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INTRODUCTION

Redistricting in America is rotten. Across the country, for elections of every level, district lines are drawn in such a way that fundamental democratic values are subverted. Sometimes districts take on bizarre shapes as legislators add and subtract people in order to assure a particular political profile. Sometimes distinct political communities—say, rural farmers or inner-city minorities—are split apart by district lines or merged with other very different communities. Sometimes districts are blantly skewed toward one party even though the state as a whole is politically competitive. Sometimes, thanks to clever district-drawing, the distribution of seats in a state legislature or congressional delegation has little correlation to a state’s overall voting pattern. And, very often, all these sins are combined. When looking at a district map, it is not unusual to see oddly shaped districts that divide political communities, virtually guarantee reelection for incumbents, and enable one party to win a much higher proportion of legislative seats than popular votes.

There are several ways in which redistricting abuses could be combated, but unfortunately most are unlikely to transpire. Congress1 and state

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1 The Constitution explicitly states that “Congress may at any time by law make or alter... regulations” relating to “[t]he times, places and manner of holding elections.” U.S. CONST. art. I, § 4. Congress has exercised this authority several times in the past. The Apportionment Act of 1842, 5 Stat. 491, required that House districts elect a single member and consist of contiguous territory. The Apportionment Act of 1862, 12 Stat. 572, reiterated these requirements, and the Apportionment Act of 1872, 17 Stat. 28, § 2, added the further condition that districts “contain[,] as nearly as practicable an equal number of inhabitants.” In 1901, Congress also insisted on district compactness, Apportionment Act of 1901, 31 Stat. 733, and in 1911, Congress renewed these requirements of contiguity, compactness, and equipopulation, Apportionment Act of 1911, 37 Stat. 13. However, Congress did not extend the 1911 requirements when they expired, and has failed to pass any new redistricting legislation over the past ninety years. Today the only federal statutory limitation on redistricting is the requirement that all House districts elect a single member. 2 U.S.C. § 2c (2000).
legislatures could pass laws imposing certain requirements—for example, contiguity, compactness, preservation of political communities—on the district-drawing process. But legislators are the primary beneficiaries of the redistricting status quo, and therefore have a strong incentive not to change the rules that allow them to be reelected time after time. Courts could also intervene by invalidating especially egregious gerrymanders. But the Supreme Court’s recent decisions in Vieth v. Jubelirer and League of United Latin American Citizens (LULAC) v. Perry all but foreclosed federal judicial relief, at least on equal protection grounds. A plurality of the Court held in Vieth (and affirmed in LULAC) that political gerrymandering is never justiciable under the Equal Protection Clause, and the remaining justices splintered over what the constitutional standard should be (and whether it has yet been discovered). As for state courts, Sam Hirsch has noted that it is “difficult to convince [them] not to follow lockstep the U.S. Supreme Court’s . . . jurisprudence,” and that the Elections Clause arguably “bars a state court from applying state constitutional law to invalidate a congressional map enacted by the state legislature.”

Legislators’ self-interest and adverse court decisions leave critics of contemporary redistricting with only one promising avenue for reform: the popular initiative. The initiative, available in some form in twenty-four states, enables the general public to place statutory and constitutional

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2 Several states have either adopted standards for redistricting, or decided by statute to allow bipartisan or nonpartisan commissions to draw district lines. See, e.g., HAW. REV. STAT. § 25-2 (1993); IDAHO CODE ANN. § 72-1506 (1999); IOWA CODE § 42.4(5) (2003); ME. REV. STAT. ANN. tit. 21-A, § 1206 (2003); MONT. CODE ANN. § 5-1-115 (2003); WASH. REV. CODE § 44.05.090 (1994). But such states are in the minority, and their reforms typically do not apply to federal elections.


5 Justice Kennedy concurred in the Court’s judgment but wrote separately to express his view that simply because “no [justiciable] standard has emerged in this case should not be taken to prove that none will emerge in the future.” 541 U.S. at 311 (Kennedy, J., concurring in judgment); see also LULAC, 126 S. Ct. at 2607 (“A plurality of the Court in Vieth v. Jubelirer would have held such challenges to be nonjusticiable political questions, but a majority declined to do so.”). The LULAC Court rejected yet another proposed standard for detecting unconstitutional political gerrymandering: a presumption that mid-decade redistricting is conducted solely for partisan ends and therefore violates the Equal Protection Clause. Id.


Reforming Redistricting

proposals directly on the ballot. After enough signatures are garnered, both legislatures and courts are circumvented, and the people themselves are able to decide if, for example, certain standards should be followed during redistricting or a commission should draw district lines instead of the legislature.

