

2013

The Controversy of Redistricting in Minnesota

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Boese, Brandon L. (2013) "The Controversy of Redistricting in Minnesota," *William Mitchell Law Review*: Vol. 39: Iss. 4, Article 10.
Available at: <http://open.mitchellhamline.edu/wmlr/vol39/iss4/10>

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THE CONTROVERSY OF REDISTRICTING IN MINNESOTA

Brandon L. Boese[†]

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I. INTRODUCTION

Every ten years, the United States Constitution mandates that a census be taken to determine the population of the entire country.¹

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1. U.S. CONST. art. I, § 2, cl. 3 (“Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers Enumeration shall be made within three Years after the first Meeting of the Congress . . . and within every subsequent Term of ten Years . . .”).

Although the data collected by the U.S. Census Bureau is used for a multitude of reasons,² the primary, constitutionally mandated purpose for the census is to apportion the 435 seats of the U.S. House of Representatives between the states.³ The Supreme Court has interpreted Article I, Section 2 to require that each congressional district be equal in population.⁴ Thus, if it is determined that a state's congressional districts are not equal, the state must redraw its districts to meet the equal population requirement.⁵ Most states also use the census numbers to determine the make-up of their own state legislatures,⁶ and thus, the U.S. Supreme Court has held that state legislative districts must also be of roughly equal populations.⁷

Because of these requirements, each state must determine how many people live in its legislative and congressional districts every ten years.⁸ If a state's districts are not of equal populations, the state is mandated to redraw its district lines in order to conform with the Constitution's requirement of equal representation. This

2. See *The Constitution, the Congress and the Census: Representation and Reapportionment*, U.S. CENSUS BUREAU (June 14, 2010, 1:38:53 PM), <http://www.census.gov/dmd/www/dropin7.htm> ("Community leaders use the census for everything from planning schools and building roads to providing recreational opportunities and managing health care services.").

3. U.S. CONST. art. I, § 2, cl. 3; see *The Constitution, the Congress and the Census*, *supra* note 2.

4. The plain objective of Article I, Section 2 is to make "equal representation for equal numbers of people the fundamental goal for the House of Representatives." *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964). The "equal representation" standard requires that congressional districts achieve population equality "as nearly as is practicable." *Id.* at 7–8. The "as nearly as is practicable" standard requires that "the state make a good-faith effort to achieve precise mathematical equality." *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969). Therefore, the Constitution only permits "the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Id.* at 531.

5. See *Wesberry*, 376 U.S. at 7–8 (holding that the Constitution requires that one man's vote in a congressional election must be worth as much as another's); see also U.S. CONST. amend. XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

6. See *The Constitution, the Congress and the Census*, *supra* note 2.

7. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) ("The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens [T]he Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.").

8. A legislative district refers to the territory that each state legislator represents, while a congressional district refers to the territory that each member of the United States House of Representatives represents.

process, known as “redistricting,” has become a very heated and political debate as politicians and civic leaders attempt to control the process in order to draw maximally beneficial maps for their respective parties.⁹

In Minnesota, and in most states around the country, the state legislature is charged with the responsibility of redrawing both the congressional and the legislative districts every ten years.¹⁰ If the legislature is unable to come to an agreement on an appropriate redistricting plan, the task of redistricting falls on the shoulders of the Minnesota Supreme Court.¹¹ Because the state legislature has failed to enact acceptable redistricting maps in recent memory¹²—leaving the courts to decide this controversial and political issue for Minnesotans every ten years—questions arise as to whether Minnesota’s redistricting method is really the most effective and efficient way. While most states use a method of redistricting that mirrors Minnesota’s, opponents of the method argue that redistricting is an inherently political process and should not be done by the same legislators that stand to benefit from it. They also argue that this political process directly conflicts with the judiciary’s role as a politically neutral entity.¹³

While these arguments do have some merit, the fact that Minnesota’s judiciary has redistricted the state over the past few census cycles does not imply that Minnesota’s system must be completely reformed. Indeed, the Supreme Court has encouraged

9. See Tim Pugmire, *Control over Redistricting, ‘a Secret Perk,’ at Stake in Election*, MINN. PUB. RADIO NEWS (Oct. 1, 2010), <http://minnesota.publicradio.org/display/web/2010/10/01/redistricting> (“[M]any incumbent legislators view redistricting as a secret perk . . . [and] ‘it is entirely based on each party trying to maximize the number of districts that tilt in their direction.’” (quoting Larry Jacobs, political science professor, University of Minnesota)).

10. MINN. CONST. art. IV, § 3 (“[T]he legislature shall have the power to prescribe the bounds of congressional and legislative districts.”).

11. See *Grove v. Emison*, 507 U.S. 25, 34 (1993) (“The Minnesota Special Redistricting Panel’s issuance of its [redistricting] plan (conditioned on the legislature’s failure to enact a constitutionally acceptable plan in January) . . . was precisely the sort of state judicial supervision of redistricting we have encouraged.”).

12. See Peter S. Wattson, *History of Minnesota Redistricting*, MINN. LEGISLATURE, <http://www.gis.leg.mn/html/redist-hist.pdf> (last updated July 7, 2010, 12:49 PM). The last time the state legislature passed a constitutionally sound legislative redistricting plan was in 1966. *Id.* at 2. Since the 1970 census, the Minnesota Supreme Court has had to adopt its own maps for legislative redistricting. *Id.* at 3–5.

13. See Thomas J. Kalitowski & Elizabeth M. Brama, *Should Judges Get Out of Redistricting?*, BENCH & B. MINN., Mar. 2004, at 19, 19.

this type of judicial supervision over redistricting.¹⁴ Therefore, the fact that the Minnesota legislature has not been able to promulgate redistricting maps in recent years does not indicate that Minnesota's method should simply be abandoned. This is not to say, however, that some reforms are unnecessary. By implementing statutory, politically neutral standards that both the legislature and the judiciary must adhere to when redistricting, much of the politics that plagues the process can be greatly reduced. These reforms remove some of the biases that critics are wary of while allowing the responsibility of redistricting to remain with the legislature—the branch of government elected to make decisions in the best interest of the public. Also, by promulgating these standards, the legislature is still able to play a role in the process, even if the task of redistricting ultimately falls on the courts.

This note initially provides an overview of Minnesota's redistricting method, using the 2010 redistricting battle as an illustrative demonstration of the process.¹⁵ This overview is followed by a discussion of the most common problems and criticisms of the way Minnesota redistricts.¹⁶ Minnesota's method is not the only way for a state to redistrict, and examples of two alternative processes are surveyed in Part IV.¹⁷ This note concludes with an analysis of the advantages, disadvantages, and effectiveness of the different methods,¹⁸ and advocates that while Minnesota should remain cautious about a complete overhaul of the redistricting process, it should consider reforming its current method by implementing statutorily defined redistricting standards to be applied by both the legislature and the judiciary.¹⁹

II. THE MINNESOTA METHOD

The Minnesota Constitution states, "At its first session after each enumeration of the inhabitants of this state . . . the legislature shall have the power to prescribe the bounds of congressional and legislative districts."²⁰ In other words, Minnesota gives the power to redistrict to the legislative branch. The legislature performs this

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14. *Grove*, 507 U.S. at 34.
 15. *See infra* Part II.
 16. *See infra* Part III.
 17. *See infra* Part IV.
 18. *See infra* Part V.
 19. *See infra* Part VI.
 20. MINN. CONST. art. IV, § 3.

responsibility through the traditional legislative process—a bill enunciating the redistricting plan is passed by each house of the legislature and becomes law after being signed by the governor.²¹ Redistricting must be completed no later than twenty-five weeks before the state primary election in the second year of each decade,²² and if the legislature and the governor are unable to agree on a plan, the responsibility of drawing constitutionally sound districts falls on the state judicial branch.²³

In early March 2010, census forms were delivered to every household throughout the United States.²⁴ By December 21, 2010, the U.S. Census Bureau announced its final state-by-state population counts, which indicated that Minnesota would keep its eight congressional seats.²⁵ The following day, the Minnesota House of Representatives announced the members of the 2011–2012 Redistricting Committee (which included seven Republicans and five Democrats),²⁶ and on March 16, 2011, Minnesota received its official, detailed population totals for the entire state.²⁷

The Minnesota House Redistricting Committee began meeting

21. *Hippert v. Ritchie*, 813 N.W.2d 374, 378 (Minn. 2012).

