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Redistricting Reform in New Jersey

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Preface

This is the twelfth paper in NJLM Foundation's "Friends of Local Government" Policy Paper series. This paper, written by Mark J. Magyar, is titled, "**Redistricting Reform in New Jersey.**"

This paper provides a brief history of the State and Federal Redistricting process in the Garden State, with a particular focus on the recent redistricting. Mr. Magyar offers his comments on these processes and offers his commentary for reform going forward.

The Board of the NJLM Educational Foundation thanks Mr. Magyar for this paper and his ongoing contributions to the public dialogue.

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Mark J. Magyar coauthored "Redistricting and the Politics of Reform" with Donald Scarinci in 2010, and covered the 2011 legislative and congressional redistricting commissions for New Jersey Spotlight, where he serves as Editor-at-Large. A veteran Statehouse correspondent and public policy analyst, he served as deputy chief of policy and planning in the Whitman administration and as policy director for the independent Daggett for Governor campaign in 2009.

For more of Mr. Magyar's work, please visit the NJ Spotlight website at: <http://www.njspotlight.com/>

Redistricting Reform in New Jersey

More than any other state, New Jersey has a history of innovation and reform in redistricting, the process through which states redraw legislative and congressional lines after each Census to reflect population shifts in order to ensure that lawmakers represent about the same number of voters.

During the Constitutional Convention of 1787 that required congressional reapportionment once a decade, New Jersey delegates William Paterson and David Brearley, who were the intellectual leaders of the “small states,” suggested a radical proposal that would have erased all state boundaries every decade and created 13 equal districts, thus eliminating the issue of large state vs. small state representation that was then dividing the convention.¹

When the U.S. Supreme Court issued its historic one-man, one –vote rulings in 1964, it was the special New Jersey Constitutional Convention two years later that created the nation’s first redistricting commission, taking control over legislative redistricting from the governor and the legislature. The constitutional amendment, which was approved overwhelmingly by voters, gave Democrats and Republicans equal representation on the panel and empowered the state’s Supreme Court chief justice with the power to appoint an independent, neutral tie-breaker to choose a winning map if the two partisan delegations failed to reach agreement.

The bipartisan commission with a neutral tie-breaker proved so successful that in 1990, New Jersey became the first state to establish a separate bipartisan commission with a neutral tie-breaker to oversee congressional redistricting.²

Today, 16 states – about one-third of the total – entrust legislative and/or congressional redistricting to bipartisan or independent commissions, and eight use the bipartisan commission with neutral tie-breaker method that New Jersey pioneered.

The commission approach was not designed to take the politics or the partisanship out of the redistricting process. Indeed the attendees at New Jersey’s 1966 Constitutional Convention expected redistricting to remain “an intensely political process, but ... no longer a biased political process.”³

Unlike other states, New Jersey vested the power to appoint members of its legislative redistricting commission not in the hands of governors, legislative leaders or other elected officials, but in the two state party chairmen.

¹ Scarinci, Donald, “David Brearley and the Making of the United States Constitution,” pp. 159-160.

² Scarinci, Donald and Magyar, Mark. J., “Redistricting and the Politics of Reform,” pg. 123.

³ Stokes, Donald E., “Legislative Reapportionment in New Jersey: A Report Prepared for the Fund for New Jersey,” pg 7.

According to Princeton University political scientist Donald Stokes, who served twice as the commission's neutral tie-breaker, "this provision reflected the framers' belief that party control is what reapportionment is, and should be, about," and that "the party chairmen are responsible for thinking in terms of overall control of the state government"⁴ – unlike governors or legislative leaders who might use that power to punish their enemies, or individual legislators who would simply be worried about protecting their own seats.

Furthermore, this decision reflected the belief that party officials closely attuned to election results and voting patterns would be more likely to understand and respect the relationships between incumbents and their constituent districts, the political and social "communities of interest" that make up New Jersey, and the interests of racial and ethnic minorities, than a neutral commission or judges coming in as political neophytes without a thorough understanding of New Jersey's political rhythms and realities.

Over the years, bipartisan redistricting commissions with neutral tie-breakers have produced model maps and outrageous gerrymanders, bipartisan consensus and partisan walkouts, quick agreements and lengthy lawsuits stretching out for years, and the practice followed by New Jersey Supreme Court Chief Justices of appointing political science professors to serve as neutral tie-breakers has guaranteed that they come in with an understanding of New Jersey electoral politics.⁵

Because the commission approach gives both parties an equal voice in a process that resembles collective bargaining – with binding arbitration thrown in at the end in those states with neutral tie-breakers – the redistricting panels tend to produce maps that are less partisan and less extreme than those that would be passed in states where one party controls both the governorship and the state legislature. This was the expectation of the 1966 Constitutional Convention delegates, who believed that there would be still gerrymandering under the commission approach, but "it will not be as blatant and drastic" as it would have been if the governor and legislature had remained in charge.⁶

New Jersey's redistricting commissions, like most reforms, grew as much out of partisan self-interest as a concern for "good government."

