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## Redrawing the Lines: Power Politics and Communities at Risk

By Amanda Munsie

### INTRODUCTION

After each decennial census, the map of every state's congressional election district must be redrawn to accommodate population shifts not only within the state, but also throughout the country.<sup>1</sup> Congressional redistricting is the method of redrawing the boundary lines of every state's congressional district.<sup>2</sup> Each state undertakes the process every ten years. While it is always difficult to adjust for population shifts and accommodate conflicting political end goals, in 2011, the New Jersey Redistricting Commission ("Commission") was tasked with an additional challenge: eliminating one seat.<sup>3</sup> While the Census Bureau reported New Jersey's population grew 4.5% from 2000 to 2010, with states like Nevada and Texas growing both

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<sup>1</sup> Frederick Kaimann, *N.J. Loses seat in Congress as Census Bureau unveils population numbers*, THE STAR LEDGER (Dec. 21, 2011), available at

[http://www.nj.com/news/index.ssf/2010/12/nj\\_to\\_lose\\_seat\\_in\\_congress\\_af.html](http://www.nj.com/news/index.ssf/2010/12/nj_to_lose_seat_in_congress_af.html)

<sup>2</sup> ABOUT REDISTRICTING, *Congressional Redistricting*, NEW JERSEY REDISTRICTING

<http://www.njredistrictingcommission.org/aboutredistricting.asp> (last visited Mar. 4, 2012).

<sup>3</sup> Frederick Kaimann, *N.J. Loses seat in Congress as Census Bureau unveils population numbers*, THE STAR LEDGER (Dec. 21, 2011), available at

[http://www.nj.com/news/index.ssf/2010/12/nj\\_to\\_lose\\_seat\\_in\\_congress\\_af.html](http://www.nj.com/news/index.ssf/2010/12/nj_to_lose_seat_in_congress_af.html)

35.1% and 20.6% in population, respectively, New Jersey's representation in the House needed to be reduced to account for the growing population of other states.<sup>4</sup>

John Farmer, Jr., dean of Rutgers School of Law in Newark, New Jersey, and former New Jersey Attorney General, headed the 2011 Commission.<sup>5</sup> Since its origin, the Commission has been comprised of thirteen members: six from each of the two major political parties and one independent tiebreaker.<sup>6</sup> Mr. Farmer, as the head of the commission, serves as the tiebreaker.<sup>7</sup> While the members from the two major political parties, Republican and Democrat, each presented dueling maps, ultimately only one could be chosen. In effect, because it is presumed that members of the Commission will vote along party lines, Mr. Farmer selected the winning map. A variety of factors are used when evaluating the maps: equal representation; complying with the mandate of the Voting Rights Act of 1965, which requires districts to not be racially discriminatory; compact districts containing communities of interest, adjacent towns and preserved municipalities; and protection of incumbents.<sup>8</sup> The protection of incumbent congressional representatives is one of the most controversial factors Congress considers in the redistricting process.<sup>9</sup>

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<sup>4</sup>Kaimann, *supra* note 1. In addition to New Jersey, nine other states lost a House seat: New York, Pennsylvania, Illinois, Iowa, Louisiana, Massachusetts, Missouri, Michigan and Ohio. *Id.*

<sup>5</sup> Matt Friedman, *Rutgers Law School Dean Named Tiebreaker of Commission to Redraw Congressional Districts*, NJ.COM (July 16, 2011), [http://www.nj.com/news/index.ssf/2011/07/rutgers\\_law\\_school\\_dean\\_select.html](http://www.nj.com/news/index.ssf/2011/07/rutgers_law_school_dean_select.html).

<sup>6</sup> The twelve members of the Commission are Assemblyman Joseph Roberts, Jr, who serves as the Democrat Delegation Chair; Michael J. Baker, who serves as Delegation Vice Chair; Michael DuHaime, who serves as Republican Delegation Chair; Assemblywoman Caroline Casagrande; Nilsa Cruz-Perez; Sherine El-Abd; Edward Farmer; Aubrey Fenton; Jeannine Frisby LaRue; Eric Jaso; M. Susan Sheppard; and Philip Thigpen. *See* NEW JERSEY REDISTRICTING, <http://www.njredistrictingcommission.org/aboutredistricting.asp> (last visited Mar. 4, 2012).

<sup>7</sup> ABOUT REDISTRICTING, *Congressional Redistricting Timeframe in New Jersey*, NEW JERSEY REDISTRICTING, <http://www.njredistrictingcommission.org/aboutredistricting.asp> (last visited Mar. 4, 2012).

<sup>8</sup> ABOUT REDISTRICTING, *Redistricting Principles*, NEW JERSEY REDISTRICTING, <http://www.njredistrictingcommission.org/aboutredistricting.asp> (last visited Mar. 4, 2012).

<sup>9</sup> Donal Scarcini & Nomi Lowy, *Congressional Redistricting in New Jersey*, 32 SETON HALL L. REV. 821 (2002); *see also, infra*, Incumbent Protection discussed in Part III

On its face, the redistricting process consists of three phases: the Census, where, among other data are compiled, everyone in the United States is counted; congressional apportionment, where Congress determines the number of representatives to which each state is entitled;<sup>10</sup> and finally, the literal redrawing of the boundary lines into the number apportioned by Congress, which is the responsibility of each states' government and done differently nationwide.<sup>11</sup> One of the constitutional goals of redistricting is to achieve the principle of “one person, one vote.”<sup>12</sup> In explaining this principle, former United States Supreme Court Chief Justice Earl Warren, in his majority opinion in *Reynolds v. Sims*, stated, “Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.”<sup>13</sup> By drawing districts based on population, and not area, each person in a state is as equally represented in the United States House of Representatives as possible.<sup>14</sup>

This Note explores the Congressional redistricting process nationwide and specifically evaluates the process in New Jersey. While the commission in New Jersey is bipartisan, ultimately, only one party can win. The term bipartisan actually means “two parties,” however, it suggests a joint effort of both the Republicans and Democrats working together to come up with the best option for the parties collectively – a compromise. Here, however, party politics are still at the center of the redistricting battle. Both the Democratic and Republican members of the commission come with political history in New Jersey and thus, a political agenda. The members, having collectively been privy to the political scene in both New Jersey and

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<sup>10</sup> ABOUT REDISTRICTING, *The Census, Congressional Apportionment, and the United States Constitution*, NEW JERSEY REDISTRICTING, <http://www.njredistrictingcommission.org/aboutredistricting.asp> (last visited Mar. 4, 2012); ECON. & STAT. ADMIN, U.S. DEPT. OF COMM., U.S. CENSUS BUREAU, *Strength in Numbers: Your Guide to Census 2010 Redistricting Data From the U.S. Census Bureau* (hereinafter “Strength in Numbers”), at 1 (July 2010).

<sup>11</sup> *Strength in Numbers*, *supra* note 11, at 1.

<sup>12</sup> *Reynolds v. Sims*, 377 U.S. 533, 558 (1964).

<sup>13</sup> *Id.*

<sup>14</sup> *The Census, Congressional Apportionment, and the United States Constitution*, *supra* note 11.

Washington, D.C., could be seen as protecting their own. The fact that each party presents dueling maps in an attempt to capitalize on the population shift,<sup>15</sup> shows a bias for members of their own political party, rather than a focus on other important redistricting values, like keeping communities of interest together.<sup>16</sup> In fact, it has been argued by Micah Altman, the Director of Research and Head Scientist for the Program on Information Science for the Massachusetts Institute of Technology Libraries, among others, that there is actually no such thing as purely neutral redistricting, as one side always stands to gain from the way the map is drawn.<sup>17</sup> While the New Jersey system acts as an independent commission, theoretically free from any political pressure from the legislature, this Note will show how in practice, by creating a commission of members of the political elite, partisan politics is still at the forefront of the redistricting arena.

Part I of this Note discusses the redistricting process in New Jersey and the constitutional constraints that are put on redrawing the maps nationwide. Part II of this Note describes the 2011 Redistricting Process in New Jersey and examines the members selection for the 2011 Commission. Part III of this Note explores the interests at play during the New Jersey 2011 Redistricting Process. It compares the dueling interests of “sweetheart districts”<sup>18</sup> and incumbency protection with keeping municipalities and communities of interest together. It elaborates on how incumbency protection was at the forefront of the 2011 redistricting process and considers other factors that would benefit New Jersey residents in a better, more important way. Part IV of this Note compares the New Jersey system with those of other states that employ an arguably less partisan, and potentially fairer, system for undertaking the redistricting process.

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<sup>15</sup> Editorial, *N.J. Gov. Christie’s Intervention in Redistricting Process Went Too Far*, TRENTON TIMES, Apr. 6, 2011, available at, [http://www.nj.com/times-opinion/index.ssf/2011/04/editorial\\_nj\\_gov\\_christies\\_int.html](http://www.nj.com/times-opinion/index.ssf/2011/04/editorial_nj_gov_christies_int.html) (last visited Mar. 12, 2012).

<sup>16</sup> See, *infra*, Part III and IV.

<sup>17</sup> Micah Altman, *The Computational Complexity of Automated Redistricting: Is Automation the Answer?* 23 RUTGERS COMPUTER & TECH. L.J. 81, 86 (1997). See also BRUCE E. CAIN, *THE REAPPORTIONMENT PUZZLE* 77 (1984)

<sup>18</sup> See, *infra* Incumbent protection, Part III.

It examines techniques other states utilize in attempting to take politics out of redistricting, and questions if redistricting can ever be truly politically neutral. While each state's system has its strengths, the redistricting process is flawed nationwide. In order to create a fairer process for New Jersey redistricting, the interest of protecting incumbents needs to be given less weight and focus needs to be put on the constituents and their communities.

