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Redistricting and Gerrymandering in North Carolina

Battlelines in the Tar Heel State

J. Michael Bitzer

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*This work is dedicated to the memory and life of my brother,
David Kinsley Bitzer (1971–2020)*

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Introduction

Abstract This chapter introduces the concept of redistricting, the redrawing of legislative district lines to create representative geographic areas, and the controversies of both race and partisanship when it comes to redrawing the lines. The chapter provides an overview of North Carolina’s role in redistricting controversies from the 1980s, particularly the aspects of racial and partisan gerrymandering, as well as covers redistricting’s basic principles including population allocation, equal population distribution, and other traditional redistricting criteria.

Keywords Redistricting · North Carolina · Gerrymandering

Redistricting activities have fully embodied what one scholar calls “the most political activity in America.”¹ By drawing lines to create defined areas, redistricting doesn’t denote just representative geographies, but also exemplifies a political party’s power and its possible enhancement, while potentially diminishing the opposition party’s chances of exercising governing power. This activity often determines who controls the levers of state legislative governance and power, allowing a political party to shape that state’s policies and actions. That state-level influence has a ripple effect on American politics by determining who may control the U.S.

House of Representatives. But the political world isn't the only venue where redistricting has been fought over. Legal challenges have shaped and constructed redistricting's constitutionally acceptable and infirmed activities.

One state has exemplified redistricting's political and legal dynamics over four decades. Following major federal action on redistricting in the 1960s, North Carolina has provided critical cases in American jurisprudence regarding redistricting since 1980. At both the federal and state levels, the courts have been influential players in redistricting, with North Carolina's controversies often at center stage. North Carolina's efforts have impacted two distinct aspects of redistricting: race and partisanship. In terms of what is acceptable, and what isn't, when district lines are drawn, North Carolina has been a political and legal battle field over racial and partisan considerations in redistricting. These cases shaped national legal principles, and influenced the political dynamics, of how one can draw legislative lines.

For most Americans, redistricting is a once-every-so-often word that they hear in the news. They may understand the concept as changing who they get to vote for as their elected representative, at the state legislative or congressional level. For those Americans with a higher political interest and engagement, they may know redistricting as a useful tool for their party, whether their party is in power or fighting for it. For elected officials, redistricting is a life and death struggle in the game of modern politics, the means of keeping legislative governing control or losing political influence. Ultimately, redistricting efforts uniquely and intricately shape and reshape the lines where voters are placed and how elections are determined.

In modern American politics, redistricting has become a policy for ensuring political power. Thanks to elected officials, engaged citizens, and voters having sorted themselves into respective political camps and tribes, the job of a map drawer has become easier over time.² This sorting can be reflected geographically, allowing map drawers to expertly assign like-minded and neighboring voters into districts that favor one political party. And often, the political behavior of these districts holds over time. Redistricting can pay dividends long past the initial election into subsequent contests until the next decade's activities begin anew—or simply continue that same political power dynamic with new lines.

Yet one should not focus just on the redrawing of lines as redistricting's major influence. Redistricting can influence the tenor and tone of a state's

politics. The process can affect the policies adopted at both the state and national level. Redrawing district lines captures the partisan nature of our politics in geographic terms and influences policy initiatives and decisions that impact everyday Americans' lives. To understand how those ground-level partisan attitudes are best expressed, one must explore why the lines are drawn, how they are drawn, and what the legal controversies are in order to put one more piece into the puzzle of modern American politics.

Since 1980, North Carolina has undergone major litigation every decade over the redrawing of district lines. These court cases have also led to multiple redistricting plans being created each decade. Many of these court cases have been settled by the nation's highest court, the U.S. Supreme Court, producing binding legal principles for the other forty-nine states. Sometimes North Carolina cases provided the legal groundwork for legal battles fought over in other states. But as this single-state case study will demonstrate, two distinctive redistricting controversies have found a natural home in North Carolina.

