

## *A Comparative Analysis of Redistricting Institutions in the United States, 2001–02*

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### ABSTRACT

Legislative redistricting is among the most intensely fought battles in American politics. Through redistricting, political parties seek to control government, incumbents seek job security, and minority groups seek representation. I explore how the various United States redistricting institutions, and the political actors who operate within them, determined the outcomes of the 2001–02 redistricting cycle. I categorize these institutions into two types: redistricting that follows the normal legislative process and that which takes place through a commission. For those states that use the legislative process, when one party controls state government, redistricting results in a partisan gerrymander. When there is divided state government, a bipartisan compromise results from the legislative process. Commission systems differ on membership and voting rules, suggesting two types of commissions: partisan and bipartisan. A partisan commission reliably produces a partisan map, while a bipartisan commission results in a bipartisan compromise.

LEADING INTO THE 2001–02 round of legislative redistricting in the United States, the Republican National Party sought to gain control of state governments to affect redistricting outcomes (Hirsch 2003). Some state legislatures spent months in special session, at a cost of millions of dollars, struggling with redistricting. Millions more were spent on redistricting lawsuits in attempts to alter adopted maps (Galloway 2001; Wagster 2001; Riskind 2002; Copelin 2003). These intense battles over redistricting demonstrate that decision-makers recognize the importance of the process in affecting future political outcomes.

Despite this frenzied activity for political advantage, academic research has found only inconsistent evidence of the electoral consequences of legislative redistricting. While redistricting in response to the equal population court mandates of the 1960s is credited with erasing a Republican congress-

sional electoral advantage (Erikson 1972; Gelman and King 1994b; Cox and Katz 2002), Tufté (1973) and Ferejohn (1977) debated the consequences of these redistrictings on incumbency advantage. King (1989) found an electoral benefit to political parties in control of the 1971–72 redistricting cycle, while other scholars found no appreciable gains (Glazer, Grofman, and Robbins 1987; Squire 1985). Scholars have found that parties that drew the 1981–82 maps were either better off (Cain 1984; Squire 1995) or worse off (Campagna and Grofman 1988). Any gains made by parties through redistricting appear to dissipate after two or three elections (Basehart and Comer 1991; Niemi and Winsky 1992). Some posit that the increased power of incumbency explains the minimal electoral impact of redistricting, since incumbents can withstand all but the most dramatic changes to their districts (Squire 1995; Born 1985).

Thus, redistricting is a political activity where scholarly analyses and political practices seem to diverge. The purpose of this article is to help explain this divergence by demonstrating the conditional nature of redistricting effects. I take an informal game theoretic approach to analyzing the various redistricting institutions, which are categorized broadly into two types: redistricting that follows the normal legislative process and redistricting performed by a commission. With some notable exceptions, in states that use the legislative process for redistricting, unified government results in partisan redistricting. The type of divided government—a divided legislature or a unified legislature pitted against a governor of another party—structures the bipartisan compromise in state legislative redistricting, but not in congressional redistricting. Among commission systems, membership and voting rules produce two types of commissions—partisan and bipartisan—leading to two types of redistricting plans: partisan gerrymanders and bipartisan compromises.

## REDISTRICTING ACTORS AND THEIR MOTIVATIONS

Redistricting affects the careers of politicians and the representation of political parties and racial groups. Incumbents, parties, and racial groups have roles in the redistricting process, therefore understanding their motivations and how they interact is important to understanding how the redistricting process operates in practice and shapes electoral outcomes.

### *Incumbents*

Incumbent legislators wish to be re-elected. This axiom guides modern inquiry into legislator behavior, from their campaign strategies to their poli-

cymaking activities (Mayhew 1974). To become an incumbent, a legislator usually must first win an election. Having successfully won an election, a risk-averse incumbent will not lightly change the circumstances that resulted in that victory.

However, the requirement that electoral districts must have equal populations may result in radical changes to a district during redistricting. Migration between states results in the reallocation of congressional districts through reapportionment. This may force the collapse of districts in states that lose congressional representation and the creation of new districts in states that gain representation. Perhaps more important, migration within a state can result in the shift of districts from the slower to the faster growing regions. Like falling dominoes, a population imbalance in one district affects adjacent districts, rippling across a state. Incumbents, especially those who represent districts deviating greatly from the ideal equal population size, fear redistricting because of the changes it can bring to their districts and the negative effect this can have on their chances of re-election.

Indeed, incumbents may suffer an electoral penalty following redistricting in congressional (Campagna and Grofman 1990) and state legislative districts (King 1989). Redistricting can upset district-based campaign organizations and the carefully cultivated name recognition and trust that incumbents build with their constituents (Desposato and Petrocik 2003). These must be built anew with unfamiliar constituents through early and frequent campaigning in annexed areas (Boatright 2004). Radical change may force incumbents who no longer fit their districts into early retirement, an election defeat, or even the purchase of a new home in a friendlier district (Butler and Cain 1992). Perhaps, worse, an incumbent may be paired with another popular incumbent whose existing district contains the core voters in the new district.

On the other hand, redistricting can help incumbents. If incumbents must lose constituents through redistricting, they wish to jettison those least likely to support them. Crafty incumbents may even orchestrate maps that exclude the homes of potential challengers; the odd, finger-like projections in some district boundaries may be attributed to this strategic behavior (Brown 2001; Johnson 2001). If incumbents must gain constituents, they want areas with a strong presence of their party. Here, incumbents of different parties in adjacent districts find themselves with a shared interest and may willingly swap voters to increase their respective margins of victory.

### *Political Parties*

Political parties want to win elections in more than a single district. A successful partisan gerrymander wastes the votes of its opponent party, so that the

latter receives fewer legislative seats than its share of the vote. Two tools used to dilute opposition votes are stacking and cracking (Cain 1984). Stacking places many opposition party supporters into a few districts, thereby wasting opposition votes in overwhelming victories. Cracking spreads opposition party supporters across districts favoring the gerrymandering party, thereby dissipating opposition votes in districts that they cannot win. The gerrymandering party's goal is to place just enough of its supporters in their districts so that their candidates win comfortably, without wasting their own supporters' votes (Cain 1984; Owen and Grofman 1988).