Redistricting initiatives—in the wake of Vieth and LULAC the only realistic way to curb political gerrymandering—are the subject of this Article. Part I discusses the merits of the initiative in the redistricting context, and evaluates the bipartisan commission (the approach taken by almost every redistricting initiative) relative to other anti-gerrymandering mechanisms. The section argues that the popular initiative is particularly well-suited to combating gerrymandering because it allows voters to bypass the self-interested politicians who typically thwart efforts to make redistricting fairer. The section also contends, on the basis of political theory and empirical evidence, that the bipartisan commission is, on the whole, well-designed to prevent gerrymandering and improve redistricting.

Part II begins to confront the biggest problem with redistricting initiatives: the fact that they generally fail. The section first presents a series of factors that have been identified by scholars and other observers as potential explanations for initiatives’ success or failure. The section then examines in detail the twelve cases in which initiatives were launched to regulate redistricting. Each initiative’s official language, political backdrop, principal supporters and opponents, campaign dynamics, and eventual outcome are described. In addition, tentative conclusions are reached about why each initiative passed or (more typically) was defeated.

Finally, Part III takes a more holistic approach to the twelve redistricting initiatives. The section analyzes all the initiatives together in order to identify factors that were relevant to success or failure across a range of cases, offers recommendations that advocates of redistricting reform should follow in the future, and discusses the Article’s implications for the academic conventional wisdom on why initiatives succeed or fail. The section’s main finding is that redistricting initiatives always fail when they are strongly opposed by the majority party in the state legislature, and only succeed when some factor—for example, favorable national developments, the enthusiastic support of the state’s media establishment, 8 Redistricting initiatives are clearly a second-best solution since they must be conducted separately in each state, and are unavailable entirely in twenty-six states. It would be better to regulate gerrymandering across the entire country in one swoop, either through congressional or federal judicial action. But, as argued above, national action is virtually impossible because of federal legislators’ self-interest and unfavorable Supreme Court doctrine.
dissension between the majority party's executive branch officials and its legislators—defuses majority party opposition. The upshot for reformers is that they should wait for auspicious political moments before launching redistricting initiatives, and try at all costs to stop the majority party from presenting a unified front of opposition to the measure. And the lesson for academics is that the traditional theory of initiative outcomes, which downplays the importance of political parties, is wrong as applied to redistricting initiatives. Not only do parties' positions and campaigning influence redistricting initiative outcomes, they hold more explanatory power than any other factor.

I. THE CASE FOR THE REDISTRICTING INITIATIVE AND COMMISSION

Before delving into the details of the twelve redistricting initiatives, it is important to ask whether initiatives are a good idea in the redistricting context, and whether their typical approach—the creation of a redistricting commission—is an appropriate cure for the ills of gerrymandering. This Part argues that the answer to both of these questions is yes. Popular initiatives are especially well-suited to the redistricting context because it is an area where legislators' self-interest often trumps the pursuit of the public good. And redistricting commissions, while not a perfect solution to rampant political gerrymandering, are theoretically and empirically superior to the status quo.

A. The Redistricting Initiative

When the initiative and referendum were first proposed at the turn of the twentieth century, their supporters tended to view them as a panacea to many of the afflictions of politics. Woodrow Wilson believed that they would remind politicians that "they are bound in duty . . . to represent the sovereign people . . . and not the private interests which creep into their counsels."10 Harvard professor Lewis Jerome Johnson argued that, "[s]upplemented by the initiative and referendum . . . the representative system will gradually but surely enter upon a period of honor and usefulness hitherto never surpassed and probably never equaled."11 And

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9 Initiatives are placed directly on the ballot after enough signatures are obtained. Referenda subject a legislative enactment to a popular vote.
California Governor Hiram Johnson, a prominent Progressive, claimed that after his state adopted the initiative and referendum, "the prosperity of the State [would be] assured, exaction and extortion from the people will be at an end," and "development and progress will follow as a matter of course."\textsuperscript{12}

But the century in which they have been in use has stripped some of the bloom off the initiative and referendum rose. According to critics, the expense of placing a proposition on the ballot and then conducting an effective campaign for it makes it difficult for ordinary people to participate in the initiative and referendum process, and results in domination by well-heeled special interests.\textsuperscript{13} In addition, precisely because they evade the normal checks and balances of the legislative process, initiatives and referenda can more easily be used to abridge individual rights. As Julian Eule writes, "direct democracy bypasses internal safeguards designed to filter out or negate factionalism, prejudice, tyranny, and self-interest."\textsuperscript{14} Furthermore, initiatives and referenda may result in an undesirable distortion of public policy. "The legislative process provides for debate over alternatives, compromise, and consensus or agreement," while initiatives and referenda present voters with a single proposition that must be approved or rejected in its entirety.\textsuperscript{15} Finally, the evidence that initiatives and referenda improve deliberation on important issues is slim. In fact, voter turnout is usually far lower in special elections for initiatives and referenda than in normal elections.