## **I. BACKGROUND**

The process of congressional redistricting has largely been left to the states. The Federal Government's role is limited to conducting the Census, reapportioning the number of seats each state is entitled to, and if questioned, reviewing the constitutionality of the final maps presented by the states.<sup>19</sup> Otherwise, states are generally unrestricted in deciding the means by which they redraw the boundaries of their congressional districts. After the United States Supreme Court declared the 1990 map, drawn by the New Jersey Legislature, unconstitutional,<sup>20</sup> New Jersey has taken the redistricting process out of the hands of the state Legislature and place it into those of an independent bipartisan commission.

### **A. HISTORY OF THE CENSUS AND SUPREME COURT PRECEDENT OF CONGRESSIONAL REDISTRICTING**

The first step in the redistricting process is the United States Census. Under the United States Constitution, the fundamental purpose of the Census is to ensure that the representation of each state in the United States House of Representatives reflects its relative population.<sup>21</sup> Since

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<sup>19</sup> See Voting Rights Act of 1965, 42 U.S.C. § 1973

<sup>20</sup> Karcher v. Daggett, 462 U.S. 725, 727 (1982).

<sup>21</sup> According to U.S. Const. art. 1, 2, cl. 3:

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to services for a term of years, and excluding Indians not taxed, three fifths of all other Persons.

See also, U.S. Const. amend. XIV, 2, "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."

the first Census in 1790, the population of the United States is counted every ten years.<sup>22</sup> The Census numbers ensure that our representative districts reflect the respective population numbers and possess equal weight and equal representation for the United States House of Representatives, state legislatures, and city and town governments.<sup>23</sup> The Census is conducted by mailing questionnaires to all United States households. In order to get the most accurate calculation possible, Census takers will visit the homes of those who did not respond to the questionnaire.<sup>24</sup>

The 435 seats in the United States House of Representatives are apportioned among the fifty states after each decennial census.<sup>25</sup> While the Census is constitutionally required, the Constitution does not specify how Members of the House are to be elected once they are apportioned to the state.<sup>26</sup> Thus, with redistricting left to the states, there are various ways the process is undertaken. After the population is counted, pursuant to 13 U.S.C. §§ 141(a)-(b), the Department of Commerce and the Census Bureau provide population counts to the President and the states.<sup>27</sup> For the 2010 Census, the official counts were required to be delivered to the

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<sup>22</sup> *Strength in Numbers*, *supra* note 11, at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Census 2010: What It Is and How it Works*, THE LEADERSHIP CONFERENCE, <http://www.civilrights.org/census/how-it-works.html> (last visited Mar. 4, 2012).

<sup>25</sup> *Apportionment Data*, United States Census 2010, <http://2010.census.gov/2010census/data/apportionment-data.php> (last visited Mar. 13, 2011). The apportionment population consists of the resident population of the 50 states, plus the overseas military and federal civilian employees and their dependents living with them who could be allocated to a state. The populations of the District of Columbia and Puerto Rico are excluded from the apportionment population because they do not have voting seats in the U.S. House of Representatives. *Id.*

<sup>26</sup> L. Page Whitaker, *Congressional Redistricting: The Constitutionality of Creating an At-Large District*, CRS REPORT FOR CONGRESS, March 20, 2007.

<sup>27</sup> *Strength in Numbers*, *supra* note 11, at 2; 13 U.S.C. § 141(a):

The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the “decennial census date,” in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.

13 U.S.C. § 141(b), “The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.”

President on or before December 31, 2010.<sup>28</sup> In early January 2011, the President reported the figures to Congress, which included the population of each state and the number of representatives apportioned thereto.<sup>29</sup> Within fifteen days of this report, the Clerk of the House of Representatives is required to send each state's government a certificate stating how many representatives the state is allotted in the next Congress.<sup>30</sup>

Standards for redistricting were first established in 1842, which stated that Representatives "should be elected by districts composed of contiguous territory equal in number to the number of Representatives to which each said state shall be entitled, no one district electing more than one Representative."<sup>31</sup> The Apportionment Act of 1872 added to the statute, requiring that districts should contain "as nearly as practicable an equal number of inhabitants."<sup>32</sup> The Apportionment Act of 1901 added the requirement of a compact territory, meaning that districts must be made up of "contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants."<sup>33</sup>

Not only is redistricting governed by statute, there are various United States Supreme Court cases which interpret these statutes and govern the process of redistricting as well. In 1963, the Supreme Court case of *Baker v. Carr* first established that the process of apportionment was no longer a political question and was now justiciable by the federal courts.<sup>34</sup>

The Court enumerated six factors to determine whether an issue was a non-justiciable political

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<sup>28</sup> 13 U.S.C. § 141(b)

<sup>29</sup> *Strength in Numbers*, *supra* note 11, at 3.

<sup>30</sup> *Id.*; New Jersey Governor Chris Christie received the 2010 Population Totals on February 3, 2011, Press Release, *U.S. Census Bureau Delivers New Jersey's 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting*, Feb. 3, 2011, <http://2010.census.gov/news/releases/operations/cb11-cn15.html> (last visited Mar. 1, 2012).

<sup>31</sup> 5 Stat. § 491 (1842)

<sup>32</sup> 17 Stat. § 492 (1842)

<sup>33</sup> 26 Stat. § 736 (1842)

<sup>34</sup> *Baker v. Carr*, 369 U.S. 186 (1962).

question.<sup>35</sup> While the case is often cited for its analysis of justiciability, the landmark decision of *Baker* established the court's role in the apportionment and redistricting process. The following year, the Court weighed in for the first time on challenges to the apportionment and redistricting process. The Court began setting the judicial framework for these challenges in the 1964 cases of *Wesberry v. Sanders* and *Reynolds v. Sims*.<sup>36</sup> Through these cases, the Court articulated the maxim "one person, one vote."<sup>37</sup> In *Wesberry v. Sanders*, the Court held that the Constitution requires members of the House of Representatives to be selected by districts composed, as nearly as possible, of equal population, stating "[a]s nearly as is practicable one person's vote in a congressional election is to be worth as much as another's."<sup>38</sup> In *Reynolds v. Sims*,<sup>39</sup> the court also reaffirmed the principle that state legislative districts must be "as nearly of equal population as is practicable."<sup>40</sup> Later, in the 1969 case *Wells v. Rockefeller*, the Court held that limited population variances among congressional districts are constitutionally permissible "only if they are unavoidable despite a good-faith effort to achieve absolute equality or if justification for them is shown."<sup>41</sup>

In 1993, in *Shaw v. Reno*, white voters in North Carolina alleged that the district boundaries created an unconstitutional gerrymander of a district that was 160 miles long, and at some points no wider than the right of way on a highway, winding throughout the state

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<sup>35</sup> *Baker*, 369 U.S. at 217. The factors include:

[A] textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

<sup>36</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>37</sup> *Reynolds*, 377 U.S. at 558.

<sup>38</sup> *Wesberry*, 376 U.S. at 1.

<sup>39</sup> *Reynolds*, 377 U.S. at 533.

<sup>40</sup> *Id.*

<sup>41</sup> *Wells v. Rockefeller*, 394 U.S. 542 (1969).

connecting black voters.<sup>42</sup> While recognizing the idea that an ordinary shape is not constitutionally required, the Court found that the bizarre shape of the district served no other purpose than to increase the power of racial minorities, and held that race based districting, even if employed for remedial purposes, is subject to strict scrutiny.<sup>43</sup> Shortly thereafter, in *Miller v. Johnson*, the Court addressed racial gerrymandering and found the Georgia congressional redistricting plan unconstitutional, reasoning that it violated the equal protection clause of the Fourteenth Amendment because the plan was based predominately on race and was not shown to serve a compelling governmental interest.<sup>44</sup> The Court held racial gerrymandering of the congressional redistricting process a violation of the Equal Protection Clause, stating that in some instances, a reapportionment plan may be so highly irregular and bizarre in shape that it rationally cannot be understood as anything other than an effort to segregate voters based on race.<sup>45</sup> Finally, in 2004, in *Vieth v. Jubelirer*, the Court held that gerrymandering claims under Article I, §§2 and 4, and the Equal Protection Clause were nonjusticiable, as no judicially discernible and manageable standards for adjudicating such claims existed.<sup>46</sup> In a plurality opinion, the Court stated that the remedy for gerrymandering was already within the Constitution: the Constitution vests state legislatures with the initial power to draw federal election districts, but authorizes Congress to “make or alter” those districts.<sup>47</sup> Instead of taking this opportunity to resolve the important problem of how courts should handle partisan

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<sup>42</sup> *Shaw v. Reno*, 509 U.S. 630, 633-34 (1993). See also, RICHARD K. SCHER ET AL., *VOTING RIGHTS & DEMOCRACY: THE LAW AND POLITICS OF DISTRICTING* 93 (1997). Gerrymandering is the practice of drawing a district with boundaries that attempts to establish a political advantage for a particular party or group. *Redistricting Glossary*, THE CENTER FOR VOTING AND DEMOCRACY, <http://www.fairvote.org/redistricting-glossary/#.T1KSzCPxpF8> (last visited Feb 28, 2012). Racial gerrymandering is the process of drawing the district boundaries to favor one particular racial group over another. *Id.*

<sup>43</sup> *Shaw*, 509 U.S. at 657.

<sup>44</sup> *Miller v. Johnson*, 515 U.S. 900, 917-18 (1995).

<sup>45</sup> *Id.* The Court applied the rule laid down in *Shaw v. Reno*, which requires strict scrutiny whenever race is the “overriding, predominate force” in the redistricting process. See *Shaw* 509 U.S. at 630.

