavage between the state House and Senate.

DYNAMICS OF THE PROCESS

The governor had earlier indicated he would not veto a redistricting plan for "political" reasons, but only if it flagrantly violated court standards. The vote for the redistricting plan put forward by the Republicans was 50-21 in the House and 20-8 in the Senate. Democratic opponents were joined by a few rural Republicans who again argued that the southern rural interests had been submerged in a congressional districting plan that gave the Wasatch Front population centers control of all three congressional districts.

When the measure reached the governor's desk, he vetoed the reapportionment plan for the state House, while the Senate and congressional redistricting plans passed into law without his signature. In general, the governor objected to the generous protection of incumbents. The co-chairs of the Reapportionment Committee responded that retaining incumbents from both parties is critical to the legislative process, and is a valid concern in reapportionment.[3] A specific gubernatorial objection was to a 300-mile, seven-county-long district created by the House (which will be discussed in a subsequent section).

Governor Matheson's action contained the potential for splitting House and Senate Republicans. A call for party unity and an override of the veto would exacerbate tensions between the two chambers. Some Senate Republicans were hesitant to support the governor, believing that an override would provide ammunition for a likely court suit, particularly if such items as the 300-mile district remained in the bill. On the other hand, the GOP had previously agreed that each chamber of the legislature would be allowed to reapportion itself; non-support on a veto override could be viewed as party disloyalty.

Republicans, through a form of political jiujitsu, found a way to shift the political burden back to the governor. Senators agreed to support the veto override on a 21-6 vote, but only if the House then passed a revised reapportionment plan that dealt with such items as the 300-mile district. The House did enact a revised plan on a 46-17 vote, which created a somewhat more compact five-county district. The Senate agreed to the measure by a 17-6 margin. To lay a trap for the governor, the measure stipulated that if a veto of the second measure occurred, the original measure which had incurred the governor's wrath would remain the law, forced into effect by the legislative veto override.[4] In this way the House GOP would save face, and the Senate would obtain a better bill than the one originally passed by the House.

Democratic legislators encouraged Matheson to veto the second House redistricting bill as well, arguing that if the original version went to court, the 300-mile-long district would stand a greater chance of being overturned. The governor permitted the second House bill to become law without his signature. While he would not comment about whether the GOP trap affected his decision, his executive assistant indicated it was a concern.[5]

In 1970 three special sessions were required to complete the reapportionment task. By contrast, the 1980 redistricting session was one of the shortest on record, leading one observer to comment, "Sometimes a dictatorship can be a good thing."[6] One means of determining whether the "dictatorship" produced a worthy product is to examine the design of the districts.

Design of the Districts

For 1982, in order to meet the "one person-one vote" standard, the Legislative Reapportionment Committee adopted a policy that each legislative district must be within 4 percent above or below the ideal population. The ideal population for a Senate district was 50,381. The population deviation ranged from -3.08 percent to +2.15 percent, for an overall range of 5.41 percent. For the House, the figure for an ideal district population was 19,480, with deviations ranging from -3.93 percent to +3.87 percent, for an overall range of 7.80 percent.

In determining the districts, legislators faced a growth pattern similar to that of other urban areas in recent years: declining central city population, and burgeoning growth in the suburbs.

Any evaluation of who benefited from the design would find three major winners: urban legislators, incumbents, and Republicans. Urban legislators were able to derail the push by rural legislators to decrease the size of the state House from 75 to 69.

Incumbents in the state legislature also benefited. A major issue was whether senators who were elected in 1980 to a four-year term would have to run again in 1982. The 1971 redistricting did require incumbents to run again because their districts had changed. The plan adopted in 1981 allowed such incumbents to retain their seats except for those who ended up in a district with another incumbent.

Republicans also stood to gain from the design of the districts. In the House, 18 members ended up in districts with another incumbent. Ten out of 58 Republicans (15 percent) were in this category; conversely, 17 Democrats (47 percent) faced this challenge. The design of the districts had the potential of pushing the Democrats further towards endangered species status.

The Gerrymandering Game

With Republicans holding 77 percent of the House seats and 76 percent of the Senate seats in 1981, further diminution of the Democrats through gerrymandering would require an extra dimension of creativity. The Republican party, however, proved to be adequate to the task.

As illustrations, an urban and a rural gerrymander will be examined. As previously noted, due to population trends, the redrawing of state Senate districts in Salt Lake County required two Senate districts to be shifted from Salt Lake City and given to southern suburban areas in the county. Such demographic changes allowed Republicans in Salt Lake City to disperse Democratic strength by extending eastern Republican strongholds into central-city areas, while maintaining GOP strength in the newly created suburban districts.[7]

Specifically, in the 1st Senate District the opportunity arose for a two-for-the-price-of-one gerrymander: a "concentration-of-them" and an "elimination" gerrymander. Figure 1 shows the redrawing of the 1st and 2nd Senate Districts. The political purpose is clear: in the 1980 election Democrats were elected to the 1st, 2nd, and 5th Senate Districts by electoral margins of 58, 54, and 56 percent, respectively. After the reapportionment, the 5th District was absorbed by the 1st and 2nd Districts, effectively concentrating Democrats.

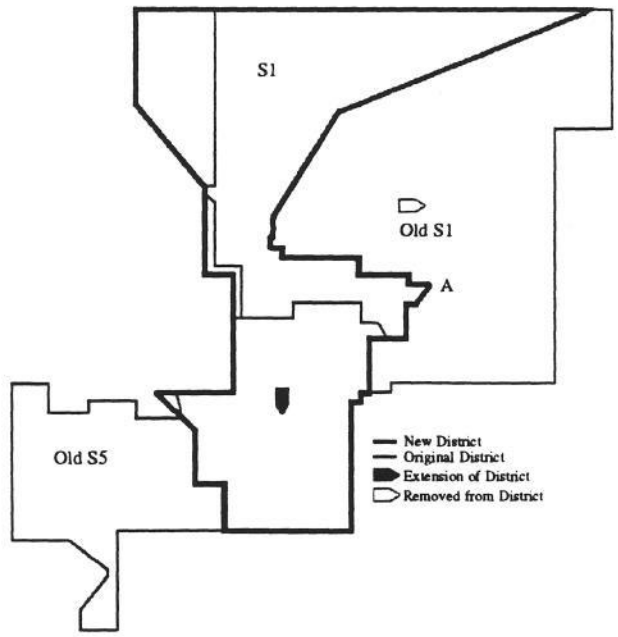

Figure 1. Gerrymandered Senate Districts.

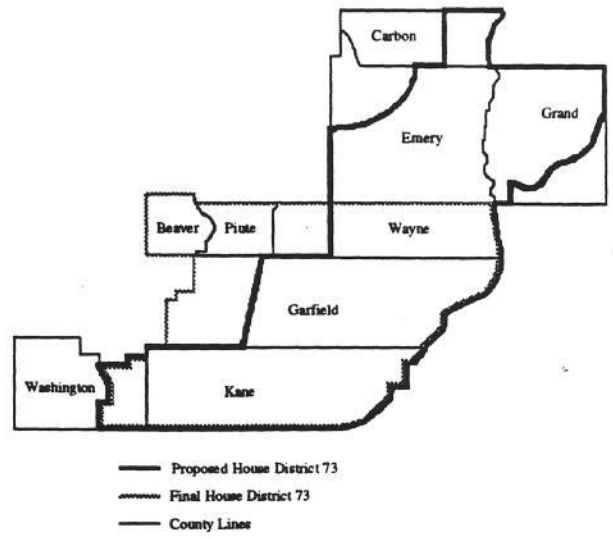

Figure 2. The "Garr Shaft."

(See Figure 1.) The remainder of the Democrats living in the eastern portion of the old 1st District (termed the "Avenues") were effectively dispersed to the 3rd District, a "safe" Republican district, where the GOP incumbent won with 56 per cent of the vote.

The skillful drawing of the 1st District lines also shows evidence of an elimination gerrymander. The purpose of combining the 1st and 5th Senate Districts was to knock out one incumbent. The 1st District incumbent, Frances Farley (one of the few women in the legislature), normally would not be up for election until 1984. By elongating this district, and having a barely discernible "jog" of three blocks (at "A" on Figure 1), Farley was put in the same district with another Democrat.[8] Contesting a fellow incumbent was one of the reasons Farley resigned her seat to run for Congress.[9]

A rural gerrymander was attempted in the House which, if enacted, would be a strong candidate for the *Guinness Book of World Records*. The intended gerrymander was so clear that it became a common joke in the legislature. For House District 73, Republicans originally enacted a 300-mile-long district stretching from Carbon County in the east to Washington County in the west. The incumbent, John Garr (D-East Carbon) estimated it would be a 1,000-mile round trip for him to visit Washington County. Thus, within the legislature, the district was commonly known as the "Garr Shaft." (See Figure 2.) Garr's colleague, Senator Omar Bunnell (D-Price), minced few words: "This bill just makes me absolutely sick . . . classic gerrymandering is too mild a term. . . it is irresponsible, ridiculous, incredible, unconscionable, and in the words of a Republican senator, asinine."[10] Several Senate Republicans conceded the district violated compactness standards, but went along with it because of the previously discussed agreement allowing each chamber sovereignty in reapportionment matters.

Congressional redistricting is briefly worth noting, as the state had to determine how to carve out the newly allocated third congressional seat. The two key dimensions dividing legislators were region and political party. Regional issues came to the forefront when rural legislators proposed a new district formed entirely of southern counties, repeating the familiar argument that their interests had been submerged for years by the major population areas of the Wasatch Front. Moreover, rural interests claimed a Congress member from southern Utah could best weigh the conflicting demands inherent in the national parks, as well as the mineral and tourist industries prominent in the region. This proposal could be implemented only by dividing Salt Lake County nearly in half for the two remaining districts.