Fortunately, this critique of direct democracy has limited force in the redistricting context. Redistricting initiatives do not endanger individual rights since all they seek to do is change the process by which electoral district lines are drawn. They do not interfere with the complicated negotiating and favor-trading of the legislative process since they involve no serious spending and need not be balanced against other agenda items. Because of their diffuse impact and fiscally neutral posture, there is no


\textsuperscript{13} See, e.g., Elizabeth Garrett, Money, Agenda Setting, and Direct Democracy, 77 TEX. L. REV. 1845, 1853 (1999) ("As money becomes the only certain route to ballot access, the character of direct democracy is increasingly determined by those with financial resources."); Jamin B. Raskin, Direct Democracy, Corporate Power and Judicial Review of Popularly-Enacted Campaign Finance Reform, 1 N.Y.U. J. LEGIS. & PUB. POL'Y 21, 22 (1997) ("[W]hether our laws emerge from legislative process or plebiscite, far too many of them are being shaped and determined by the expenditure and contribution of huge sums of money by interested corporate factions.").


special interest group that consistently benefits from the passage of redistricting initiatives. And, while not as simple and provocative as some cultural issues, the question of who should draw district lines—the legislature or a commission—is easily understood by voters.

Most importantly, redistricting initiatives are attractive because, to use John Hart Ely’s phrase, they promise to “unblock[] stoppages in the democratic process.” Redistricting is a context in which legislators’ incentives and the public interest are almost diametrically opposed. Legislators want to win reelection handily and to have their party obtain as many seats as possible. Under almost any theory of democracy, on the other hand, the public is more interested in elections whose outcome is not a foregone conclusion, districts that respect preexisting political communities, and legislatures whose partisan composition roughly reflects actual vote totals. Redistricting initiatives enable the public to rescue their interests from legislative hijacking. Substantive standards (for example, contiguity, compactness, competitiveness, preservation of political communities) can be imposed on redistricting, or a more neutral district-drawing process instituted, without legislators—whose rejection of such proposals is a virtual certainty—having anything to say about the matter. As a recent Harvard Law Review Note observes, direct democracy, when it addresses flaws in the electoral and legislative process,

is playing precisely the role that it should: it checks dysfunctional government. . . . [D]irect democracy is most effective when partisan politics or special-interest influence has so distorted the proper operation of political markets that democratic government ceases to be responsive to voters’ concerns. Just as scholars have advocated an enhanced judicial role when “the ins are choking off the channels of political change to ensure that they will stay in and the outs will stay out,” so too can direct democracy promote more responsive and representative government in such situations.

Redistricting initiatives are by no means without their blemishes. As Part II discusses in detail, voters are not always very informed or excited

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16 JOHN HART ELY, DEMOCRACY AND DISTRUST 117 (1980).
17 Note, Judicial Approaches to Direct Democracy, 118 HARV. L. REV. 2748, 2764-65 (2005) (internal citations omitted).
Reforming Redistricting

about them, their accompanying media campaigns are often extremely misleading, and sinister motives are sometimes alleged to lurk behind the proposals' technical details. Moreover, the intrinsic state-by-state nature of direct democracy means that redistricting reform by initiative must unfold slowly and incrementally, rather than in a single national legislative or judicial thunderclap. Still, on balance, the case for redistricting initiatives is strong. Unlike many other initiatives, they do not supplicate to special interests, upset delicate budgetary balances, or harm minority groups. And, as long as legislative and judicial paths to reform remain blocked, they represent the only realistic way for the evils of gerrymandering to be redressed.

B. The Redistricting Commission

Redistricting initiatives could in principle operate in several ways. They could allow the legislature to continue drawing districts, but require that certain rules about the districts' shape and composition be followed. They could abolish single-member districts entirely and replace them with a proportional representation or other electoral system. They could create a nonpartisan or bipartisan commission and grant it complete freedom to devise the district map it thinks is best. Or they could create a commission and limit its discretion by imposing various requirements on the districts that it draws.

In practice, every one of the twelve redistricting initiatives has taken the last of these approaches: establishing a commission by constitutional amendment, and then providing the commission with various rules to follow as it goes about drawing district lines. The main contrasts among the initiatives have involved the bodies to be reapportioned (state legislature and/or congressional delegation), the standards to be used by the commissions, and the size, composition, and selection of the commissions. Appendix A, infra, summarizes the main features of the twelve redistricting initiatives.