The battle over redistricting has often centered on the issue of race, most notably in resolving and rectifying historical racial discrimination against Black and African American citizens. The question regarding race and redistricting often boils down to whether representation should be based on descriptive or substantive representation. Namely, can minority groups only be represented by those who look like them, or can they be represented by individuals who share the same policy goals and aspirations, but may not be from their racial group? Once that question is considered, the next inquires can be even more difficult: if descriptive representation is the basis for electing minority officials, then how many minority voters does, or should, it take to successfully elect their preferred candidate? And if there is a quota-level for minority voters to elect one of their own, does that violate the idea of equal protection under the law? In the battle over redistricting and racial gerrymandering, it is this controversy of "how much race is enough or too much" that agitates redistricting efforts.

Redistricting's other major battle is over another simple yet difficult question: how much should partisanship influence district lines? Over the nation's history, the art and science of gerrymandering has come to symbolize the ills of partisan behavior, namely entrenching one's party in power and dividing and conquering the opposition. Both Democrats and Republicans have long histories of using partisan gerrymandering to their advantage.³ But with modern technological capabilities of drawing

district lines (literally to the point where one could cross a city's main intersection and be in another congressional district⁴), combined with high levels of partisan loyalty by voters who have often sorted themselves into like-minded communities, partisan gerrymandering intensifies one party's power over the other. If you combine both partisanship with racial dynamics, then gerrymandering becomes the modern-day version of political trench warfare of American politics.

This study examines the legal and political dynamics of how North Carolina's redistricting activities have shaped national dynamics. The state provided fundamental case law regarding claims of racial gerrymandering in the 1980s and 1990s. The 2000s saw the advent of state courts, especially the courts of last resort, taking the reins to shape their own influences. And in the politically polarized environment of the 2010s, North Carolina continued its role of not just clarifying the role of race in redistricting, but shaping how the courts, both at the national and state levels, dealt with partisan gerrymandering.

AN OVERVIEW

This analysis begins with the principles of redistricting, most importantly what it is and what criteria has historically served as redistricting's foundation. Following that overview, Chapter 2 presents a brief overview of North Carolina's historic redistricting activities, followed by the 1960s redistricting revolution, when the U.S. Supreme Court handed down several landmark cases to guide state legislatures' redistricting activities. The chapter also starts North Carolina's jurisprudential journey into the 1980s legal controversies over redistricting, most notably focused on race. A 1986 North Carolina case established the legal test for when racial gerrymandering claims could be litigated. In doing so, North Carolina's redistricting efforts instituted an important legal benchmark for determining when race and redistricting collided. Chapter 3 continues the legal battles over racial dynamics in redistricting into the 1990s, with another seminal case out of the Tar Heel State. In a landmark ruling based on North Carolina's congressional redistricting efforts, the U.S. Supreme Court once again set legal precedent on how race could be handled within redistricting efforts. For some states, North Carolina included, the road to legal and constitutional usage of race in redistricting was not akin to a straight interstate highway, but rather the zigs-and-zags of what was acceptable and what wasn't.

After two decades of legal wrangling, it was thought that the notion of race within redistricting had been resolved. But as Chapter 4 will show, controversies in the 2000s merely shifted from the federal to the state courts, with an important North Carolina state case that shaped the following decade's legal battles. To say the decade beginning with 2010 was consequential in North Carolina redistricting litigation is an understatement, as Chapter 5 will explore. The legal challenges and controversies in the first half of the 2010s brought into play not only continued controversies over racial gerrymandering claims, but then a battle over the most divisive aspect of redistricting. In covering the second half of the 2010-decade, Chapter 6's coverage of partisan gerrymandering focuses on North Carolina's controversy over partisanship's influence within redistricting. With these decisions, the ground shifted from the federal to state judiciaries to address what some believe is a major deficiency within America's governing system. The concluding chapter brings these different dynamics of redistricting, notably racial and political dynamics, together to create a sense of where things potentially stand for the 2021 redistricting efforts in North Carolina and beyond.