While most of Salt Lake County would comprise the 2nd Congressional District, a part of the county would have to be detached in order to meet population standards. The Legislative Reapportionment Committee proposed linking the southwestern part of Salt Lake County with the eastern 3rd Congressional District. Democrats objected strenuously, fearing Republicans would accomplish a "dispersal-of-them" gerrymander if the 100,000 residents living in West Jordan and surrounding areas were dispersed into the heavily Republican 3rd District. Democratic dispersal would further help incumbent Dan Marriott in Salt Lake City's 2nd District. Commenting upon the Republican proposal, one Democratic senator said, "We call it the Marriott Line—something like the Maginot Line."[11] When the Republican proposal was easily adopted, Democrats predicted all three congressional districts would remain in the hands of the GOP for the foreseeable future.

The Aftermath of Reapportionment

Following the redistricting, no major court suits were filed by the Democratic party. One suit was filed by a group consisting primarily of Democrats from the Ogden area, but it did not directly challenge the drawing of district lines. Instead, the suit objected to the provision that senators who had been elected in 1980 should be allowed to serve a four-year term if their districts had not changed substantially, or if they had not been placed in a district with another incumbent. The suit was withdrawn before the 1982 election.[12]

In political terms, reapportionment did not dramatically increase the number of Republican legislators, or bring about the "gloom and doom" scenario predicted by Democrats. As Table 1 indicates, Republicans controlled 77 percent of state House and 76 percent of state Senate seats in 1980. The primary impact of redistricting was to institutionalize gains won at the ballot box in the late 1970s, as well to marginally increase the number of GOP state Senate seats at the 1982 election. (The GOP picked up two seats.) By the 1990 election Republican majorities had decreased to 59 percent of the House seats and 65 percent of the Senate seats.

Table 1. Party Balance in the Utah Legislature and Congressional Delegation.

	LOWER HOUSE		UPPER HOUSE		CONGRESSIONAL	
YEAR	DEM.	REPUB.	DEM.	REPUB.	DEM.	REPUB.
1980	17	58	7	22	0	2
1982	17	58	5	24	0	3
1984	14	61	6	23	0	3
1986	27	48	8	21	1	2
1988	28	47	7	22	1	2
1990	31	44	10	19	2	1

A mixed pattern is evident regarding the degree of competition in elections following redistricting. At the congressional level, the 1st and 3rd Districts were among the most Republican in the nation in the 1980s, with reelection margins usually ranging from 67 percent to 75 percent.[13] The fears of Democrats of being noncompetitive in all three districts have not been realized. In the 2nd Congressional District, the "Marriott Line" did not prove to be impregnable. Dan Marriott prevailed with 54 percent of the vote in 1982, but the GOP successor to Marriott in 1984 won by about 500 votes of the 210,000 cast. The swing nature of the 2nd District is made evident by the 55 percent of the vote garnered by Wayne Owens in 1986.

Perhaps the most surprising element in 1990 was the election of Democrat Bill Orton in the 3rd District, presumably the "most Republican district in the nation." Orton benefited from a vicious Republican primary battle, and a negative campaign effort by his opponent which backfired. In regard to redistricting, Republicans may be deterred from transferring GOP districts to the 2nd District by the need to regain control of the 3rd District.

1991 and Beyond

Two of the issues which have already emerged are nonpartisan redistricting and an attempt at early redistricting. As 17 states are now using some form of commission to perform redistricting, Democrats and a few Republicans have once again proposed the ap-

pointment of a bipartisan reapportionment commission; but final approval would still reside with the legislature. Republicans swiftly dismissed the notion of a non-legislator apportionment commission. Utah House Majority Leader Craig Moody commented: "There's never been a non-partisan group that met on reapportionment, and there's not going to be. There's no such thing." [14]

At the congressional level, the first redistricting trial balloon was floated with such a degree of entrepreneurship, and has been shot down with such a degree of enmity, that it has earned the *Wall Street Journal*'s designation as a prime example of the "national disgrace of redistricting." In June of 1989, Rep. Jim Hansen met with Governor Bangerter and legislative leaders to discuss a plan (reportedly from the Republican National Committee) to conduct early redistricting of boundaries in 1990, using annual estimates of population supplied by the Census Bureau. The rationale was to draw the congressional lines while Republicans were in firm control of both houses.

While some Republican leaders were leery of early redistricting, the *coup de grace* to the plan was delivered by the Republican National Committee. A letter sent to the media by the committee stressed that it had not drawn any redistricting maps for the state of Utah, and called the redistricting proposal a gross gerrymander drawn to eliminate a specific candidate, which was "counter to the RNC's policy on redistricting." [15] When presented with the letter, Rep. Hansen then indicated that 20 to 30 people in Utah and Washington had come up with the plan, but that he would serve as the "fall guy." While the early redistricting never materialized, with this beginning, Utah appears ready to provide another enlightening chapter in the saga of representative government.

NOTES

1. For a description of redistricting in Utah prior to the 1980s, see Lauren H. Holland and Robert C. Benedict, "Utah," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 318-25.
2. "Reapportionment Plans Issued," *Salt Lake Tribune*, October 7, 1981, p. B-1.
3. LaVarr Webb, "Legislature May Alter House District," *Deseret News*, November 12, 1981, p. B-1.
4. Vaughn Roche and Douglas Parker, "Solons OK Plan to Redistrict," *Salt Lake Tribune*, November 21, 1981, p. A-1.
5. "House Reapportionment Becomes Law," ibid., December 9, 1981.
6. LaVarr Webb, "GOP Gets Its New Districts, But Democrats Expect a Veto," *Deseret News*, October 31, 1981, p. A-1.
7. LaVarr Webb, "Reapportionment on Election Stage," ibid., March 26, 1982.
8. Some political observers viewed the redistricting as a "sweetheart" gerrymander for Farley. Without the three-block deviation Farley would have faced a Republican incumbent in the 3rd District. Rick Brough, "Cutting the Reapportionment Pie, *Utah Holiday*, February 1990, p. 19.
9. Thus two appointed members were left to contest for the seat. Another unanticipated consequence of the gerrymander was that Terry Williams, the eventual winner, became the first African American state senator in Utah history.
10. Webb, "GOP Gets Its New Districts."
11. Douglas Parker, "GOP Majority Forces Own District Lines," *Salt Lake Tribune*, October 30, 1981.
12. Webb, "Reapportionment on Election Stage."
13. One aberration in the 1st District occurred in 1986, when a challenge by a former Democratic congressmember brought the incumbent's electoral margin down to 52 percent.
14. Douglas Parker, "Demos Want Bipartisan Redistricting," *Salt Lake Tribune*, September 17, 1989.
15. Lee Davidson and Bob Bernick, "National GOP Denies Part in 'Gerrymander'," *Deseret News*, July 1, 1989.

VERMONT

LAURA JEAN KESSINGER

Some things about Vermont remain immutable. Vermont is the least populous state in the Northeast and the third smallest in the nation and yet its scenic beauty remains largely unchanged. However, a growth spurt of more than 35 percent since 1960 has driven Vermont's population to 563,000.[1] This growth has had major effects on both the demographics and politics of the state.

Much of the population increase was caused by young urbanites who left behind the hassles of the Boston-New York megalopolis, but brought their liberal politics with them. These emigres pulled the state to the left while the rest of the nation appeared to be moving right.[2]

This trend shattered Vermont's reputation as the sturdiest bastion of Yankee Republicanism.[3] Democratic Senator Patrick J. Leahy, the first Democrat ever elected to a high office, is now serving his third term.[4] Democrat Madeleine M. Kunin served from 1985 to 1991, after which she decided not to run for reelection. In 1991, Republican Richard A. Snelling was elected to the governorship.

An even stronger signal of the state's shift to the left was the 1990 House election of independent former Burlington Mayor Bernard Sanders, a self-described socialist.[5] The swing has also reinforced the dominance of moderate-to-liberal leaders in the state Republican party. Moderate Representative James M. Jeffords won in 1988 to succeed like-minded Republican Robert T. Stafford in the Senate.[6]

REDISTRICTING FOR THE VERMONT STATE SENATE AND HOUSE OF REPRESENTATIVES

Vermont's population merits only one U.S. representative, elected on an at-large basis. Redistricting of the state is therefore a matter only of redrawing the lines of the state legislative districts. Vermont has a Senate consisting of 30 members and a House of Representatives consisting of 150 members.[7] The Senate is reapportioned on the basis of population and the House on the basis of registered voter counts after every second presidential election.[8]

In 1965, Vermont created a Legislative Apportionment Board to handle the redrawing of the state House and Senate lines.[9] There are six members on the board: one special master appointed by the Vermont Supreme Court's chief justice; two freemen (residents of Vermont for at least five years) representing each political party, appointed by the governor; two persons appointed by the state committees of each of the major parties; and the secretary of state, who sits as an ex-officio member.[10] The Legislative Reapportionment Board meets in the odd-number year after the census and, by May 15th of that year, the board must submit a plan, as a bill, to the legislature. The bill is then voted on by January of the next year.[11]

VERMONT STATE SENATE

In 1981, the Legislative Reapportionment Board submitted three Senate plans to the legislature. Of the three plans, the one that the board most strongly recommended was the plan that called for the use of single-member districts. The board contended that multimember districts in the Senate had tended to disenfranchise citizens of small towns who are members of multimember districts within which is located a large population center.[12] Prime examples were the Chittenden County Senate district and the Rutland County Senate district. "In the case of the sixteen towns in the Chittenden County District, five of the six senators reside in the City of Burlington."[13]

The other two plans, Vermont Senate Alternatives 1 and 2, drew district lines on a multimember basis. The plan that was accepted was Vermont Senate Alternative 2. (See Figure 1.)

Vermont's Senate district lines are drawn as close as possible to Vermont's county lines. Vermont's counties are divided into 13 Senate districts by combining Orleans and Essex Counties into one district. Each county is guaranteed at least one state senator, the larger counties elect a number of senators on a multimember basis. Chittenden County elects six senators; Rutland, Windsor, and Washington Counties elect three senators; Bennington, Windham, Addison, Caledonia, Franklin, and Orleans/Essex Counties elect two senators each; and Lamoille and Grand Isle elect only one senator each.[14] Based on 1980 population figures, this equals one senator for every 17,000 persons; for 1990 that number changed to one senator for every 19,000 persons.[15] According to Ellen Tofferi, Vermont Director of Elections, "[I]n order for the counties to retain the minimum population figures needed to qualify for one senator, the smaller counties are having to borrow towns from the surrounding, more populous counties."[16] Of the 13 Senate districts, only four—Bennington, Windham, Windsor, and Washington—are complete counties. Grand Isle County borrows the town of Colechester from Chittenden County, Orleans and Essex Counties borrow the town of Richford from Franklin County, Addison County borrows the town of Brandon from Rutland County, and Caledonia County borrows one town from Lamoille County and three towns from Orange County.