<sup>46</sup> *Vieth v. Jubelirer*, 541 U.S. 267, 284-85 (2004).

<sup>47</sup> *Id.*

gerrymandering claims,<sup>48</sup> the Court effectively has sanctioned the use of redistricting as a means to create political payback to disenfranchise a group of constituents, so long as that group is not a racial minority.

## **B. CONGRESSIONAL REDISTRICTING LEGISLATION**

In 1941 Congress adopted 2 U.S.C. § 2a, which requires states to use the method of equal proportion to complete the apportionment process.<sup>49</sup> Equal proportion requires the Census Bureau to compile a priority list of states, which is determined by dividing a state's population by the geometric mean of its current and next House seats.<sup>50</sup> For example, following the 2010 Census, each of the fifty states was initially awarded one seat out of the 435 seats. The fifty-first seat then went to the state that had the highest priority value for its second seat. In 2010, seat fifty one went to California, whose priority value was 26,404,774.<sup>51</sup> The next seat, number fifty two, went to Texas, with a second-seat priority value of 17,867,470.<sup>52</sup> New Jersey received the sixty-ninth seat, with a second-seat priority value of 6,227,844.<sup>53</sup>

The Voting Rights Act of 1965 was enacted to ensure that congressional redistricting does not discriminate on the basis of race, color or on being a member of a protected minority.<sup>54</sup> Section 2 of the Voting Rights Act is a general prohibition against discriminatory voting

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<sup>48</sup> Note, Uncertainty Maintained: The Split Decision Over Partisan Gerrymanders in *Veith v. Jubelirer*, Michael Weaver, 36 Loy. U. Chi. L.J. 1273 (Summer 2005).

<sup>49</sup> 2 U.S.C. §2(a):

On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one member.

<sup>50</sup> *Strength in Numbers*, *supra* note 11, at 3.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> U.S. Dept. of Comm., U.S. CENSUS BUREAU, Priority Values for 2010 Census.

<sup>54</sup> Voting Rights Act of 1965, 42 U.S.C. § 1973; *see also*, *Redistricting Information*, THE UNITED STATES DEPT. OF JUSTICE, <http://www.justice.gov/crt/about/vot/redistricting.php> (last visited Mar. 9, 2012).

practices and procedures, including redistricting, on the basis of being a member of a protected minority group.<sup>55</sup> The voting protections of the Fifteenth Amendment and Section 2 of the Voting Rights Act are permanent, however, Section 5 remains in effect only through 2031.<sup>56</sup> Section 5 of the Voting Rights Act requires certain states, mostly in the South, to seek federal permission before changing their voting procedures, including redistricting.<sup>57</sup> Any changes to voting process or requirements are not allowed “unless that jurisdiction can show that the change has neither a discriminatory purpose nor will have a discriminatory effect.”<sup>58</sup> New Jersey is not required to go through the preclearance mandated by Section 5.<sup>59</sup> While on its face, Section 5 could appear to promote, or even require, racial gerrymandering as a way of giving minority voters a voice and a chance of electing a representative for their community in the House of Representatives, the Supreme Court has twice ruled, once in a plurality opinion, that a plan to create minority-majority districts by using the racial gerrymander was unconstitutional<sup>60</sup> and that Section 5 does not *require* racial gerrymandering.<sup>61</sup> Most recently, in dealing with the narrow issue of Texas redistricting, the Court made reference to the “serious constitutional questions” raised by the Act’s preclearance requirements and its coverage formula, alluding to a possible constitutional challenge to Section 5 before it expires in 2031.<sup>62</sup>

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<sup>55</sup> 42 U.S.C. §1973.

<sup>56</sup> *Section 5 of the Voting Rights Act*, THE UNITED STATES DEPT. OF JUSTICE, [http://www.justice.gov/crt/about/vot/sec\\_5/about.php](http://www.justice.gov/crt/about/vot/sec_5/about.php) (last visited Apr. 14, 2012).

<sup>57</sup> *Id.*

<sup>58</sup> *Redistricting Information*, *supra* note 55.

<sup>59</sup> *Section 5 Covered Jurisdictions*, THE UNITED STATES DEPT. OF JUSTICE, [http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php) (last visited Apr. 12, 2012). Preclearance is required in the states which had voter turnout lower than fifty percent of the voting population in 1960 and/or 1964 or if the state or political subdivision of the state restricted the opportunity to vote or register to vote. *See Section 5 of the Voting Rights Act*, *supra* note 57.

<sup>60</sup> *Miller*, 515 U.S. at 900.

<sup>61</sup> *Bush v. Vera*, 517 U.S. 952, 962(1996).

<sup>62</sup> *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193, 129 S.Ct. 2504, 2513 (2009).

In December 1975, Congress also passed Public Law 94-171, codified as 13 U.S.C. § 141.<sup>63</sup> The law requires the Census Bureau to make special preparations to provide redistricting data to the fifty states no later than one year following the census under 13 U.S.C. § 141(c).<sup>64</sup> The information provided to the states includes “population counts for counties, cities, census blocks, and State-specific congressional districts, legislative districts, and voting districts that meet Census Bureau technical criteria.”<sup>65</sup> The 2010 Census Redistricting Data Program (“Program”), consists of five phases for the state governments to abide by, the first two are voluntary.<sup>66</sup> During Phase 1, the State Legislative District Project Phase, which took place in 2005 and 2006, states that chose to participate received guidelines for providing State legislative districts, while the Census Bureau collected state legislative district boundaries to tabulate legislative districts.<sup>67</sup> States that chose to participate in Phase 2, the Voting District/Block Boundary Suggestion Project, which took place from 2008 to 2010, received electronic tools, such as flow basis and geographic products, to electronically collect voting district boundaries.<sup>68</sup> A verification phase is also offered.<sup>69</sup> Delivery of the Decennial Census 2010 Redistricting Data constitutes Phase 3. By April 1, 2011, exactly one year after Census Day, the Census Bureau delivered the population counts to the Governors of each state and the majority and minority leaders in the state legislatures.<sup>70</sup> The data included population counts for state and congressional districts, American Indian areas, counties, cities, and towns.<sup>71</sup> After the Census Bureau provided the data, the states began their redistricting. The process varies by state, but is typically

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<sup>63</sup> 13 U.S.C. § 141.

<sup>64</sup> *Strength in Numbers*, *supra* note 11, at 3.

<sup>65</sup> Establishment of the 2010 Census Redistricting Program, 69 Fed. Reg. 93, 26547 (May 13, 2004).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*; *Strength in Numbers*, *supra* note 11, at 4.

<sup>68</sup> Establishment of the 2010 Census Redistricting Program, *supra* note 68; *see also Strength in Numbers*, *supra* note 11, at 4.

<sup>69</sup> *Id.*

<sup>70</sup> Establishment of the 2010 Census Redistricting Program, *supra* note 68, at 26548.

<sup>71</sup> *Id.*

conducted by one or more of the following: the legislatures, the secretaries of state, governors, and/or redistricting commissions.<sup>72</sup> During Phase 4, which takes place from 2011 to 2013, the Census Bureau collects the newly drawn legislative and Congressional districts from each state. It then prepares the new data for the 113th Congress.<sup>73</sup> The final phase of the 2010 Census Redistricting Data Program, Phase 5, will be a review and evaluation of the Census, which will provide guidance and recommendations for the 2020 Census.<sup>74</sup>

Standing alone, the data presented by P.L. 94-171 means very little. Using an automated geographic database, the Census Bureau takes the raw data and inputs it into maps and geographic areas.<sup>75</sup> The system, called Tiger® system, puts the data into easy to use maps, differentiating between, state legislative districts<sup>76</sup>, county block maps<sup>77</sup>, voting districts<sup>78</sup>, census tracts<sup>79</sup>, census tabulations blocks<sup>80</sup> and block groups<sup>81</sup>. This is the data that is handed over to Congress, and subsequently used by the states when formulating both the congressional and legislative district maps.

## II. REDISTRICTING IN NEW JERSEY

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<sup>72</sup> *Strength in Numbers*, *supra* note 11 at 4.

<sup>73</sup> Establishment of the 2010 Census Redistricting Program, *supra* note 68, at 26547-48; *see also Strength in Numbers*, *supra* note 11, at 4.

<sup>74</sup> Establishment of the 2010 Census Redistricting Program, *supra* note 68, at 26547-48; *see also Strength in Numbers*, *supra* note 11, at 4.

<sup>75</sup> *Strength in Numbers*, *supra* note 11, at 4.

<sup>76</sup> State legislative districts are used to elect a member to the upper or lower chambers of state legislatures. *Strength in Numbers*, *supra* note 11, at 6.

<sup>77</sup> County blocks are the smallest tabulation areas used in the redistricting process. They encompass voting districts, census tracts and census tabulation blocks. *Strength in Numbers*, *supra* note 11, at 6-7; *see infra* note 74, note 75 and note 78.

<sup>78</sup> Voting districts include areas such as election districts, wards, or precincts identified by the states. *Strength in Numbers*, *supra* note 11, at 7.

<sup>79</sup> Census tracts are statistical areas averaging about 4,000 people, subdivided from counties and equivalent areas. The areas generally remain constant over each census. *Strength in Numbers*, *supra* note 11, at 7.

<sup>80</sup> Averaging about 100 people each, census tabulation blocks are the smallest of census geographic areas, normally bordered by natural boundaries, like streets or other prominent physical features. *Strength in Numbers*, *supra* note 11, at 7.

<sup>81</sup> Block groups is a set of census blocks. *Strength in Numbers*, *supra* note 11, at 7.

