

# Congressional Redistricting in New Jersey

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## INTRODUCTION

Many voters do not appreciate the tremendous impact that redistricting will have on their state's strength in Congress over the following decade. The outcome of future elections to the House of Representatives is often determined by the redistricting process, which takes place only once every ten years. As one commentator noted, "[t]here is nothing more crucial, or more overlooked by voters, than this once-a-decade dance, when state lawmakers don their best party hats and reshape [their state's] political boundaries to account for the state's shifting and growing population."<sup>1</sup>

A number of factors are considered in the redistricting process, but few are more controversial than the protection of incumbent congressional representatives. This essay examines the benefits of incumbency protection and how New Jersey has acted to maintain and defend its seniority in the House of Representatives through protection of incumbents. Part I begins with an overview of the redistricting process. Part II details New Jersey's establishment of a bipartisan redistricting Commission in the 1990s. Part III discusses the Commission's redistricting efforts after the 2000 census. Part IV analyzes the benefits and disadvantages of incumbency protection. The essay concludes that a bipartisan redistricting Commission that

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<sup>1</sup> Editorial, *Put the Crayons Back in the Box! Redistricting Commission Would Take Voters' Needs, Not Legislators', to Heart*, THE ARIZ. REPUBLIC, June 27, 1999, at 6B.

considers incumbency protection as a legitimate and desirable state interest serves New Jersey's citizens by promoting their representatives' seniority (and, therefore, influence) in Washington.

## I. HISTORICAL PERSPECTIVE ON CONGRESSIONAL REDISTRICTING

The United States Constitution directs that members of the House of Representatives be apportioned among the states according to their respective numbers.<sup>2</sup> The Fourteenth Amendment to the Constitution eliminated the original 3/5<sup>th</sup> rule for counting slaves in that apportionment, and provides that “[r]epresentatives 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.”<sup>3</sup>

The population count mandated by the Constitution is conducted by a decennial census, which began in 1790.<sup>4</sup> The Department of Commerce, through its Bureau of the Census, is responsible for the census.<sup>5</sup> When the census is completed, the Secretary of Commerce must report the total population of each state to the President by December 31 of each census year.<sup>6</sup> The President

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<sup>2</sup> U.S. CONST. art. I, § 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 Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

*Id.*

<sup>3</sup> U.S. CONST. amend. XIV, § 2.

<sup>4</sup> Population Div., U.S. Census Bureau, *Congressional Apportionment—How Long It's Been Done*, at <http://landview.census.gov/population/www/censusdata/apportionment/howlong.html> (last visited Apr. 14, 2003) (on file with the Seton Hall Law Review).

<sup>5</sup> 13 U.S.C. § 144 (2000).

<sup>6</sup> *Id.* at § 141. This section provides:

(a) The Secretary shall, in the year 1980 and every 10 years thereafter,

must then provide Congress with a statement of the apportionment of the seats among the states, which are allocated based on the census results.<sup>7</sup>

There are currently 435 seats in the House of Representatives, to be apportioned among the fifty states.<sup>8</sup> Each state is awarded one seat, and the remaining 385 seats are currently apportioned among the states by the Method of Equal Proportions, adopted by Congress in 1941.<sup>9</sup> The Method is a formula for dealing with “rounding” problems that have confronted the reapportionment process since the nation’s earliest days.<sup>10</sup> It allocates seats in the House by formulating a “priority” value to states for assigning the second and subsequent seats.<sup>11</sup> Once the number of seats is assigned, each state has the responsibility to create its own single-member congressional districts.<sup>12</sup> While this process has traditionally been in the hands of

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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.

(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.

*Id.*

<sup>7</sup> 2 U.S.C. § 2a(a) (2000).

<sup>8</sup> Population Div., U.S. Census Bureau, *Computing Apportionment*, at <http://landview.census.gov/population/www/censusdata/apportionment/computing.html> (last visited Apr. 14, 2003) (on file with the Seton Hall Law Review) [hereinafter *Computing Apportionment*].

<sup>9</sup> *Id.* See also 2 U.S.C. § 2b (2000).

<sup>10</sup> See *Dep’t of Commerce v. Montana*, 503 U.S. 442 (1992) (upholding Method of Equal Proportions). See generally Paul H. Edelman & Suzanna Sherry, *Pick a Number, Any Number: State Representation in Congress After the 2000 Census*, 90 CAL. L. REV. 211 (2002); Efton Park, *The Mathematics of Apportionment*, 7 U. CHI. L. SCH. ROUNDTABLE 227 (2000).