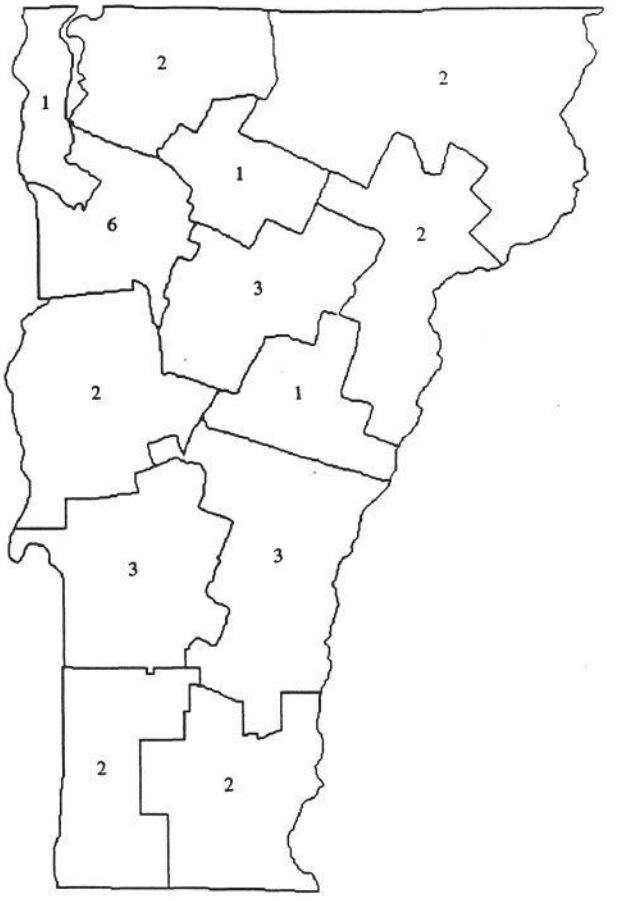

Figure 1. Vermont Senate Alternative 2.

Vermont State House of Representatives

In early January 1981, the Legislative Reapportionment Board produced a final draft of the proposed House districts. Vermont's central unit of apportionment is the town. The proposed plan divided the state into 69 districts: 34 single-member districts, and 35 multimember districts. Once again the board made a strong recommendation to move to single-member districts based upon towns and cities which are kept intact.[17] The second recommendation the board made was to have apportionment by population rather than by registered voters.

> While the board agrees that using population would eliminate much of the controversy regarding the accuracy of checklist, which itself would be worthwhile, the overall representation would not be significantly changed, even though many district lines would probably be changed. An analysis by county shows that Chittenden county would lose 1.58 representatives, the biggest change in numbers, but that is only 4.45 percent, considerably less than the 8.2 percent we are currently allowing. Further the absolute total difference is only 16.74 percent, similar to the 16.4 percent now being used. The maximum gain would be 0.72 members in Orleans County, but since county lines are rarely considered in the House districting, the gain could actually occur in another county.[18]

The plan that was approved had 106 districts: 62 single-member districts and 44 multimember districts. The populations varied from 3,087 to 3,746 in the

single-member districts and from 6,167 to 7,474 in the multimember districts.[19] (See Figure 2.)

Effects of Reapportionment

One effect is, in multimember districts, that the cities have been consistently over-represented and the outlying rural areas have been under-represented. Since Democrats tend to be more heavily concentrated in the larger cities and the Republicans in the rural areas, this leads to more Democrats being elected to office. Still, from 1982 to 1985, the Republicans outnumbered the Democrats in both the Senate and the House. Not until the 1986 elections did the Democrats begin to gain. In the Senate, the Democrats gained five seats, moving their numbers to 18 seats and leaving the Republicans with 12 seats. In the House, the Democrats gained seven seats, moving their numbers to 72 seats and leaving the Republicans with 78 seats. The Democrats' gain seems to be related more to Vermont's population growth than the location of district lines.

After the 1990 elections, the Senate is equally divided between the Republicans and the Democrats and the House has 73 Democrats, 75 Republicans, and two Independents. This has had the effect of strengthening the governor's pull in legislative matters. The election of Republican Governor Richard A. Snelling in 1990 ended almost a decade of Democratic control of the governorship. This put the Republicans in a favorable position for 1990 redistricting, but on August 14, 1991, Governor Snelling died. Later that day Democratic Lieutenant Governor Howard B. Dean was sworn in as governor, shifting the balance in favor of the Democrats.[20]

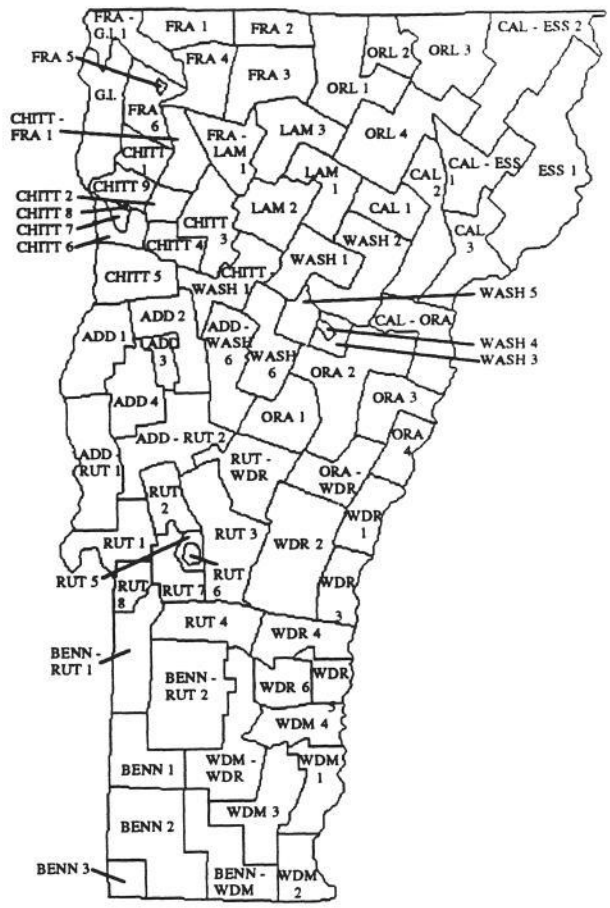

Figure 2. Vermont Representative Districts.

NOTES

1. Phil Duncan, ed., *Politics in America, 1991, The 102nd Congress* (Washington, DC: Congressional Quarterly Press, 1990), p. 1519.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid., p. 1509.
8. Frank Bryan, "Vermont," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), p. 329.
9. Ibid.
10. Interview with Ellen Tofferi, Vermont Director of Elections, September 2, 1991.
11. Ibid.
12. Members of the Legislative Reapportionment Board, "Recommendation for the Reapportionment of the Vermont State Senate," February 2, 1981, p. 2.
13. Ibid.
14. Interview with Tofferi.
15. Duncan, *Politics in America*, p. 1509.
16. Interview with Tofferi.
17. Members of the Legislative Reapportionment Board, "Recommendation," p. 4.

18. Ibid., pp. 4-5.
19. Interview with Tofferi.
20. Glen Craney, "Republican Gov. Snelling Dies; Democrat Takes Over Post," *Congressional Quarterly*, August 17, 1991, p. 2297.

VIRGINIA

THOMAS R. MORRIS

Redistricting in Virginia is the prerogative of the Democratically controlled state legislature, as it has been throughout this century. The Virginia Constitution of 1971 requires electoral districts to be "contiguous and compact . . . and . . . so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district" (Article II, Section 6). According to the state constitution, redistricting is to take place in the year following the census count. Beginning in 1971, the Privileges and Elections Committee of each house of the legislature undertook the task of reviewing population changes and making recommendations to the General Assembly. Prior to 1970, the legislature in most years appointed a redistricting study commission from among its membership.

CHALLENGES TO REDISTRICTING

Virginia will begin the decennial process of legislative redistricting as soon as the census data becomes available. Elections for all seats in the state legislature take place in 1991. In the past, prompt redistricting action by the legislature has meant early review by the Justice Department under Section 5 of the Voting Rights Act and, following the last three census counts, federal court litigation.

REDISTRICTING IN THE EIGHTIES

State legislative redistricting following the 1980 census was not one of Virginia's finer moments.[1] In 1981-82 there were some 14 legislative sessions, six redistricting plans, a ruling of unconstitutional population disparities by a three-judge federal court panel, a gubernatorial veto, and objections to plans for both houses by the Department of Justice. The legislature ended up sharing its power to redraw district lines with lobbyists for the ACLU and the NAACP and was required to hold House of Delegates elections one year after the 1981 elections, because the districts had been declared unconstitutional.