On February 3, 2011, New Jersey Governor Chris Christie received the 2010 Census Population Totals.<sup>82</sup> New Jersey's population totaled 8,791,894, which constitutes a 4.5% population growth from 2000 to 2010.<sup>83</sup> As directed by the New Jersey Constitution, the first step in New Jersey's redistricting process is to appoint a bipartisan redistricting Commission.<sup>84</sup> Historically, congressional redistricting was left up to the state Legislature.<sup>85</sup> Before the 1960 census, when New Jersey was apportioned an additional seat, the district remained largely untouched for thirty years, despite differing population counts.<sup>86</sup> However, when the United States Supreme Court declared the 1980 map unconstitutional, due in large part to partisan gerrymandering, the New Jersey state government needed to take action.<sup>87</sup> The power of redrawing the lines to comply with the 1990 Census numbers was taken out of the hands of the Legislature and vested in a temporary commission.<sup>88</sup>

The United States Supreme Court, in *Karcher v. Daggett*, held that the 1980 New Jersey congressional map was not a good faith effort to ensure population equality among the districts and determined that there were two basic questions regarding population deviations in state legislation: (1) whether the redistricting committee could reduce the population differences between districts by a good faith effort, and (2) whether the differences between the districts were necessary due to some state interest or legislative goal.<sup>89</sup> The first question is a threshold question and the party challenging the boundary lines bears the burden of proof of whether or not

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<sup>82</sup> New Jersey Governor Chris Christine received the 2010 Population Totals on February 3, 2011, *supra* note 37.

<sup>83</sup> New Jersey, State & County Quick Facts, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/34000.html> (last visited Jan. 12, 2012).

<sup>84</sup> See N.J. CONST. art. II, 2. "The commission shall consist of 13 members, none of whom shall be a member or employee of the Congress of the United States. The members of the commission shall be appointed with due consideration to geographic, ethnic and racial diversity and in the manner provided herein."

<sup>85</sup> Dr. Ernest C. Reock, Redistricting New Jersey after the Census of 2010, CENTER FOR GOVERNMENT SERVICES, RUTGERS UNIVERSITY, 11, March 2008.

<sup>86</sup> Reock, *supra* note 86, at 12.

<sup>87</sup> *Id.*

<sup>88</sup> *Karcher*, 462 U.S., at 727.

<sup>89</sup> *Id.*

the commission or body who drew the boundary lines could have done so in a way that could eliminate or reduce the population differences.<sup>90</sup> If the case moves to the second question, the state has the burden of showing whether there was a state interest at play and, in effect, justifying the reasons why the districts are drawn the way they are.<sup>91</sup>

In the wake of the unconstitutional map, the temporary Commission was established and tasked with redrawing the boundaries with regard to the 1990 Census, in which the number of seats assigned to New Jersey was reduced from fourteen to thirteen.<sup>92</sup> The law that vested redistricting power in the temporary commission was set to sunset on January 1, 2001, sending the redistricting process back to the Legislature.<sup>93</sup> Due to the success of the Commission redrawing the boundaries after the 1990 Census, however, the New Jersey Constitution was amended in 1995 by a referendum vote to permanently establish the commission.<sup>94</sup>

The redistricting Commission is made up of thirteen members: six democrats, six republicans and one independent.<sup>95</sup> Not only are members' political affiliation accounted for, but due consideration must be given to "geographic, ethnic and racial diversity."<sup>96</sup> Members of the redistricting commission are appointed as follows: two members are appointed by the President of the New Jersey Senate, two members are appointed by the Speaker of the New Jersey General Assembly, two members are appointed by the minority leader in the New Jersey Senate, two members are appointed by the minority leader in the New Jersey General Assembly, two

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<sup>90</sup> *Id.* at 735.

<sup>91</sup> *Id.* at 732.

<sup>92</sup> Reock, *supra* note 88, at 11-13; N.J. STAT. ANN. §19:46-11.

<sup>93</sup> Reock, *supra* note 88, at 12-13.

<sup>94</sup> *Id.*; NJ CONST., art. II, sec. II.

<sup>95</sup> See N.J. CONST. art. II, 2. The 2010 Redistricting Commission Democratic members consist of: Joseph Roberts, Ed Farmer, Phil Thigpen, Nilsa Cruz-Perez, Jeannine LaRue and Michael Baker. The Republican members consist of: Michael DuHaime, Caroline Casagrande, Eric Jaso, Sue Sheppard, Aubrey Fenton and Sherine El-Abd. The independent is John Farmer, Jr. Matt Friedman, *N.J. parties pick leaders for congressional redistricting panel*, N.J.COM, June 16, 2011, [http://www.nj.com/politics/index.ssf/2011/06/nj\\_parties\\_pick\\_leaders\\_for\\_co.html](http://www.nj.com/politics/index.ssf/2011/06/nj_parties_pick_leaders_for_co.html); . Matt Friedman, *Congressional redistricting process starts in N.J. with 15-minute meeting*, N.J.COM, Sept. 7, 2011, [http://www.nj.com/news/index.ssf/2011/09/congressional\\_redistricting\\_pr.html](http://www.nj.com/news/index.ssf/2011/09/congressional_redistricting_pr.html).

<sup>96</sup> N.J. STAT. ANN. §19:46-7 2a (expired); N.J. CONST. Art. II, Sec. II.

members are appointed by the party who holds the governorship, and two members are appointed by the chairman of the political party who's candidate received the second largest number of votes at the most recent gubernatorial election.<sup>97</sup> The thirteenth member is appointed by the other twelve to serve as an independent member and chairman of the Commission. The individual appointed as the thirteenth member cannot have held an elected public or party office in New Jersey during the five years prior to the appointment.<sup>98</sup> Along with requirements for who may be appointed, the New Jersey Constitution also lays out a strict timeline that the Commission, as well as those nominating the Commission, must follow.<sup>99</sup>

When the temporary Commission undertook drawing the lines after the 1990 Census, the enabling statute put the Commission under strict guidelines. Under the Districting Standards statute, the congressional districts were required to be drawn to “provide for equality of population among districts; for the preservation of minority voting status within each district; for the geographical contiguity of individual districts; and for reasonable protection for districts from decade to decade against disruptive alteration due to redistricting.”<sup>100</sup> Additionally, the statutes elaborated on protection of minority groups: no Congressional district shall be drawn which separates an ethnic or racial minority community, that if left intact, would constitute a majority or significant number of voters with the ability to elect the candidate of their choice.<sup>101</sup> These standards have subsequently been omitted from the Constitutional language adopted in 1995.<sup>102</sup> Under federal law, however, if districts are not drawn constitutionally and proportionally, the entire state Congressional delegation would have to be elected at large.<sup>103</sup> If New Jersey was

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> ABOUT REDISTRICTING, *supra* note 3.

<sup>100</sup> N.J. STAT. ANN. §19:46-7 2a (expired); N.J. CONST. Art. II, Sec. II.

<sup>101</sup> *Id.*

<sup>102</sup> Reock, *supra* note 88, at 14; *see also* N.J. STAT. ANN. §19:56-10 5.(a). (expired); N.J. CONST., art. II, sec. II.

<sup>103</sup> *See* 2 USC§2a(c):

required to elect its representatives at-large, that would mean New Jersey delegation would be elected by and represent the state at-large, instead of smaller districts. An at-large district would negatively affect New Jersey constituents the responsibility of the Representatives will have shifted from twelve smaller groups of people, to the state as a whole.

In compliance with the rules, the current Commission held the first meeting on Tuesday, September 6, 2011.<sup>104</sup> The New Jersey Constitution requires the Commission to complete the re-drawn map by the latest of either the third Tuesday in the next year or within three months after receipt of official notification from the Clerk of the House of Representatives regarding the number of House seats apportioned to New Jersey.<sup>105</sup> Additionally, the Commission must hold at least three public hearings in different parts of the State.<sup>106</sup> It can otherwise work privately. Therefore, the Commission needed a completed constitutional map by January 17, 2012. Ahead of schedule, Farmer selected the Republican map on December 23, 2011, giving the Grand Old Party (“GOP”) the victory in the 2011 redistricting battle.<sup>107</sup>

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“Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

<sup>104</sup> The Commission was required to hold its first public meeting no later than Wednesday after the first Monday in September 2011. Matt Friedman, *Congressional Redistricting Process Starts in N.J. with 15-minute Meeting*, N.J.COM, Sept. 7, 2011, [http://www.nj.com/news/index.ssf/2011/09/congressional\\_redistricting\\_pr.html](http://www.nj.com/news/index.ssf/2011/09/congressional_redistricting_pr.html).

<sup>105</sup> N.J. CONST. art. II, 2.

<sup>106</sup> *Id.*

<sup>107</sup> Aaron Blake, *New Jersey Tilts Redistricting Battle Toward GOP*, WASH. POST, Dec. 12, 2011, [http://www.washingtonpost.com/blogs/the-fix/post/new-jersey-tilts-redistricting-battle-toward-gop/2011/12/27/gIQAHmEnKP\\_blog.html](http://www.washingtonpost.com/blogs/the-fix/post/new-jersey-tilts-redistricting-battle-toward-gop/2011/12/27/gIQAHmEnKP_blog.html) (last visited Jan. 12, 2012).