Indeed, New Jersey Republicans proposed the first legislative redistricting commission in 1966 because they feared that the U.S. Supreme Court's one-man, one-voting rulings would end decades of GOP control of the state Senate by striking down the century-old practice of awarding

⁴ Stokes, pp 6-7.

⁵ Scarinci and Magyar, pg. 70.

⁶ Reock, Ernest C., Jr., "Unfinished Business: The New Jersey Constitutional Convention of 1966," pg. 218.

one senator to each county – a practice that enabled 11 rural Republican counties representing 27 percent of the population to control what was then a 21-member Senate.

For similar reasons, it was New Jersey Democrats who passed legislation to create a congressional redistricting commission because they knew that the wave of voter anger over Democratic Gov. Jim Florio's \$2.8 billion tax increase would sweep in Republican majorities in the 1991 legislative elections, giving the GOP control over congressional redistricting if they failed to act.

The bipartisan commission with neutral tie-breaker represented the cutting edge of redistricting reform from the 1960s through the 1990s. Indeed, the neutral tie-breaker approach provides an equal opportunity for each party to propose new ideas and approaches. That's what the out-of-power New Jersey Democrats did in 2001 when they disregarded years of U.S. Voting Rights Act precedents and persuaded the neutral tie-breaker that shifting thousands of minority voters out of majority-minority districts into "minority opportunity districts" where they would make up 30 percent to 40 percent of the population would result in the election of more minority legislators than maintaining overwhelming African-American or Hispanic majorities in urban districts.

The creation of "minority opportunity districts" in the 2001 legislative redistricting was an anomaly, however – an example of the triumph of a philosophical vision over the usual back-and-forth swap of Democratic and Republican voters to create safe districts for most incumbents and only a handful of districts where races are truly competitive without a voter backlash on the level of the 1973 anti-Watergate backlash or the 1991 tax revolt that swept first the Democrats and then the Republicans into two-thirds majorities in both houses.

The legislative and congressional redistricting maps completed in 2011 by New Jersey's two redistricting commissions are symptomatic of the failure of the current system to create competitive districts – an issue that has drawn increased attention due to the rise in the number of self-described independent voters and voter dismay over the increasing partisanship of party leaders and elected officials in Washington and Trenton.

However, Alan Rosenthal, the Rutgers University professor who served as independent tie-breaker for the 2011 legislative redistricting commission and previously for the 1991 and 2001 congressional reapportionment panels, made it clear in his opening statements as chairman that he valued "continuity of representation" over the creation of competitive districts.

Patrick Murray, a Monmouth University political scientist, and Ingrid Reed, former director of the New Jersey Project at Rutgers University's Eagleton Institute, both argued that competition was more important than protecting incumbents, that competitive elections increase voter turnout and make elected officials responsible to their constituents for their votes, and that non-competitive districts tend to increase partisanship because the only real races are in party primaries dominated by more ideological voters.

"I speak to you as an independent voter, one of 2.1 million in New Jersey. In competitive districts, we would make the difference," Murray told the commission in proposing a map that would have created seven or eight competitive districts. "This would allow both parties the opportunity to have a majority in the legislature. Having competitive districts also increases media interest and voter attention. A competitive map is a fairer map in every sense of the word,"

Despite Murray's plea, Democrat commission members, whose party controlled the Senate 24-16 and the Assembly 47-33, "gave the teacher what he wanted," as state Democratic Chairman John Wisniewski put it, and Rosenthal chose the Democratic map over a Republican proposal that would have created at least a handful of competitive districts.

New Jersey's new legislative map, which will be in place through the 2019 elections, favored both Democratic and Republican incumbents so heavily that Republican Governor Chris Christie campaigned only half-heartedly for his party's challengers. In the end, every Democratic incumbent in both the Senate and Assembly won reelection, and the only seat that changed hands was that of a Republican assemblyman in a split district whose hometown was moved into a Democratic-leaning district.

Murray correctly predicted the results four months before the election:

"This would allow both parties the opportunity to have a majority in the legislature. Having competitive districts also increases media interest and voter attention. A competitive map is a fairer map in every sense of the word," Murray said. Directly addressing Rosenthal again, he said, "I urge you to consider a more proactive definition of competitiveness -- one that creates six or eight or ten competitive legislative districts."

Congressional redistricting, with Rutgers-Newark Law School Dean John Farmer Jr. serving as the independent tie-breaker, produced similar results.

With New Jersey losing one of its 13 congressional seats because its population grew more slowly than the nation as a whole in the 2010 Census, New Jersey's congressional redistricting commission had the opportunity to create a perfectly competitive district. New Jersey had seven Democratic House members and six Republican incumbents, all of whom were planning to run for reelection.