<sup>11</sup> *Computing Apportionment*, *supra* note 8. For example, following the 1990 census, each of the 50 states was given one seat out of the current total of 435. The next, or the 51st seat, went to the state with the highest priority value and thus became that state’s second seat. This continued until all 435 seats had been assigned. *Id.*

<sup>12</sup> See 2 U.S.C. § 2c, which provides:

In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative (except that a State

state legislatures, six states, including New Jersey, currently use a bipartisan redistricting Commission.<sup>13</sup>

The paramount requirement in congressional redistricting within a state is population equality among the districts.<sup>14</sup> This requirement, also known as the “one-person, one-vote”<sup>15</sup> standard, is that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.”<sup>16</sup> The United States Constitution “permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.”<sup>17</sup> Population shifts during the ten-year period between each census necessarily cause changes both because states gain or lose seats and because, even in states retaining the same number of seats, the population of each district changes and must be brought back into conformity with “one person, one vote.” Thus, all states are required to reconfigure congressional districts every decade.<sup>18</sup>

## II. THE ESTABLISHMENT OF A BIPARTISAN CONGRESSIONAL REDISTRICTING COMMISSION IN NEW JERSEY

Prior to 1990, the task of congressional redistricting in New Jersey, as in the vast majority of states, was in the hands of the state legislature. The New Jersey Legislature, however, had a poor history

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which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress).

*Id.*

<sup>13</sup> The six states that use redistricting Commissions for congressional redistricting are Arizona, Hawaii, Idaho, Montana, New Jersey, and Washington. *See* ARIZ. CONST. art. IV, pt. 2, § 1; HAW. CONST. art. IV; IDAHO CONST. art. III, § 2 (Michie Supp. 2002); MONT. CONST. art. V, § 14; N.J. CONST. art. IV, § 3, ¶ 1; WASH. CONST. art. II, § 43. All of these states, with the exception of New Jersey, use the same Commission to perform legislative redistricting. New Jersey utilizes a separate Apportionment Commission, which is charged with legislative redistricting in this State. *See* N.J. CONST. art. IV, § 3, ¶ 1.

<sup>14</sup> *Karcher v. Daggett*, 462 U.S. 725, 732-33 (1983).

<sup>15</sup> *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

<sup>16</sup> *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

<sup>17</sup> *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)).

<sup>18</sup> J. GERALD HEBERT & DONALD B. VERRILLI, JR., *THE REALISTS’ GUIDE TO REDISTRICTING: AVOIDING THE LEGAL PITFALLS* v (2000). “States must understand and fully respect each of the legal constraints . . . —the “one person, one vote” standard, Sections 2 and 5 of the Voting Rights Act, and the constitutional limits on racial and partisan gerrymandering that flow from the Equal Protection Clause of the Fourteenth Amendment.” *Id.*

of drawing district lines.<sup>19</sup> The districts it drew after the 1980 census were challenged and, ultimately, declared unconstitutional by the United States Supreme Court in *Karcher v. Daggett*.<sup>20</sup> In that case, the Supreme Court affirmed the District Court's holding, stating that "the population deviations in the plan were not functionally equal as a matter of law, and . . . the plan was not a good-faith effort to achieve population equality using the best available census data."<sup>21</sup>

After the 1990 census, New Jersey lost one congressional seat, reducing its number of Representatives to thirteen.<sup>22</sup> Since the state had been divided into fourteen congressional districts during the 1980s, the state had to redraw the districts. Under federal law, failure to reduce the number of districts to thirteen would result in the New Jersey congressional delegation's being elected at large.<sup>23</sup> In anticipation of the impending Republican control over both the Senate and the Assembly after the elections in 1991,<sup>24</sup> the lame-duck Democratic legislature adopted a bipartisan approach to congressional redistricting.<sup>25</sup> The legislature adopted a statute that created the New Jersey Redistricting Commission,<sup>26</sup> a temporary bipartisan Commission to reconfigure congressional districts for the

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<sup>19</sup> ERNEST REOCK, JR., REDISTRICTING NEW JERSEY AFTER THE CENSUS OF 2000, at 9 (Ctr. for Gov't Servs. Rutgers Univ. 1998) (footnote omitted).

New Jersey's track record has not been very laudable. The districts established in 1931 remained untouched, although having widely different populations, until the state received an additional seat after the 1960 census. More recently, partisan gerrymandering after the 1980 census resulted in New Jersey's districts being declared unconstitutional by the United States Supreme Court. The New Jersey Legislature approached redistricting after the 1990 Census with this unhappy history in mind.

*Id.*

<sup>20</sup> 462 U.S. 725 (1983).