In its first round of redistricting prior to the 1981 elections, the legislature made minimal changes. Fairfax County continued to be the only locality divided, and the number of multimember districts actually increased from 28 to 31. In the 1981 elections, the Republicans picked up a net gain of eight House seats, to increase the party's representation to a modern-era high of 33 seats in the lower house. Republican candidates were aided by redistricting in a number of contests, picking up five seats where population shifts created districts without incumbents. GOP candidates also ran well in many suburban communities, including a sweep of three seats in a district around the Southside city of Danville.[2]

Less than a month after the elections, the General Assembly was back in session to draw up a new redistricting plan to replace the one invalidated by the federal district court. The new plan had 34 multimember districts and a population deviation of 12.5 percent. It never reached the federal courts because the Republican chief executive vetoed it. Governor John Dalton urged the legislature to draft a plan with all single-member districts.[3] Only 44 delegates voted to override the governor's veto. Significantly, the frustration of Democrats over the state's redistricting woes was manifested by the 27 Democrats who joined 21 Republicans to sustain the veto. Two days before Christmas, 1981, the legislature passed yet another plan, this time with only eight multimember districts. Governor Dalton returned the plan with objections to the remaining multimember districts and the configuration of districts which placed Republican incumbents in identical districts in Lynchburg and Chesterfield. The legislative leadership agreed to a compromise which left the Lynchburg situation unchanged, but only Norfolk with a multimember district. A Justice Department objection to the Norfolk district led to the adoption of the final redistricting plan on April 1, 1982. The district population deviation was reduced to 5.1

percent in the all-single-member-district plan in which 41 localities were divided in order to compose the legislative districts.[4]

It had been widely assumed that Republicans and African Americans would benefit from the single-member district plan. In fact, increased representation was slow in coming for both minority groups. To the surprise of both Republicans and Democrats, the GOP share of seats increased by only one (to 34 of 100) as a result of the special elections mandated in 1982 due to the unconstitutionality of the redistricting plan under which the delegates were elected in 1981. Three incumbents were defeated in the primaries; two of the defeats were unavoidable, since two Republicans in Lynchburg and two Democrats in Norfolk were running in the same districts. Eight incumbents were defeated in the general election: four Democrats and four Republicans. The high success rate of incumbents following redistricting, especially after the shift to all single-member districts, in the opinion of one noted political analyst, could "be construed as a measure of the skill with which the legislators drew their new district lines."[5]

The 1982 redistricting plan included nine majority-African American districts in the House of Delegates. No additional minority members were elected in the House as a result of the 1982 elections, but by the 1985 elections, African American Democratic legislators represented the seven House districts with 59 percent or greater minority population; the two districts with smaller minority majorities elected white Democrats.[6] The 1987 election of an African American delegate to a predominantly minority Senate district in Norfolk brought African American representation to 10 members (three in the Senate and seven in the House), or twice the number at the end of the decade that had been in office for redistricting in 1981. It is significant to note that all the newly elected African American legislators in the eighties won their seats when incumbents retired or won other offices (except for the Portsmouth seat). Kenneth R. Melvin, a minority lawyer, defeated a veteran white legislator in 1985 slated to chair the powerful House Appropriations Committee in the next session of the legislature.

Increased representation came even more slowly for the Republicans. Four elections after the 1981 elections (when Republican representation increased by eight seats to 33 members), GOP representation was still only at 35. Not until 1989, when the Republicans lost all three statewide offices for the third consecutive election, were Republican aspirations realized in the legislature, with a gain of four House seats, to boost GOP representation in the lower house to a century-high total of 39 members. The Republican share of the vote in party-contested districts in 1989 was 49.3 percent, by far the best showing of the century.[7]

Despite the gains in 1989, troubling signs remained for the Republicans. Democrats controlled the governor's office for the first redistricting session since the sixties. GOP representation in the 40-member state Senate had increased by only one, to 10 members, since 1979. Moreover, in the most recent election of all members to the General Assembly (1987), 92.4 percent of the incumbents running for reelection won, a figure consistent with the average reelection rate since 1979.[8] One of the reasons for the high reelection rate is the absence of party competition in legislative races. Almost two-thirds of the members elected to the legislature in 1987 had no significant opposition from the other major party. Republicans, in fact, nominated candidates in only slightly over half (76) of the 140 races.[9] Republicans obviously cannot challenge the Democrats for control of either house of the legislature until they run greater numbers of legislative candidates.

One of Virginia's two traditional criteria for redistricting—the maintenance of city and county boundaries—has been rejected along with multimember districts. The other traditional criterion—incumbency protection—was challenged by a critic of the 1981 redistricting as an impermissible justification for population disparities:

> Maintaining existing districts to preserve the reelection chances of incumbents is a form of purposeful political gerrymandering designed to shut out new candidates with new ideas, minority parties, and other unrepresented or underrepresented groups from the political process.[10]

As a result of the 1981-82 redistricting, the majority party is denied the use of multimember districts to submerge the voting strength of racial and partisan minorities. Incumbency protection is also less attractive as an operating principle, especially in the House of Delegates, where the number of Republicans increased from 25 in 1980 to 39 in 1990.

Redistricting in Virginia in 1991 will mark the beginning of a new era in Virginia legislative politics. Unlike in past years, the legislature will approach redistricting with all single-member districts in both houses. With numerous localities already divided as a consequence of the 1981-82 redistricting, the Virginia legislature will have more flexibility to redraw district lines than has ever existed in the modern era. The Democratically controlled legislature no longer needs to apply the principle of preserving local governmental units intact, since this criterion has been rejected at the insistence of the Justice Department and a Republican governor. In 1991, partisan gerrymandering of legislative district lines to the advantage of Democratic incumbents and candidates is likely to reach a new high.

The process of redrawing district lines will be firmly in the control of the Democratic party. The Privileges and Elections Committees responsible for redistricting are dominated by Democrats: the Senate committee has 13 Democrats and two Republicans, while the House committee has 14 Democrats, five Republicans, and one Independent.[11] The 10 African American incumbents, all Democrats, can look to the majority party for protection of their districts, and the Department of Justice will monitor attempts to dilute the African American vote in other areas of the state. Meanwhile, Republicans cannot turn to the governor's office for assistance with a threatened or actual veto of a redistricting plan unfair to GOP candidates.

Congressional Redistricting

No challenges were made to the reapportionment of Virginia's 10 congressional seats in 1981. In 1980, the Republicans won nine of the state's 10 congressional districts, but by 1988 Democrats controlled half the seats. About two-thirds of the new population growth has been in northern Virginia, where Democrats were shut out of the area's two congressional districts during the decade of the eighties. In 1990, however, the mayor of Alexandria, James P. Moran, Jr., upset one of two Republican incumbents from the area, giving the Democrats a majority of the state's congressional delegation for the first time since 1966.

Virginia will receive an additional congressional seat in the nineties. There will be pressure on the legislature, and most likely litigation, if it does not respond, to draw a majority-African American congressional district. The political drama surrounding Virginia's congressional redistricting is heightened by the service of the nation's first elected African American governor. To draw a district in the Tidewater/Southside Virginia area with a minority majority would most likely disrupt the existing districts of two white Democratic incumbents whose respective constituencies are made up of 21 percent and 37 percent minority populations. In other words, the price of a majority African American district could very well be a Republican advantage in the contests for control of the surrounding districts.

NOTES

1. For a discussion of reapportionment in Virginia prior to the 1980s, see Robert J. Austin, "Virginia," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 334-38.

2. Larry Sabato, *Virginia Votes: 1979-1982* (Charlottesville: Institute of Government, University of Virginia, 1983), p. 91.

3. John G. Schuiteman and John G. Selph, "The 1981/1982 Reapportionment of the Virginia House of Del-

egates," *University of Virginia News Letter* 59 (June 1983): 48.

4. Ibid., p. 49.

5. Sabato, *Virginia Votes*, p. 140.

6. Thomas R. Morris, "Virginia and the Voting Rights Act," *University of Virginia News Letter* 66 (June 1990).

7. Larry Sabato, *Virginia Votes: 1987-1990* (Charlottesville: Center for Public Service, forthcoming), p. 85.

8. Ibid., p. 32.

9. Ibid., pp 27-29.

10. Frank R. Parker, "The Virginia Legislative Reapportionment Case: Reapportionment Issues of the 1980's," *George Mason University Law Review* 5 (Spring 1982): 30.

11. National Conference of State Legislatures, *Redistricting Provisions: 50 State Profiles* (Denver: National Conference of State Legislatures, 1989), pp. 93-94.

WASHINGTON

RICHARD MORRILL

Washington has long been and remains a closely balanced state politically.[1] In the 1960s, the state's congressional and legislative districts were not as unequal in population as the districts in many other states, but the main problem was that the legislature didn't want to redistrict at all.[2] Throughout most of the 1970s, the Democrats did rather well under the 1972 federal court redistricting, but in 1980 Washington shared in the "Reagan revolution" and Republicans gained control of both houses of the legislature as well as the governorship. Not surprisingly, they decided to take advantage the unusual opportunity to design a plan favorable to long-term Republican aspirations. Most important to the party was an assurance of gaining Washington's new (eighth) congressional district.

THE 1980S REDISTRICTING

Washington gained population rapidly in the 1970s and was allocated a new congressional seat. Although the population gains were quite widely distributed across the state, local differences in relative gains and losses required some fairly drastic readjustments to both congressional and legislative districts. In the legislature, the most "hurtful" was the loss of representation for the city of Seattle, and the necessary shift of seats to the suburbs. For Congress, the only plausible location for the new district was broadly in the suburbs of greater Seattle. On the face of it, the redistribution of population, as was the case nationally, appeared to favor Republicans significantly.

The Republican redistricting task force, led by state Representative Bob Eberle, decided to automate the redistricting process by purchasing a Hewlett-Packard computer and the software system devised by the Rose Institute of State and Local Government, Claremont McKenna College, California. The legislature had authorized the Secretary of State's office to prepare a correspondence table from census figures to electoral precincts, but since Washington was not one of the states that had contracted with the Census Bureau for precinct data, the task proved quite formidable, and the automated system was evidently not as useful as had been hoped. As a consequence, part of the actual redistricting was done via more old-fashioned techniques.

The process was classically partisan—that is, the Republican task force did the work secretly, with limited, pro forma hearings, and without release of detailed maps or district composition until the congressional and legislative plans were ready to be passed and sent to Governor Spellman for his signature.

The Republican strategy for the legislature reflected the party's buoyant optimism that the country was entering a new "conservative age." The goal was to ensure a long-term Republican majority, and the device was to pack Democrats in unnecessarily safe seats and design a large majority of relatively competitive districts, with smallish Republican majorities, which the GOP was confident of carrying.

Although the legislative plan was criticized for its obvious gerrymandering, its gross political unfairness, and its unnecessary disruption of traditional districts, it was not seriously challenged, because it met equal population criteria explicitly and carefully. The plan did split Seattle's African American community, which might have been cause for suit, but in the subsequent election these legislators survived and the threat was dropped.