Because the initiatives have been so similar, it is worth examining how compelling their solution to political gerrymandering—a commission with prescribed standards—is. In my view, the commission is quite a good solution. First, and most critically, the members of redistricting

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18 This would only be possible for state elections. Federal law requires that all Representatives be elected through single-member districts. 2 U.S.C. § 2c (2000).

19 Redistricting commissions enjoy wide support in the scholarly literature. See, e.g., DENNIS F. THOMPSON, JUST ELECTIONS: CREATING A FAIR ELECTORAL PROCESS IN THE UNITED STATES 173-75 (2002); Christopher C. Confer, To Be About the People's Business: An Examination of the Utility of
commissions are not self-interested legislators. Who exactly the members are varies from initiative to initiative, but in no case are the very politicians who will soon be running for reelection allowed to draw the district lines themselves. This feature of commissions encourages values other than the legislators' self-interest to be pursued, such as district competitiveness, the preservation of political communities, and the achievement of electoral results that broadly mirror the public's political preferences. Of course, commission members are not politically agnostic saints; under the terms of several of the twelve initiatives, in fact, they may be executive branch officials or staunch partisans appointed by state party leaders. But the fact that commission members' own careers will not be directly affected by the district maps that they draw frees them to focus on the public good (or, at least, to consider it more seriously than legislators do). The bipartisan nature of many commissions, with an equal number of each major party's backers as well as, typically, a neutral chairperson elected by the political appointees, also prevents commission members from blatantly flouting democratic values. Any redistricting proposal that promises to result in disproportionate electoral success for one party inevitably provokes fierce opposition from the other party's supporters and the chairperson.

Second, redistricting that is conducted by a commission enjoys greater public legitimacy than redistricting carried out by the state legislature. As Jeffrey Kubin notes, the latter method "fosters disillusionment with the democratic process because it more deeply ingrains upon the American

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20 See infra Appendix A. The three principal formulas for commission composition are 1) for certain state officials (e.g. the governor, the secretary of state) to be on the commission ex officio; 2) for designated state officials (e.g. the governor, legislature majority and minority leaders, state party leaders) to appoint the commission members; and 3) for retired judges to staff the commission.

21 See Nichol, supra note 19, at 1030 ("I am inclined to believe that independent redistricting commissions are less political than their legislative counterparts."); Kubin, supra note 19, at 858 ("The legislative independence of... commissioners also affords them greater flexibility to adhere to a state's constitutionally mandated redistricting criteria.").

22 See Appendix A, infra. A variation of this formula was proposed in North Dakota (1973), Arizona (2000), and Ohio (2005). Many states that have adopted redistricting commissions through legislative action (as opposed to an initiative) also have bipartisan commissions.

23 See Kubin, supra note 19, at 856 ("Fundamentally, tie-breaking commissions provide for a fair fight because the majority party cannot run roughshod over the minority party as it would be able to in an unevenly split legislature.").
Reforming Redistricting

psyche the image of politicians as self-interested actors feathering their own nests.\(^{24}\) Oddly shaped districts, very high reelection rates, seat counts that do not correspond to vote counts—all these ills may be blamed on self-serving politicians when the legislature draws the district lines, with the result that the public’s faith in government declines and its cynicism swells. In contrast, when elections conducted pursuant to a commission’s district map fall short of perfection, people at least know that the rules of the game were drafted by someone other than the game’s actual contestants.\(^{25}\)

Third, entrusting redistricting to a commission allows the legislature to devote more attention to issues of greater concern to the public. It is true that redistricting (typically) takes place only once per decade, but it is a very time-consuming process that generates a great deal of animosity among legislators battling for personal and partisan advantage. A governor’s veto or a court’s invalidation of the legislature’s plan, both quite common in the redistricting context, can further protract the process and intensify legislators’ antagonism. But when a commission draws district lines, both the time-drain and the poisonous side effects of legislative redistricting are averted.\(^{26}\)

Empirical evidence confirms that elections in states with commissions are superior in several respects to elections in states without commissions.\(^{27}\) Andrew Gelman and Gary King conducted a study of all lower house elections in thirty states over a twenty-year period. They found that when a single party controls redistricting, it wins on average 3 percent more seats than it would have obtained if a commission handled redistricting or if control over the legislature was split.\(^{28}\) That is, a party that would have won 100 seats under a bipartisan commission’s plan will typically win 103 seats if it is able to draw the district lines itself. At the

\(^{24}\) Id. at 860.

\(^{25}\) See Confer, supra note 19, at 126 ("Bipartisan or nonpartisan legislative redistricting commissions increase the legitimacy of the entire redistricting process by removing the most self-interested group, the political parties, from control over the process.").