At the least, the New Jersey panel could have created a map with safe districts for six Democratic and five GOP incumbents, and a competitive district in North Jersey matching up a Democratic congressman against a Republican. That is what Connecticut's bipartisan congressional redistricting commission with an independent tie-breaker did in 2001 when population loss required its evenly split six-member House delegation to be reduced to five members, and that is what Democratic commission members proposed in a map that would have matched Republican

Rep. Scott Garrett against Democratic Rep. Steven Rothman in an evenly matched district stretching across the state's northern border from Bergen to Sussex counties.

Farmer, however, selected a GOP-proposed map that essentially created a safe map for six Democratic incumbents and six Republicans. Rothman's hometown did end up in a district with Garrett's hometown, but Garrett had such an edge in GOP voter registration in his new district that Rothman opted to move into a neighboring district and challenge fellow Democratic incumbent Rep. William Pascrell in the primary instead.

As a result, Rothman and Pascrell will be using their million-dollar war chests in a Democratic primary in which each will try to prove that he is more liberal and more pro-President Obama than the other, rather than having Rothman facing off against Garrett in what would have been a battle of competing liberal vs. conservative ideologies in a truly competitive district. The Democratic challenger who takes on Garrett will start out underfunded facing an uphill battle in a solidly Republican-leaning district.

Civics lessons aside, New Jersey voters can be excused for their low turnout in legislative and congressional midterm elections when their votes don't really count.

"Party leaders don't like competition, but competitive elections are in the people's interest," Reed said during legislative redistricting. "Competitive elections increase turnout because people vote when they know their votes count. They hold legislators responsible for their votes. It's what democracy is supposed to be about."

The idea that the practice of democracy is too important to be left to political party leaders underlies the latest wave of redistricting reform.

It started in 1980 in Iowa with the passage of a new redistricting approach that vested the power to draw new legislative and congressional district lines with Iowa's nonpartisan Legislative Services Commission – the equivalent of New Jersey's respected Office of Legislative Services, which provides nonpartisan analysis to the state legislature.

Iowa's redistricting reform gives its legislature and governor the opportunity to reject up to two maps submitted by the Legislative Services Commission, but with the proviso that each map will be closer to equal population size than the map before. Iowa has yet to reach that point, with its legislature and governor signing off on the first or second map in 1981, 1991, 2001 and again last year because they did not want to box themselves into the "either-or" position of having to accept the final map, undertake the task of redistricting itself, or hand off responsibility to the high court.

In the 2001 redistricting round, Arizona went to great lengths to create a five-member commission insulated as much as possible from the influence of legislative leaders by having hundreds of candidates for the commission -- which would consist of two registered Democrats, two registered Republicans and one independent -- interviewed and screened by a judicial panel, rather than having the partisan members appointed by political leaders. Expectations that the new

commission would be successful in creating competitive districts were undermined by the need to draw majority-minority districts for Hispanic, African-American and Native American groups, and the map-making process dragged through the Arizona courts for most of the decade.

The most interesting reform, however, was adopted through the initiative-and-referendum process in California, however.

California's proposal follows Arizona's lead in having commission members selected by a neutral board of auditors, but it goes far beyond Arizona in giving a voice to independent voters. California's reform commission, which just completed its first set of maps, consists of five Democrats, five Republicans and four independents – and three members of each group must agree in order to approve a map.

California's redistricting law, as approved by the voters, expressly bars commission members from considering where incumbents live and, like Arizona, it encourages the creation of competitive districts where possible as one of its explicit redistricting criteria.

California's approach virtually guarantees that the interest of the general public – not just that of the political parties and its incumbent politicians – is met through the redistricting process.

It is a reform worth considering for New Jersey, although it could be modified to allow party leaders to appoint one or two of the Democratic or Republican commission members to ensure that their expertise and views are considered as part of the redistricting process. The requirement that three out of five Democrats, three out of five Republicans and three out of four independents vote to approve any map presumably should eliminate any concern about party leaders somehow dominating the process.

New Jersey should also give priority to the creation of competitive districts where they do not adversely affect the creation of majority-minority districts as required under the U.S. Voting Rights Act – a provision that would have covered only two or three congressional districts out of 12 and perhaps eight legislative districts out of 40 during the last redistricting round.

New Jersey should also encourage the creation of congressional districts, in particular, that conform with “communities of interest,” are more compact and respect county lines. Our state's congressional districts currently sprawl haphazardly across counties on east-west lines, at times reaching almost from the Delaware River to the New Jersey Shore, while our “communities of interest” run north-south along the New Jersey Turnpike and Route 1, the Garden State Parkway and Route 9, Routes 295 and 130. Compact districts that followed these transportation corridors would more likely guarantee congressional representation to Ocean County, the state's sixth-largest and fastest-growing county.

Finally, New Jersey should reform its redistricting law to require publication of any proposed map one week before it is adopted. While this would certainly increase the heat on commission members, the public deserves the opportunity to comment on whether district lines conform with

their views of what constitutes “communities of interest” and whether the commission has met its mandate to provide competitive districts where possible and protected minority interests where needed.

The process of choosing the voters who will select our state’s lawmakers is too important to be left to politicians alone.