22. MINN. STAT. § 204B.14, subdiv. 1(a) (2010) (“It is the intention of the legislature to complete congressional and legislative redistricting activities in time to permit counties and municipalities to begin the process of reestablishing precinct boundaries as soon as possible after the adoption of the congressional and legislative redistricting plans but in no case later than 25 weeks before the state primary election in the year ending in two.”). The 2012 Minnesota primary election was August 14, thus the statutory redistricting deadline was February 21, 2012.

23. See *Scott v. Germano*, 381 U.S. 407, 409 (1965) (holding that “[t]he power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged”).

24. *2010 Census Forms Arrive in 120 Million Mailboxes Across Nation*, U.S. CENSUS BUREAU (Mar. 15, 2010), http://www.census.gov/newsroom/releases/archives/2010_census/cb10-cn14.html.

25. Tom Scheck, *Minnesota Keeps 8 Seats*, MINN. PUB. RADIO NEWS (Dec. 21, 2010, 10:54 AM), http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2010/12/minnesota_keeps.shtml.

26. Rachel E. Stassen-Berger, *Here’s the MN House Committee Membership*, STAR TRIB. (Dec. 22, 2010, 6:06 PM), <http://www.startribune.com/politics/blogs/112344804.html>.

27. *U.S. Census Bureau Delivers Minnesota’s 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting*, U.S. CENSUS BUREAU (Mar. 16, 2011), http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn89.html. This data provided more in-depth information such as populations of political subdivisions, race and ethnic group populations, housing unit data, and other information that assists with redistricting. See *id.*

on January 11, 2011, and continued to meet as a committee into May of the same year.²⁸ The committee heard testimony from many groups and individuals representing various geographical, economic, and ethnic groups throughout the state.²⁹ On April 11, 2011, Representative Sarah Anderson (R-43A), chair of the Redistricting Committee, introduced two bills outlining a plan for congressional and legislative redistricting.³⁰ The Republican-controlled House passed the legislative redistricting bill on May 6, 2011,³¹ and the congressional redistricting bill on May 13, 2011.³² On May 17, 2011, the Republican-controlled Senate passed both bills,³³ but these bills were promptly vetoed by the governor, a Democrat, the following day.³⁴

While the aforementioned legislative process was being carried out in the Minnesota House and Senate, a related proceeding was taking place in the Minnesota judiciary. On January 21, 2011, a lawsuit was filed in Wright County District Court alleging that based on the 2010 census, the current legislative and congressional districts were no longer equal in population and thus unconstitutional.³⁵ Four days later, the petitioners requested that

28. *Redistricting Committee Meeting Minutes 2011–2012*, MINN. HOUSE REPRESENTATIVES, <http://www.house.leg.state.mn.us/comm/committee.asp?comm=87016> (last visited on Jan. 22, 2013).

29. This included representatives from groups such as the Minnesota Association of Townships, the League of Women Voters, and the Council on Black Minnesotans. See Minn. House Redistricting Comm., *Eighth Meeting Minutes*, MINN. HOUSE REPRESENTATIVES (Mar. 8, 2011), http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=87016&id=337&ls_year=87; Minn. House Redistricting Comm., *Ninth Meeting Minutes*, MINN. HOUSE REPRESENTATIVES (Mar. 14, 2011), http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=87016&id=398&ls_year=87; Minn. House Redistricting Comm., *Tenth Meeting Minutes*, MINN. HOUSE REPRESENTATIVES (Mar. 21, 2011), http://www.house.leg.state.mn.us/comm/minutes1.asp?comm=87016&id=425&ls_year=87.

30. See H.R. 1425, 87th Leg., Reg. Sess. (Minn. 2011) (legislative redistricting bill); H.R. 1426, 87th Leg., Reg. Sess. (Minn. 2011) (congressional redistricting bill).

31. H.R. JOURNAL, 87th Leg., Reg. Sess. 3374 (Minn. 2011), available at <http://www.house.leg.state.mn.us/cc/journals/2011-12/J0506050.htm#3374>.

32. *Id.* at 3722, available at <http://www.house.leg.state.mn.us/cc/journals/2011-12/J0513055.htm#3722>.

33. S. JOURNAL, 87th Leg., Reg. Sess. 2117–18 (Minn. 2011), available at <http://www.senate.leg.state.mn.us/journals/gotopage.php?session=ls87&number=2118>.

34. H.R. JOURNAL, 87th Leg., Reg. Sess. 4984 (Minn. 2011), available at <http://www.house.leg.state.mn.us/cc/journals/2011-12/J0523064.htm#4984>.

35. Complaint at 12, *Hippert v. Ritchie*, No. 86-CV-11-433 (Minn. Dist. Ct. Jan. 21, 2011), available at <http://www.mncourts.gov/Documents/0/Public>

the chief justice of the Minnesota Supreme Court appoint a special judicial redistricting panel to oversee the redistricting process because the parties believed that the legislature was unlikely to come to an agreement on a redistricting plan.³⁶ The chief justice granted the petitioners' request but stayed the appointment of the special redistricting panel and any further proceedings until the state legislature had the opportunity to enact redistricting plans.³⁷

Immediately after the Governor rejected the House's redistricting plan, the petitioners filed a motion to lift the chief justice's stay on the appointment of the special judicial redistricting panel.³⁸ On June 1, 2011, the chief justice appointed a Special Redistricting Panel to hear and decide all matters regarding the legislative and congressional redistricting.³⁹ This five-judge panel⁴⁰ was charged with the responsibility to design and implement both congressional and legislative redistricting plans if the legislature and the Governor failed to enact their own statutorily and constitutionally valid plans before the constitutional deadline.⁴¹

On February 21, 2012, the Special Redistricting Panel issued two orders—one adopting a legislative redistricting plan and the

/Court_Information_Office/2011Redistricting/01_-_Complaint.pdf.

36. Petition for Appointment of Special Redistricting Panel, *Hippert v. Ritchie*, No. A11-152 (Minn. Jan. 25, 2011), *available at* http://www.mncourts.gov/Documents/0/Public/Court_Information_Office/2011Redistricting/02_-_Petition_for_Appointment_of_SRP.pdf.

37. Order, *Hippert*, No. A11-152 (Feb. 14, 2011), *available at* http://www.mncourts.gov/Documents/0/Public/Court_Information_Office/2011Redistricting/A110152Order2.14.11.pdf.

38. Motion to Lift Stay and Appoint Panel, *Hippert*, No. A11-152 (May 18, 2011), *available at* http://www.mncourts.gov/Documents/0/Public/Court_Information_Office/2011Redistricting/08_-_Motion_to_lift_stay_and_appoint_panel.pdf.

39. Order, *Hippert*, No. A11-152 (June 1, 2011), *available at* http://www.mncourts.gov/Documents/0/Public/Court_Information_Office/2011Redistricting/A110152Order6.1.11.pdf.

40. This panel consisted of the following judges: Wilhelmina Wright, presiding judge (Jesse Ventura (I) appointee), Ivy Bernhardson (Tim Pawlenty (R) appointee), James Florey (Arne Carlson (R) appointee), Edward Lynch (Rudy Perpich (D) appointee), and John Rodenberg (also a Ventura appointee). Elizabeth Dunbar, *Judges Appointed to Redistricting Panel*, MINN. PUB. RADIO NEWS (June 2, 2011), <http://minnesota.publicradio.org/display/web/2011/06/02/redistricting-panel> [hereinafter Dunbar, *Judges Appointed*]. It is also worth noting that Chief Justice Lorie Gildea is a Pawlenty appointee. Elizabeth Dunbar, *Gildea Named to Take Magnuson's Place on High Court*, MINN. PUB. RADIO NEWS (May 13, 2010), <http://minnesota.publicradio.org/display/web/2010/05/13/magnuson-replacement>.