\(^{26}\) See id. at 128 ("The primary advantage gained by allowing redistricting to be done by nonpolitical or bipartisan redistricting commissions is that the legislature can take the time previously spent on redistricting and spend it in pursuit of its primary responsibility - being about the people's business.").

\(^{27}\) See also Christopher S. Elmendorf, Representation Reinforcement Through Advisory Commissions: The Case of Election Law, 80 N.Y.U. L. Rev. 1366, 1388 (2005) (noting that redistricting commissions have been "singularly effective"); id. at 1390 ("Many districting commissions that purport to be nonpartisan have acquired a reputation (among informed local observers) for fulfilling their mission with integrity.").

\(^{28}\) Andrew Gelman & Gary King, Enhancing Democracy Through Legislative Redistricting, 88 AM. POL. SCI. REV. 541, 553 (1994).
federal level, I compared 2004 election results in the four states that employ redistricting commissions and have more than two congressional seats—Arizona, Iowa, New Jersey, and Washington—to results in the forty-three states that do not use commissions to redistrict their congressional delegations.\(^{29}\) I found that candidates’ average margin of victory was smaller in the commission states than the non-commission states (30.0 percent versus 36.6 percent), election turnout was higher (59.9 percent versus 57.7 percent), and the divergence between a major party’s proportion of votes and its proportion of congressional seats was smaller (10.5 percent versus 16.2 percent).\(^{30}\)

Redistricting plans drafted by commissions are also less likely to be challenged in court, and more likely to be upheld when they are challenged. Christopher Confer analyzed lawsuits involving the district maps of the seven states—Arkansas, Colorado, Michigan, Missouri, New Jersey, Ohio, and Pennsylvania—that use commissions for state legislature redistricting but not for congressional redistricting. He found that, after the 1980 census, five of the seven congressional plans were invalidated but none of the state plans were struck down (and only two were even litigated).\(^{31}\) After the 1990 census, similarly, two of the seven congressional plans were declared invalid while only one state plan was (and that state plan, for the Arkansas state legislature, was the product of a commission composed solely of executive branch officials).\(^{32}\) As for the four states that employ commissions for both state and federal redistricting, the 1980 and 1990 cycles together saw only one state plan and one federal plan invalidated.\(^{33}\) Elections carried out after redistricting by a commission, then, appear to result in less litigation, a tighter correlation between a party’s vote and seat totals, and, at least at the federal level, more voter participation and more competitive races.

\(^{29}\) I did not consider the three states that use commissions but have only one or two congressional seats (Hawaii, Idaho, and Montana) because it is impossible to draw any conclusions about elections in such a small number of districts. It should also be noted that Iowa’s commission is technically advisory only, but its proposals have almost always been followed by the Iowa legislature.

\(^{30}\) For 2004 election data, see Fairvote, Voting and Democracy Research, Dubious Democracy 2005 Data, http://www.fairvote.org/?page=722 (last visited Oct. 15, 2007). Because of the small number of commission states, none of the differences between commission and non-commission states are significant at the 95 percent confidence level. The probability that the differences did not arise due to chance are 88 percent for the average margin of victory, 35 percent for turnout, 85 percent for Democratic seat-to-vote divergence, and 73 percent for Republican seat-to-vote divergence.

\(^{31}\) Confer, supra note 19, at 132. If anything, one would expect state legislature redistricting maps to be more likely to be invalidated because of the far greater number of seats involved.

\(^{32}\) Id.

\(^{33}\) Id. at 131.
Reforming Redistricting

Like redistricting initiatives, redistricting commissions are far from flawless. If party representation on a commission is unbalanced, as is the case in several states, the commission may be just as dominated by partisan self-interest as the state legislature. Even if the commission has an equal number of supporters of each major party, the outcome of the redistricting process may be a "sweetheart gerrymander," where parties' seats correspond to their support among voters but districts are drawn in such a way that incumbents coast effortlessly to victory. Furthermore, the near impossibility after *Vieth* and *LULAC* of challenging redistricting plans on partisan gerrymandering grounds means that there is no effective judicial check on commissions' actions. If they disregard the specified redistricting criteria, or create a district map as flawed as that of any legislature, there is very little that the courts can do. Finally, some critics argue that even if commissions "work"—by making elections more competitive and legislative power more proportional to voter support—this is not necessarily a good thing. More competition may undermine party cohesion by weakening party leaders' hold on their seats and prompting candidates in close races to deviate from the party line. And more proportional representation may hamper the state majority party's ability to pass legislation, and, at the congressional level, hurt the national party that would otherwise have enjoyed a disproportionate majority of the state's seats.