The legislative plan reveals a few blatant and scores of more subtle gerrymanders. The main purpose was to draw boundaries deliberately so as to create moderate Republican margins, often by splitting smaller cities that were strongholds of Democratic voting, and by concentrating Democratic votes in extremely safe,

large-city districts. For example, Districts 8 and 16 were oddly intermeshed to weaken the incumbent Democratic senator in the 8th, while Districts 20 and 22 were realigned to improve Republican chances in the 20th. An entirely new, rather illogical, and too-safe Democratic District 35 was carved out, with the GOP hoping to make the neighboring districts marginally Republican. In Seattle, Democrats were packed into District 32 so that the neighboring Districts 34 and 46 might be restored to the Republican column. District 1 was drawn with but one block crossing the county line, to pick up the incumbent Republican senator; this came to be called "Kiskaddon's pimple."

Democratic voters were packed into Spokane's 3rd District, to make probable three suburban Republican districts. Democratic voters were similarly packed into Tacoma's 27th and 29th Districts, to improve Republican chances in the suburban 2nd and 26th Districts. Likewise, Democrats were loaded into Everett's 38th District, to help bring about Republican victories in suburban Snohomish County's 39th and 44th Districts.

But the most ingenious and diabolical strategy was to place more than a dozen incumbent Democrats into the same districts, and not a single Republican! Several Democratic incumbents retired rather than fight it out in radically altered and often renumbered districts. For example, four leading Democratic senators were put into just two Seattle districts. Most clever of all was placement of Democratic and Republican senators in the same district, but choosing the Republican's district number, thereby instantly displacing the Democrat.

All of this ought to have worked. The Republicans looked forward to a decade of domination. As to types of gerrymander, Representative Eberle employed multiple methods, even for the same districts. Perhaps most important were: (1) "concentration-of-us" to assure reelection of some incumbents; (2) "concentration-of-them" by packing Democrats and piecing together territory to make marginally "Republican" districts; and (3) splitting of Democratic voting communities.

The Republican strategy for the congressional seats also showed some classic intrigue. The initial congressional plan was incredibly disruptive of existing patterns, because the Republicans viewed 1970s districts as fundamentally biased toward Democrats. The new scheme was obviously and extremely gerrymandered. The 1st District, which risked becoming Democratic, was gerrymandered to add large numbers of Republican-leaning suburban voters, in part by leaping across Puget Sound to the northern part of Kitsap County. Tom Foley's 5th District was drastically altered to split his home base of Spokane and include the Republican Tri-Cities, in an attempt to defeat him, since eastern Washington was traditionally Republican, and only incumbent loyalty might save him. Lowry's 7th District was vastly changed and his tenure threatened by adding large suburban tracts. And, finally, Representative Eberle carved out a new Republican-oriented 8th District from the Seattle and Tacoma suburbs, which was actually designed for himself. Eberle stated that he thought it possible that Republicans could win in all eight districts!

Perhaps Eberle underestimated the power of members of Congress, but in any event, several were outraged at the proposed plan. To the legislative Republicans' surprise and dismay, their own Republican governor vetoed the plan—possibly because he recognized the importance of Tom Foley in the state congressional delegation. The plan was revised to make quite logical districts for eastern Washington, and was duly signed. In the new plan, Lowry's 7th District was made very safe for Democrats, and the new 8th District was made more Republican. These changes, however, also caused the 1st District to shift northward and to disrupt the historic core of the 2nd District, the city of Everett. This set the stage for a lawsuit on grounds of violation of community of interest.

Reform

The redistricting process was so secretive and suspect, and the products were viewed as so unsatisfactory, that

even the Republican leadership, urged on by criticism from the Democrats and from the media, joined the growing movement for redistricting reform. Redistricting commission bills were reintroduced in the legislature, at the same time as the 1980s round of redistricting was being done in the traditional way. (Commission bills had been introduced in the 1978 session, but got nowhere). In his testimony, the author of this essay urged that the process be made open, bipartisan, and independent of the legislature, but also that political fairness be explicitly recognized. A constitutional amendment and statutory provisions were passed by the legislature in 1982, and the amendment was approved by the voters in November 1982.

Perhaps another reason that reform was possible was that deep down, everybody knew that the voters of Washington were so volatile that it was not really possible to guarantee partisan success via gerrymandering. For example, it is quite common that voters of the state will give substantial majorities to Democrats and Republicans for different offices. In over one-third of legislative districts, the same voters will routinely split between Republicans and Democrats as between Senate and House, or between the two House members elected at large from the same district!

The reform legislation proved to be quite good, and immediately made Washington the largest state with a strong and independent commission mechanism. The basic provision, and an ingenious one, is that the commission has only four voting members, one named by each party's caucus for each house—thereby recognizing that redistricting is inescapably a political process. They must select a non-voting "facilitating" chair, but the final plan must have the approval of three out of four "partisan" members, and therefore of both parties. The legislation includes the usual "good government" criteria for redistricting—equal population; racial and ethnic fairness; respect for political boundaries and communities of interest; convenience, compactness, and contiguity. (Experience in other states indicates that there is no guarantee that these criteria will be followed very faithfully.) Most important, there is an explicit criterion for "fair and effective" representation and the encouragement of competition, and exclusion of discrimination against the political power of any group. Another positive provision is for the process to be clearly and visibly open and public. Remarkably, this latter provision applies to all levels of redistricting, to counties, cities, and even school districts.

The commission may, if it wishes (and it probably will), hire a consultant to prepare redistricting plans. The state is required to provide a high level of assistance, in the form of population data and maps, and redistricting hardware, software, and expertise. The commission must submit one plan to the legislature. While it can modify the plan—and no more than 2 percent of the population of any district can be moved—a supermajority of two-thirds of each house is required for the passage of a plan, and no tampering with the commission's work is expected. If the commission, which has until January 1, 1992, to complete the job, is unable to do so, the state Supreme Court will do so.

What Happened as a Result of the Redistricting?

As to the congressional plan, a suit was filed in the summer of 1982 on behalf of the city of Everett, essentially on grounds of violation of its community of interest with the creation of the 2nd Congressional District. The author of this essay supplied testimony supporting the suit, and provided alternative plans. The court agreed that the congressional plan could not be allowed to stand, but did so, not surprisingly, on narrower population-inequality grounds, and in early 1983 the court sent the congressional redistricting plan back to the state legislature. The court specifically commented that the submitted plan had achieved a "better" population spread of only 0.97 percent compared to the legislature's "worse" 1.38 percent. While the difference is trivial, this small victory was appreciated. By now power was split, and the provisions of the redistricting commission had come into force. The commission was quickly established and, under the able chairmanship of the University Law School Dean, Luverne Rieke, the commission was able to revise the congressional plan to satisfy the

Congress members. As a result of the commission's unexpected early success, students of government are remarkably optimistic about the redistricting process for the 1990s.

Did the Gerrymandering Work?

Since the Republican gerrymandering strategy was based on election results from 1978 and 1980, which were unusually Republican years, the GOP's redistricting plan fell victim to the nationwide off-year electoral swing to the Democrats. The Republican plan also tended to ignore the inherent volatility of Washington state politics, and the lack of party loyalty. As a result, Democrats took control of both houses of the legislature in the 1982 elections and, with the benefit of incumbency, maintained legislative control for most of the 1980s. Possibly the Democratic shift would have been even greater in the absence of the Republican gerrymander, but that is doubtful. Representative Eberle did believe in competitiveness, and in that respect the plan was an outstanding success, since the results did reveal great voter independence and selectivity. In the end, all those marginally "Republican" districts proved to be marginally Democratic. (See Table 1.)

Meanwhile, despite Republican efforts, the congressional delegation remained unchanged at five Democrats and three Republicans, although the Republicans did get and keep the new 8th District.

Redistricting in the 1990s

The mood is rather different from a decade ago. It is true that power is now divided, with the governor and the House of Representatives Democratic and the Senate Republican; but, more importantly, all know that redistricting will now be done by the commission. By January 1990, the office of the secretary of state was busy with the task of precinct and census geography correspondence. The legislature had created a bipartisan redistricting task force and hired a redistricting manager to serve the commission. This writer suspects that the greatest risk for the 1990s redistricting in Washington will not be partisan gerrymandering,

Table 1. Party Composition in the Washington Legislature, 1980-88.

YEAR	SENATE	HOUSE
1980	25R, 24D	56R, 42D
1982	23R, 26D	44R, 54D
1984	22R, 27D	45R, 53D
1986	24R, 25D	37R, 61D
1988	25R, 24D	35R, 63D

but a tendency to seek greater population equality than may be necessary or desirable.

During the 1980s, the Washington population grew moderately, but again concentrated as it had in the 1960s, in the suburban zones of central Puget Sound, from Olympia in the south to Everett in the north. As a result, eastern Washington must lose one legislative seat to the metropolitan core, and the city of Seattle will also lose a seat. The state seems likely to add a ninth congressional district, somewhere in the metropolitan suburbs. The voter volatility and lack of partisan loyalty continued throughout the 1980s, but in addition there are signs of fundamental and unexpected realignments that make the results of any redistricting even more unpredictable. For example, partly as a result of a large increase in the Hispanic-origin population of eastern Washington, and of changes in agriculture and some population rejuvenation, traditionally Republican areas of eastern Washington are becoming more and more likely to vote Democratic. Conversely, some traditionally Democratic bastions in western Washington, including blue-collar areas of forest-product industries in rural and small-town areas, and some blue-collar and socially conservative industrial areas in the cities, are beginning to vote Republican on occasion. Voters in the burgeoning suburbs, while still leaning Republican, are increasingly professional, educated, and Democratic—virtually a flip-flop of traditional patterns of the 1960s.

The partisan redistricting of the 1980s proved to be very important, not in its ability to alter the Washington political map in any significant way, but because it was the platform from which the state moved to an independent redistricting commission.

NOTES

1. The assistance of the Washington secretary of state, Mr. Ralph Munro, and his Elections Division staff, is gratefully acknowledged.