The political geography of a state, the number of districts, and the legislative body to be redistricted help determine the success of partisan gerrymandering. Partisan gerrymandering can have little effect in a politically homogenous state since almost any map would naturally favor the dominant party; more opportunities to group voters strategically exist in heterogeneous states. The more districts in a legislative body, the greater the ability to group voters strategically. Thus, partisan gerrymandering can be more potent in state legislative than in congressional districting, except in the current California and Texas state senates, which have fewer districts than those states' congressional delegations. Furthermore, while the partisan stakes of state legislative redistricting are the control of the state legislature, a state can affect partisan control of Congress only at the margins. Thus, with greater opportunities to affect electoral outcomes and more at stake, state legislative redistricting is often more contentious among the parties than congressional redistricting.

Partisan gerrymanders can wreak havoc on the opposition party's incumbents since the advantages of incumbency can be nullified by placing little of an incumbent's old district in his or her new district (Desposato and Petrocik 2003). Often, the opposition party can find two of its incumbents living in a new district. On the other hand, those opposition incumbents who are not paired with another incumbent may end up being electorally safer since efficient partisan gerrymanders tend to produce extremely safe opposition districts. In this respect, incumbent protection and partisan gerrymanders can produce districts with a similar partisan composition (Owen and Grofman 1988).

The redistricting goals of a political party and its incumbents can be at odds. Optimal partisan gerrymanders set that party's strength at an efficient level in districts it expects to win which, although safe, is at a lower level of safety than that desired by incumbents (Cain 1984). The electoral fortunes of incumbents elected from marginal districts can improve by moving

more of their party's supporters into their districts. However, incumbents in extremely safe districts may oppose their party leaders who want to shift supporters out of their districts to shore up adjacent marginal districts. Parties accommodate their incumbents, attempting to maximize simultaneously their respective goals when forging the details of a redistricting plan (Gelman and King 1994b).

### *Racial Minorities*

Redistricting can affect racial representation through similar techniques of stacking and cracking used in partisan gerrymandering. Historically, in the few stacked minority districts, intimidation and constitutional restrictions on minority voting preserved white electoral dominance (Kousser 1999). Ultimately, the federal government mandated, through the Voting Rights Act of 1965 and subsequent extensions, protections for minority voters and the drawing of special "minority-majority" electoral districts—so called because they contain a majority of members of a minority group—to facilitate minority representation. These districts are overwhelmingly Democratic (except for Cuban-American districts) since minority-majority districts must often contain a supermajority of minorities, who tend to vote Democratic and their neighbors who are of similar partisan affiliation (Brace et al. 1988).

Since minority-majority districts tend to be overwhelmingly Democratic, they waste Democratic votes and are an effective Republican gerrymander. Scholars who study racial gerrymandering debate the degree of damage to Democrat interests this causes, with some finding substantial effects (Bullcock 1996; Lublin 1997; Lublin and Voss 2000; Swain 1995; Thernstrom and Thernstrom 1997), others finding minimal effects (Grofman and Handley 1998; Petrocik and Desposato 1998), and one finding a benefit to Democrats when cracking Democrats is an optimal Republican strategy (Schotts 2001).

### REDISTRICTING INSTITUTIONS

Redistricting in the United States is conducted by the states through a patchwork of state laws and constitutional provisions, overlaid with federal guidelines that apply to drawing all electoral districts. First, I discuss the national government's rules constraining redistricting, emphasizing the federal government's encroachment on the states' redistricting prerogatives. Second, I describe the various state redistricting institutions, focusing on how these processes can structure outcomes.

### *Universal Districting Principals and the Role of the National Government*

Two basic principals govern all redistricting in the United States: all parts of a district must be contiguous and a district must be reasonably compact in shape. While contiguity is an objective criterion, compactness is subjective, and there are many ways to define it (Niemi et al. 1990). The courts have not set a standard more specific than what the United States Supreme Court called “bizarreness” of shape in *Miller v. Johnson*, 515 U.S. 900 (1995). Many states establish additional rules in state statutes or constitutions, such as requiring that districts respect the integrity of existing political or geographical entities to the extent practicable (for a partial listing of criteria, see Barabas and Jerit 2004). These traditional criteria constrain redistricting, and their violation is often an indicator of biasing redistricting for political advantage, but even applying these seemingly neutral principals may inadvertently or intentionally produce second-order bias that favors one interest over another (Parker 1990).

Another basic institutional constraint on redistricting is the number of districts into which a political entity is to be divided. Congressional seats fluctuate with the apportionment of congressional seats to the states. Some state constitutions set the specific number of state legislative seats, while others set a minimum or a maximum or allow the redistricting process to decide the issue. Consensus is easier to achieve when the number of districts increases, while contentious battles may result when the number decreases.

Beginning with the 1962 United States Supreme Court decision *Baker v. Carr*, 369 U.S. 186, the national government has been active in mandating redistricting guidelines for all levels of government. In *Baker*, the Court interpreted the equal protection clause of the 14<sup>th</sup> Amendment to require states to equalize all the districts in a given governmental body.<sup>1</sup> Prior to *Baker*, states typically redistricted infrequently even though many state constitutions mandated a timely redistricting schedule. Nearly all states defined state legislative districts in terms of geography, for example, requiring a minimum number of state representatives to be elected from counties or cities. As population migrated from rural to urban areas, a growing imbalance in district populations and representation resulted (Johnston 2002).<sup>2</sup> After *Baker*, states were required to redraw their legislative and congressional districts to correct existing imbalances, with redistricting becoming a regularized event at the start of each decade with the release of new population numbers from the United States Census.

Another innovation of the 1960s was the Voting Rights Act of 1965,

which introduced new players in the redistricting process: the United States Department of Justice and the federal courts. States covered by Section 5 of the Voting Rights Act must get approval for, or “preclear,” their districting plans with the Department of Justice or the Federal District Court for the District of Columbia before they are implemented. Failing preclearance, these jurisdictions may try again.