I do not find these arguments against redistricting commissions persuasive. The potential negative consequences of unbalanced and bipartisan commissions are belied by the empirical evidence cited above; even if such commissions in theory might produce gerrymanders of various sorts, in practice they have not tended to do so. Moreover, even if

34 Challenges to redistricting plans on racial gerrymandering grounds—both under the Equal Protection Clause and the Voting Rights Act—remain available even after *Vieth* and *LULAC.*

35 For a rare example of a court striking down a commission plan for failure to follow all of the specified redistricting criteria, see *In re Reapportionment of the Colorado General Assembly,* 828 P.2d 185, 194-96 (Colo, 1992) (upholding most of the Colorado commission's 1990 legislative redistricting plan but invalidating the split of two counties, which violated the requirement that counties not be unnecessarily divided).

36 See Confer, supra note 19, at 133-38.

37 For example, if California were to start redistricting by commission, its congressional delegation, currently made up of 33 Democrats and 20 Republicans, would likely become more evenly split. This might be a "fairer" result, but it would substantially harm the national Democratic Party. For a state to begin redistricting its congressional delegation by commission in a context where most states do not, then, arguably amounts to unilateral disarmament. See Adam B. Cox, *Partisan Gerrymandering and Disaggregated Redistricting,* 2004 SUP. CT. REV. 409, 450 n.118 (2004) ("If [redistricting reforms] were successful in only a few states (or if there were a consistent partisan alignment among the states most likely to enact such reforms by initiative), the use of commissions might exacerbate certain harms.").
accurate, the critique of unbalanced and bipartisan commissions proves only that commissions with a particular composition do not function well—not that all commissions are intrinsically flawed. In particular, a commission made up of nonpartisan experts, like the one used by Iowa, should result in neither a one-party nor a bipartisan gerrymander.

As for the argument that rigorous judicial review of commissions’ actions is unavailable, it merely suggests that there should be such judicial review. And in the absence of any way to regulate partisan gerrymandering in the courts, it is even more important that an independent party, not the self-interested legislators, draw the district lines. Samuel Issacharoff goes so far as to contend that courts should not even try to "police redistricting outcomes ex post," and instead “should forbid ex ante the participation of self-interested insiders in the redistricting process."38

Finally, it is true that greater electoral competition and more proportional representation are not unalloyed goods; in the complex realm of elections, no goal can ever be achieved without some compromise. The key point, though, is that competition and some rough measure of proportional representation are far more fundamental to the democratic process than party cohesion and legislative efficiency. Democracy is in part about unified parties and effective lawmaking—but its essence is the translation of the popular will into public policy, and this deeper mission is advanced by redistricting commissions and undermined by the status quo.

II. THE TWELVE REDISTRICTING INITIATIVES

Redistricting commissions promise to improve American democracy, and the popular initiative is an attractive way to establish commissions in states where the legislature refuses to act. The great puzzle, then, is why most redistricting initiatives fail and why a select few succeed.39 Solving this puzzle is critically important for proponents of redistricting reform, who need to know when and where to launch initiatives, and under what circumstances to hold their fire. The frequent failure and occasional success of redistricting initiatives are also perplexing to legal scholars and political scientists, most of whom would expect such initiatives—in the

39 Studies of why initiatives of a specific sort succeed or fail are rare. There are no studies of which I am aware attempting to explain why redistricting initiatives succeed or fail.
interests of the general public, and opposed mainly by self-interested legislators—generally to prevail.40

This Part begins the effort to get to the bottom of the mystery. It first outlines a series of factors that might explain redistricting initiatives’ success or failure. Some of these variables have been identified by political scientists as significant in the initiative context, while others emerged as important over the course of my research. The Part next describes the salient features of the twelve redistricting initiatives that have taken place over the course of American history, and offers some tentative explanations for why each initiative succeeded or failed.

A. Variables

What are the variables that might explain the electoral success or failure of redistricting initiatives? Several political scientists, first, have identified campaign spending as a critical factor. According to Elizabeth Garrett, studies “have uniformly concluded that money plays a large role in [initiative] campaigns, particularly when it is spent to defeat ballot questions.”41 Deep pockets allow politicians and interest groups to obtain access to the ballot—typically a difficult task because of the large number of signatures required—and more effectively to broadcast their message to the public. As a result, 78 percent of initiative campaigns are won by the side that spends more money, and opponents of a measure who outspend its backers win 90 percent of the time.42 Second, some (more optimistic) scholars argue that initiatives’ outcomes depend on voters’ appraisal of the proposals’ pros and cons. Rich Braunstein’s data indicates that “inclusive” measures succeed at a higher rate than “exclusive” measures that primarily benefit a particular interest group (65.5 percent versus 43.5 percent), and that measures that increase citizens’ decision-making power succeed 73 percent of the time.43 Similarly, Andrew Skalaban’s analysis of two