41. Dunbar, *Judges Appointed*, *supra* note 40.

other adopting a congressional redistricting plan—as the state legislature was unable to enact a plan as mandated by the Minnesota Constitution.⁴² In determining an appropriate plan, the Special Redistricting Panel sought out information from numerous sources. Each group of plaintiffs to the action submitted proposed redistricting maps⁴³ and participated in oral argument on the proposed plans.⁴⁴ The Special Redistricting Panel also considered the House Redistricting Committee’s record, held eight public hearings across the state, and received written comments and maps from the public in order to receive as much input as possible.⁴⁵

The Special Redistricting Panel stated, “When the judicial branch performs redistricting, it lacks the political authority of the legislative and executive branches and, therefore, must act in a restrained and deliberative manner to accomplish the task.”⁴⁶ To that end, the panel stated that it utilized the following “politically neutral redistricting principles”:

- (1) drawing districts with a maximum deviation of two percent from the ideal population;
- (2) drawing districts without the purpose or effect of denying or abridging the voting rights of any United States citizen on account of race, ethnicity, or membership in a language minority group;
- (3) drawing districts that consist of convenient, contiguous territory structured into compact units;
- (4) drawing districts that represent political subdivisions;
- (5) preserving communities of interest; and
- (6) drawing districts without the purpose of either

42. *Hippert v. Ritchie (Hippert I)*, 813 N.W.2d 374 (Minn. 2012) (legislative redistricting plan); *Hippert v. Ritchie (Hippert II)*, 813 N.W.2d 391 (Minn. 2012) (congressional redistricting plan).

43. In both *Hippert* cases, there were three groups of plaintiffs: the “Hippert” group, the “Martin” group, and the “Britton” group. Devin Henry, *DFL Maps a Lesson in Partisan Redistricting*, MINNPOST (Nov. 30, 2011), <http://www.minnpost.com/dc-dispatches/2011/11/dfl-maps-lesson-partisan-redistricting>. The Hippert Plaintiffs represented the interests of the Minnesota Republican Party, and their proposed map was identical to the maps passed by the Minnesota Legislature; the Martin Plaintiffs represented the interests of the Minnesota Democratic-Farmer-Labor Party (DFL) (Martin is the state DFL chair); and the Britton Plaintiffs also represented the interests of the DFL and provided a contingency map. *Id.*

44. *Hippert I*, 813 N.W.2d at 379–80.

45. *Id.* at 380. Examples of comments include the “sovereignty and interests of federally recognized Indian tribes,” regionally shared governmental and educational services, and “communities of interest that span counties.” *Id.*

46. *Id.* at 378.

protecting or defeating incumbents.⁴⁷

The panel also utilized a “least-change” strategy where possible, which meant that it began the process using the “old” maps as a starting point and only modified them enough to satisfy the equal representation requirement.⁴⁸ The panel also stated that the plan was not drawn with the purpose to infringe on any citizen’s voting rights on account of race or ethnicity and thus complied with both the United States Constitution and the Voting Rights Act.⁴⁹ Finally, the panel determined that the implemented plan did not “result in either undue incumbent protection or excessive incumbent conflicts.”⁵⁰ Thus, the legislative and congressional district boundaries determined by the Special Redistricting Panel went into effect for the 2012 election cycle.

III. CRITICISM OF THE MINNESOTA METHOD

Recently, there has been much criticism over the process that Minnesota employs for legislative and congressional redistricting.

Redistricting by the legislature draws criticism because legislators are, in essence, choosing who votes for them.⁵¹ Each political party attempts to draw a map with as many districts that will lean in its favor. Mike Dean, Executive Director of Common Cause Minnesota, asserts, “Technology has evolved . . . over the last 30 years, where politicians are . . . able to craft districts to their own advantage That creates a process where we have elections that are not competitive, where . . . the outcome of the election is a foregone conclusion”⁵² Thus, critics argue, leaving the

47. *Id.* at 379 (footnote omitted) (citations omitted). The principles enunciated in the text were outlined in the first *Hippert* case and therefore were specifically relevant for legislative redistricting. In the second *Hippert* case, the court enunciated similar, yet slightly different principles for congressional redistricting:

(1) adherence to the United States Constitution; (2) adherence to the Voting Rights Act of 1965; (3) adherence to Minnesota’s statutory requirements for congressional redistricting, such as drawing districts that comprise convenient, contiguous territory; (4) adherence to well-established redistricting principles, such as creating compact districts and preserving communities of interest; and (5) drawing districts without the purpose of either protecting or defeating incumbents.

Hippert II, 813 N.W.2d at 395 (footnote omitted) (citations omitted).

48. *Hippert I*, 813 N.W.2d at 380.

49. *Id.* at 384.

50. *Id.* at 386.

51. See Pugmire, *supra* note 9.

52. *Id.*

redistricting process to the legislature only promotes political and self-interested map drawing by a partisan legislature.⁵³

Another criticism is that both the legislature and the judiciary are involved in the process, yet both branches serve two very different purposes. While redistricting is mandatory to ensure that each citizen's vote is equal,⁵⁴ it has become a political duel, with both parties fighting for as much of a political advantage as possible.⁵⁵ Critics assert that this type of jockeying for political advantages is not well-suited for a state judiciary that is tasked with the responsibility of remaining politically neutral.⁵⁶ And while it is true that the state legislature has the first responsibility for redistricting, Minnesota's history has demonstrated that the judiciary plays an active role in the redistricting process—the Minnesota legislature has not enacted its own plan since 1966, and even that plan could not escape its fair share of judicial involvement.⁵⁷ Critics state that the judicial branch must be perceived by the public as a politically neutral entity in order for the citizenry to have confidence that the courts are making impartial and unbiased decisions.⁵⁸

On the same note, critics assert that having the courts as a fallback option if the legislature fails to enact a redistricting plan gives the legislature less reason to actually attempt to negotiate.⁵⁹ Politicians in the legislature may not be willing to negotiate earnestly if they assume that the courts are ultimately going to end up drawing the maps anyway.⁶⁰ By having the courts as a safety net,

53. See Rachel E. Stassen-Berger, *Minnesota's Former Leaders Call for a New Redistricting System*, STAR TRIB., Mar. 8, 2011, <http://www.startribune.com/politics/117591033.html>.

54. See *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (“The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.”).

55. See Kalitowski & Brama, *supra* note 13, at 19.

56. *Id.*

57. See Wattson, *supra* note 12, at 2. The legislature's 1959 plan was declared invalid by *Honsey v. Donovan*, 236 F. Supp. 8 (D. Minn. 1964). *Id.* In 1965, the Legislature passed a new redistricting bill, which was vetoed by the Governor. *Id.* An approved plan was eventually passed into law in 1966. *Id.* Ever since then, the judiciary has had to intervene and implement a court-approved plan for legislative redistricting. *Id.* at 3–5.

58. See Kalitowski & Brama, *supra* note 13, at 19.

59. Lawrence R. Jacobs, *Redistricting Reform to Fix a Broken System and Restore Competition*, MIDWEST DEMOCRACY NETWORK 2 (Jan. 2008), http://www.midwestdemocracynetwork.org/files/pdf/Redistricting_Reform.pdf.

60. *Id.*

there is no incentive for politicians to give up any ground during the legislative process of redistricting—they know that if they do not come to a decision and the courts draw a map they do not agree with, they can use the courts as a scapegoat when campaigning in the following election season.

A fourth criticism of the Minnesota process is that a lawsuit is required in order to get the courts involved in the redistricting process. These suits are usually based on the fact that the current legislative districts are unconstitutional because they violate both the Equal Protection Clause of the Fourteenth Amendment⁶¹ and the Civil Rights Act.⁶² Parties spend hundreds of thousands of dollars in legal fees during this judicial process.⁶³ While the Civil Rights Act allows the awarding of attorney's fees to parties that prevail in suits under the Act,⁶⁴ the parties will likely spend much more throughout the process than what they actually end up receiving.⁶⁵ Thus, questions arise as to the necessity of individuals and/or groups having to spend hundreds of thousands of dollars to implement something that is constitutionally mandated.

Others have been critical of the lack of public input that is available to the decision makers during redistricting. In the 2011 cycle, the Special Redistricting Panel traveled throughout the state to hear public comments.⁶⁶ They also invited members of the public to submit their own maps.⁶⁷ Critics, however, stated that while the public was allowed to give input, the window for that input closed before the Panel announced the criteria to be used in determining Minnesota's districts.⁶⁸

61. See, e.g., Complaint, *supra* note 35, at 9–10.

62. 42 U.S.C. § 1983 (2006).