If no districting plan is forthcoming, either because the political process breaks down or a plan cannot be precleared, courts (either state or federal, depending on circumstances) must provide a new districting plan before candidate filing opens for the next election. Thus, the reversionary outcome of redistricting has changed from maintaining the status quo to a plan drawn by a court (Cox and Katz 2002). Finally, the redistricting process may not end with the adoption of a plan, as losers frequently sue in court for changes, claiming plans violate state and federal redistricting criteria.

### *Fifty State Processes*

State laws and constitutions determine redistricting processes in the United States. States primarily use one of two methods to redistrict: the ordinary legislative process or a specially appointed commission. Some states use a mixture of these two processes. A few states have complicated processes that do not fit neatly into one of these two classifications, and not all states use the same method for both congressional and state legislative redistricting. A listing of the types of the redistricting processes each state uses is in Table 1, and a detailed summary of commission processes used in 20 states is in Table 2.

*The Legislative Process.* The most common form of redistricting in the states follows the normal state legislative process. The legislature passes a plan to the governor for his or her signature and can override the governor’s veto by a supermajority vote. Thirty-eight states use the legislative process for congressional redistricting, and 26 states use it for state legislative redistricting. To understand the outcomes of redistricting through the legislative process, one must consider party control of that process.

When there is unified party control of state government, or when one party has a veto-proof majority in the state legislature, the process is streamlined and a plan is usually adopted quickly. As a Republican state legislator facing the unified Alabama Democratic government put it, “They’re going to run us over” (Poovey 2001, 1). There is little reason for a party in complete control to accommodate the minority party. The chair of the Texas Republican Party put it this way: “We weren’t overly sensitive to protecting anyone

Table 1. Survey of Legislative Redistricting Processes Used in the United States, 2001–02

Type of Process	States
Legislative Process	
<i>Congress (38)</i>	AL, AK, AR, CA, CO, DE, FL, GA, IL, KS, KY, LA, MA, MI, MN, MS, MO, NE, NV, NH, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY
<i>State Legislature (26)</i>	AL, CA, DE, GA, IN, KY, LA, MA, MI, MN, NE, NV, NH, NM, NY, ND, RI, SC, SD, TN, UT, VT, VA, WV, WI, WY
Legislative Process/Commission	
<i>Congress (2)</i>	CT <sup>a</sup> , IN
<i>State Legislature (7)</i>	CT <sup>a</sup> , IL, MS <sup>b</sup> , OH, OK, OR <sup>c</sup> , TX
Commission	
<i>Congress (7)</i>	AZ, HI, ID, ME <sup>d</sup> , MT, NJ, WA
<i>State Legislature (12)</i>	AK, AZ, AR, CO, HI, ID, ME <sup>d</sup> , MO <sup>e</sup> , MT, NJ, PA, WA
Other	
<i>Congressional (3)</i>	IA <sup>f</sup> , MD <sup>g</sup> , NC <sup>h</sup>
<i>State Legislative (5)</i>	FL <sup>h</sup> , IA <sup>f</sup> , KS <sup>g</sup> , MD <sup>g</sup> , NC <sup>h</sup>
No Congressional Redistricting <sup>i</sup> (7)	
	AK, DE, MT, ND, SD, VT, WY

Notes: Full citations and hyperlinks to the relevant state constitutions and statutes are available at <http://elections.gmu.edu/redistricting.htm>.

<sup>a</sup> In Connecticut, the legislature must adopt a districting plan with a two-thirds vote. If this vote cannot be achieved, a commission convenes to propose districts to the legislature that can be adopted with only a majority vote. If the commission fails to produce a plan that wins a majority vote, the state Supreme Court draws the districts.

<sup>b</sup> In Mississippi and North Carolina, the governor does not have a veto over the redistricting plan.

<sup>c</sup> In Oregon, the commission is composed solely of the Secretary of State. The state Supreme Court must approve any redistricting plan.

<sup>d</sup> In Maine, a commission proposes a districting plan to the legislature, where it must be approved by a two-thirds vote, followed by the governor's approval. If this fails, the state Supreme Court draws the districts.

<sup>e</sup> Missouri uses two separate commissions for its Senate and House state legislative redistricting. The House commission has 20 members and the Senate has 10, with equal numbers being selected by each party. Plans are adopted by a seven-tenths vote of the commission. If a commission fails to adopt a plan, the state Supreme Court forms a commission to draw a plan of its own.

<sup>f</sup> In Iowa, nonpartisan staff in the Legislative Service Bureau propose districting plans to the legislature. The legislature is offered three plans in succession, any of which may be adopted by a majority vote of the legislature, thus ending the process. If each of these plans fails to receive majority support, the regular legislative process is used.

<sup>g</sup> In Maryland, the governor proposes a districting plan to the legislature, who can approve it with a majority vote. The legislature may adopt a different plan with a two-thirds vote. If the legislature fails to act, the governor's plan becomes law.

<sup>h</sup> In Florida and Kansas, the legislature adopts a plan that it then proposes to the state Supreme Court. The court may reject the legislature's map and draw its own plan.

<sup>i</sup> For the seven states with no congressional redistricting, the process that would be used if the state had more than one district is listed in the table.



in particular, and particularly not Democrats. We make no bones about that. We're the Republican Party" (Root 2001, 6).

But even under unified governments, there can be political tensions and considerations regarding state legislators, governors, racial interests, and the potential for court action that complicate the process and highlight the motivations of the political actors involved. Two examples from the 2001–02 redistricting cycle illustrate this point. In Georgia, under unified Democratic government, tension developed between Democratic state legislators, who crafted a districting plan to aid in their re-election, and Governor Barnes, who was determined to advance the broader interests of the party (Galloway 2001). The special redistricting session was extended for two months after Barnes vetoed the first state legislative map sent to him. In neighboring Alabama, racial interests stymied the adoption of a Democratic congressional plan by a unified Democratic state government (Rawls 2002). At issue was an increase in the percentage of African Americans in one district above a level agreeable to conservative Democrats. At the eleventh hour, the legislature acted rather than allow a Republican-friendly federal court to draw the districts.