40 Cf. RICH BRAUNSTEIN, INITIATIVE AND REFERENDUM VOTING: GOVERNING THROUGH DIRECT DEMOCRACY IN THE UNITED STATES 110 (2004) (presenting data that government and political process initiatives succeed at a higher rate than any other type of initiative).
41 Garrett, supra note 13, at 1847.
42 BRAUNSTEIN, supra note 40, at 75-77; see also PHILIP L. DUBOIS & FLOYD FEENEY, LAWMAKING BY INITIATIVE: ISSUES, OPTIONS AND COMPARISONS 182-86 (1998) (46 percent of California initiatives with one-sided spending in favor succeeded, and 90 percent of California initiatives with one-sided spending in opposition failed). Contra MAGLEBY, supra note 15, at 147 (“By spending considerably more than the opposition, can a group pass an initiative into law? .... The best available evidence indicates that this is typically not the case.”); John R. Owens & Larry L. Wade, Campaign Spending on California Ballot Propositions, 1924-1984: Trends and Voting Effects, 39 W. Pol. Q. 675, 688 (1986) (“Money has simply been overemphasized as a determinant of voting on direct legislation.”)
43 BRAUNSTEIN, supra note 40, at 55, 67.
California term limits initiatives suggests that voters have the "ability to make a sophisticated choice between competing initiatives by voting for the one closest to their ideal and against the other."44

Third, the positions taken by elites—major newspapers, interest groups, prominent politicians, etc.—arguably affect the likelihood that an initiative will pass. Jeffrey Karp's study of a 1991 Washington term limits initiative showed that voters who were favorably disposed toward House Speaker Tom Foley and who knew that he opposed the measure were far more likely to oppose the measure themselves.45 James Gregg found that the electorate follows newspapers' endorsements more than 80 percent of the time,46 and David Magleby determined that the positions of groups such as environmentalists and unions have a good deal of influence on voters' behavior (greater, in fact, than politicians' stances).47 Finally, some scholars contend that the framing of an initiative is critically important. David McCuan et al. interviewed political consultants and found that, in the consultants' view, the most important element of initiative campaigns was the "drafting of messages designed to gain support or test likely objections for a ballot measure."48 Magleby, similarly, analyzed several California initiatives and concluded that "[t]he battle over defining the proposition is one of the most important aspects of initiative politics...[T]he side that defines the issue will win the election."49

In addition to these factors, two variables that are not emphasized in the secondary literature should be cited. First, the positions adopted by the major parties, and the intensity and consistency with which they are

45 Jeffrey A. Karp, The Influence of Elite Endorsements in Initiative Campaigns, in CITIZENS AS LEGISLATORS: DIRECT DEMOCRACY IN THE UNITED STATES 149, 162 (Shaun Bowler et al. eds., 1998) [hereinafter CITIZENS AS LEGISLATORS].
46 MAGLEY, supra note 15, at 151 (citing the Gregg study); see also EDWARD C. BANFIELD & JAMES Q. WILSON, CITY POLITICS 324 (1963) ("Where voters must...pass on a multitude of referenda issues, the newspaper acquires added influence."). Contra John E. Mueller, Voting on the Propositions: Ballot Patterns and Historical Trends in California, 63 AM. POL. SCI. REV. 1197, 1211 (1969) ("This analysis of ballots has found little evidence to support the view that newspaper recommendations strongly affect the vote on the propositions.").
48 David McCuan et al., California's Political Warriors: Campaign Professionals and the Initiative Process, in CITIZENS AS LEGISLATORS, supra note 45, at 55, 68.
49 MAGLEY, supra note 15, at 168-69; see also Mueller, supra note 46, at 1211 ("[C]ampaigning...does seem to structure opinion on those few propositions on which it is conducted...").
promoted, may have an impact on an initiative's odds of passing.50 Parties have significant resources, they can easily convey their message through the politicians who belong to the party, and voters tend to respond to partisan cues. When a party strongly supports or opposes a measure, its stance should be expected to have some effect on the initiative's fate. Second, major state and national developments may make a redistricting initiative more or less likely to pass. A recent egregious gerrymander or a nationwide tide in favor of electoral reform, for instance, may create a favorable climate for a redistricting initiative. On the other hand, when voters are relatively satisfied with the political status quo, they may be reluctant to try to fix what does not seem to be broken.