2. For a description of redistricting in Washington before 1980, see Hugh A. Bone and Richard Morrill, "Washington," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 339-43.

WEST VIRGINIA

DAVID M. HEDGE AND KATRINA L. SCHOCHET

Historically, districting and apportionment in West Virginia have been concerned as much with protecting the political integrity of the state's 55 counties as they have in achieving any additional partisan advantage for the dominant Democratic party. West Virginia's constitution mandates that districts be "compact, formed of contiguous territory, bounded by county lines and as nearly as practicable, equal in population." This combination of constitutional and political practice has produced a mixture of both single-member and multimember districts in the House of Delegates that has lasted to this day.[1]

APPORTIONMENT IN THE 1980S

Redistricting should have been easy in the eighties; the Democrats controlled both houses of the state legislature and the governorship, less than a third of the state's voters were Republicans, and the Republican vote was scattered across the state. However, redistricting in the early 1980s proved every bit as contentious as it was earlier. Yet, the main stories remained the same. The drive for equality in district population grew more important in the U.S. House of Representatives and in the House of Delegates as court challenges continued to be the norm. Senate districting remained largely unchanged (and unchallenged). Legislators attempted partisan gerrymandering in both the House of Delegates and the U.S. House of Representatives, but in the face of court challenges those efforts proved unsuccessful.

The 1980 redistricting plan for the U.S. House of Representatives was blatant in its attempt at partisan gerrymandering. In the earliest redistricting scheme, committee members placed three incumbents—two Republicans and one Democrat—in the same predominantly Democratic congressional district. In a subsequent version, legislators packed Republican counties, taken from the congressional district of one of the state's two Republican House members, into the remaining Republican's congressional district and replaced these counties with a very large and heavily Democratic county. The plan was enacted but, given the 13 percent variation in population between the largest and smallest districts, was successfully challenged in federal court.

The final redistricting plan was considerably more benign in effect. Only three counties were moved out of their original districts, and this occurred only as a result of population shifts. In addition, the new scheme contained just a 0.05 percent population variation between the smallest and largest districts. Moreover, while West Virginia lost its two Republican congressmen in the 1982 election, it is unlikely that the new districting scheme had any effect on either contest. Both Republican incumbents had been swept into office in 1980 in normally Democratic districts on the coattails of the Reagan landslide and, in one case, the incumbent had resigned his House seat to run in 1982 (unsuccessfully) for the U.S. Senate.

Initial redistricting plans for the House of Delegates evidenced similar kinds of partisan mischief. At one point, the Republican minority leader claimed that the chair of the committee on redistricting "could add two other professions to his biography: a surgeon because some districts were drawn with the precision of a surgeon's knife and the operator of a slaughter house because other districts had a meat axe taken to them."[2] Under the original plan, Preston and Upshur Counties—two of the seven predominantly Republican counties in the state—were to be divided three ways. In another instance, sections of one county were added to another county to ensure that the state's two African American delegates would retain their seats. Even though the redistricting plan cut across several county lines, the scheme had a population variation of more than 13 percent between the largest and smallest districts.

Even before the new House plan had been signed into law, three residents of Jefferson County challenged the proposed redistricting in federal court and asked the court to impose single-member districts. The panel of federal judges quickly advised legislative leaders that the House redistricting plan was unacceptable and urged the legislature to come up with a plan that did not have a variation of more than 10 percent. U.S Circuit Judge James Sprose informed the state's lawyers that, "In order to justify a variation of greater than 10 percent, it is necessary to show a good faith effort. Good faith does not mean protecting someone's seat but what is good for the voters." [3] Once the plan was found unacceptable, Governor Jay Rockefeller and the leaders of the House of Delegates began trading barbs, and the governor refused to sign the original redistricting plan into law.

Over the next two weeks, the House of Delegates considered several alternative plans, including schemes that would include only single-member districts and a number of plans that would have either increased or decreased the size of the House. In the end, none of the proposed measures passed. Instead, the legislature chose to modify slightly the existing delegate districting plan, so that the maximum population variation between districts fell below the 10 percent limit mandated by the panel of federal judges. The final bill shifted only a few counties, and apparently none in a partisan fashion. The plan was approved by the federal judicial panel in late March.

Redistricting in the Senate was a quieter, more last-minute affair which involved little controversy. Indeed, the Senate seemed more inclined to redo the House of Delegate's redistricting plan than anything else. In any event, the new Senate plan left existing districts largely intact. Ironically, the Senate plan allowed for a maximum population deviation between districts of 12.5 percent, and yet was approved by the federal court—probably on grounds that the plan allowed the large population variations in order to protect county integrity.

Table 1. Election Results for West Virginia Legislature and Congressional Delegation.

YEAR	HOUSE OF DELEGATES	SENATE	U.S. HOUSE
1980	78D, 22R	27D, 7R	2D, 2R
1982	88D, 12R	31D, 3R	4D
1984	76D, 24R	29D, 5R	4D
1986	78D, 22R	27D, 7R	4D
1988	79D, 21R	30D, 4R	4D
1990	Not available	Not available	4D

A cursory analysis of the state's Senate and House districts reveals little blatant gerrymandering. However, in a sense no blatant gerrymandering is really necessary, given the state's reliance on multimember districts for both legislative chambers. Although Republican voters represent roughly a third of all registered voters in the state, in 1988 Republicans held just 21 percent and 12 percent of the House and Senate seats, respectively. At the district level, the vote-to-seat distortion is clear. In Kanawha County, for instance, approximately one voter in three is Republican, yet the GOP captured only two of the county's 12 delegates in 1986. That example repeats itself throughout the state. The results of the six elections, 1980-1990, are shown in Table 1.

The 1990s

Redistricting politics in the 1990s should be much the same as those in the 1980s. The Democrats control both houses of the state legislature as well as the governorship. The most difficult task, politically, may entail redrawing the state's congressional districts. Following the 1990 census, West Virginia will lose one of its four seats in the U.S. House of Representatives. Currently, all four incumbents appear inclined to seek reelection. Assuming that is the case, the legislature will have to decide which pair of incumbents will face each other in the 1992 Democratic primary, and whether that election will take place in a newly configured, somewhat neutral district, or in one that is essentially the home base for one of the incumbents.

As in the past, districting politics should be most dramatic in the House of Delegates. Several issues will

receive attention as the House debates various districting plans. First, legislators will once again have to decide whether to abolish multimember districts. Although efforts to employ single-member districts failed in the 1980s, multimember districts are likely to be challenged by reform-minded people in both the legislature and the courts. Second, given the advances in computer-assisted districting technologies (legislators will now have precinct-level voting and census information at their disposal), there are likely to be strong pressures to create districts with considerably less than the 10 percent population variation allowed in the 1980s. (Successful gerrymandering may rest with those able to master the new technologies of districting.) Third, House Democrats are likely to look closely at how districts are apportioned among the high-growth counties in the eastern panhandle—areas that are more responsive to Republican politics and politicians. Redistricting in the Senate, if the past is any guide, is likely to cause less conflict, and the changes that do take place should be minimal and should reflect population movements within the state.

NOTES

1. For a discussion of redistricting in West Virginia prior to the 1980s, see Kathleen M. Arnold, "West Virginia," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 344-47.
2. *Charleston Gazette*, February 2, 1982, p. 8A.
3. Ibid., March 9, 1982, p. 1B.

WISCONSIN

DAVID G. WEGGE

Redistricting in Wisconsin following the 1980 census was one of the most tumultuous and conflictual reapportionment battles in recent decades. It involved conflict among the state legislature, the governor, and the federal courts. In the end, the redistricting battle was not settled until 1984.

In many ways, Wisconsin redistricting conflicts are not much different than the battles that are fought in other states. Naturally, conflicts emerge between Democrats and Republicans, urban and rural areas, minority and majority groups, and among various interest groups. If there have been focuses of conflict over the years, these have probably been the conflict between the parties and the conflict between the urban and rural areas of the state.

BACKGROUND

Wisconsin's reapportionment guidelines are presented in Sections 3, 4, and 5 of Article IV of the Wisconsin Constitution, which emphasizes the following criteria for redistricting: apportionment based upon the number of inhabitants, contiguous territory, compactness, and maintenance of political subdivisions. Wisconsin was a leader in accepting and implementing the "one person-one vote" standard in the United States, which it did as early as 1892.

REDISTRICTING IN THE 1980S

Reapportionment issues which emerged in the 1900-to-1970 time frame have been well documented in previous analyses.[1] This analysis will focus on the redistricting of the 1980s. Currently, the responsibility for redistricting falls to the state legislature under its regular lawmaking function. Therefore, both the legislature and the governor (the latter through the power to sign or veto legislation) are, at least initially, the key formal decision-makers in legislative redistricting. In redistricting, the highest priority is on achieving population equality among the districts. To the degree that this is not attainable, the reapportionment plan must reflect a good-faith effort to "apportion the legislature giving due consideration to the need for contiguity and compactness of area, the maintenance of the integrity of political subdivisions and of communities of interest, and competitive legislative districts."[2] In Wisconsin, the state Senate consists of 33 legislators elected for four-year terms, with 16 seats filled in one election year and the remaining 17 filled in the next election. Each Senate district consists of three state Assembly districts wholly contained within that Senate district.

Based upon the 1980 census, the state of Wisconsin was certified to have an official population of 4,705,521. In line with that figure, the state Senate districts should each have had 142,591 residents and the state Assembly districts should each have had 47,531 residents. By 1980, there naturally had been some shifts in population within the state, so that the Senate districts ranged from 27.3 percent above the ideal norm to 22.5 percent below the ideal norm. In the Assembly, the districts ranged from 29.0 percent above the ideal to 33.4 percent below the ideal. Overall, the total number of people "misrepresented," that fell either above or below the ideal norm in all of the districts, was 514,686, or 10.9 percent of the 1980 population. There was indeed need for considerable redistricting.