In 2011, the redistricting Commission drew New Jersey's thirteen districts into twelve due to population shifts across the country. While needing to eliminate a district is difficult in itself, the process was made more complex because all of New Jersey's incumbent House members – six Democrats and six Republicans, are actively seeking reelection.<sup>108</sup> Notwithstanding former Rep. Payne's successor, New Jersey's House members will likely remain the same, minus one Democrat, thus leaving New Jersey to be equally represented by both parties.<sup>109</sup> In June 2012, Rep. Bill Pascrell defeated Rep. Steve Rothman in the Democratic primary for the newly drawn District 9.<sup>110</sup> The 2011 map dismantled Rep. Steve Rothman's (D) district, District 9, by drawing his hometown of Fair Lawn, New Jersey, into the conservative-leaning District 5, represented by Rep. Scott Garrett (R).<sup>111</sup> The majority of Rep. Rothman's district was combined into District 8, represented by fellow Democrat, Rep. Bill Pascrell.<sup>112</sup> Rep. Rothman could have chosen to face-off against Rep. Garrett (R) for Garrett's redrawn Fifth District instead of a primary battle with Rep. Pascrell. However, because the majority of Rep. Rothman's district was combined with Rep. Pascrell's, Rep. Rothman chose to follow the constituents he had represented since 1996.<sup>113</sup> This decision not only guarantees Rep. Garrett's

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<sup>108</sup> Friedman, *supra* note 107. Before his death on March 6, 2012, Rep. Payne was planning on seeking reelection to New Jersey's Tenth Congressional District. David Giambusso, *U.S. Representative Donald Payne Dead at 77*, The Star Ledger, Mar. 6, 2012, available at [http://www.nj.com/news/index.ssf/2012/03/hold\\_donald\\_payne.html](http://www.nj.com/news/index.ssf/2012/03/hold_donald_payne.html).

<sup>109</sup> Because the map was drawn in a way to maximize incumbent protection, all of the districts are considered "safe" for the current representatives. *See, infra*, part III.

<sup>110</sup> Matt Friedman & Amy Brittain, *U.S. Rep. Pascrell beats Rep. Rothman in Democratic Primary*, June 5, 2012, available at [http://www.nj.com/news/index.ssf/2012/06/pascrell\\_beats\\_rothman\\_in\\_demo.html](http://www.nj.com/news/index.ssf/2012/06/pascrell_beats_rothman_in_demo.html).

<sup>111</sup> 2011 New Jersey Redistricting Commission Proposed Map (hereinafter "2011 Proposed Map"), available at, <http://njredistrictingcommission.org/adoption.asp> (last visited Mar. 11, 2012).

<sup>112</sup> *Id.*

<sup>113</sup> According to the Star Ledger and the Associated Press, Rep. Rothman never seriously weighed challenging Rep. Garrett, despite the fact that many Democrats hoped he would. Rep. Rothman cites having born, raised and lived in the Ninth Congressional District "practically [his] whole life" as the reason he opted for the June 5, 2012 primary challenge. *Democratic party won't fund his primary battle vs. Bill Pascrell, Steve Rothman says*, THE ASSOCIATED PRESS, available at [http://www.nj.com/news/index.ssf/2012/01/democratic\\_congressional\\_campa.html](http://www.nj.com/news/index.ssf/2012/01/democratic_congressional_campa.html) (last visited Apr. 14, 2012).

reelection to the Fifth District, but also, the Democratic Party will now lose an incumbent representative, hurting the party locally as well as nationally.

Thus, by pitting two Democrats against each other, Rep. Rothman and Rep. Pascrell, both of whom have held their respective seats since 1996, the scales are tipped for a GOP victory in New Jersey in 2012. While the 2012 election for the United States House of Representatives for the New Jersey delegation will most likely end in equal representation of both parties, the Democrats being slated to lose one seat from 2010, creates a victory for New Jersey Republicans and potentially Republicans nationwide. While on its face this seems the fairest route, as New Jersey will now likely be represented by an equal number of Democrats and Republicans, the question that must be addressed is, is this a fair representation of New Jersey?

### **III. POLITICAL MACHINES, COMMUNITIES AT RISK AND PROTECTION OF INCUMBENT REPRESENTATIVES**

#### **A. INCUMBENCY PROTECTION**

Depending on the factors taken into account and the procedures used to redraw the boundaries, redistricting outcomes vary. The following are the four most likely outcomes: (1) an incumbent may have no change at all and a safe road to reelection; (2) an incumbent may be placed in a newly-formed district consisting mostly of voters from the opposite party and have slim chances for re-election; (3) two members of the same party could find themselves fighting against each other for portions of their previous district now drawn as one; or, (4) more of a compromise, a Democrat and Republican incumbent may end up in a district where the winner is a toss-up.<sup>114</sup> In slicing and dicing any state, the ideal situation when undertaking congressional redistricting is to eliminate partisan politics and the role of incumbency from the vision of the Commission. Instead, the Commission should focus on putting the best interests of voters and

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<sup>114</sup> Friedman, *supra* note 107.

constituents at the forefront of the redistricting process by keeping communities together and maintaining for equal representation throughout all of the states' districts, thus creating a fair representation of New Jersey in the House of Representatives.

In practice, by protecting incumbents when redrawing districts, the political contests are essentially decided before Election Day.<sup>115</sup> New Jersey's approach to redistricting generally favors protection of incumbents, instead of keeping communities and people of similar interests together.<sup>116</sup> The effect of protecting incumbents are high rates of reelection, declining competitiveness of congressional districts and long periods of one-party control of the House of Representatives.<sup>117</sup> These effects have eroded the accountability and legitimacy of the House of Representatives.<sup>118</sup> In 2011, it is clear that incumbent protection was at the forefront of the Commission's interests: all twelve districts are considered sweetheart districts and eleven of the twelve incumbent representatives seeking reelection should see no problem in their 2012 campaigns.<sup>119</sup>

Supporters of incumbent protection argue that it "minimizes disruption for voters and leads to greater continuity...[and] maintains their seniority in the House of Representatives, which is key to obtaining critical committee chairmanships and leadership posts in Congress."<sup>120</sup> Some states, however, view this protection as illegitimate.<sup>121</sup> Incumbency protection stifles the democratic process by generating lower voter turnout and limiting competition, thus attracting

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<sup>115</sup> Douglas J. Amy, How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems, <http://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm>.

<sup>116</sup> Scarini, *supra* note 16.

<sup>117</sup> See Sam Hirsch, The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting, 2 ELECTION L.J. 179, 179 (2003) (discussing how "redistricting has helped to transform the U.S. House of Representatives into a body that will no longer accurately reflect majority will").

<sup>118</sup> *Id.*

<sup>119</sup> This observation was made before the late Rep. Payne died in March 2012.

<sup>120</sup> Scarini, *supra* note 16, at 832.

<sup>121</sup> See, e.g., ARIZ. CONST. art. IV, pt. 2, 1 (15). "Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals. The places of residence of incumbents or candidates shall not be identified or considered."

less qualified challengers and ultimately hurting constituents.<sup>122</sup> The GOP's 2011 map forced two Democrats to run against each other in the June 2012 primary, Rep. Rothman and Rep. Pascrell. The newly formed District 9 contains fifty four percent of Rep. Rothman's previous constituents and forty three percent of Rep. Pascrell's.<sup>123</sup> No Republican incumbents face the fear of an intra-party primary contest or genuine possibility of being defeated in the 2012 election. While it is clear that the GOP's main intention was protecting their own party's incumbents, it is likely that five Democrat incumbents will be reelected in 2012 as well. Additionally, District 10 will likely remain safe for the Democratic Party, despite Rep. Donald Payne's March 2012 death.<sup>124</sup> While New Jersey has lost a seat for the next Congress and the lines have been redrawn, incumbents still come away with the victory. The map shows no signs of incumbency defeat in 2012.<sup>125</sup>

The importance of protecting as many incumbents as possible was recognized as well. Due to the fact that New Jersey was guaranteed to lose at least one incumbent in 2012 (and now two due to Rep. Payne's passing), constituents were concerned with preserving the power of the New Jersey delegation, as "seniority begets influence."<sup>126</sup> Continuity of representation is important because seniority is necessary to receive the most coveted and powerful committee appointments in Congress. This concern was weighed against compactness, however.<sup>127</sup> While it is true that incumbency protection and compactness both allows for more effective representation

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<sup>122</sup> Douglas J. Amy, *How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems*, <http://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm> (last visited Mar. 4, 2012).

<sup>123</sup> Press Release, *Paul Swibinski Named General Consultant and Chief Strategist for Congressman Steve Rothman's Re-Election Campaign*, <http://www.prweb.com/releases/north-jersey/public-relations/prweb9152589.htm>

<sup>124</sup> Max Pizarro, *10th Congressional District voters face prospect of doubled up elections*, POLITICKERNJ, Mar. 6, 2012, <http://www.politickernj.com/55330/10th-congressional-district-voters-face-prospect-doubled-elections> (last visited Apr. 14, 2012).

<sup>125</sup> *Id.*

<sup>126</sup> Minutes, Commission Meeting of New Jersey Redistricting Commission ("Sept. 22, 2011 Minutes"), Sept. 22, 2011, at 12.

<sup>127</sup> *Id.* at 16

in Congress, there is a difference in the type of representation. Through seniority, the Representative is able to receive more powerful committee appointments and thus bring more money and projects back to their districts. Through district compactness, however, the Representative's district will likely be comprised of people with similar interests and economic situations and allowing the Representative travel throughout the district with greater ease, hearing constituents needs and bringing those concerns back to Congress. While protecting incumbents is one of the most important factors in redistricting, it must be balanced with the interests of constituents and keeping communities together. As explored in Part B, *infra*, keeping communities of interest intact should be the driving force behind redrawing the lines, as the residents of New Jersey are the voices and interests Congressmen are representing in Washington, D.C.