63. See, e.g., Order Awarding Attorney Fees and Costs at 16–20, *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Aug. 16, 2012), available at http://www.mncourts.gov/Documents/0/Public/Court_Information_Office/2011Redistricting/A110152Order_-_Taxation_of_Costs-Disbursements_andor_Atty_Fees.pdf. The Hippert Plaintiffs sought \$225,000 in attorney's fees from the state (their documentation indicated that one firm billed them over \$400,000 in attorney fees), the Martin Plaintiffs sought \$292,131 in attorney's fees, and the Britton Plaintiffs sought \$174,000 in attorney's fees. *Id.*

64. Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988 (2006).

65. See, e.g., Order Awarding Attorney Fees and Costs, *supra* note 63, at 15–22 (awarding all parties \$115,000, which was much less than what each requested).

66. *Hippert I*, 813 N.W.2d 374, 380 (Minn. 2012).

67. *Id.*

68. Lois Beckett & Olga Pierce, *In Minn. Redistricting Battle, Powerful Players Clash—With Citizens on Sidelines*, PROPUBLICA (Nov. 16, 2011, 4:38 PM), <http://www.propublica.org/article/in-minn-redistricting-battle-powerful-players-clash>

While one can likely find endless critiques of the current redistricting process in Minnesota, other states have attempted to deal with some of these criticisms by implementing different strategies and processes for redistricting.

IV. WHAT ARE OTHER STATES DOING?

Every state's method of redistricting varies, but there are three types of methods worth noting. The first method is used by a majority of states, including Minnesota, and it charges the legislature with drawing new maps every ten years.⁶⁹ The second method gives at least some of the redistricting responsibility to independent commissions, and this method is used by thirteen states including the state of Arizona.⁷⁰ Iowa, the only remaining state, utilizes a unique method by having a nonpartisan state agency draw district maps without the use of any political or election data, and these maps are ultimately approved by the legislature and the governor.⁷¹

In order to effectively determine whether Minnesota should reform its method of redistricting, it is prudent to analyze the alternative methods used by other states around the country. Therefore, the following sections discuss in detail the independent commission method used by the state of Arizona as well as Iowa's method of using a state agency to assist with redistricting.

A. *Arizona Method—Independent Redistricting Commission*

Prior to 2000, the Arizona legislature was charged with the responsibility of drawing new legislative and congressional district

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69. NAT'L CONFERENCE OF STATE LEGISLATURES, REDISTRICTING LAW 2010 161–62 (2009), available at <http://www.comptroller.tn.gov/lg/PDF/NCSL%20Redistricting%202010.pdf> (identifying thirty-six states where the legislatures have the authority for both congressional and state redistricting).

70. *2009 Redistricting Commissions Table*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/legislatures-elections/redist/2009-redistricting-commissions-table.aspx> (last updated June 25, 2008) (listing thirteen states: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Missouri, Montana, New Jersey, Ohio, Pennsylvania, and Washington.).

71. See W. Walter Hearne, *Methods to Madness: Alternative Schemes for Single-Member Redistricting*, FAIRVOTE, <http://archive.fairvote.org/reports/monopoly/redist.html> (last updated August 12, 1998); see also Ed Cook, *Legislative Guide to Redistricting in Iowa*, LEGIS. SERVICES AGENCY 12–20 (Dec. 2007), <https://www.legis.iowa.gov/DOCS/Central/Guides/redist.pdf> (outlining the redistricting process in Iowa).

boundaries after each decennial census.⁷² In November 2000, Proposition 106 was approved by Arizona voters, amending the Arizona Constitution and creating the Arizona Independent Redistricting Commission.⁷³ The purpose for the amendment and creation of the Independent Redistricting Commission was to make legislative and congressional districts more competitive by taking the redistricting process out of the hands of incumbent legislators and giving the task to a politically neutral entity.⁷⁴

Under article IV, part 2, section 1 of the Arizona Constitution, “[b]y February 28 of each year that ends in one, an independent redistricting commission shall be established to provide for the redistricting of congressional and state legislative districts.”⁷⁵ The commission consists of five members, with no more than two members being affiliated with the same political party.⁷⁶ The members of the commission cannot “have been appointed to, elected to, or a candidate for any . . . public office” within the three years previous to the appointment.⁷⁷

The Arizona Commission on Appellate Court Appointments is responsible for the nomination of candidates for appointment to the commission.⁷⁸ This pool of candidates consists of twenty-five individuals—ten from each of the two largest political parties in Arizona and five who are not registered with either of the two largest political parties.⁷⁹ From this pool of twenty-five candidates, the highest-ranking officer in the Arizona House of Representatives, the minority party leader in the Arizona House of

72. Rhonda L. Barnes, Comment, *Redistricting in Arizona Under the Proposition 106 Provisions: Retrogression, Representation and Regret*, 35 ARIZ. ST. L.J. 575, 578 (2003).

73. *Id.* at 577; see ARIZ. SEC’Y OF STATE, 2000 PUBLICITY PAMPHLET 54–60 (2000), available at <http://www.azsos.gov/election/2000/info/pubpamphlet/english/prop106.pdf> (describing Proposition 106, which amended article IV, part 2, section 1 of the Constitution of Arizona).

74. ARIZ. SEC’Y OF STATE, *supra* note 73, at 57 (summarizing the argument for passage of Proposition 106 from Janet Napolitano, Arizona attorney general).

75. ARIZ. CONST. art. IV, pt. 2, § 1(3).

76. *Id.*

77. *Id.*

78. *Id.* art. IV, pt. 2, § 1(4). The Arizona Commission on Appellate Court Appointments is a nonpartisan commission which is composed of the chief justice of the Arizona Supreme Court, five attorney members (nominated by the board of governors of the Arizona State Bar, appointed by the governor with advice and consent of the senate), and ten nonattorney members (appointed by the governor with advice and consent of the senate). *Id.* art. VI, § 36(A).

79. *Id.* art. IV, pt. 2, § 1(5); see also Jacobs, *supra* note 59, at 4.

Representatives, the highest-ranking officer in the Arizona Senate, and the minority party leader in the Arizona Senate each choose one candidate to serve on the Independent Redistricting Commission.⁸⁰ These four members of the commission then meet and select, by majority vote, the fifth member of the commission.⁸¹ This fifth member must be one of the nominees not registered with either party already represented, and this member also serves as chair of the commission.⁸²

The redistricting commission is directed by the Arizona Constitution to create districts “in a grid-like pattern across the state.”⁸³ The purpose for this provision is to make sure that the commission will draw maps from scratch every ten years rather than simply modifying the existing districts.⁸⁴ In drawing legislative and congressional districts, the commission is mandated to accommodate the following goals:

- A. Districts shall comply with the United States Constitution and the United States voting rights act;
- B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
- C. Districts shall be geographically compact and contiguous to the extent practicable;
- D. District boundaries shall respect communities of interest to the extent practicable;
- E. To the extent practicable, district lines shall use visible geographic features, city, town, and county boundaries, and undivided census tracts;
- F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.⁸⁵

When drawing the legislative and congressional districts, incumbent and candidate residences are not identified or considered by the commission.⁸⁶ Also, information concerning voting history and party registration is not to be considered when

80. ARIZ. CONST. art. IV, pt. 2, § 1(6).

81. *Id.* art. IV, pt. 2, § 1(8).

82. *Id.*

83. *Id.* art. IV, pt. 2, § 1(14).

84. *Glossary*, ARIZ. INDEP. REDISTRICTING COMMISSION, <http://azredistricting.org/about-irc/Glossary.asp> (last visited Jan. 12, 2013).

85. ARIZ. CONST. art. IV, pt. 2, § 1(14)(A)–(F).

86. *Id.* art. IV, pt. 2, § 1(15).

drawing the maps, although this information may be used to make sure the final maps comply with the aforementioned goals.⁸⁷

Prior to the first draft of maps, the commission holds hearings throughout the state to get input on communities of interest and other information to consider when drafting the district maps.⁸⁸ Once the commission drafts an initial map, it is then advertised for public comment.⁸⁹ The public, as well as either legislative body, may make recommendations for the commission to consider.⁹⁰ Following this comment period, the commission then promulgates the final legislative and congressional district boundaries.⁹¹

B. Iowa Method

Prior to 1980, the Iowa Constitution required the Iowa General Assembly to establish legislative and congressional districts every ten years after the decennial census.⁹² If the legislature was unable to enact a redistricting plan by a specified date, the Iowa Supreme Court was charged with the responsibility of redistricting.⁹³ This process, however, changed in 1980 when the Iowa legislature passed House File 707, which established a new procedure for drawing legislative and congressional districts.⁹⁴

Iowa law tasks the Legislative Services Agency⁹⁵ with the responsibility of drawing legislative and congressional district maps, which are then submitted to the Iowa legislature and governor for approval or denial.⁹⁶ When the Legislative Services Agency delivers the redistricting plan to the state legislature, the agency must also provide to the public copies of the bill, maps illustrating the plan, a

87. *Id.*

88. Barnes, *supra* note 72, at 580.

89. ARIZ. CONST. art. IV, pt. 2, § 1(16). The comment period must be at least thirty days. *Id.*

90. *Id.*

91. *Id.*

92. Cook, *supra* note 71, at 1; *see* IOWA CONST. art. III, § 35 (“The general assembly shall . . . in each year immediately following the United States decennial census . . . establish senatorial and representative districts.”).