<sup>21</sup> *Id.* at 744. Other descriptions of the plan adopted by the legislature, and declared unconstitutional by the Supreme Court, have been even less flattering. DONALD E. STOKES, LEGISLATIVE REDISTRICTING BY THE NEW JERSEY PLAN 34 (Fund for N.J. 1993). "[W]hen the Democratic legislature redrew New Jersey's congressional districts before the party lost control of the governor's office, *Congressional Quarterly* called the resulting boundaries a 'four-star gerrymander [that] twisted crazily through counties and townships all over the state to create a Democratic advantage.'" *Id.*

<sup>22</sup> Population Div., U.S. Census Bureau, *Resident Population*, at <http://landview.census.gov/population/www/cen2000/respop.html> (last visited Apr. 14, 2003) (on file with Seton Hall Law Review).

<sup>23</sup> 2 U.S.C. § 2a(c) (2000).

<sup>24</sup> REOCK, *supra* note 19, at 9.

<sup>25</sup> STOKES, *supra* note 21, at 28.

<sup>26</sup> 1991 N.J. Laws ch. 510, § 1 (codified at N.J. STAT. ANN. §§ 19:46-6 to -14 (West 1999)) (expired Jan. 1, 2001).

1990s.<sup>27</sup>

The new statute provided that, on or before March 20, 1992, or within three months after the Governor received the official statement regarding the number of House Representatives to which New Jersey was entitled, the thirteen-member<sup>28</sup> bipartisan Redistricting Commission was to certify the establishment of congressional districts pursuant to a majority vote of its members.<sup>29</sup> The districting plan was to take into consideration the specific goals of “equality of population among districts,” “preservation of minority voting status within each district,” “geographical contiguity,” and “reasonable protection for districts from decade to decade against disruptive alteration due to redistricting.”<sup>30</sup> If a majority of the Commission could not agree on one plan, then the Commission was to submit the two plans that received the greatest number of votes, but none that received fewer than five votes, to the New Jersey Supreme Court for selection of a plan.<sup>31</sup>

The first temporary Commission “[t]ook seriously its charge to make the populations of the districts ‘as nearly equal as practicable.’”<sup>32</sup> Eleven of the 13 districts it drew had populations of 594,630 persons, while the other two each had 594,629 residents. This precise result was achieved by dividing 24 municipalities, in some cases three ways.<sup>33</sup>

The creation of congressional districts by a bipartisan Commission was regarded as a vast improvement over having the boundaries drawn by the state legislature.<sup>34</sup> The law, however, was to expire on January 1, 2001.<sup>35</sup> Thereafter, the responsibility of

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<sup>27</sup> STOKES, *supra* note 21, at 28. “[The] new statute provided that within each party three leaders—the state chairman and the leader in the Assembly and the Senate—would each name two members to a Commission of twelve, which would be presided over by a neutral chairman playing the tiebreaker’s role.” *Id.*

<sup>28</sup> Of the six states that use a Commission for congressional redistricting, New Jersey’s Commission is the largest, made up of thirteen members. Arizona uses a five-member Commission. ARIZ. CONST. art. IV, Part 2, § 1(3). Hawaii uses a nine-member Commission. HAW. CONST. art. IV, § 2. Idaho uses a six-member Commission and is the only Commission made up of an even number of individuals. IDAHO CONST. art. III, § 2 (Michie Supp. 2002). Montana uses a five-member Commission. MONT. CONST. art. V, § 14(2). Washington uses a five-member Commission. WASH. CONST. art. II, § 43(2).

<sup>29</sup> N.J. STAT. ANN. § 19:46-9 (West 1999) (expired Jan. 1, 2001).

<sup>30</sup> *Id.* at § 19:46-10 (expired Jan. 1, 2001).

<sup>31</sup> *Id.* at § 19:46-9 (expired Jan. 1, 2001).

<sup>32</sup> REOCK, *supra* note 19, at 9.

<sup>33</sup> *Id.*

<sup>34</sup> STOKES, *supra* note 21, at 34.

<sup>35</sup> The law did indeed expire. N.J. STAT. ANN. § 19:46-6 to -14 (expired Jan. 1,

congressional redistricting would revert back to the state legislature, absent some action by the state prior to the expiration of the statute. With this in mind, the legislature proposed a constitutional amendment to create a permanent bipartisan Commission for the future establishment of congressional districts after each decennial census.<sup>36</sup> The proposed amendment was approved at the November 7, 1995, General Election.<sup>37</sup>