## **B. COMMUNITIES OF INTEREST**

Community of interest is not defined in New Jersey, the New Jersey State Constitution only requires districts to be lawful.<sup>128</sup> In California and Alabama, however, the redistricting commission is equipped with guidelines on what to consider and what not consider when redrawing the lines. In California, those tasked with redrawing the lines cannot consider the political inclinations of the voters or the incumbents' residency.<sup>129</sup> In Alabama, conversely, it is instructed to consider where the incumbents live when redistricting.<sup>130</sup> The New Jersey Redistricting Commission should work to develop standards regarding communities of interest.<sup>131</sup> If standards are developed, the redistricting process will become more transparent and

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<sup>128</sup> N.J. CONST. Article III, Section II.

<sup>129</sup> FAQ, California Citizens Redistricting Commission, <http://wedrawthelines.ca.gov/faq.html> (last visited Apr. 14, 2012).

<sup>130</sup> Reapportionment Committee Guidelines For Congressional, Legislative, and State Board Education Redistricting, THE ALABAMA LEGISLATURE, May 2011, *available at* <http://www.legislature.state.al.us/reapportionment/Guidelines.html> (Last visited Apr. 14, 2012).

<sup>131</sup> Sept. 22, 2011 Minutes, *supra* note 126, at 14

overtime, communities will be better served in Congress. The standards should focus on keeping municipalities together, using county lines and highways and interstates as starting points when redrawing the lines, and taking natural boundaries, like rivers, into account when redistricting. Taking newspaper circulation into account was also an idea voiced at the public meetings.<sup>132</sup> Media markets are an important factor, not only for campaigning, but for both the constituent and the Representative staying well informed at what interests the communities and what is happening in Washington, D.C.

Linking towns with similar interests should be the driving factor in Congressional redistricting. It is true that many voters may feel disenfranchised in districts where partisanship is taken into account and constituents with similar interests, who arguably, will vote the same way, will ultimately leave out those constituents on the opposite end of the spectrum. While doubts in the legitimacy of the American government should not be disregarded and low voter turnout is a major concern, by creating districts with like-minded people, the Representatives will be able to respond to their constituencies better.<sup>133</sup> Instead of spending the time attempting to generate a big tent approach to a heterogeneous district and relate to the district generally, Representatives can instead focus on the specific needs of the community because they will likely be the same throughout the district.

As a result of the 2011 map, fifteen municipalities are now split between multiple districts.<sup>134</sup> Montclair, New Jersey, a generally politically active township comprised of a

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<sup>132</sup> *Id.* at 15; *see also* Oct. 11, 2011 II, *supra* note 149, at 4-5.

<sup>133</sup> October 11, 2011 II Minutes, *supra* note 149, at 3.

<sup>134</sup> Bayonne, Bloomfield, East Greenwich, Jersey City, Kearny, Middletown, Montclair, Newark, Old Bridge, Point Pleasant, Scotch Plains, Stafford, Teaneck, Union, and West Orange are the New Jersey municipalities that have been split between multiple districts. Each municipality was split between two districts. *See* New Jersey Redistricting Commission, Adopted Map, Detailed Maps of Multi-District Municipalities, *available at* <http://www.njredistrictingcommission.org/adoption.asp> (last visited Mar. 9. 2012).

population 37,669,<sup>135</sup> is a useful case study. Montclair has generally always been divided into two districts, with the northern portion of the town being represented by Rep. Pascrell (D-8) and the southern portion by the late Rep. Donald Payne (D-10).<sup>136</sup> While it is still unclear from the adopted map exactly where the new boundaries will lie, much of Montclair has been drawn in the GOP territory of Rep. Rodney Frelinghuyen's (R) District 11.<sup>137</sup> Montclair's residents are made up of 14,711 registered Democrats, 2,541 registered Republicans, and 9,900 voters not affiliated with a political party.<sup>138</sup> The redrawn Eleventh District now includes 11,299 Montclair residents, however, at the time of publication, numbers on the political party have not been released yet. While the roughly 2,500 registered Republicans Montclair residents and whatever faction of the 9,900 independent voters who lean right, if lucky enough to live within the redrawn Eleventh District, are, arguably, being represented for the first time in decades, the community as a whole suffers. Rep. Pascrell has represented District 8 since 1996 and the late Rep. Payne has represented District 11 since 1989. For the first time in decades, Montclair will have two new representatives after the 2012 election. Six Democrats have filed to replace the late Rep. Payne, including his son, Donald Jr., Newark Council President.<sup>139</sup> While Montclair already has less input as a town because it straddles two districts instead of being kept together as a politically active, cohesive unit, it is further diluted by being represented by an incumbent who is not familiar with Montclair and their needs and interests. While it is unclear at this time who will

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<sup>135</sup> Municipalities Grouped by 2011-2020 Legislative Districts, NEW JERSEY DEPARTMENT OF STATE, at 13 (last visited Mar. 7, 2012).

<sup>136</sup> Map, New Jersey Congressional Districts 2001-2011.

<sup>137</sup> Linda Moss, *Much of Montclair in GOP territory, Frelinghuysen excited to represent town*, THE MONTCLAIR TIMES, Dec. 29, 2011, available at [http://www.northjersey.com/news/136358153\\_Much\\_of\\_Montclair\\_in\\_GOP\\_territory.html](http://www.northjersey.com/news/136358153_Much_of_Montclair_in_GOP_territory.html) (last visited Apr. 14, 2012).

<sup>138</sup> T.D. Shoudy, *In Wake of Congressional Redistricting, Montclair Republicans Looking Forward to Having a Voice*, THE MONTCLAIR TIMES, Jan. 5, 2012, available at [http://www.northjersey.com/news/state/136717708\\_Where\\_is\\_the\\_line\\_drawn\\_.html?page=all](http://www.northjersey.com/news/state/136717708_Where_is_the_line_drawn_.html?page=all)

<sup>139</sup> Colleen O'Dea, *Primary Battles Expose Rifts Among NJ Democrats*, NJSpotlight.com, Apr. 3, 2012, <http://www.njspotlight.com/stories/12/0403/0001/> (last visited Apr. 14, 2012).

be filling the seat vacated by the late Rep. Payne, the new Representative could help ease the concerns of Montclair citizens that their representation and interests will be lost between the redrawn lines.

Additionally, East Greenwich, New Jersey and Point Pleasant, New Jersey, the two municipalities with the smallest populations that are straddling two districts, have a population of 9,555 and 18,392, respectively.<sup>140</sup> While it is clear that the Commission held true to the maxim one person, one vote, as ten of the newly redrawn districts in New Jersey have a total population of 732,658 and the remaining two newly redrawn districts have a population of 732,657, splitting up communities should not be seen as a worthy sacrifice. Additionally, District 3 cuts across the entire state, from the New Jersey shore to the Pennsylvania border.<sup>141</sup> When a district spreads across the entire state, Representatives may not only have issues relating to their constituents and serving the varying needs of those living across the entire state of New Jersey, the representative will also have trouble visiting and traveling throughout the district. This was a concern addressed by residents of New Jersey at the first public hearing hosted in South Jersey.<sup>142</sup> Keeping the districts compact will eliminate the problems that come with drawing a district like District 13.

Communities encompass people with common interests, and, especially small towns as a whole are more likely to have people of similar backgrounds, with similar interests and goals, and similar economic situations. Therefore, cutting a municipality in half, drawing one corner of a city or town, or in Point Pleasant's situation, a few streets, into a different district, the areas siphoned off, and the municipality as a whole, suffer. It creates confusion as to who their representative is and low voter turnout, as people are less likely to know where to go to vote or who they are actually voting for, which ultimately leads to a community of less politically active

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<sup>140</sup> Plan Components Report, N.J. Redistricting Commission, at 2,6,14,38.

<sup>141</sup> Proposed Map, New Jersey Congressional Districts 20011-2021.

<sup>142</sup> Sept. 22, 2011 Minutes, *supra* note 126, at 17.

constituents. If constituents do not know whom to contact regarding upcoming votes, projects within the community, or national issues, the community is the one that suffers. If constituents do not know which member of the United State House of Representatives represents the section of the city or town they live in, he or she is not held accountable for the state of things in the community, good or bad, creating less incentive for visiting the municipality, hearing the issues that concern the citizens of the municipality, or furthering their interests in Washington, D.C. Most incumbents, regardless of whether or not they are known in their districts, are almost certain to not face a primary challenger from his or her own party and to be reelected to the United States House of Representatives. While incumbency status and seniority status serve important interests in Washington, D.C., the redistricting process is being used to protect the political machines already in place. By creating a commission of political insiders, communities will be scarified in order to serve the best interests of the political machine.

Communication with the Congressman also suffers due to area code differences and Franked mail.<sup>143</sup> Point Pleasant and Brick Township, while, adjacent communities, have different area codes. The few streets in Point Pleasant that are broken off into District 3, grouped with Brick Township, will receive constituent mail from Rep. Chris Smith (R-4), the current incumbent and likely winner of the 2012 election for District 4, and not from their current Representative. While the interests of Point Pleasant and Brick Township will likely be very similar, breaking down a small community of roughly 18,000 citizens, 16,590 residents are placed within the newly redrawn District 4, and 1,802 will be placed in the newly redrawn District 3. Similarly, in East Greenwich, 7,747 residents have been placed in the newly redrawn

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<sup>143</sup> The term “Franked mail” refers to the official correspondence sent by members of Congress to their constituents using their signatures instead of stamps. Use of the Frank is regulated by Federal Law and allows for the mailing of only certain types of correspondence. *See* Committee On House Administration, FRANKING FAQ, <http://cha.house.gov/franking-commission/franking-faq> (last accessed Apr. 14, 2012).