93. IOWA CONST. art. III, § 35.

94. Cook, *supra* note 71, at 2. This law was codified in Iowa Code chapter 42. *Id.* at n.15; *see* IOWA CODE ANN. § 42 (West, Westlaw through 2012 Reg. Sess.).

95. The Legislative Services Agency “provides nonpartisan staff services to all members of the Iowa General Assembly.” *Central Nonpartisan Staff*, IOWA LEGIS., <https://www.legis.iowa.gov/Agencies/nonPartisanStaff.aspx> (last visited Jan. 19, 2013).

96. § 42.3(1)(a) (Westlaw); *see* Cook, *supra* note 71, at 2.

summary of the standards used in designing the plan, and a statement of each district's population.⁹⁷

When formulating a redistricting plan, the Legislative Services Agency must consider certain factors apart from the normal population and race considerations. First, to the extent possible, when drawing the district boundaries, the boundaries of political subdivisions should not be disturbed.⁹⁸ Second, districts must be made up of contiguous territory.⁹⁹ Finally, districts should be as compact as possible.¹⁰⁰ This means that, to the extent possible, districts should not be irregularly shaped.¹⁰¹ Iowa law also mandates that “[n]o district shall be drawn for the purpose of favoring a political party, incumbent legislator or member of Congress, or other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group.”¹⁰² Therefore, the agency is not allowed to consider where any incumbent legislator or member of Congress resides, the political affiliations of the voters, any past election results, and any demographic information other than what is required by the Constitution and U.S. law.¹⁰³

Iowa law also states that a temporary redistricting advisory commission should be established that is made up of five members.¹⁰⁴ Unlike the duties of redistricting commissions like in Arizona, the Iowa commission's duties do not include any drawing of maps. The Iowa redistricting commission has two main responsibilities. First, if the Legislative Services Agency needs to make some kind of decision for which there is no statutory guideline, the redistricting commission may provide direction to the agency.¹⁰⁵ Second, when the redistricting bill is delivered to the

97. § 42.2(4)(a)–(d) (Westlaw).

98. *Id.* § 42.4(2).

99. *Id.* § 42.4(3).

100. *Id.* § 42.4(4).

101. *Id.* The statute states, “The compactness of a district is greatest when the length of the district and the width of the district are equal[, and when] . . . the distance needed to traverse the perimeter boundary of a district is as short as possible.” *Id.* § 42.4(4)(a)–(b).

102. *Id.* § 42.4(5).

103. *Id.* § 42.4(5)(a)–(d).

104. *Id.* § 42.5(1). These members are chosen in a similar fashion as Arizona chooses its five-member commission. Four of the five members are chosen by the majority and minority leaders in both the house and the senate, while the fifth member is chosen by a majority vote of the four commission members. Cook, *supra* note 71, at 13–14. This fifth member serves as the chairperson. *Id.* at 14.

105. § 42.6(1) (Westlaw).

legislature, the commission must conduct three public hearings throughout the state and present a report to both the senate and the house that summarizes the comments and conclusions made during those public hearings.¹⁰⁶

If the legislature fails to enact the first plan that is submitted by the Legislative Services Agency, the legislature must provide reasons to the agency as to why the plan was rejected, and the agency is required to submit another plan.¹⁰⁷ A vote on the second plan must be held not less than seven days after the plan is submitted, and no amendments to the bill may be offered (other than those that are purely corrective in nature).¹⁰⁸ If the legislature fails to enact the second plan, the legislature must again provide the agency with the reasons it rejected it.¹⁰⁹ The third plan's submission to the legislature follows the same timetable as the second plan,¹¹⁰ but it is subject to amendment by the legislature.¹¹¹ If the legislature still fails to enact a redistricting plan, the Iowa Supreme Court is tasked with formulating an appropriate redistricting plan.¹¹²

V. ANALYSIS OF REDISTRICTING METHODS

Any system of redistricting will garner both praise and criticism from the public, regardless of how bipartisan or nonpartisan the process is. While there will never be one "perfect" method for states to utilize when they redistrict, some are less criticized than others. Therefore, before one can adequately judge if a new method for redistricting is necessary in Minnesota, it is sensible to first understand how successful each method has been and also how each has been critiqued.

106. *Id.* § 42.6(3)(a)–(b).

107. *Id.* § 42.3(2). This second plan must be submitted within thirty-five days of the first bill's nonpassage. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* § 42.3(3).

111. *Id.*

112. While there is no statutory provision that states the redistricting process would go to the Iowa Supreme Court, one can assume that the supreme court would take up the process since the United States Supreme Court has stated that judicial supervision of redistricting is encouraged when the legislature fails to enact a plan. *See* *Grove v. Emison*, 507 U.S. 25, 34 (1993).

A. Redistricting Through the State Legislature

Partisan redistricting through the legislative process is usually criticized for reducing electoral competition, but there are some commentators who argue that partisan redistricting can actually strengthen competition.¹¹³ These commentators state that political parties, by attempting to gain as many seats in the state legislature as possible, may create more districts that *lean* toward their party, but these districts will likely have a smaller margin of victory.¹¹⁴ For example, rather than having a few very strong Republican districts, partisan districting may create more districts that are only “light pink” rather than “bright red,” which may allow Democrats to be more competitive in those districts. Others argue, however, that this results because of failed partisan redistricting rather than as a natural consequence that stems from it.¹¹⁵ Those who argue that partisan redistricting decreases competition state that empirical evidence suggests that while there are some outlier cases of partisan redistricting creating more competitive districts, in most cases the partisan redistricting decreases competition.¹¹⁶

Other proponents of redistricting through the legislative process argue that independent commissions are not elected by the people of the state and thus, are not accountable to the voters like legislators are.¹¹⁷ They also argue that while legislatures sometimes have a difficult time agreeing on districting maps, especially in

113. See David Lublin & Michael P. McDonald, *Is it Time to Draw the Line?: The Impact of Redistricting on Competition in State House Elections*, 5 ELECTION L.J. 144, 145 (2006) (discussing the counterargument to their argument that “partisan gerrymandering increases electoral competition”).

114. See *id.* After the 1980 census, Indiana Republicans attempted to design a congressional redistricting plan that favored their party. *Id.* While the plan initially was successful (the pre-redistricting congressional seats favored Democrats 6–5 while the post-redistricting congressional seats favored Republicans 6–4), by 1990 the Indiana delegation favored Democrats 8–2. *Id.* Thus, while the plan was originally drawn to give the Republicans as many congressional seats as possible, the plan backfired because it created more competitive districts that ultimately swung back in favor of the Democrats.

115. See *id.* at 154–55 (finding that partisan redistricting plans negatively influence competition in state house elections).

116. *Id.*

117. See T.W. Budig, *Minnesota Political Heavyweights Weigh In on Redistricting Reform*, HOMETOWN SOURCE (Mar. 8, 2011) <http://hometownsource.com/2011/03/08/minnesota-political-heavyweights-weigh-in-on-redistricting-reform> (quoting Rep. Sarah Anderson (R-Plymouth), chairwoman of the House Redistricting Committee, who stated, “The Legislature is an elected body and we are accountable to the people of Minnesota . . . [a] commission is not.”).

recent redistricting cycles, the ultimate maps drawn by the courts have been very fair to both parties.¹¹⁸

Critics of redistricting by state legislatures argue that voters are supposed to choose their legislators, not the other way around.¹¹⁹ By leaving redistricting up to the state legislatures, critics argue that politicians are essentially choosing who will vote for them. Proponents of this system, however, counter by stating that while the politicians do have some impact on the districts, the voters still have to elect the politicians into office. They assert that there are many other factors that go into an election other than simply what party is generally favored in the district.¹²⁰

Minnesota has not enacted a redistricting plan promulgated by the state legislature since the 1960s census.¹²¹ Therefore, one could argue that with a success rate so low, a new process should be adopted. Others may argue, however, that even though the legislature has not been able to promulgate its own map, the Minnesota Supreme Court has enacted maps that have been perceived as fair and unbiased, and thus there is no need for reform.