When partisan control of a state government is divided, either a bipartisan compromise is struck or redistricting is settled in court. Many unified state legislatures respect a norm that the respective chambers should be allowed to draw their maps (Butler and Cain 1992, 154). When divided control of a legislature exists, a frequent compromise is the continuation of this norm, allowing the different chambers to draw their own districting plans. This situation typically requires the majority party to accommodate the minority party's incumbents in each chamber. As Janet Massaro of the League of Women Voters of New York commented on state legislative redistricting in her state, "Republicans in the Senate and Democrats in the Assembly have consolidated their strength by shaping the new districts to serve the interests of their party and of incumbents" (McCarthy 2002, C1). When a state government is divided between a legislature controlled by one party and a governor of another party, compromise can still occur between the minority and majority leadership in the legislature. Often, governors are willing to accept a bipartisan compromise forged within the legislature out of deference to and respect for the legislative leaders of the governor's party.

The norm that legislators should draw their own districts often extends to a state's congressional delegation. Members of Congress do not play a formal role in the redistricting process, but they often play an informal role by proposing plans for congressional districts. Especially under unified party control of the redistricting process, the state's congressional delegation cau-

cus of that party can be intimately involved in redistricting (Boatright 2004). Under divided government, a compromise often entails the congressional delegation drawing and advocating a bipartisan incumbent protection plan for itself. Sometimes personalities or progressive ambitions muddy the waters. In 2001, Democratic Massachusetts House Speaker Finneran threatened to draw United States Representative Meehan (D-MA) out of his district due to his sponsorship of campaign finance reform (Beardsley 2001). In California, state legislator Vargas (D-San Diego) crafted a map that would increase his chances of defeating his old primary foe, United States Representative Filner (D-CA) (Associated Press 2001).

The potential for court action may structure any redistricting plan or compromise. In 2001–02, Illinois faced not only a divided state government, but also the loss of a congressional seat due to apportionment. Expectations were high that if legislative action failed, a Republican-friendly federal court would do congressional redistricting (Kieckhefer 2001). Rather than risk court action and the adoption of a Republican map, the Democratically controlled state House passed a bipartisan incumbent protection plan negotiated between United States Representatives Hastert (R) and Lipinski (D) that made a concession to Republicans by collapsing a Democratic seat.

On the other hand, expectations of court action may prevent a compromise from developing. The courts may choose among competing plans that parties or organized groups propose or they may draw a plan of their own. The parties often anticipate that the relevant court will adopt a map based on the party of the judges involved, if elected, or of those who nominated them, if appointed. In 2001, Texas Republicans balked at negotiations with Democrats in the divided legislature. After a complicated maze of lawsuits, congressional redistricting landed in a Republican-friendly federal court. But, the Republicans' dream of big gains in Texas was shattered when the judges adopted a plan protecting all incumbents (Selby 2001). As a consolation, Texas's two new congressional districts were drawn to favor Republicans.<sup>3</sup>

*Commissions.* Twenty states use a commission at some stage of congressional or state legislative redistricting. A commission plays a primary role in congressional redistricting in seven states and in state legislative redistricting in 12 states. A commission is used as a backup if the legislative process breaks down in congressional redistricting in two states and state legislative redistricting in seven states. Table 2 lists details of the commissions in these 20 states, such as the year a commission was adopted, its membership, and its decision rule in adopting a map. Some states use different processes for congressional and state legislative redistricting. Indiana is the only state to

Table 2. Redistricting Commissions in the United States, 2001–02

State	Process (Number of Members/Decision Rule)	Year Adopted	
		Congress	State Legislature
Alaska	Odd/Majority vote	—	1998
Arizona	Even/Majority selects tiebreaker	2000	2000
Arkansas	Odd/Majority vote	—	1936
Colorado	Odd/Majority vote	—	1974
Connecticut	Even/Majority selects tiebreaker	1980	1976
Hawaii	Even/Majority selects tiebreaker	1968	1968
Idaho	Even/Supermajority vote/Supreme Court review	1994	1994
Illinois	Even/Random tiebreaker	—	1970
Indiana	Odd/Majority vote	1969	—
Maine	Odd/Unanimous vote	1964	1964
Mississippi	Odd/Majority vote	—	1977
Missouri	Even/Supermajority vote	—	1945 (Senate) 1966 (House)
Montana	Even/Majority or Supreme Court selects tiebreaker	1972	1972
New Jersey	Even/ Majority selects tiebreaker (Congress), Supreme Court selects tiebreaker (state legislature)	1966	1966
Ohio	Odd/Majority vote	—	1851
Oklahoma	Odd/Majority vote	—	1964
Oregon	Odd (1 person, Secretary of State)	—	1952
Pennsylvania	Even/Supreme Court selects tiebreaker	—	1968
Texas	Odd/Majority vote	—	1948
Washington	Even/Supermajority vote	1983	1983

Notes: — denotes that the regular legislative process is used. Full citations and hyperlinks to the relevant state constitutions and statutes are available at <http://elections.gmu.edu/redistricting.htm>.

use a commission for congressional redistricting and the legislative process for state legislative redistricting. In 11 states, a commission is used for state legislative redistricting and the legislative process is used for congressional redistricting. Seven states use a commission for both.

There are two general types of commission sequencing, the Ohio model and the Texas model. The Ohio model gives the commission sole redistricting authority. The 1851 Ohio constitution placed state legislative redistricting in the hands of a three-member Apportionment Board composed of the governor, the state auditor, and the secretary of state (Barber 1981). Today, 11 states use a commission vested with sole responsibility for congressional or state legislative redistricting. The selection mechanism for commissioners and the rules under which they operate have evolved as subsequent states established such commissions.

The Texas model uses a commission to serve as a backup if the legislative process fails. Texas voters amended the Texas constitution in 1948 to form a commission to draw state legislative districts (Claunch, Chumlea, and

Dickson 1981). This commission was designed to avoid gridlock, with five members who were partisan elected officials, adopting a map on a majority vote. This model is used by eight other states, each of which adopted its system in the 1960s and 1970s (Table 2). Under the Texas model, when the state government is unified, redistricting is likely to be completed through the regular legislative process. When that process breaks down, as under divided government, the Texas model concentrates control of redistricting into the hands of a few partisan commissioners, often party leaders or their appointees, who are able to act outside of the prying eyes and mixed influences of state legislators.