The political context for this period was a partisan mix. The state legislature was controlled by the Democratic party and had been for a number of years. The Democrats controlled the Senate 19 to 14 and the Assembly 59 to 40. The governor's office was held by Republican Lee Dreyfus. Dreyfus was a maverick populist politician who surprised everyone in 1978 by defeating the Republican party-endorsed gubernatorial candidate, Robert Kasten, in the Republican primary. Dreyfus then went on to defeat Acting Governor Martin Schreiber in the general election. Governor

Dreyfus was not a highly "party-oriented" politician and seemed to have little patience for some of the games of politics.

Following the 1980 census, the state legislature and the governor were unable to come to an agreement over a new redistricting plan. This led to a court case filed in the U.S. federal district court of Judge Terence T. Evans on February 2, 1982 (*Wisconsin State AFL-CIO et al. v. Elections Board et al.*), on behalf of several candidates who wanted to start campaigning for the 1982 elections but couldn't without knowledge of where the district boundaries would be drawn. On February 8, 1982, Chief Judge Walter J. Cummings of the Seventh Circuit Court of Appeals named a three-judge panel to hear the case.

On February 22, 1982, the three-judge panel declared the existing reapportionment scheme (i.e., the 1970 plan) to be unconstitutional and enjoined the state Elections Board from administering any elections using the existing Senate and Assembly districts. On April 21, the three-judge panel entertained oral arguments, and on April 23 it issued an order indicating that the judges were reluctant to act until they were convinced that all reasonable efforts to establish an acceptable plan had been exhausted by the state legislature and the governor. The judges gave the legislature and governor until May 4 to come up with a plan.[3] When there still was no agreement, the three-judge panel indicated that it might move forward with a court plan that included reducing the 132 legislative seats to 80, 60 Assembly seats and 20 Senate seats. Although many felt this was simply a "bluff" on the part of the court, it did stimulate a new attempt to reach agreement. The threat of a seat reduction by the court was also not dismissed by the governor, but rather the governor stated, "Reducing the Legislature appeals to me considerably." This clearly indicates the kind of contentiousness that existed between the governor and the state legislature.[4]

On May 20, a new redistricting plan was approved by the state legislature and sent to the governor. Although the legislature felt that it was likely the governor would veto the plan, the legislators believed they had a good chance of overriding his veto. Four days later, the governor vetoed the plan because he felt it was designed primarily to protect the interests of the incumbent members of the legislature and not the interests of the public. The legislature was not able to muster the necessary two-thirds vote to override, and once again redistricting was dead in the water. This same redistricting plan was also submitted to the three-judge panel for consideration, but was sharply criticized by the panel as being "... one of the worst efforts before us... the plan... has no redeeming value."[5] The most significant criticism raised against the plan was the fact that it did a poor job of maintaining the integrity of political subdivisions.

On June 9, 1982, the three-judge panel put forth its redistricting plan. It had not reduced the number of seats, but it did redraw the district lines in such a way that numerous incumbents were either going to have to run against each other or move into new districts. The court plan also created five Senate districts that had no incumbents and, because they were even-numbered districts, would not hold elections until 1984. This essentially left the constituents in question without representation in the Senate for two years.

In mid-June, the three-judge panel altered its plan by renumbering the questionable Senate seats so that elections would be held in 1982. Based on the court's redistricting plan, the average deviation from the ideal norm in the state Assembly was $\pm$188 individuals, or $\pm$0.40 percent, and in the state Senate it was $\pm$369, or $\pm$0.26 percent. Although the court case was essentially initiated by the Democratic party, the court-ordered redistricting plan ended up pleasing many Republicans, since it improved Republican chances for victory in several districts.

It was this plan that was in effect for the 1982 elections. The 1982 elections produced Democratic Governor Tony Earl, and the Democrats maintained their control of the state Senate and state Assembly. The court plan was not particularly well received by the Democrats, however, and hence they sought to change the plan in

Table 1. Makeup of the Wisconsin State Legislature in the 1980s.

	ASSEMBLY		SENATE	
YEAR	REPUBLICANS	DEMOCRATS	REPUBLICANS	DEMOCRATS
1981	39	59*	14	19
1983	40	59	14	17*
1985	47	52	14	19
1987	45	54	11	19
1989	43	56	13	20
Change: 1981-89	+4	-3	-1	+1

*Seat vacancies existed

the 1983 legislative session. The Democrats also knew that if they were going to recommend such a change, their "new" plan would have to demonstrate some tangible improvement as regards the issue of equal representation. Only if this occurred would they be able to sell the plan to the public using the "high ground."

In the spring of 1983, a new plan was developed by Representative David Travis and introduced as an amendment to the 1983-85 budget bill without public hearing. The new plan was quickly attacked by the Republican party, Common Cause, and the League of Women Voters as being blatantly partisan and as having passed with little or no public discussion. When the budget bill arrived on Governor Earl's desk, he item-vetoed the plan even though he indicated that he generally supported it. According to Earl, adding redistricting to the budget bill might "taint" the budget process, and hence the redistricting plan should be considered in a separate special session of the legislature.[6]

A special legislative session was called in July of 1983 to deal with the redistricting plan. The new plan was significantly different from the plan promulgated by the federal district court in 1982. The Democrats argued that the court plan had split too many municipalities and that their plan not only remedied this problem but also provided for more equal representation. In fact, while equal representation was "improved," it was only very slightly improved. The new legislative plan had an average deviation from the ideal population norm in the Assembly of $\pm$190, or $\pm$0.40 percent, and in the Senate of $\pm$340, or $\pm$0.24 percent.

The new legislative redistricting plan was challenged in the courts by the Republican party, and the GOP was successful in obtaining a ruling that the new plan was unconstitutional. This case was then appealed to the U.S. Supreme Court, which stayed the lower-court ruling, and the legislative redistricting plan of 1983 then went into effect.

State legislative elections in the 1980s reveal that the two redistricting plans may have had somewhat different effects on the elections. It is difficult to determine whether or not changes in the outcome of elections have been due to redistricting or to the many other factors that can affect the outcome of elections (e.g., incumbency, issues, the nature of candidates, campaign spending, etc.). The makeup of the Wisconsin state legislature in the 1980s is shown in Table 1. Overall in the 1980s, the Republican party gained four seats in the Assembly and lost one seat in the Senate. Hence the decade saw them make a net gain in legislative seats. The redistricting in the state legislature may have provided more security for Democrats in the Senate, while it lost them some support in the Assembly districts.

Another way of examining the effects of the two redistricting plans is to analyze the Senate districts which held elections in 1978, 1982, and 1986, to see if the percentage of votes for the Democrats, who controlled the redistricting in 1983, changed. The

Table 2. 1984 Election Results in the Assembly Districts Making up the 27th Senate District.

ASSEMBLY DISTRICT	DEMOCRATIC VOTE	REPUBLICAN VOTE
79th	71% (15,823)	29% (6,346)
80th	55% (11,541)	45% (9,481)
81st	67% (14,865)	33% (7,175)
Average	65% (14, 076)	35% (7,667)

results reveal, when comparing the election results of 1978 and 1982, that the Democrats had an average decrease in their vote of 1.75 percent in the 12 districts that were contested and could be compared over this period. Recall that the 1982 elections were run using the court redistricting plan. When the election results of 1982 and 1986 are compared, there was an average vote gain of 1.64 percent per Senate district for the Democrats. The 1986 election was held utilizing the redistricting plan passed by the state legislature in July 1983, when both the legislature and the governor's office were controlled by the Democrats.

The 27th Senate District looked much different under the state legislative redistricting plan of 1983, and the election results reflected these differences. The results from the 1984 election are shown in Table 2. The change in the redistricting plan (that is, shifting from the court plan of 1982 to the legislative plan in 1984) dramatically changed the competitive nature of the 27th Senate district.

In the state legislative plan, the 92nd District was slightly altered and renumbered as the 80th Assembly District, while the boundaries of the 93rd District were adjusted somewhat and the district was renumbered as the 81st Assembly District. Both of these Assembly districts had stronger Democratic majorities in 1984. The most significant change was that the legislative plan dropped the 91st Assembly District, which voted 54 percent Republican in the 1982 Assembly election, and replaced it with the 79th Assembly District, which voted 71 percent Democratic in the 1984 Assembly election.

Hence, a Senate district in which the Republican incumbent was not challenged in 1978, and in which the Democrat won by 30 votes in 1982, was transformed into a relatively safe Democratic Senate district by 1984. (See Figures 1 and 2.)

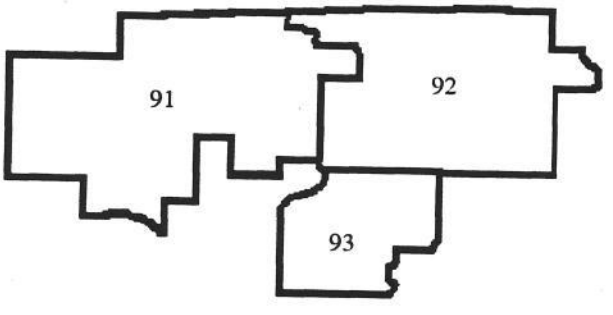

Figure 1. The 27th Senate District Under the Court Plan of 1982.

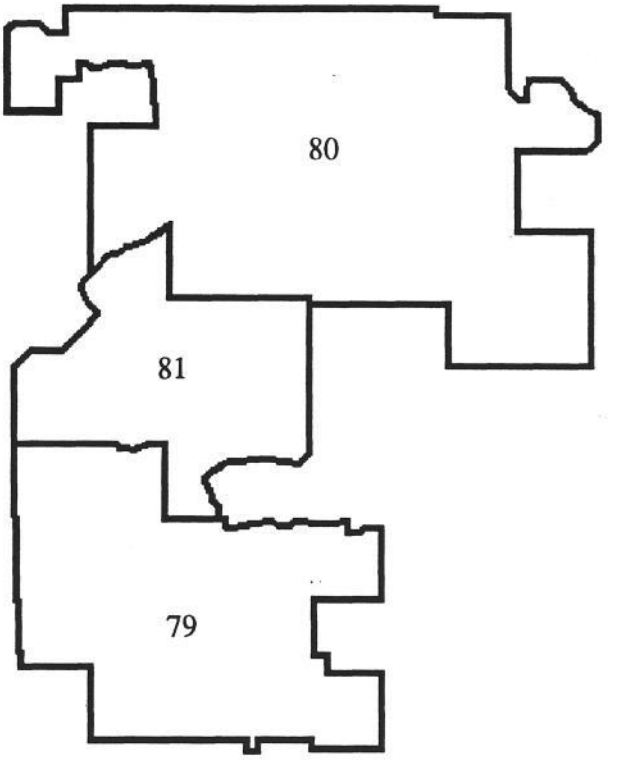

Figure 2. The 27th Senate District Under the Legislative Plan of 1984.