B. Redistricting Through Independent Commissions

The redistricting of independent commissions is usually less criticized than that of the state legislatures, but there are nevertheless concerns over the use of these commissions. Some critics question the validity of such commissions under the U.S. Constitution. Others are skeptical of whether they are truly independent and nonpartisan.

118. See Chris Steller, *Redistricting Draws Reformers but Some Say Process Worked Fine Last Time*, MINN. INDEP. (May 22, 2009) <http://minnesotaindependent.com/35240/redistricting-reform-minnesota-bachmann>.

119. See Robert Pack, *Land Grab: The Pros and Cons of Congressional Redistricting*, D.C. B. (Apr. 2004) http://www.dcb.org/for_lawyers/resources/publications/washington_lawyer/april_2004/landgrab.cfm (quoting Ronald Klain, a former aide to President Clinton, who stated that “[legislators] draw the lines, they benefit from the lines, and it’s very hard for the people to respond because they can’t vote the rascals out”).

120. See *id.* (quoting Tom Davis, former Congressman from Virginia, who stated, “The voters still elect. There are still districts where Republicans have a voter registration advantage that [they’re] going to lose, and districts that have a Democratic voter registration advantage that they [will] lose. There are other factors in representation [than] just the party to be considered, such as the quality of the candidates and what part of the district they hail from.”).

121. See *supra* note 12 and accompanying text.

Some critics of the use of independent redistricting commissions question their constitutionality.¹²² Article I, Section 4 of the U.S. Constitution states, “The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the *Legislature* thereof”¹²³ Therefore, critics argue, the Constitution specifically states that only the *legislature* has the power to redraw legislative and congressional districts, and thus the use of an independent commission to carry out this task is unconstitutional.¹²⁴ Other critics state that while commissions that were formed through legislative action, such as through a bill, are likely constitutional, those commissions that were formed through a statewide referendum, such as through a constitutional amendment like in Arizona, are not.¹²⁵ Proponents of independent commissions, however, claim that the U.S. Constitution used “legislature” in a broad sense and meant that the state government as a whole was allowed to choose how to elect its members of Congress.¹²⁶

While Arizona’s redistricting commission does not use incumbent data when redrawing its maps,¹²⁷ other states that use independent commissions do not restrict the commission from considering this information.¹²⁸ Thus, some critics state that

122. See Evan Wyloge, *GOP Lawmakers Seek to Overturn Redistricting Commission’s Authority to Create Maps*, ARIZ. CAPITOL TIMES, May 2, 2012, <http://azcapitoltimes.com/news/2012/05/02/gop-lawmakers-seek-to-overturn-redistricting-commission’s-authority-to-create-maps/>; see also Mark R. Brown, *Proposed Independent Redistricting Commission is Unconstitutional*, CLEVELAND.COM (Aug. 25, 2012 1:00 PM), http://www.cleveland.com/opinion/index.ssf/2012/08/proposed_commission_is_unconst.html.

123. U.S. CONST. art. I, § 4, cl. 1 (emphasis added).

124. See Wyloge, *supra* note 122.

125. See Brown, *supra* note 122 (stating that “[s]o long as it has legislative approval, an independent commission would seem to satisfy Article I’s command”).

126. Wyloge, *supra* note 122 (according to Paul Bender, constitutional law professor at Arizona State University, “The ‘times, places and manner’ referred to in the Constitution refer to the actual machinations of elections . . . [and] ‘the Legislature’ . . . means . . . whatever processes the state has established for elections ‘It includes the state constitution and citizen initiatives.’”). *But see* Brown, *supra* note 122 (“[The Framers] did not intend [a state] to have regulatory authority over congressional elections; they meant for [the state’s] legislature to exercise that power. . . . The Framers’ choice of legislatures as the repositories of federal electoral powers was clearly a studied decision. State legislative regulation . . . provided a middle ground between popular (democratic) and national (republican) control of the . . . country’s legislature.”).

127. See *supra* note 86 and accompanying text.

128. See, e.g., N.J. CONST. art. II, § 2. The New Jersey Constitution does not

bipartisan independent commissions are still able to favor incumbents and reduce competition in future elections by agreeing to draw maps that favor all incumbents, regardless of party affiliation.¹²⁹

Most independent redistricting panels are still in their infancy and thus, it is hard to tell whether the maps they draw are any better than the legislature's maps. They do, however, seem to at least present an appearance of a fairer and more objective process of redistricting than redistricting through state legislatures, even amidst allegations that political parties are swaying these panels one way or another.

C. *The Iowa Method*

Reaction to Iowa's use of a non-partisan state agency for redistricting has been mostly positive. By giving the map-drawing responsibility to an independent state agency while leaving the final approval to an up-or-down vote by the state legislature, politicians are put in an interesting position. If the legislature does not like the map, it can reject it, but by doing so, legislators risks the possibility of the agency sending them a new map that they dislike even more.¹³⁰ Also, because the agency is not allowed to consider where incumbents live, the agency's maps can make for very competitive races.¹³¹

ban the redistricting commission from considering incumbent information. *See id.*

129. *See* Gary S. Stein, *An Unpublicized Scandal: New Jersey's Non-Competitive Congressional Districts*, 253 N.J. LAW. 10, 11 (2008) ("The members of the New Jersey Redistricting Commission, acting pursuant to constitutional authorization, engaged in a bipartisan gerrymander to create congressional districts in which no incumbent would be vulnerable." (footnote omitted)). The 2006 elections in New Jersey were very uncompetitive despite the fact that there was a huge nationwide swing of Democrats unseating Republicans due to the public's discontent with President Bush and the Iraq War. *Id.* at 10. In New Jersey, all thirteen incumbents won their elections by large margins. *Id.* at 10–11. There was only one race that ended with a winning margin of less than 10%. *Id.* at 11.

130. Lauren Fox, *Iowa Hosting Four Fierce Congressional Races Thanks to Redistricting*, U.S. NEWS & WORLD REP. (July 5, 2012), <http://www.usnews.com/news/articles/2012/07/05/iowa-hosting-four-fierce-congressional-races-thanks-to-redistricting-2> (quoting Christopher Larimer, a political science professor at Northern Iowa University, who stated, "[Redistricting] is almost like a game of chicken. The legislators can send it back for another draft, but then they risk it coming back worse for their party.").

131. *See id.* (discussing that congressional redistricting has placed two incumbents against each other and caused another incumbent to move his residence to run in a different district); David Pitt, *Iowa's 4 US House Seats Unusually Competitive*, DAILY GATE CITY, Oct. 22, 2012, <http://www.dailygate.com>

The biggest criticism of Iowa's method is that, because it does not consider incumbent data, many incumbents are paired against each other in the same district.¹³² This, critics argue, could lead to a high turnover rate of legislators and create instability within the legislature.

Others assert that although this method works well for Iowa, it may not work as well for other states.¹³³ Iowa's population is smaller and more homogeneous than the population of many other states, and no matter how you draw the districts, there will likely be competitive races because there are not large geographical areas that are very red or very blue.¹³⁴ States such as California are much more racially diverse and have large areas that strongly favor one political party over another.¹³⁵ This makes drawing competitive districts very difficult, and without the use of incumbent information, redistricting by a method like Iowa's will likely not have much of an influence on the competitiveness of districts in states like California.¹³⁶

Although there have been some criticisms of Iowa's redistricting method, since its enactment in 1980¹³⁷ no redistricting plan submitted by the Legislative Service Agency and adopted by the legislature has ever been challenged in court.¹³⁸

/news/article_9d975876-ec45-5f81-92ff-519cc89e8539.html.