While the permanent Commission is patterned after the original temporary Commission, there are some differences. Perhaps one of the most noteworthy changes is that the constitutional provision does not refer to the specific goals set forth in the statute establishing the temporary Commission.<sup>38</sup> In fact, the only standard enunciated in the constitutional amendment regarding the required criteria of a plan is contained in the provision that applies only when the Commission is unable to certify a plan, and the matter is referred to the state's highest court for selection of a plan. In that case, the court "shall select and certify whichever of the two plans so submitted conforms most closely to the requirements of the Constitution and laws of the United States."<sup>39</sup>

The absence of specific standards was intentional. The proposed amendment to the New Jersey Constitution initially contained five written standards to guide the New Jersey Redistricting Commission.<sup>40</sup> Several witnesses, including Assembly Minority Leader Joseph Doria, however, argued that the amendment should be written more broadly, without specific standards, in order to "reflect the times."<sup>41</sup> This approach was attributed to general uncertainty

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2001).

<sup>36</sup> Assembly Concurrent Resolution No. 25 ("ACR-25") proposed an amendment to the New Jersey Constitution to create the New Jersey Redistricting Commission.

<sup>37</sup> Passed by Assembly on June 10, 1993 (72-0); passed by Senate on December 16, 1993 (32-2). See 1996 N.J. Sess. Law Serv. Assem. Conc. Res. 25 (West 1996).

<sup>38</sup> N.J. CONST. art. II, § 2.

<sup>39</sup> *Id.* § 2, ¶ 3.

<sup>40</sup> ACR—25, as originally introduced, provided:

The plan certified by the New Jersey Redistricting Commission for the establishment of Congressional districts shall provide for equality of population among districts; for the preservation of minority voting status within each district; for the geographical coherence of individual districts; for the protection of the interest which fellow citizens of the counties and municipalities share in having common representation, so that district boundaries follow county and municipal boundaries to the greatest extent possible; and for reasonable protection for districts from decade to decade against disruptive alteration due to redistricting.

ACR—25 (introduced by Assemblyman Franks, Feb. 3, 1992).

<sup>41</sup> Matthew Reilly, *Politicians Urge Independent Chief for Congressional Redistricting*

about the United States Supreme Court's Voting Rights Act jurisprudence in the mid-1990s, during which time the Court invalidated many redistricting plans that enhanced the voting strength of minorities while giving little weight to traditional redistricting principles.<sup>42</sup> In any event, there are no specific state redistricting standards that the New Jersey Redistricting Commission must follow, as long as the plan comports with all federal constitutional and statutory requirements.

### III. CONGRESSIONAL REDISTRICTING IN NEW JERSEY AFTER THE 2000 CENSUS

New Jersey was among the first states to receive detailed data about the 2000 census from the U.S. Census Bureau.<sup>43</sup> The data, which were delivered to Acting Governor Donald T. DiFrancesco on March 8, 2001,<sup>44</sup> reported that New Jersey's population totaled 8,414,350.<sup>45</sup> Like other states, New Jersey was required to realign congressional districts to take into account population shifts since the 1990 census.<sup>46</sup> Thus, in accordance with the New Jersey Constitution, a bipartisan Commission was formed to perform this congressional redistricting.<sup>47</sup> The Commission was led by independent member<sup>48</sup> Alan Rosenthal, who had previously served as the Chairman of the New Jersey Redistricting Commission in 1990s.<sup>49</sup>

During their initial meetings, the Commissioners discussed the

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*Panel*, STAR-LEDGER (Newark, N.J.), Feb. 19, 1993, available at 1993 WL 3449839.

<sup>42</sup> REOCK, *supra* note 19, at 10-11.

<sup>43</sup> Press Release, U.S. Census Bureau, *Census Bureau Delivers New Jersey's Census 2000 Population Totals for Legislative Redistricting; First Race and Hispanic Data* (Mar. 8, 2001) (on file with Seton Hall Law Review) [hereinafter Press Release, U.S. Census Bureau].

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Census Bureau, *State and County QuickFacts*, at <http://quickfacts.census.gov/qfd/states/34000.html> (last visited Apr. 15, 2003) (on file with Seton Hall Law Review).

<sup>46</sup> Press Release, U.S. Census Bureau, *supra* note 43.

<sup>47</sup> N.J. CONST. art. II, § 2, ¶ 1. The twelve initial members were appointed by their respective party leaders. The Democratic members of the Commission were Karen Brown, James P. Dugan, Zulima V. Farber, Lionel Kaplan, Dana Redd, and Frank Robinson. The Republican members of the Commission were Len Coleman, Dale Florio, George R. Gilmore, Elizabeth Randall, Candace Straight, and Gary Stuhltrager. *Certif. of 2001 Congressional District Map for New Jersey*, N.J. Redistricting Comm'n, filed with the Secretary of State, Oct. 29, 2001.