Using analyses both of districts and of votes, it would be difficult to argue that there were substantial changes which benefited the controlling party in the legislature as a whole. It is possible to isolate some districts, like the 27th Senate District, and see that redistricting did have significant effects at the district level. As with most modern redistricting plans, the changes that occurred tended to be very complex and often subtle.

What will the redistricting efforts of the 1990s produce? It is always difficult to make this type of prediction. However, given the current political circumstances, we might anticipate the following: The state legislature continues to be controlled by the Democrats, who have fairly substantial majorities in both the Assembly and the Senate. The current governor is a Republican who served in the state legislature for a number of years. There is a generally good working relationship between the governor and the legislature, and this may help avoid some of the conflicts that have been encountered in recent years of divided government. The governor has also been quite popular, and hence has had substantial public support for many of his positions. Recent legislative scandals involving the use of interest-group money for private purposes have diminished the public's view of the legislature, and may also strengthen the hand of the governor in redistricting efforts.

At the congressional level, there may also be some changes. During the 1980 redistricting efforts, the congressional delegation was made up of five Democrats and four Republicans, and the redistricting plan was basically a compromise worked out by the congressional delegation, and then passed in the state legislature. The 1990 elections, however, changed the balance of power in the congressional delegation so that there are now five Republicans and four Democrats. This may have an impact on how the new congressional district lines will be drawn in Wisconsin.

NOTES

1. See, for example, H. Rupert Theobald, "Equal Representation: A Study of Legislative and Congressional Apportionment in Wisconsin," *Wisconsin Blue Book, 1970* (Madison: State of Wisconsin, 1970), p. 75; A. Clarke Hagensick, "Wisconsin," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 348-53; and Ronald Hedlund, "The Wisconsin Legislature," in Wilder Crane, A. Clarke Hagensick, et al., eds., *Wisconsin Government and Politics* (Milwaukee: University of Wisconsin-Milwaukee, Department of Governmental Affairs, 1987).

2. *Wisconsin Statutes, 1985-86*, Chapter 14, Subchapter I, 4.001 (3), p. 23.

3. *Wisconsin Briefs: 82-5* (Madison: State of Wisconsin, 1982), p. 56.

4. "Dreyfus Vetoes Reapportionment Proposal," *Green Bay Press-Gazette*, May 24, 1982, p. 1.

5. U.S. District Court for the Eastern District of Wisconsin, "Senate and Assembly Districts: Promulgated for the 1982 Elections," in *Wisconsin Briefs: 82-5*, p. 57.

6. "Earl Will Veto Remap Because It's in Budget," *Green Bay Press-Gazette*, June 28, 1983, p. B-1.

WYOMING

JANET CLARK

At the start of the 1990s, Wyomingites faced a different situation from that of the early 1980s.[1] The state's economic condition had deteriorated drastically during the decade, presenting the legislature with a far different problem regarding redistricting from that of ten years earlier. While the state's population had grown about 41 percent during the 1970s, the bust cycle was accompanied by significant outmigration. The population of the state had dropped 4 percent by 1990. The populations of some of the energy-rich counties, many of which had doubled in the 1970s, had dropped around 10 percent over the decade of the eighties. At the same time, state revenues had fallen severely.

Legislative districts for both houses in Wyoming are based on the 23 counties. According to the terms of the 1889 Wyoming Constitution, representation is based on population but each county is guaranteed at least one representative in each house. Larger counties have multiple seats, with all legislators elected at large from the whole county. Moreover, the size of the House must be at least twice but not more than three times that of the Senate.

The rapid population growth of the 1970s created new problems for redistricting in Wyoming. While the state as a whole grew in population by nearly 41 percent, the growth was unevenly distributed. The range in the growth rate was from 0 percent in Niobrara County to 136.9 percent in neighboring Converse County, one of the major energy-producing counties. Twelve of the 23 counties were energy-impacted counties which seemed to leave the others far behind in terms of growth. Laramie County, home of the capital city, Cheyenne, and historically the county with the largest population in the state, was outstripped by Natrona County.

Again, the legislature faced the problem of providing equal representation while honoring the constitutional mandate that each county have at least one seat in the House of Representatives. The state had refurbished its 1890 capitol, which could not accommodate enough desks to meet the constitutional requirement and the spirit of *Reynolds v. Sims*. The major redistricting proposal decided in favor of the Supreme Court decision by maintaining the five combined-county districts in the Senate and by creating the first combined district for the House. However, opposition from residents of Niobrara County (which was to be combined with Goshen County) stalled the proposal. A conference committee finally compromised by apportioning seats among the counties as nearly equally as possible while adding one seat to accommodate Niobrara County. The larger counties, with the more stable populations, lost seats to the rapidly growing counties.

Partisan cleavages over the redistricting plan were interesting. Initially, Democrats in the House formed the core of opposition to eliminating Niobrara's seat, while most of the dissenters to the Senate's plan for giving Niobrara back its House seat were Republicans. When the Senate's plan returned to the House, however, many Democrats joined the opposition to it, and Democrats cast most of the "no" votes against the conference committee version. The Republicans from the larger counties switched from their opposition to Niobrara's representation. Perhaps, as members of the majority party, some of the House Republicans felt that they could be generous to the small but highly Republican county.

The new plan, of course, was distinctly in violation of *Reynolds v. Sims*. The variation between the representation of Washakie County and that of Niobrara County was 86 percent, and the average variation between the representation of the counties was 16

percent. In anticipation of a legal challenge, the legislature had established a contingency clause should the plan be struck down, along with a lengthy justification of its action. The Wyoming League of Women Voters brought suit in the federal district court, in the case of *Brown v. Thomson*. In 1982, a three-judge federal panel upheld the redistricting plan. In 1983, the Supreme Court again upheld the plan.

The surprising decision rested to a large degree on the narrowness of the League challenge. Rather than requesting the Supreme Court "to decide whether Wyoming's nondiscriminatory adherence to county boundaries justified the population deviations that exist throughout Wyoming's representative districts . . . . Appellants deliberately have limited their challenge. . . ."[2] The majority of the Court upheld the district court ruling that Wyoming's policy of preserving county boundaries for representative districts showed no evidence of bias favoring particular political interests or geographic areas. Further, the improvement of the appellants' voting power by the elimination of Niobrara's seat in the legislature would be "de minimis." Considerable population variations would have remained, with the average deviation remaining at 13 percent and the maximum at 66 percent. Clearly, the failure of the League to challenge the entire redistricting plan led to the League's defeat in the Supreme Court. The highly divided Court was reluctant to set aside the state's "longstanding and legitimate policy of preserving county boundaries . . . particularly where there is no taint of arbitrariness or discrimination. . . ."[3]

The impact of the 1981 redistricting plan upon the makeup of the Wyoming legislature was slight. The Republican party continued to dominate both houses following each election of the decade. Although the Democrats did well in electing popular candidates to statewide executive offices, the Republicans continued to hold strong majorities in the Senate and House. While party registrations in the decade have been 56 percent Republican to 35 percent Democratic, Republicans have had approximately a 2-to-1 edge in the legislature. Democratic gains of seats in the more liberal counties in the southern part of the state were compensated for by additional Republican seats in the conservative northeastern counties.

Agricultural, business, and professional interests continued to be overrepresented in the Wyoming legislature. The major downturn in the economy of the state lent legitimacy to conservative demands to control spending. The general activity of the decade has been to adjust the budget downward to compensate for declining revenues from mineral royalties and severance taxes.

The 1990 session of the Wyoming legislature was a budget session wherein most of the 20 days were devoted to efforts to balance the budget while maintaining state service levels, particularly in education. Redistricting was definitely on the back burner; however, the Corporations, Elections & Political Subdivisions Committees of both houses began working on redistricting plans during the interim before the 1991 session. The legislature faced problems similar to those of 1981. It is virtually impossible to satisfy both the Wyoming constitutional requirement of at least one representative for each county and the spirit of *Reynolds v. Sims*.

Three approaches to redistricting have emerged from committee hearings held throughout the state. First, conservatives believe that the present system can continue, with each county having its own representative while the more populous countries have multiple seats. Under this approach, only small adjustments in the number of seats allocated to the larger counties would be needed. The plan is rooted in the assumption that the *Brown v. Thomson* decision shows that the Supreme Court accepts Wyoming's county system.

A second approach recognizes that the 83 percent deviation in representation in the House that will result from preserving the seat for Niobrara County will surely not pass a thorough test before the Supreme Court. Therefore, advocates of this second approach are calling for districts combining a few counties in the House as well as in the Senate. The problem is to find

a means of combining counties in such a way as to preserve contiguity and common interests while reducing the amount of deviation in population to less than 20 percent.

The third approach, advocated by liberal Democrats, is to scrap the use of counties as legislative districts and to create single-member districts throughout the state. This approach will allow for a minimum of deviation in population size per district. However, many Republican legislators, who outnumber the Democrats by 42-to-22 in the House and by 20-to-10 in Senate, are opposed to this plan. They argue that drawing new district lines will lead to gerrymandering.[4] It appears that no matter which of the three approaches is adopted, there will be a court challenge to test its legality.

NOTES

1. For a description of redistricting in Wyoming before 1980, see Oliver Walter, "Wyoming," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 354-57.

2. *Brown v. Thomson*, 462 U.S. 835, 103 S. Ct. 2690 (1983).

3. Ibid.

4. Tom Rea, "Committee Hires GOP Lawyer to Help State with Reapportionment," *Casper Star-Tribune*, November 17, 1990, pp. 1, 14.

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