132. James Q. Lynch, *Redistricting Process Produces 'Iowa Envy,' Legal Expert Says*, QUAD-CITY TIMES, Jan. 7, 2011, http://qctimes.com/news/local/government-and-politics/article_42a5731c-1a19-11e0-93d1-001cc4c002e0.html (stating that in 2001, the Legislative Service Agency's first plan, which was rejected, paired 70 incumbents against each other, while the second plan, which was adopted, had "39 House members and 25 senators running in districts where at least one other incumbent lived").

133. See Alan Greenblatt, *Can Redistricting Ever Be Fair?*, GOVERNING (Nov. 2011), <http://www.governing.com/topics/politics/can-redistricting-ever-be-fair.html>.

134. See *id.*

135. See *id.*

136. See *id.* (statement of Nathaniel Persily, a redistricting consultant at Columbia Law School) ("The coast [of California] is so Democratic and the interior so Republican, . . . my feeling is that in California, if you're not going to pay attention to incumbency and you start drawing districts from north to south, there's only so much partisan impact redistricting is going to have."). The article also states that in order to make Congresswoman Nancy Pelosi's district competitive, it would have to stretch from San Francisco all the way to Nevada. *Id.*

137. See Cook, *supra* note 71, at 2.

138. *Id.*

VI. DOES MINNESOTA REALLY NEED REDISTRICTING REFORM?

Even though the redistricting process was recently completed in Minnesota,¹³⁹ addressing the possibility of reforming Minnesota's process should not be tabled for a later date. Discussion of whether Minnesota should change its redistricting method, and if so, ideas of how this could be done, should be discussed while the process is still fresh in everyone's memory. While many claim that Minnesota's method is broken,¹⁴⁰ it seems that this assertion may overstate the issue. It is clear that reforms must be made, but before Minnesota completely changes its system and takes complete control of redistricting out of the hands of our elected officials, smaller reforms, such as establishing standard redistricting guidelines for judges to consider and removing the need for a formal lawsuit, should be considered first.

A. *Establish Concrete Redistricting Guidelines*

The current status of America's political climate is clearly very partisan.¹⁴¹ Does this mean, however, that the current system of government is broken and thus should be reformed? Though there are some who think the U.S. Constitution should be rewritten,¹⁴² most individuals do not believe that the United States needs to start from scratch. Are changes needed? Absolutely. Should we transform the entire system? Probably not. So too is it with legislative and congressional redistricting. Yes, changes are clearly needed, but before one throws out a system of redistricting that is used in a majority of states throughout the country, more gradual, common-sense reforms should first be implemented and evaluated before larger changes are made.

139. See *Hippert I*, 813 N.W.2d 374 (Minn. 2012) (promulgating Minnesota's new legislative districts on February 21, 2012); *Hippert II*, 813 N.W.2d 391 (Minn. 2012) (promulgating Minnesota's new congressional districts on February 21, 2012).

140. See Jacobs, *supra* note 59, at 1 (stating that the redistricting reform is vital because the current system is "broken").

141. See Liz Halloran, *Has Partisanship Really Gotten So Bad on the Hill? Yes*, NAT. PUB. RADIO (Feb. 17, 2010, 10:48 AM), <http://www.npr.org/templates/story/story.php?storyId=123783904> ("Historians and politicians alike say the current rancor on the Hill is . . . historic, and has been building over recent decades to a level unlike any in modern times.")

142. See, e.g., George Kenney, *America Needs a New Constitution*, HUFFINGTON POST BLOG (Oct. 22, 2010, 8:33 AM), http://www.huffingtonpost.com/george-kenney/america-needs-a-new-const_b_772288.html.

It seems that the recent push for redistricting reform, not just in Minnesota but also throughout the country, stems from a cynical, yet substantiated, distrust of politicians. The public views politicians as self-interested individuals who are more focused on their own reelection than serving the public interest. Although there is some truth in this statement, this is not true across-the-board. Many politicians have sacrificed lucrative careers to be public servants, not for fame and notoriety, but because they felt they had a civic duty to serve the people of their state. Public officials are elected to make decisions that they believe are in the public's best interest.¹⁴³ If there is discontent with the adequacy of an elected official's representation, such as if he is placing his own well-being before the public's, constituents have the ability to elect someone else.

By placing redistricting in the hands of a commission, we effectively remove this decision-making process from the elected officials that the public chose to make decisions in its best interest. While some view this as a good thing because it takes this decision away from the individuals who stand to benefit from it, the framers of the Constitution seemed to intend for this to be part of the job of state legislators.¹⁴⁴ Therefore, it is the public's responsibility to elect politicians who it believes will represent it with honesty and integrity rather than for his or her self-interest. Bipartisanship is not impossible, and faith in the legislature should not be abandoned so quickly.

This is not to say, however, that these politicians should not be without limits on how the redistricting proceeding takes place. Currently, there are only a few mandated rules that Minnesota legislators must adhere to when they undertake the redistricting process: (1) legislative and congressional districts must be approximately the same population;¹⁴⁵ (2) districts cannot be drawn

143. See Catherine A. Rogers & David L. Faigman, "And to the Republic for Which It Stands": *Guaranteeing a Republican Form of Government*, 23 HASTINGS CONST. L.Q. 1057, 1059-60 (1996) ("In a republic, . . . the superior force of an interested and overbearing majority could be tempered by the reasoned judgment of representatives acting for the common good." (footnote omitted) (internal quotation marks omitted)).

144. See U.S. CONST. art. I, § 4, cl. 1.

145. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964) ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."); *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) ("While it may not be possible to draw congressional districts with mathematical precision, that is no

to deny equal voting power to anyone on the basis of race, color, or ethnic group;¹⁴⁶ (3) districts must be one contiguous territory;¹⁴⁷ and (4) the Minnesota Senate must consist of sixty-seven members, and the Minnesota House of Representatives must consist of 134 members.¹⁴⁸ To better foster neutrality during the redistricting process while keeping this task within the state legislature's purview, it seems prudent that additional principles should be adhered to throughout the process.

Because the judiciary lacks the political authority of the legislative branch, Minnesota courts have established "politically neutral redistricting principles" that guide its redistricting process.¹⁴⁹ These principles include:

[1] drawing districts with a maximum deviation of two percent from the ideal population; . . . [2] drawing districts that consist of convenient, contiguous territory structured into compact units; [3] drawing districts that respect political subdivisions; [4] preserving communities of interest; and [5] drawing districts without the purpose of either protecting or defeating incumbents.¹⁵⁰

Many of these principles are also used in states like Iowa and Arizona, and have helped those states create more competitive and fair maps.

The court also uses a "least-change strategy" when possible, using the prior districts as a starting point and changing them only as necessary to make the districts as equal in population as possible.¹⁵¹ A "least-change strategy" seems to be less political than drawing maps from scratch, like they do in Arizona, because by mandating that the maps be only altered enough to account for the

excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the [U.S.] House of Representatives.").

146. 42 U.S.C. § 1973(a) (2006) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . ."); *Id.* § 1973b(f)(2) ("No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.").

147. MINN. CONST. art. IV, § 3.

148. MINN. STAT. § 2.021 (2010).

149. *See Hippert I*, 813 N.W.2d 374, 378–79 (2012); *see also supra* Part II.

150. *Hippert I*, 813 N.W.2d at 379 (footnote omitted) (citations omitted).

151. *Id.* at 380.

population changes, there is a starting point to work from and it is not as easy to redraw district boundaries for a specific benefit. Starting from scratch places no limits on how legislators can draw a new map and opens the door to be able to politically gerrymander the state to a particular party's advantage.

An additional principle that has been included by other states is that districts are to be drawn without the use of voting history.¹⁵² Iowa has a specific provision that bans the consideration of past voting data when drawing new maps.¹⁵³ By not considering this information, new map drawing has led to much more competitive electoral races in the state.

If Minnesota's legislature adopted these principles in addition to the principles that are mandated by the U.S. Constitution, the U.S. Supreme Court, and Minnesota law, much of the politics that plagues the redistricting process would be minimized. Incumbents could no longer draw maps to make sure their territory was safe, political parties could not be favored, and the least-change method would reduce the possibility of placing many incumbents within the same district and thus, theoretically, maintain stability in the legislature.

B. Reform the Judicial Process

Many also argue that judges should not be involved in the drawing of districts, as they are in Minnesota, because it is critical that the justice system be perceived as fair.¹⁵⁴ In Minnesota, judges do not declare a political affiliation,¹⁵⁵ even though they are elected officials.¹⁵⁶ Thus, it is argued, since redistricting is an inherently political process, judges should abstain from deciding such political questions and should not be responsible for drawing new congressional and legislative maps.