<sup>48</sup> See *Certif. of Appointment of Independent Member of the New Jersey Redistricting Commission* filed with the Secretary of State, July 16, 2001.

<sup>49</sup> Alan Rosenthal is a Professor at the Eagleton Institute of Politics, at Rutgers, the State University of New Jersey. See <http://policy.rutgers.edu/faculty/rosenthal.htm> (last visited 24 Sept. 24, 2003).



statutory and constitutional standards imposed upon them.<sup>50</sup> In addition to the Commission's obligation to satisfy these legal requirements, Chairman Rosenthal made clear his objective to ensure political fairness so that both parties were treated equally.<sup>51</sup> Rosenthal advised the Commission that a bipartisan agreement among New Jersey's House Representatives (the Congressional Delegation) could be presumed to be politically fair, so he regarded it as important to give strong weight to such an agreement. By according strong weight to a bipartisan agreement among New Jersey's Representatives in Congress, Rosenthal was necessarily favoring the protection of incumbent Representatives during the redistricting process.

The Commission held public hearings.<sup>52</sup> On the date of the final public hearing, the Congressional Delegation presented the Commission with a plan that all members supported.<sup>53</sup> Significantly, the plan met the primary goal established by Rosenthal in that it was politically fair, as evidenced by the unanimous support of the New Jersey Congressional Delegation. The Congressional Delegation's support also meant that the plan protected New Jersey's thirteen incumbent Representatives.

Details of the Congressional Delegation's plan were released and members of the public testified regarding it at the final hearing.<sup>54</sup> Several concerns were expressed. One concern related to the Township of Woodbridge, which, under the Congressional Delegation's proposal, was divided among three congressional districts—the sixth, seventh, and thirteenth.<sup>55</sup> This differed from the previous districting plan, which divided the township between only two districts—the seventh and the thirteenth.<sup>56</sup> State Senator Joseph F. Vitale, who testified regarding this issue at the final hearing,

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<sup>50</sup> See *Minutes of Meeting* of N.J. Redistricting Comm'n, July 31, 2001.

<sup>51</sup> New Jersey's Representatives in Congress include 7 Democrats and 6 Republicans: Robert E. Andrews (D), Frank A. LoBiondo (R), Jim Saxton (R), Christopher H. Smith (R), Marge Roukema (R), Frank Pallone, Jr. (D), Michael A. Ferguson (R), Bill Pascrell, Jr. (D), Steven R. Rothman (D), Donald M. Payne (D), Rodney P. Frelinghuysen (R), Rush Holt (D), and Robert Menendez (D). See Official List of Members, U.S. H.R., 107th Cong., Feb. 27, 2002.

<sup>52</sup> *Testimony from Interested Groups and Members of the Public Regarding the Establishment of Congressional Districts for New Jersey for Use During the 2000 Decade Before N.J. Redistricting Comm'n*, 2, Aug. 9, 2001 [hereinafter *Testimony*].

<sup>53</sup> *Id.* at 2-3.

<sup>54</sup> *Id.* at 4-36.

<sup>55</sup> *Id.* at 10-14.

<sup>56</sup> *Id.* at 10.

described the proposed three-way split as “unacceptable.”<sup>57</sup> He concluded that the further division of Woodbridge would “only serve to destabilize [the township’s] aggregate voting power, and ultimately and most importantly, confuse its residents and undermine their access to equal representation.”<sup>58</sup> Senator Vitale believed that the manner in which Woodbridge was divided under the congressional plan of the 1990s “makes clear sense.”<sup>59</sup> He also provided the Commission with specific examples of how various combined communities in each of the two districts were able to effectively deal with their respective Representatives on issues of concern particular to those communities.<sup>60</sup>

Another concern, voiced by Finn Casperson, Jr., dealt with proposed changes to the twelfth district.<sup>61</sup> Casperson believed that the twelfth district would be less competitive than it had been in the past.<sup>62</sup> He pointed out that some of the most competitive races in the nation had been fought in the twelfth district and that, in the congressional race the previous year, the candidate won by only 651 votes.<sup>63</sup> He stressed the importance of competitive races, particularly in the twelfth district, where 60% of the voters are independent.<sup>64</sup> While acknowledging the importance of incumbency protection, he argued that the Commission could “juggle the dual objectives of incumbency protection and competitive balance.”<sup>65</sup> The Congressional Delegation’s plan would likely boost the incumbent

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

<sup>58</sup> *Testimony, supra* note 52, at 10-11.

<sup>59</sup> *Id.* at 11.

<sup>60</sup> *Id.* at 10-12.