Two factors are key to determining the type of redistricting plan adopted by a commission: the selection of its members and the decision rule used to adopt the plan. A commission will either have: 1) an odd number of members and adopt a plan on a majority vote, 2) an even number of members and adopt a plan on a majority vote, or if a majority cannot form, with a tiebreaker being selected, 3) an even number of members and tiebreaker selected at the outset by majority vote of the commission's members, and adopt a plan on a majority vote, or 4) an even number of members and adopt a plan by a supermajority vote.

In the nine states with a commission composed of an odd number of members and requiring a majority vote to adopt a plan, legislative leaders or statewide party officials are either commission members or designate its members. With an odd number of commissioners, one party controls the majority and can adopt its favored districting plan.

This process does not always lead to a commission that reflects the values and party of the majority of people in the state. In 2001, Democratic Governor Knowles of Alaska appointed two commissioners, who, along with the two members selected by the Democratic legislative leadership, gave the Democrats majority control of the Apportionment Board, even though the Republicans had near supermajority control of the legislature. In the eyes of the Republicans, the Board adopted a redistricting plan favored by the Democrats, which they successfully challenged in state court (Pemberton 2002).

In Illinois, New Jersey (for the state legislature), and Pennsylvania, an equal number of partisans are initially appointed to the commission, but if it cannot adopt a plan by a majority vote, a tiebreaker is selected. This late-tiebreaker rule is designed to induce the commissioners from the two political parties to compromise; in practice, compromise usually occurs only if the tiebreaker commissioner forces the parties to negotiate. If the tiebreaker makes unreasonable demands, the partisan commissioners may seek a bipartisan

compromise. Often, commissioners have strong common prior beliefs about the likely partisanship of the tiebreaker, and therefore balk at compromise during initial negotiations. Once chosen, the tiebreaker then sides with one of the parties and a partisan plan is adopted. This has been the outcome in Illinois for all redistricting cycles since 1980, and it demonstrates that under the highest degree of uncertainty, where a randomly chosen partisan is the tiebreaker, the parties prefer commission gridlock to compromise. New Jersey's state Supreme Court traditionally selects political scientists, who apply neutral criteria to their decisions (Butler and Cain 1992, 100–1). But because they are selected near the end of the process, these neutral tiebreakers are at an informational and resource disadvantage and must often adjudicate between the plans offered by the partisan commissioners rather than designing their own.

In Arizona, Connecticut, Hawaii, and New Jersey (for Congress), an equal number of partisans serve on the commission and choose a tiebreaking member at the beginning of the process by a majority vote. The commission then adopts a redistricting plan by a majority vote. This process tends to foster bipartisan compromise and an incumbent-protection redistricting plan (Butler and Cain 1992, 152). The commission may adopt a bipartisan compromise even without the tiebreaking member's vote. Arizona's commission is exceptional in that party influence is reduced through a complicated membership selection procedure and by the fact that the commission draws its plans without knowledge of incumbents' homes. For these reasons, I classify it as a neutral, or nonpartisan, commission. In Montana, if the commission cannot select a tiebreaker, then the selection of a tiebreaker falls to the state Supreme Court. In practice, the strategic decisionmaking of the partisan members is similar to that on commissions where tiebreakers are chosen after a stalemate is reached in that they let the court choose the tiebreaker.

Idaho, Maine, Missouri, and Washington commissions have an even number of partisan members and require a supermajority vote to adopt a redistricting plan. These states' commissions explicitly require bipartisan compromise among their members to adopt a map (Butler and Cain 1992, 151).

While Maine has a bipartisan commission, its commission is not the sole actor in redistricting. Maine's constitution requires a unanimous vote of the commission, followed by a two-thirds vote in the state legislature and the governor's approval, with a state Supreme Court backup if gridlock occurs. The commission's unanimity requirement strongly encourages a bipartisan compromise, which is then usually approved by the legislature, where a supermajority vote is also needed to adopt the plan.

Some recently created redistricting commissions operate under additional rules constraining their membership or actions, mostly designed to reduce partisan politics in the process. For example, Arizona's Proposition 106, passed in 2000, outlines elaborate qualifications for commissioners aimed at making them less tied to the parties. Recently, other states have adopted Hawaii's constitutional prohibition on its commission from drawing districts to favor a political party or particular incumbent officeholder. Arizona's and Washington's constitutions go even further, requiring their commissions to draw competitive districts where practicable.

*Odds and Ends.* A handful of states cannot be classified as using the legislative process or a commission for redistricting. In North Carolina, the legislature has sole redistricting authority. Maryland turns the legislative process on its head, with the governor proposing congressional and state legislative redistricting plans to the legislature. In Florida and Kansas, the legislature proposes a state legislative redistricting plan to the state Supreme Court, which may reject the plan in favor of one of its own.

Iowa is often referred to as a commission state, but I do not classify it as such because its commission exists only under state statute, and the legislature can assume redistricting authority through the same statute. Iowa's commission is not appointed solely for redistricting; it is a nonpartisan legislative support staff agency called the Legislative Service Bureau (LSB). In this respect, Iowa's commission is modeled on bureaucratic boundary commissions in other countries, where technicians draw district boundaries (Rallings et al. 2004). In Iowa, a temporary advisory redistricting commission composed of partisan members is convened to answer queries from the LSB. The LSB proposes a sequence of three redistricting plans to the legislature, any of which may be adopted by majority vote. The first two plans may only be amended for technical reasons, but the third plan may be amended in any way through the normal legislative process. However, in the history of this convoluted process, adopted in 1970, the legislature has never failed to adopt at least the third proposal from the LSB, fearing that to do otherwise would invite the perception that politics had contaminated the process (Butler and Cain 1992, 102; Glover 2001).

*The Courts.* Behind all these redistricting processes in the United States is the threat of court action. Various criteria found in federal and state constitutions and statutes often serve as the basis for a court challenge to a redistricting plan. In 2001, state legislative plans in Alaska, Arizona, Idaho, and North Carolina were successfully challenged, as were congressional plans in

Mississippi and Georgia. If the redistricting process breaks down, a court must step in and provide a plan that at least balances population before the subsequent election. Five states explicitly require state Supreme Court review of adopted redistricting plans: Alaska, Colorado (for the state legislature), Florida, Idaho, and Kansas.