REDISTRICTING'S BASIC PRINCIPLES

Before entering redistricting's political and legal dimensions, it is useful to have the ground rules as to what drives the process. Creating districts, and the subsequent changes to those districts (redistricting), serves as a necessary component when it comes to member-assigned systems of representative governance through democratic elections. It's not just about who is elected, but who elects the representatives, and where the representative's geographic constituency is defined, that makes redistricting an important component of the American democratic-republican experiment. How districts are ultimately drawn translates election results into representative seats, and thus a "districting scheme can make some votes worth more than others."⁵ While redistricting may be viewed as "ultimately a technical task," both politics and the law shapes how those technical aspects play out.⁶

Prior to redistricting, the process of reapportionment assigns an individual representative to a set number of citizens. Following the U.S. Census counting of citizens every ten years, reapportionment divides a legislative body's membership among different geographic components. The most notable reapportionment in American politics is the division

of the 435 seats in the U.S. House of Representatives. Utilizing the constitutional requirement that every state is entitled to at least one U.S. representative, the apportionment process allocates the remaining 385 seats based on the state's population in the decennial census. That allocation process influences not just a state's U.S. House delegation. Formulaic dimensions of national policies and, just as importantly, federal dollars are often tied to a state's population totals. But when it comes to a state's Congressional membership, there is one other influence to keep in mind. A state's electoral votes for president are based on the number of Congressional members, both representatives and senators. Any increase, or worse decrease, in population has a direct consequence not just on a state's influence in the U.S. House, but also in electoral votes for the nation's elected executive. Controversies over which state gets how many U.S. representatives have been another source of legal and political controversies, and North Carolina, with the 2010 Census and reapportionment, was at the heart of the most recent battle over the 435th and last member.⁷

Once the U.S. House seats are reapportioned, states with more than one U.S representative must allocate each member to a defined geographic district. States also redistribute their own legislative bodies, typically both a house and senate, into districts to achieve one of redistricting's most important conditions, that of equal population among the districts. Thanks to the 1960s redistricting revolution, the battle over apportioned legislative membership has intensified due to the "one-person, one-vote" legal principle. For congressional districts, the U.S. Supreme Court requires that each district must be mathematically equal to the others (barring the fact that plus or minus one or two citizens is accepted for congressional districts). For state legislative districts, the court has allowed some population deviation, taking into account other redistricting criteria, principles, and constraints.

Beyond population allocation and equal distribution, redistricting activities are based on other factors. Often cited as an important traditional redistricting criterion, compact districts should have a minimum distance between all parts of the geographic territory. Another factor related to geography is contiguity, that all parts of the district must connect at some point. All fifty states require their state legislative districts to be contiguous, while forty-one require contiguous congressional districts.⁸ However, one question regarding contiguity is, how much do the 'points' of a district need to be in *actual* geographic space?

In several past North Carolina redistricting efforts, the idea of ‘point contiguity’ held sway by bringing a district lines to a singular, discrete point—but then expanding back out to continue its geographic coverage. Contiguity typically requires an actual amount of geographic space must be present to connect the district, although what that geographic space is can be up for debate (district lines utilizing water ways, for example).

The next set of traditional redistricting principles is akin to what one U.S. Supreme Court justice once labeled as his test for whether something was pornographic or not: “I know it when I see it.”⁹ Considerations of local jurisdictions and “communities of interest” have been given weight in drawing legislative lines, but they are often afforded momentary acknowledgement and then sacrificed for other considerations. Grouping counties and other political subdivisions, such as cities or townships, attempts to preserve distinctive notions of local politics within a district, with citizens often having a localized notion of who their neighbors are and what their local communities’ important issues are. Connected to sub-state jurisdictions are “communities of interest.” For example, mountain areas may share common traits that a coastal community may not. Conversely, city neighborhoods, due to race, ethnicity, or socio-economics, could be determinative of communities of interest. But what are the “common interests” shared among different communities? While respecting county borderlines or city limits give map drawers easy reference points, respecting communities of interest can be harder to define.

Finally, two traditional factors in redistricting denote the influence of partisanship outside the bounds of voter behavior and election results. Map drawers typically seek to preserve a district’s prior versions, or ‘cores.’ Respecting what has been done in the past, especially for the majority political party, helps to ensure future respect for continuity of representation. Most elected officials know their districts like the back of their hand. Moving their district lines (which inevitably happens) is akin to taking away their first born. Adhering as closely to a previous district’s shape helps incumbents preserve their name recognition and credit-claiming when it comes to ‘bringing home the bacon’ for the folks back in the district. And this traditional criterion is directly tied to the last principle: incumbent protection.

Incumbents can have a distinct upper hand when it comes to election prospects.¹⁰ Name identification, credit-claiming, and constituency services allow elected officials to demonstrate their effectiveness with