<sup>61</sup> *Id.* at 5-9.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 5-6. Casperson noted that the incumbent Congressman in the twelfth district won the election the previous year with 50.2% of the vote, or a margin of 0.4%. *Id.* at 7.

<sup>64</sup> *Testimony, supra* note 52, at 6. The Commission also received other support for a more competitive twelfth district. Former Governor Thomas Kean submitted a written statement to the Commission in which he expressed his view that “[t]he competitive nature of the 12th [district] is healthy and should remain.” *Id.* at 37. Assembly member Leonard Lance also submitted a letter to the Commission:

In 1998, the Democratic candidate won the Twelfth District by approximately 5000 votes, the smallest margin in the state. In 2000, the Democratic candidate retained his seat by fewer than 1000 votes, again the smallest margin in New Jersey. For this reason, I favor keeping District Twelve as competitive as possible and urge the Commission to reject any plan that would unfairly benefit one party over the other as has been suggested.

*Id.* at 38.

<sup>65</sup> *Id.* at 7.

congressman's vote percentage to over 58%, thus "increasing his margin of victory by an astounding fortyfold—forty times."<sup>66</sup> Casperson believed that this increase was "far too dramatic."<sup>67</sup> He then submitted a plan that would increase the incumbent Congressman's winning percentage to approximately 54%, thereby keeping the district more competitive.<sup>68</sup>

A final concern centered on the Congressional Delegation's plan to move a portion of Cherry Hill out of the third district, thereby splitting Cherry Hill between two districts—the first and the third.<sup>69</sup> At the time, all of Cherry Hill was represented in a single district, and there was concern in southern New Jersey that dividing it would "dilute the town's political influence."<sup>70</sup>

Taking into account the comments and concerns expressed by the public, the Commission modified the plan proposed by the Congressional Delegation, while maintaining the goal of incumbency protection. Specifically, the Commission divided Woodbridge between only two districts, the seventh and the thirteenth, as it had been in the past.<sup>71</sup> Additionally, the Commission maintained a more competitive balance in the twelfth district by adopting a plan that would give the incumbent Congressman more Democratic voters, but not as many more as had been initially proposed.<sup>72</sup> The Commission also rearranged the plan so that all of Cherry Hill would remain in the third district.<sup>73</sup>

On October 26, 2001, the Commission unanimously adopted the current congressional redistricting plan, incorporating these changes.<sup>74</sup> The plan was filed and recorded with the Secretary of State of the State of New Jersey on October 29, 2001.<sup>75</sup> The plan divides New Jersey into thirteen congressional districts. Nine of the thirteen districts have populations of 647,258<sup>76</sup> and four have

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<sup>66</sup> *Id.* at 8.

<sup>67</sup> *Id.* at 8.

<sup>68</sup> *Id.*

<sup>69</sup> *New Jersey District Map Still Helps Incumbents*, N.Y. TIMES, Oct. 27, 2001, at D4.

<sup>70</sup> *Id.*

<sup>71</sup> See 2001 Cong. Map Plan Components Rep. filed with the Sec. of State, Oct. 29, 2001, as attachment to Certif. of 2001 Cong. Dist. Map for New Jersey by the N.J. Jersey Redistricting Comm'n.

<sup>72</sup> *Id.*

<sup>73</sup> *New Jersey District Map Still Helps Incumbents*, *supra* note 69.

<sup>74</sup> See Certif. of 2001 Cong. Dist. Map for New Jersey by the N. J. Redistricting Comm'n, filed with Secretary of State, Oct. 29, 2001, and 2001 Congressional Map Plan Components Report filed as attachment thereto.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* These districts include 1, 2, 4, 5, 8, 10, 11, 12, and 13.

populations of 647,257.<sup>77</sup> The final plan, which complies with all statutory and constitutional requirements imposed on the Commission, was the result of compromises that addressed the need for incumbency protection, as well as a myriad of specific concerns raised by the public during hearings held by the Commission throughout the state.

#### IV. PROTECTION OF INCUMBENT REPRESENTATIVES

Perhaps in no other arena is protection of incumbents a more legitimate or desirable state goal than in congressional redistricting. While some states appear to view incumbency protection as illegitimate,<sup>78</sup> such a view is shortsighted on several grounds. Protecting incumbents minimizes disruption for voters and leads to greater continuity and the likelihood that voters will be familiar with their Representative. Most importantly, however, protection of incumbent Representatives maintains their seniority in the House of Representatives, which is key to obtaining critical committee chairmanships and leadership posts in Congress. Committees are the lifeblood of Congress, "directly shaping the overwhelming majority of legislation."<sup>79</sup> Thus, having more senior New Jersey Representatives positions them to be more effective voices for New Jersey interests.