District 1 and 1,808 will be placed in the newly redrawn District 2. In Scotch Plains, 22,419 residents are placed within the redrawn District 12 and 1,091 are placed within the redrawn District 7.<sup>144</sup> The same issues regarding receiving Franked mail from Representatives that affect the residents of Point Pleasant placed in District 3 will affect fourteen other municipalities that straddle two districts. This can indirectly lead to a disenfranchised district, which is a district where a person's vote is rendered ineffective.<sup>145</sup> By creating twelve districts that, from a political party standpoint, are virtually noncompetitive, and by breaking up fifteen municipalities, voters will feel less incentive to vote and thus remove themselves further from the political process.

The 2011 map, however, is a welcome improvement from the map drawn after the 2000 Census. After the 2000 Census and redistricting process, New Jersey's congressional districts split twenty-nine of the state's municipalities, two of which (Linden and Jersey City) were split among three congressional districts.<sup>146</sup> The 2011 map reduces this number to fifteen, almost half, and only splits municipalities into two districts, instead of the previous three. Generally, the community will be better off as a majority in one district, without regard to which political party wins the district, than being divided between two or more districts. Going forward, the Commission should continue in its efforts to keep municipalities and communities of similar interests together.

Keeping communities contained within a single district was not the only concern voiced at the public meetings. South Jersey was also very concerned with one person, one vote and equal representation.<sup>147</sup> Protecting a community identity, however, was of utmost importance to those in attendance at the public meetings. Calling it "home rule," the Mayor of Gloucester

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<sup>144</sup> Plan Components Report, N.J. Redistricting Commission.

<sup>145</sup> *Techniques in Direct Disenfranchisement, 1880-1965, RACE VOTING RIGHTS AND SEGREGATION*, available at <http://www.umich.edu/~lawrace/disenfranchise1.htm> (last visited Apr. 14, 2012).

<sup>146</sup> Reock, *supra* note 86, at 13.

<sup>147</sup> Sept. 22, 2011 Minutes, *supra* note 126, at 4, 8, 10

Township cited confusion when neighborhoods are divided and pride in the community as reasons to keep municipalities together.<sup>148</sup> The shared services between neighboring municipalities was also cited as a reason to keep communities of similar interests together.<sup>149</sup> Additional concerns and factors asserted at the meetings were proposing to take into account New Jersey's diverse communities by keeping diverse populations with a clearly shared community together in order to allow the community to speak as one.<sup>150</sup> The public meeting that took place in Newark, New Jersey, focused mainly on the idea of keeping the Voting Rights Act at the center of the process. From keeping the Muslim-American communities in Passaic County together<sup>151</sup> to working against the dilution of the Asian American vote throughout New Jersey.<sup>152</sup>

Each district is made up of more than 730,000 constituents; therefore, not everyone in the district is going to have similar interests. Even the largest cities in New Jersey, which have populations less than 300,000 people, are not comprised of residents with similar backgrounds, similar interest, and similar values. However, by drawing the districts in a way to keep the areas with like-minded people together, even if it is made of multiple groups of like-minded people, representatives will be able to serve their constituents better. In creating clearly defined communities of interest, representatives will be better able to hone in on what is important to the various communities of interest in their district. The idea isn't to make districts heterogeneous, but to make it easier and clearly define what the constituents want, thus facilitating better communication and representative in Washington D.C.

### **C. PARTISAN POLITICS**

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<sup>148</sup> *Id.* at 5

<sup>149</sup> Minutes, Commission Meeting of New Jersey Redistricting Commission ("Oct. 11, 2011 Minutes II"), Oct. 11, 2011, 3 p.m. meeting, at 7-8.

<sup>150</sup> *See generally* Sept. 22, 2011 Minutes, *supra* note 126; Minutes, Commission Meeting of New Jersey Redistricting Commission ("Oct. 11, 2011 Minutes I"), Oct. 11, 2011, 10 a.m; Oct. 11, 2011 Minutes II, *supra* note 149.

<sup>151</sup> Oct. 11, 2011 Minutes I, *supra* note 150, at 4-5.

<sup>152</sup> *Id.*

While New Jersey seems to have eliminated some of the partisan politics from the redistricting process by appointing an independent, bipartisan Commission to re-draw the lines, it cannot escape partisan politics entirely. As directed by the New Jersey Constitution, six members are appointed by the majority party in the state legislature and governorship and six members are appointed by the minority party in the state legislature, with only one appointment dubbed actually “independent”.<sup>153</sup> Theoretically, because the commission is comprised of six members of the Republican Party and six members of the Democratic Party, as well as a “compromise” member, the Commission is independent of the state legislature and relatively neutral.<sup>154</sup> In practice, however, there seems to be no such thing as purely neutral redistricting, as one side always stands to gain from the way the map is drawn.<sup>155</sup>

Other states that vest the power of redistricting in an independent commission are Arizona,<sup>156</sup> Idaho,<sup>157</sup> Washington,<sup>158</sup> and Hawaii,<sup>159</sup> as well as others. While taking the process of legislative redistricting out of the hands of the legislature and into an independent commission was an important first step in removing partisan politics from this arena, politics is still front and center in redistricting. Due in large part to an unspoken agreement between both major political

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<sup>153</sup> See N.J. CONST.

<sup>154</sup> Note, *Redistricting: Who Should Draw the Lines? The Arizona Independent Redistricting Commission as a Model for Change*, 48 ARIZ. L. REV. 171 (2006).

<sup>155</sup> Altman, *supra* note 26, at 86.

<sup>156</sup> Proposition 106 amended the Arizona Constitution by creating the IRC and assigning to it the task of redistricting, which must consist of five members, no more than two of whom may belong to the same political party and requiring four of the members to be chosen by the highest ranking members of the state House of Representatives and Senate of both the majority party and minority party after the Commission on Appellate Court Appointments selects a group of candidates. The four selected members then select the last member, who serves as the chairperson and who may not be a member of either major political party. See Betts, *supra* note 127; see also ARIZ. CONST., art. 4, pt. 2, 1(3).

<sup>157</sup> Members of the state legislature appoint Idaho’s six-member commission, with the leaders of the two largest political parties of both the Senate and the House appoint one member each and the state chairmen of the two largest political parties also appointing one member each. See IDAHO CONST., art. III, 2(2).

<sup>158</sup> The legislature also appointed Washington’s commission, which is made up of four voting members and a non-voting chairman. See WASH. CONST., art. II, 43(2). The commission is re-formed after every decennial census. Wash. Const. art. II, 43(1).

<sup>159</sup> Hawaii has a similar structure of that of Washington with the added caveat of prohibiting any commission member from running for the legislature for a specified time after completing the new districting plans. See HAW. CONST., art. IV, 2, cl. 6.

parties to draw district boundaries into “sweetheart districts” to create safe districts for incumbents, or “sweethearts,”<sup>160</sup> the major political parties are benefited, but sometimes at the expense of the communities.<sup>161</sup> When cities, towns and communities are split apart for the benefit of incumbent protection, the voters are the ones who suffer. While it is true that committees are the lifeblood of Congress and that seniority is the perquisite to getting things done in Congress, if a town is split into multiple districts, then constituents will be even more confused as to where they are supposed to go.

After the 2000 Census, the districts in New Jersey were drawn with almost precisely equal populations.<sup>162</sup> In order to do that, twenty-nine municipalities were split between two or more Congressional districts.<sup>163</sup> While equal population of districts is of constitutional importance and mandated by “one person, one vote” the importance of keeping communities together and drawing the lines in accordance with town boundaries or county lines would serve the constituents, often seen as the bosses of their representatives, better.

While supporters of incumbency protection will argue that it promotes stability,<sup>164</sup> that argument, however, is hollow because the Framers designed the national legislature in a way that eliminates this concern. In creating the Senate, the Framers kept in mind this concern, resulting in the different qualifications necessary to hold the office, the longer terms, and staggered reelections.<sup>165</sup> In fact, “one of the objectives of the Senate was to tame ‘the propensity of all single and numerous assemblies to yield to ... sudden and violent passions’ and provide stability

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<sup>160</sup> Glossary, REDISTRICTING THE NATION, <http://www.redistrictingthenation.com/glossary.aspx> (last visited Mar. 12, 2012).

<sup>161</sup> Katie Fleming, *Congressional Redistricting Above Reform*, COMMON BLOG (June 20, 2011), <http://www.commonblog.com/2011/06/20/congressional-redistricting-above-reform/> (last visited Jan. 12, 2012).

<sup>162</sup> Reock, *supra* note 88, at 14.

<sup>163</sup> *Id.*

<sup>164</sup> Scarcini, *supra* note 16.

<sup>165</sup> Constitutional Qualifications for Senator, UNITED STATES SENATE, [http://www.senate.gov/artandhistory/history/common/briefing/Constitutional\\_Qualifications\\_Senators.htm](http://www.senate.gov/artandhistory/history/common/briefing/Constitutional_Qualifications_Senators.htm), (last visited Mar. 11, 2012).

in the face of ‘rapid succession of new members, however qualified they may be.’”<sup>166</sup> Additionally, because of the high retention rate of incumbents as a general matter, efforts to draw the districts in a way to protect their status are often useless. Since 1964, reelection of incumbents in the House of Representatives has never dropped below eighty percent.<sup>167</sup>

Nationwide, the 2010 round of redistricting “was the most incumbent-friendly in modern American history” that not only “insulated incumbents from competition” but also “froze into place” what one theorist sees as a “distributional bias” giving Republicans a 50-seat head-start in the battle to keep control of Congress.<sup>168</sup> The normal pattern of elections after the most recent round of redistricting generate substantial freshman classes, due to the fact that more incumbents retire from the House in post-reapportionment election cycles, more are defeated in primaries, more lose in the November general elections and fewer win landslide reelections.<sup>169</sup> But in 2002, the first election after the 2000 round of reapportionment, this pattern did not prove true.<sup>170</sup> Instead, the freshman class was decreased by half that of the 1992 election (the election in the immediate aftermath of the 1990 round of redistricting), the number of incumbents who retired from the House was lower than average and the number of incumbents who won narrowly was also half that of the previous post-reapportionment cycle.<sup>171</sup> What the 1992 numbers do not reflect, however, is that the percentage of incumbents who lost reelection was low – a mere seven percent.<sup>172</sup>

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<sup>166</sup> Note, Drawing the Line on Incumbency Protection, Sally Dworak-Fisher, 2 Mich. J. Race & L. 131; The Federalist No. 62, at 184-85 (James Madison) (Roy P. Fairfield ed., 2d ed. 1981).