While it is true that judges are not supposed to decide political questions, certain challenges to redistricting are justiciable issues.¹⁵⁷

152. See *supra* note 103 and accompanying text.

153. IOWA CODE ANN. § 42.4(5)(c) (West, Westlaw through 2012 Reg. Sess.).

154. See Kalitowski & Brama, *supra* note 13, at 19.

155. See *id.*

156. MINN. CONST. art. VI, § 7 (“[Judges] shall be elected by the voters from the area which they are to serve in the manner provided by law.”).

157. *Baker v. Carr*, 369 U.S. 186 (1962) (holding that the redistricting was not a political question and thus justiciable). *But see Vieth v. Jubelirer*, 541 U.S. 267 (2004) (plurality opinion) (holding that political gerrymandering was not a justiciable question because of a lack of manageable standards on which to judge).

And even though courts are not supposed to decide “political questions,” courts frequently address questions with political implications.¹⁵⁸ Judges are dedicated to applying the law in a neutral and equitable fashion and thus are more than capable of deciding politically controversial questions under the law as long as there are legally concrete standards that can be applied.¹⁵⁹ Therefore, if the legislature were to adopt the principles discussed above to govern the redistricting process, the courts would have concrete, legally binding guidelines to apply if and when the responsibility of redistricting fell on their shoulders.

There are, however, changes to this judicial process that should be addressed. As stated earlier, in order for the courts to get involved in the redistricting process, a lawsuit must be filed that alleges the current legislative and congressional districts are unconstitutional.¹⁶⁰ These lawsuits are very expensive and time consuming.¹⁶¹ It has been suggested that Minnesota eliminate this “fiction of a lawsuit” and make the appointment of a special redistricting panel automatic.¹⁶² This way, the “costly lawsuit that historically initiates and drives redistricting would be obviated.”¹⁶³ With something that occurs as consistently as redistricting, it makes economic and logical sense to eliminate this “faux-lawsuit” and institute the process automatically.

C. *If More Changes Are Needed . . .*

If a more drastic change is determined necessary, there is a nice framework that Minnesota can work from. In 2009, the Minnesota Senate passed Senate File 182, a bill to amend the Minnesota Constitution and implement a bipartisan redistricting commission to handle Minnesota’s redistricting process.¹⁶⁴ The bill

158. See, e.g., *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012) (holding the individual mandate of the Patient Protection and Affordable Care Act, President Obama’s signature health care legislation, constitutional).

159. See *Onvoy, Inc. v. Allete, Inc.*, 736 N.W.2d 611, 617–18 (Minn. 2007) (“A justiciable controversy exists if the claim (1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion.”).

160. See *supra* Part III.

161. See *supra* note 63 and accompanying text.

162. Kalitowski & Brama, *supra* note 13, at 20.

163. *Id.*

164. S. 182, 86th Leg., Reg. Sess. (Minn. 2009), available at <https://www>

established a redistricting commission consisting of five retired Minnesota judges who had never served in a “party designated or party endorsed position,”¹⁶⁵ with the majority and minority leaders of each house of the legislature choosing one member.¹⁶⁶ These four members would then choose the fifth member of the commission.¹⁶⁷ The bill also outlined districting principles that the commission had to follow.¹⁶⁸ These principles required districts that did not “dilute the voting strength of racial or language minority populations,”¹⁶⁹ preserved political subdivisions¹⁷⁰ and communities of interest,¹⁷¹ were politically competitive,¹⁷² and were not designed to protect or defeat an incumbent.¹⁷³ The promulgation of the final maps worked much like in Iowa, with the commission submitting the maps to the legislature to either approve or reject.¹⁷⁴ This bill, however, was not voted on in the Minnesota House of Representatives before the legislative session ended and thus died in committee.

[.revisor.mn.gov/bin/bldbill.php?bill=S0182.2.html&session=ls86](http://www.revisor.mn.gov/bin/bldbill.php?bill=S0182.2.html&session=ls86) (text of the bill); see also S. JOURNAL, 86th Leg. Sess., Reg. Sess. 5773 (Minn. 2009), available at <http://www.senate.leg.state.mn.us/journals/2009-2010/20090515055.pdf#Page71> (bill passed 39–28).

165. S. 182, 86th Leg., Reg. Sess. (Minn. 2009).

166. *Id.*

167. *Id.*

168. *Id.* § 1.

169. *Id.* § 1, subdiv. 6 (“The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or language minority makes it possible and it can be done in compliance with the other principles in this section, the districts must increase the probability that members of the minority will be elected.”).

170. *Id.* § 1, subdiv. 7.

171. *Id.* § 1, subdiv. 8 (“For purposes of this principle, ‘communities of interest’ include, but are not limited to, geographic areas where there are clearly recognizable similarities of social, political, cultural, ethnic, or economic interests, or that are linked by common transportation or communication.”).

172. *Id.* § 1, subdiv. 9 (“The districts must be created to encourage political competitiveness . . .”).

173. *Id.* § 1, subdiv. 10.

174. *Id.* § 2, subdiv. 7 (“(a) The commission shall submit to the legislature by April 30 of the year ending in one redistricting plans for legislative and congressional seats. Either of these plans may be enacted or rejected by the legislature, but not modified. (b) If a first plan submitted by the commission is rejected by the legislature, the commission shall submit a second plan within two weeks after the rejection A second plan may be enacted or rejected by the legislature, but not modified. . . . (d) If a second plan is rejected by the legislature, the commission shall submit a third plan within two weeks after the rejection The third plan may be enacted as submitted, rejected, or enacted as modified by the legislature.”).

This bill provides a hybrid of the Iowa and Arizona system, using a bipartisan commission like Arizona while still leaving the final decision to the state legislature like in Iowa. While it still does not seem that the use of a bipartisan commission needs to be implemented in Minnesota, especially if the aforementioned changes were made to the redistricting process, Senate File 182 provides a nice framework if a complete overhaul of the system was required. It places the responsibility on a panel of retired judges to draw the map while keeping the ultimate responsibility of promulgating those maps with the legislature.

VII. CONCLUSION

Legislative and congressional redistricting is a contentious issue that has plagued states throughout the country ever since the U.S. Supreme Court's decisions in *Baker v. Carr*¹⁷⁵ and *Reynolds v. Sims*,¹⁷⁶ which mandated that congressional and legislative districts needed to be approximately equal in population. Because of this mandate, states must reevaluate the populations of their districts every ten years and redraw them if they are not equal.

Under the Minnesota Constitution, the state legislature is tasked with the responsibility of redrawing these districts,¹⁷⁷ and therefore the same legislators that are directly affected by the new maps are the ones making them. This has caused much controversy about whether those with a vested interest in the outcome should be responsible for this job. Some states have recently attempted to address this problem by establishing independent commissions or agencies to assist with the redistricting process.

While there are benefits to these commissions, their use effectively takes this process out of the hands of the people the public elected to make these kinds of difficult decisions. While it is true that Minnesota's judiciary has redistricted the state over the past few census cycles due to the partisanship that has plagued our recent political climate, this does not, however, imply that Minnesota's system is broken. Thus, rather than implementing a complete overhaul of Minnesota's redistricting system and removing the legislature from a process that the U.S. Constitution

175. 369 U.S. 186 (1962).

176. 377 U.S. 533 (1964).

177. MINN. CONST. art. IV, § 3.

arguably meant to be done by the state legislatures,¹⁷⁸ Minnesota should strictly define the guidelines that legislators must follow when drawing new maps, borrowing ideas and standards that commissions in states such as Arizona and Iowa consider during their redistricting process. By implementing politically neutral redistricting standards, much of the politics behind the legislative stalemate that generally emanates from the process can be limited. Allowing the legislature to set clear guidelines for the judiciary to follow if and when it is unable to come to a redistricting agreement keeps the legislature involved in the process, even when the responsibility of redistricting falls on the courts.

While there will likely never be a “perfect” redistricting method and controversies surrounding this topic will endure so long as redistricting is necessary, states can take substantial steps in limiting the politics involved in the process. Minnesota’s implementation of the aforementioned standards and guidelines allows for needed reforms to take place while allowing the process to remain the primary responsibility of Minnesota’s elected officials.

178. See U.S. CONST. art. I, § 4, cl. 1.