#### REDISTRICTING OUTCOMES

Much of the scholarly literature on redistricting assumes that control of the branches of the state government will determine the nature of the redistricting outcome (Erikson 1972; Abramowitz 1983; Born 1985; Niemi and Winsky 1992). The preceding section shows that this is an unwarranted assumption. Other scholars examine the intent behind the redistricting, rather than the partisan control of it, to gauge effects (Basehart and Comer 1991; Gelman and King 1994b). This approach avoids miscoding cases, such as Hawaii, as having a partisan process when, in fact, it is bipartisan. However, since this method is focused on outcomes, it tells little of how redistricting institutions may shape these outcomes.

My discussion of redistricting processes suggests that the redistricting plan that a state adopts is a function of its redistricting institutions and the players who work in it. A listing of the 2001–02 processes and the predicted and realized outcomes for the 93 instances of redistricting—state legislative and congressional redistricting in the 50 states, minus the seven states with only one congressional district—is presented in Table 3. This table shows that the outcome can be reliably predicted from an understanding of the institutions and the players. The seven exceptions to the prediction are bolded in Table 3 and discussed below, as they illustrate how other political considerations that are difficult to generalize about can affect the redistricting process.

The third column of Table 3 lists the redistricting process used in each state, as discussed in the previous section. The fourth column lists the control of the process based on the circumstances during the 2001–02 redistricting. First, consider states that used the legislative process. Where one party controlled the process, either through unified state government or a supermajority in the legislature that could override a veto from a governor of a different party, a state is coded by D or R, with “supermajority” signifying that a legislative party could override a gubernatorial veto. Where the two parties controlled different branches of the legislature, a state is coded as “Divided Leg.” Divided government due to split control between the legislative and executive branches is coded as “Divided Govt.” Most commissions

Table 3. United States Redistricting Processes, Predicted Outcomes, and Realized Outcomes, 2001–02

State	Body	Process	Control <sup>a</sup>	Predicted Outcome <sup>a</sup>	Realized Outcome <sup>a</sup>
AK	Cong.	—N/A—			
	Leg.	Partisan Comm.	D	D	D <sup>b</sup>
AL	Cong.	Leg. Process	D	D	D
	Leg.	Leg. Process	D	D	D
AR	Cong.	Leg. Process	D (supermajority)	D	D
	Leg.	Partisan Comm.	D	D	D
AZ	Cong.	Bipartisan Comm.	N	N	N
	Leg.	Bipartisan Comm.	N	N	Court: N, N <sup>c</sup>
CA	Cong.	Leg. Process	D	D	I
	Leg.	Leg. Process	D	D	I
CO	Cong.	Leg. Process	Divided Leg.	I or Court	Court: N
	Leg.	Partisan Comm. + Court	D	D	D <sup>b</sup>
CT	Cong.	Leg. Process + Bipartisan Comm.	Divided Govt.	I	I
	Leg.	Leg. Process + Bipartisan Comm.	Divided Govt.	I	I
DE	Cong.	—N/A—			
	Leg.	Leg. Process	Divided Leg.	I or Court	I
FL	Cong.	Leg. Process	R	R	R
	Leg.	Legislature + Court	R	R	R
GA	Cong.	Leg. Process	D	D	D <sup>d</sup>
	Leg.	Leg. Process	D	D	D
HI	Cong.	Bipartisan Comm.	Bipartisan Comm.	I	I
	Leg.	Bipartisan Comm.	Bipartisan Comm.	I	I
IA	Cong.	Neutral Comm. + Leg. Process	Divided Govt.	N	N
	Leg.	Neutral Comm. + Leg. Process	Divided Govt.	N	N
ID	Cong.	Bipartisan Comm. + Court	Bipartisan Comm.	I or Court	I
	Leg.	Bipartisan Comm. + Court	Bipartisan Comm.	I or Court	I
IL	Cong.	Leg. Process	Divided Leg.	I or Court	I
	Leg.	Leg. Process + Partisan Comm.	Divided Leg.+ D Comm.	D	D
IN	Cong.	Partisan Comm.	D	D	D
	Leg.	Leg. Process	Divided Leg.	I	I
KS	Cong.	Leg. Process	R	R	R
	Leg.	Legislature + Court	R	R	R
KY	Cong.	Leg. Process	Divided Leg.	I or Court	I
	Leg.	Leg. Process	Divided Leg.	I or Court	I
LA	Cong.	Leg. Process	Divided Govt.	I or Court	I
	Leg.	Leg. Process	Divided Govt.	I or Court	I
MA	Cong.	Leg. Process	D (supermajority)	D	D
	Leg.	Leg. Process	D (supermajority)	D	D
MD	Cong.	Gov. + Legislature	D	D	D
	Leg.	Gov. + Legislature	D	D	D
ME	Cong.	Bipartisan Comm. + Leg. Process	Bipartisan Comm.	I or Court	Court: N
	Leg.	Bipartisan Comm. + Leg. Process	Bipartisan Comm.	I or Court	House: I Senate, Court: N
MI	Cong.	Leg. Process	R	R	R
	Leg.	Leg. Process	R	R	R
MN	Cong.	Leg. Process	Divided Govt.	I or Court	Court: N
	Leg.	Leg. Process	Divided Govt.	I or Court	Court: N



Table 3. Cont.