The selection of committee chairs in the United States House of Representatives is based on a seniority system that "rewards age and continuous service in a body that prides itself on its long traditions and continuity."<sup>80</sup> Whether or not one believes that a seniority system is desirable, it is, nevertheless, a fact of life in the United States Congress.<sup>81</sup> Representatives with more experience are likely to have

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<sup>77</sup> *Id.* These districts include 3, 6, 7, and 9.

<sup>78</sup> *See, e.g.*, ARIZ. CONST. art. IV, pt. 2, § 1(15). Arizona, which also utilizes a Redistricting Commission for congressional redistricting, strictly prohibits the identification or consideration of the places of residence of incumbents. The constitution states: "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." *Id.*

<sup>79</sup> Tim Groseclose & David King, *Little Theatre: Committees in Congress*, in GREAT THEATER: THE AMERICAN CONGRESS IN THE 1990S, at 137 (Herbert F. Weisberg & Samuel C. Patterson eds., 1998).

<sup>80</sup> Barbara Hinckley, THE SENIORITY SYSTEM IN CONGRESS 111 (1971).

<sup>81</sup> *See* Katie Harrington & Mary Tolman, *The Impact of Term Limits on the House Seniority System: An Analysis of the 104<sup>th</sup> U.S. House*, 20 YALE POL. Q. \*2 (1998) available at <http://www.yale.edu/ypq/articles/dec98/dec98c.html> (last visited Apr. 15, 2003) (on file with Seton Hall Law Review).

By dispersing power down to individual committee leaders, the seniority system prevents individual party leaders from controlling the

more influence, as senior members naturally have the ability to garner more support for bills and gain more respect from peers. Seniority thus inures to the benefit of the citizens by virtue of their state's strength in Congress.

Opponents of incumbency protection argue that such a policy stifles the democratic process by limiting competition among candidates and causing poor voter turnout.<sup>82</sup> Furthermore, long-time Representatives may be less likely to maintain connections with and be responsive to their constituents if they do not fear defeat at the polls. More broadly, the concerns that led to the term limitation movement obviously apply to incumbency protection.<sup>83</sup>

In response, proponents of incumbency protection recognize that incumbents have a general advantage in getting reelected. Nevertheless, they point out that incumbents are regularly challenged by political opponents seeking their ouster. Status as an incumbent does not guarantee election to office;<sup>84</sup> voters are savvy enough to rid

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legislative process. Thus, the seniority system "offers stability in the distribution of influence. It offers predictability concerning who has power in what area."

Other scholars have noted that the seniority system also helps to promote harmony among legislators because it designates who will receive chairmanship [sic]. Representatives know they have to wait their turn, and thus few power battles result. "As a result, it helps to create a more cooperative atmosphere, both in the legislative body as a whole, and on the various committees."

*Id.* (citations omitted).

<sup>82</sup> Douglas J. Amy, *How Proportional Representation Would Finally Solve Our Redistricting and Gerrymandering Problems*, at <http://www.mtholyoke.edu/acad/polit/damy/articles/redistricting.htm> (last visited Mar. 26, 2003) (on file with Seton Hall Law Review).

<sup>83</sup> See generally John M. Carey et al., *The Effects of Term Limits on State Legislatures*, 23 LEGIS. STUD. Q. 271 (1998); Rhine L. McLin, *The Hidden Effects of Term Limits: Losing the Voices of Experience and Diversity*, 32 U. TOL. L. REV. 539 (2001).

<sup>84</sup> Commentary, *Incumbents Still in the Crosshairs*, ROCKY MOUNTAIN NEWS (Denver, Co.), Nov. 12, 1991, available at <http://www.annapolisinstitute.net/archives/commentary/pb1991081.html> (last visited Mar. 25, 2003) (on file with Seton Hall Law Review). There are countless examples of situations in which incumbent legislators were ousted at the polls by the voters in their districts. *Id.*

Judging by the recent election results, incumbents are in trouble everywhere. New Jersey voters, fed up with tax and spend policies of Democratic Governor James Florio, turned out Democratic majorities in both houses of the legislature. Entrenched legislators in Virginia fell like flies, giving control of the Virginia Senate to Republicans. Democratic candidates for the U.S. Senate in Pennsylvania and for governor in Kentucky were victorious after painting their opponents as hopelessly out-of-touch insiders. Mississippi's incumbent governor was defeated.

*Id.*

their districts of legislators they do not want, whether or not those legislators were previously in office. Moreover, proponents view as fallacious the contention that incumbency protection causes low voter turnout because voters believe the outcome is predetermined. Voter participation in the election process is a highly complex, often-studied phenomenon, and there are countless reasons for low voter turnout.<sup>85</sup> The belief that the presence of incumbents on the ballot is the cause of low voter turnout is simplistic.