<sup>167</sup> Reelection Rates over the Years, OPENSECRETS.ORG, <http://www.opensecrets.org/bigpicture/reelect.php> (last visited Mar. 12, 2012).

<sup>168</sup> Hirsch, *supra* note 126.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Terms, Already Limited*, N.Y. TIMES, Nov. 6, 1992, at A28, available at, <http://www.nytimes.com/1992/11/06/opinion/terms-already-limited.html> (last accessed Mar. 10, 2012).

As one argument suggests, the key feature of an unbiased redistricting plan is that the political party whose candidates attract the most popular votes is rewarded with the most seats in the legislature, treating the two majors parties on equal footing and not, either impliedly or explicitly, giving preference to which ever party is currently in control.<sup>173</sup> Moreover, while putting aside what party stands to benefit would be a welcome move in the right direction, ignoring the individual who represents each districts, regardless of political party, and keeping the interests of the voters in mind, should be the ultimate goal of the New Jersey Redistricting Commission. Keeping communities together breeds more active participation in politics. As the saying goes, all politics are local politics. Therefore in order to find out what best suits the needs of communities, whether it be numerous small towns lumped together through proximity and common interests (like the New Jersey coast area, for example), or large cities who's citizens get lost in the shuffle of the bureaucracy, they need to be kept together. The best way to find out the interests and needs of people is on the grassroots level. The representatives in Congress will be more responsive to the needs of communities if communities are first kept together, then given an incentive to band together to better focus and target their needs from Washington. When communities are torn apart in an effort to protect a seat for the Republican or Democratic parties, the voters suffer.

The members making up the Commission are no strangers to New Jersey politics. Of the Republican delegation, there are current and past freeholders, past town council members, a former Justice Department official, and a current assemblywoman.<sup>174</sup> Of the Democratic delegation, a former member of the New Jersey General Assembly who also served on the legislative redistricting process, a current assemblywoman who serves as the Vice Chair of the

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<sup>173</sup> Hirsch, *supra* note 126.

<sup>174</sup> *Commission Meeting of New Jersey Redistricting Commission "Organizational Meeting,"* Meeting Transcript, Office of Legislative Services, Sept. 6, 2011.

Democratic delegation for the New Jersey Legislative Apportionment Commission, a former Chief of Staff for Rep. Pascrell, former New Jersey Governor John Corzine's Deputy Chief of Staff, a former freeholder and city council member.<sup>175</sup> By creating an *independent* commission that is full of political insiders, the commission does not really act independently at all. Instead of creating a commission filled with people who have never worked in politics, but instead are professors at local colleges, statisticians, or the like, instead of those immersed in politics, the commission could better serve the constituents.

When those tasked with the job of redrawing the lines do so in way that protects incumbents, the drafters go against what the Framers envisioned when creating the House of Representatives. The House, as James Madison saw it, was intended to be the body of the people and should “be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them.”<sup>176</sup> If the New Jersey Redistricting Commission puts the interests of the incumbency first, then they are in fact defeating the intentions for the body. “Redistricting has helped to transform the U.S. House of Representatives into a body that will no longer accurately reflect majority will.”<sup>177</sup>

#### **IV. SHOULD COMPUTERS DRAW THE LINES?**

Computers have been cast as both the potential heroes and the potential villain in the ongoing battle of the best way to approach redistricting nationwide.<sup>178</sup> Using computers to redistrict is not a novel idea – the Supreme Court has considered the issue since the 1960s. In 1969, Justice Harlan opined, “[a] computer may grind out district lines which can totally frustrate

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<sup>175</sup> *Id.*

<sup>176</sup> John Adams, Thoughts on Government, in 4 Papers of John Adams 87 (Robert J. Taylor ed. 1979).

<sup>177</sup> Hirsch, *supra* note 126.

<sup>178</sup> Micah Altman & Michael P. McDonald, *The Dawn of Do-It Yourself Redistricting? Online Software Puts Redistricting Tools in the Hands of the Public*, Campaign Insider, CAMPAIGNS & ELECTIONS, (Jan. 20, 2011), <http://www.campaignsandelections.com/campaign-insider/172017/the-dawn-of-doityourself-redistricting-online-software-puts-redistricting-tools-in-the-hands-of-the-public.html> (last visited Mar. 11, 2012).

the popular will on an overwhelming number of critical issues.”<sup>179</sup> In 2004, the Court in *Vieth v. Jubelirer*, amplified this view stating, “the availability of enhanced computer technology allows the parties to redraw boundaries in ways that target individual neighborhoods and homes, carving out safe but slim victory margins in the maximum number of districts, with little risk of cutting their margins too thin.”<sup>180</sup>

As with every apparent solution, there are pitfalls. Two strong objections to automated redistricting are: (1) it is not inherently objective and (2) political bias is unavoidable because it is up to legislators to select among the automation plans available.<sup>181</sup> As former President Ronald Reagan put it, “[t]here is only one way to do reapportionment – feed into the computer all the factors except political registration.”<sup>182</sup> However, by feeding the numbers into a computer system, the automation of the program masks the political conflict.<sup>183</sup> Additionally, former President Reagan’s view could be seen as short sighted today. With the diversity of the United States, and especially New Jersey, increasing daily, political registration could be an important factor to consider when drawing the boundaries. As argued above, by keeping communities with similar interests together, Representatives will be better equipped with specific ways to benefit their constituencies in Washington, D.C.<sup>184</sup>

Moreover, savvy computer programmers can calibrate their system to protect the interests of one of the major political parties often defeat the neutrality of the process. The lines can still be drawn to “maximize precisely their party’s representation and minimize the other’s.” resulting

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<sup>179</sup> *Wells v. Rockefeller*, 394 U.S. 542 (1969)

<sup>180</sup> *Vieth v. Jubelirer*, 541 U.S. 267 (2004)

<sup>181</sup> Micah Altman, *The Computational Complexity of Automated Redistricting: Is Automation the Answer?* 23 Rutgers Computer & Tech. L.J. 81, 86 (1997).

<sup>182</sup> Tom Godd, *Reinecke Denounces Court: Legislative Leaders Praise Action*, L.A. TIMES, Jan. 19 1972.

<sup>183</sup> John S. Appel, *A Note Concerning Apportionment by Computer*, 7 AMER. BEHAV. SCI. 36, 36 (1965).

<sup>184</sup> See *supra* Parts II and III.

in “sham ...elections” with more polarizing and less competitive seats.<sup>185</sup> Some research has shown that “computers have enabled authorities to create redistricting plans more quickly and cheaply, but have not substantially affected plans’ content.”<sup>186</sup> Polarization and neutral redistricting procedures was also voiced during the public hearings. Nolan McCarty, a Professor of Politics and Public Affairs, and Chair of the Politics Department at Princeton University, argued that there is very little link between polarization and the process by which the lines are redrawn.<sup>187</sup> He argued that by striving to create heterogeneous districts, competitive districts the Commission would be doing the opposite of what American’s want.<sup>188</sup> According to Mr. McCarty, the Commission should not overly emphasize creating electorally competitive districts for the sake of reducing partisanship and polarization, and to strive to create districts that reflect the partisanship of the state.<sup>189</sup>

## CONCLUSION

Congressional redistricting is flawed not only in New Jersey, but also across the country. The question remains if the issue will ever be solved? It is inherent in human nature to protect personal interests first and it seems unclear at this point if there will ever be a way to totally ever remove partisan politics from redistricting. In 2012, political interests and incumbency protection were of utmost concern for the members of the New Jersey Redistricting Commission, with electoral competitiveness and the interest of political outsiders being pushed aside. In an effort to make the process fairer to constituents, the Commission should continue its attempt to

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<sup>185</sup> Altman & McDonald, *supra* note 149.

<sup>186</sup> *Id.*

<sup>187</sup> Oct 11, 2011 Minutes I, *supra* note 143, at 21-25; *see also*, Christopher Shea, *Redistricting and Political Polarization*, WSJ.COM, Nov. 8, 2011, <http://blogs.wsj.com/ideas-market/2011/11/08/redistricting-and-political-polarization/> (last visited Apr. 14, 2012); *see generally*, McCarty, Nolan, Keith Poole and Howard Rosenthal. 2009. “Does Gerrymandering Cause

Polarization?” *AMERICAN JOURNAL OF POLITICAL SCIENCE* 53(3): 666-680.

<sup>188</sup> Oct 11, 2011 Minutes I, *supra* note 143, at 21-25

<sup>189</sup> *Id.*

respect communities of similar interests by keeping them intact in compact districts as well as foster greater competition by focusing less on incumbency protection and more on town and county lines of where the interests fall. Instead of using the lines as a means of strategy to keep the political elite in office, when the Commission is given the opportunity to reevaluate New Jersey every ten years, it should use that time to make changes that benefit the constituents of New Jersey, and not just those heading to Washington, D.C.