State	Body	Process	Control <sup>a</sup>	Predicted Outcome <sup>d</sup>	Realized Outcome <sup>d</sup>
MO	Cong.	Leg. Process	Divided Leg.	I or Court	I
	Leg.	Bipartisan Comm.	I	I or Court	Court: R
MS	Cong.	Leg. Process	D	D	Court: R
	Leg.	Legislature + Partisan Comm.	D	D	D
MT	Cong.	—N/A—			
	Leg.	Partisan Comm.	D <sup>c</sup>	D	D
NC	Cong.	Legislature	D	D	D
	Leg.	Legislature	D	D	D (Court: R) <sup>f</sup>
ND	Cong.	—N/A—			
	Leg.	Leg. Process	R	R	R
NE	Cong.	Leg. Process	R	R	R
	Leg.	Leg. Process	R	R	R
NH	Cong.	Leg. Process	Divided Govt.	I or Court	Court: I
	Leg.	Leg. Process	Divided Govt.	I or Court	Court: I
NJ	Cong.	Bipartisan Comm.	Bipartisan Comm.	I	I
	Leg.	Partisan Comm.	N	N	N
NM	Cong.	Leg. Process	Divided Govt.	I or Court	Court: I
	Leg.	Leg. Process	Divided Govt.	I or Court	Senate: I House, Court: I
NV	Cong.	Leg. Process	Divided Leg.	I or Court	I
	Leg.	Leg. Process	Divided Leg.	I or Court	I
NY	Cong.	Leg. Process	Divided Leg.	I or Court	I
	Leg.	Leg. Process	Divided Leg.	I or Court	I
OH	Cong.	Leg. Process	R	R	I
	Leg.	Partisan Comm.	R	R	R
OK	Cong.	Leg. Process	Divided Govt.	I or Court	Court: R
	Leg.	Leg. Process + Partisan Comm.	Divided Govt.+ R Comm.	R	R
OR	Cong.	Leg. Process	Divided Govt.	I or Court	Court: N
	Leg.	Leg. Process + Partisan Comm.	Divided Govt.+ D Comm.	D	D
PA	Cong.	Leg. Process	R	R	R
	Leg.	Leg. Process + Partisan Comm.	R	R	R
RI	Cong.	Leg. Process	D (supermajority)	D	I
	Leg.	Leg. Process	D (supermajority)	D	I
SC	Cong.	Leg. Process	Divided Govt.	I or Court	Court: I
	Leg.	Leg. Process	Divided Govt.	I or Court	Court: I
SD	Cong.	—N/A—			
	Leg.	Leg. Process	R	R	R
TN	Cong.	Leg. Process	Divided Govt.	I or Court	I
	Leg.	Leg. Process	Divided Govt.	I or Court	I
TX	Cong.	Leg. Process	Divided Govt.	I or Court	Court: I
	Leg.	Leg. Process + Partisan Comm.	Divided Govt.+ R Comm.	R	R
UT	Cong.	Leg. Process	R	R	R
	Leg.	Leg. Process	R	R	R
VA	Cong.	Leg. Process	R	R	R
	Leg.	Leg. Process	R	R	R

Table 3. Cont.

State	Body	Process	Control <sup>a</sup>	Predicted Outcome <sup>a</sup>	Realized Outcome <sup>a</sup>
VT	Cong.	—N/A—			
	Leg.	Leg. Process	Divided Leg.	I or Court	I <sup>g</sup>
WA	Cong.	Bipartisan Comm.	Bipartisan Comm.	I or Court	I
	Leg.	Bipartisan Comm.	Bipartisan Comm.	I or Court	I
WI	Cong.	Leg. Process	Divided Leg.	I or Court	I
	Leg.	Leg. Process	Divided Leg.	I or Court	Court: N
WV	Cong.	Leg. Process	D	D	D
	Leg.	Leg. Process	D	D	D
WY	Cong.	—N/A—			
	Leg.	Leg. Process	R	R	R

Notes: <sup>a</sup> D = Democratic control/partisan gerrymander, R = Republican control/partisan gerrymander, N = neutral, I = bipartisan control/incumbent protection plan. Bold entries denote deviation from prediction.

<sup>b</sup> Alaska's and Colorado's state Supreme Courts ordered their Democratically controlled commissions to redraw districts to uphold state constitutional requirements, which enhanced Republican prospects.

<sup>c</sup> Arizona's 2002 state legislative interim districting plan was drawn by a special master when the United States Department of Justice failed to preclear the commission-approved plan. The commission drew a new plan for 2004, was ordered by a state court to draw yet another plan, and the status of the competing plans is pending appeal at the time of publication.

<sup>d</sup> Georgia's 2001 congressional districting plan was successfully challenged in federal court, and a new plan was drawn by the state government for 2004. A legal appeal of this plan is pending at the time of publication.

<sup>e</sup> Montana's commission failed to select a tiebreaker; the state Supreme Court selected a Democrat.

<sup>f</sup> A North Carolina state judge found the legislature's districting plan unconstitutional, remanded redistricting to the legislature, found a second plan unconstitutional, and adopted his own (partisan Republican) interim state legislative plan for 2002. The state legislature met in special session and adopted a new (partisan Democrat) plan for 2004.

<sup>g</sup> Vermont's bipartisan compromise was brokered through an ad hoc bipartisan commission.

are coded as "Partisan" and "Bipartisan," with Arizona's and Iowa's unique systems coded as "Neutral." Where a commission was used in conjunction with the legislative process, I denote the sequence with a "+." In the last two columns, predicted and realized partisan outcomes are coded as Democratic (D) or Republican (R) partisan gerrymanders, incumbent protection plans (I), or neutral (N) plans without obvious benefit to either political party, (most often the consequence of "Court" action). See the Appendix for a discussion of the bases of these codings.

### *Partisan Gerrymanders*

When one party controlled the 2001–02 redistricting process, either because it controlled the legislative process or a partisan commission, that party usually produced a redistricting plan favoring itself. In only seven of 44 cases did a party that controlled redistricting not produce a partisan gerrymander. In New Jersey, the selection of a neutral tiebreaker to the commission shaped the neutral outcome for state legislative redistricting. But in four states that used the legislative process—California, Rhode Island, Mississippi (for Congress),

and Ohio (for Congress)—the party that controlled the redistricting process did not produce a plan favoring itself. In these states, circumstances outside the regular legislative process affected the outcome.