### CONCLUSION

Recognition of the importance of incumbency protection can be seen throughout the United States. The United State Supreme Court has repeatedly recognized that protection of incumbents in the redistricting process is a legitimate state goal.<sup>86</sup> New Jersey clearly recognizes protection of incumbents as a legitimate and desirable state goal.<sup>87</sup> In discussing legislative and congressional redistricting in

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<sup>85</sup> MARTIN P. WATTENBERG, CENTER FOR THE STUDY OF DEMOCRACY, UNIVERSITY OF CALIFORNIA IRVINE, *TURNOUT DECLINE IN THE U.S. AND OTHER ADVANCED INDUSTRIAL DEMOCRACIES* (1998), available at <http://www.democ.uci.edu/democ/papers/marty.html> (last visited Mar. 25, 2003) (on file with Seton Hall Law Review). The explanations for low voter turnout include restrictions on registration, registration requirements lying solely with the individual, lack of political information, difficulty with the voting process, improbability of a single vote making a difference, lack of interest in who wins, lack of political affiliation, education, experience, youth, lack of exposure to political events, lack of integration into community, residential mobility, and declines in union membership and religiosity. *Id.*

<sup>86</sup> See *Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (holding that “[a]ny number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.”); *White v. Weiser*, 412 U.S. 783 (1973).

[T]he District Court did not suggest or hold that the legislative policy of districting so as to preserve constituencies of congressional incumbents was unconstitutional or even undesirable. We repeat what we have said in the context of state legislative reapportionment: ‘The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness.’

*Id.* at 797.

<sup>87</sup> As noted, while the New Jersey Constitution is silent on the specific criteria to be used by the Commission, there is no prohibition against protection of incumbents, and it is clear that the current Commission considered the protection of incumbents an important State goal in the congressional redistricting process. Of the six states that use a Commission for congressional redistricting, Arizona is the only state that has an absolute ban on consideration of the residence of incumbents written into the State’s constitution. ARIZ. CONST. art. IV, pt. 2, § 1-1(15). Hawaii law directs that “[n]o district shall be drawn so as to unduly favor a person or political party.” HAW. REV. STAT. § 25-2(b)(1) (1998). Idaho law directs that “[c]ounties shall not be divided to protect a particular political party or a particular incumbent.”

New Jersey, Professor Donald E. Stokes<sup>88</sup> noted that “[a]lthough questions of party advantage of course arose, the congressional Commission believed that a key part of its role was to serve the common interest in protecting New Jersey’s clout in Congress by retaining the highest-seniority members of the congressional delegation. It did this work well, even if its efforts were confounded by the decision of several senior members not to seek reelection.”<sup>89</sup>

New Jersey’s recognition of the importance of incumbency protection crosses party lines, as evidenced by the current plan that was adopted by unanimous vote of the bipartisan Commission. William Baroni expressed the broad-based sentiment regarding the importance of protecting incumbency. He stated, “This is a great map for New Jersey. . . . This is a plan that keeps New Jersey [strong] in Washington [D.C.], and strength in Washington, is measured in seniority.”<sup>90</sup>

In the end, the Commission was successful in adopting a plan that fulfilled its statutory and constitutional obligations, achieved the important state goal of protecting its incumbent Representatives in Congress, and satisfied concerns raised by members of the public during the redistricting process.

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IDAHO CODE § 72-1506 (8) (1996). Montana is silent on the issue of incumbency protection, but the issue is currently inconsequential in Montana, which is only entitled to one Representative in the House of Representatives and, therefore, the entire state constitutes its only congressional district. Washington directs that “[t]he Commission’s plan shall not be drawn purposely to favor or discriminate against any political party or group.” WASH. CONST. art II, § 43(5).

<sup>88</sup> Professor Donald E. Stokes was the dean of Princeton University’s Woodrow Wilson School of Public and International Affairs and was appointed by the New Jersey Supreme Court to act as the independent member on the New Jersey Legislative Apportionment Commission in 1981 and 1991. STOKES, *supra* note 21 (see Foreword).

<sup>89</sup> *Id.* at 29 (emphasis added).

<sup>90</sup> Ron Marsico, *Incumbents Like New Congressional Map: Redistricting Focuses on Getting Members Re-elected to Build up N.J. House Seniority*, STAR-LEDGER (Newark, N.J.), Oct. 27, 2001, available at 2001 WL 29562536. William Baroni was counsel to the GOP congressional contingent who helped draw the new congressional districts in New Jersey.