In Democratically controlled California, Democrats compromised with Republicans to pass an incumbent protection plan for Congress and the state legislature, thus avoiding threatened lawsuits and a redistricting initiative Republicans vowed to put on the 2002 ballot (Lawrence 2001). In Democratically controlled Mississippi, the legislature could not agree on a congressional plan in the face of the loss of a seat to reapportionment. The Democratic proposal added more African Americans to a district than some conservative Democratic legislators preferred and split communities of interest (Wagster 2001). The resulting court battles led to a federal court adopting a Republican-favored plan. In Ohio, Republican leaders' efforts to take advantage of their control of state government went awry, resulting in a missed legislative deadline and the need for Democratic votes to adopt a plan by a supermajority (Riskind 2002).

In Rhode Island, even though the Democrats held a supermajority in the state legislature, the political parties struck a bipartisan compromise due to a 1994 constitutional amendment mandating the downsizing of the legislature. An ad hoc partisan redistricting commission was convened, whose plans were nearly unanimously approved by the legislature, although the governor declined to sign the bill. The few nay votes came from Democratic legislators who believed their leadership intended to "punish dissidents" (Fitzpatrick 2002, A1).

These anomalous outcomes in four states demonstrate the pitfalls of navigating the legislative process. In contrast, wherever a partisan commission was convened, a partisan map was adopted. Partisan commissions are run by party leaders and typically hold their meetings behind closed doors, minimizing interference in accomplishing their partisan purpose. The partisan commission that does not fit with this prediction is in New Jersey, where the state Supreme Court chose a neutral tiebreaker when the commission stalemated rather than a partisan member, as is typically done elsewhere. The state legislative tiebreaker selected the party's plan that scored best on neutral criteria, which happened to be a Democratic one.

### *Bipartisan Redistricting Compromises*

Three scenarios are predicted to produce bipartisan redistricting compromises: split partisan control of legislative chambers, split control of the legislative and executive branches, and where a bipartisan commission is convened. If no compromise occurs in such a case, redistricting becomes a matter for the

courts, since a plan must still be enacted to ensure equal population among districts after each census.

In states that use the legislative process for redistricting, when the state legislature is divided, a common compromise for a state legislative plan is to allow the respective chambers to draw their own districts. The governor will usually not veto such a compromise. In six of seven states, this situation resulted in a bipartisan compromise for the state legislative plan.

When control of state government is divided, with one party controlling the legislature and the other controlling the governor's office, the norm of allowing the legislature to redistrict itself is not followed. If compromise is to occur, it must be between the minority and majority leaders and it likely entails safeguarding incumbents in the legislature. In the six states with divided government that used the legislative process for state legislative redistricting in 2001–02, a bipartisan compromise was struck only in Louisiana and for the New Mexico Senate (the New Mexico House plan was decided in court). The lower rate of bipartisan compromise in this divided government situation suggests the difficulty of the minority legislative party in accepting a bipartisan, incumbent protection compromise that could secure its minority status for a decade.

The norm of self-redistricting appears to extend to congressional redistricting, where the bipartisan compromise occurs among the state's congressional delegation, not between chambers of the legislature. Therefore, such a compromise may occur in either divided government situation, and among the 17 divided government states in 2001–02, a bipartisan compromise for a congressional redistricting plan was reached in 10 cases.

In seven of the eight states that used a bipartisan commission for either congressional or state legislative redistricting, a bipartisan compromise was forged. The exception was Missouri, where separate commissions for state Senate and House redistricting both failed to reach a compromise, and redistricting fell to a panel of state judges. The relative success of bipartisan commissions over divided government situations may lie in the ability of legislative leaders to compromise in private, without interference from their legislative caucuses.

### *Odds and Ends*

Finally, there is the case of Iowa, whose process is difficult to classify. The Iowa commission draws incumbent- and partisan-blind maps, which, in 2001, resulted in 64 of 150 state legislators being placed in a district with another incumbent (Glover 2001). Four of Iowa's five congressional districts were considered to be competitive according to election handicappers, such

as the *Cook Political Report* or *Congressional Quarterly*. Despite the political upheaval, the Republican-controlled legislature adopted the plans proposed by the LSB, fearing that a veto by the Democratic governor of a plan drawn solely by the legislature would send redistricting into the courts, turning public opinion against Republicans who had short-circuited the process.

## CONCLUSION

Redistricting is an intense battle for partisan gain, electoral security, and minority representation. With so much at stake, these actors behave in a purposive fashion. The redistricting institutions and political actors operating within them structure the type of congressional and state legislative plans that are eventually produced for a state. Despite the wide variety of redistricting institutions in the states, there are generally three outcomes: a partisan gerrymander, a bipartisan incumbent protection plan, or action by the courts. For those few states that an analysis of their institutions does not correctly predict their redistricting outcomes, other ad hoc strategic calculations by the players were at work. Even though the academic literature is mixed on the electoral consequences of redistricting, I have provided ample evidence that incumbents and parties work strategically within the constraints of the redistricting process to produce plans they believe to be most favorable to them, given existing conditions.

## APPENDIX: DATA COLLECTION

For space considerations, throughout this article, I have asserted facts and events that unfolded in the states in the 2001–02 round of redistricting without full attribution. A full record of my data collection efforts is publicly available at <http://elections.gmu.edu/redistricting.htm>. This Web site includes citations and direct links to specific state constitutional provisions and statutes regarding redistricting. Also included are links to news stories on redistricting in each state. Although many of these links to media Web sites are still active, some are now defunct or may be viewed only through paid archives. At a minimum, they can be obtained through a particular media outlet's off-line archives. I am grateful to the community of persons, too many to name, who frequented the Web site and provided links to news stories throughout the 2001–02 redistricting cycle.

## ENDNOTES

1. *Baker v. Carr* first allowed court consideration of an equal population standard. This standard was officially applied to state legislative and congressional districts in *Reynolds v. Sims*, 377 U.S. 533 (1964), and *Wesberry v. Sanders*, 376 U.S. 1 (1964), respectively.

2. Among the most severe cases of imbalance was the Connecticut House of Representatives, where in 1950, the smallest district contained 261 people while the largest contained over 177,000 (Davis 1981).

3. When Republicans gained unified control of Texas state government following the 2002 elections, they revisited redistricting in a contentious series of showdowns with Democratic legislators, ultimately resulting in a new congressional map favoring Republicans (Copelin 2003).

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