B. Cases

The factors that one might expect, on the basis of the secondary literature and common sense, to influence a redistricting initiative's likelihood of passing are therefore the following: campaign spending; the initiative's actual content and voters' evaluation of its benefits and costs; the positions taken by newspapers, politicians, interest groups, and political parties; the framing of the initiative over the course of the campaign; and the presence or absence of important state or national developments. This Section takes these factors into account while describing the twelve51 redistricting initiatives and evaluating why they each succeeded or failed.

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51 This Article does not consider the large number of initiatives that solely addressed misapportionment, for instance by requiring all electoral districts to have approximately the same population. The Article only considers initiatives that sought to create redistricting commissions and thereby combat political gerrymandering. This choice as to scope was made because 1) the campaign over an initiative is quite different when the measure seeks to create equally sized districts as opposed to when it tries to take redistricting out of legislators' hands; and 2) more importantly, Baker v. Carr, 369 U.S. 186 (1962), and its progeny have wholly mooted the debate over whether equally-sized districts and one-person, one-vote are desirable. Pre-Baker initiatives are therefore examined only if they tried to fight political gerrymandering in addition to legislative misapportionment.
1. Arkansas, 1936 (Succeeded)

The first ever redistricting initiative took place in Arkansas in 1936. The state legislature had long been badly misapportioned, with Assembly and Senate districts varying widely in population,\(^{52}\) and no reapportionment having taken place since 1890.\(^{53}\) In response, Amendment No. 23 was placed on the 1936 general election ballot. The initiative sought to create a three-member Board of Apportionment to conduct redistricting, composed of the governor, the secretary of state, and the attorney general. The Board would have no power to change Assembly district lines, which were required to correspond to county boundaries, but would be able to vary the number of representatives that each county received in accordance with its population.\(^{54}\) The Board would actually have the authority to draw the thirty-five Senate districts, with the caveats that counties could not be divided for any reason, non-contiguous counties could not be combined, and all districts were required to have "as nearly as practicable" the same population.

The campaign over Amendment No. 23 was quite subdued, as the 1936 presidential race and other ballot initiatives absorbed most of the attention of Arkansas's politicians and media. Democratic Governor Junius Futrell made no public statements about the reapportionment initiative, nor did the state's legislators hold rallies or raise money for or against the measure. Newspaper coverage was also scant but largely supportive, with both the \textit{Arkansas Gazette}\(^{55}\) and the \textit{Arkansas Democrat}\(^{56}\) strongly endorsing the measure. In one typical editorial, the \textit{Gazette} declared that "[a]pportionment is not a matter of one county or senatorial district or section against another, but a matter of fairness and justice for every resident of Arkansas wherever he lives."\(^{57}\)

\(^{52}\) See \textit{A Fair Deal for Every County}, ARK. GAZETTE, Oct. 22, 1936, at 1 [hereinafter \textit{A Fair Deal}] ("Where a certain county with 44,740 population has one representative, two counties with a combined population of 43,262 have two representatives each, giving them together four times as many votes in the House of Representatives."); \textit{Inequality and Injustice}, ARK. GAZETTE, Oct. 23, 1936, at 1 ("The most glaring inequality of all is that imposed on one three-county district with 126,918 population and one senator, as compared with another three-county district whose population is 33,225.").

\(^{53}\) See \textit{In Tuesday's Election}, ARK. GAZETTE, Nov. 1, 1936, at 1.

\(^{54}\) All of Arkansas's seventy-five counties are entitled to at least one Assembly representative. Since the Assembly has one hundred seats, the Board has only twenty-five seats to distribute on the basis of county population.

\(^{55}\) See \textit{A Fair Deal}, supra note 52 ("Each county should of course have as many members as its population entitles it to have . . . Vote "For" Amendment No. [23].")

\(^{56}\) See \textit{Amendment No. 23—Apportionment}, ARK. DEMOCRAT, Oct. 30, 1936, at 10 ("In the spirit of everyday fairness to each other the voters should support Amendment No. [23].")

\(^{57}\) See \textit{Fairness and Justice for All}, ARK. GAZETTE, Oct. 28, 1936, at 1.
On November 3, 1936, Amendment No. 23 passed by a vote of 66 percent for versus 34 percent against. The main reason for the measure’s success appears to have been a desire by the electorate—sharpened by favorable newspaper editorials—to undo the legislature’s longstanding misapportionment. In the absence of organized opposition, the policy arguments against imbalances in legislative representation prevailed. Decisions by Arkansas courts after the initiative’s passage confirm this assessment of why Amendment No. 23 succeeded. In the 1941 case of Bailey v. Abington, the Arkansas Supreme Court opined that “by the adoption of Amendment No. 23, the people intended to correct certain evils that then existed,” namely the situation where “some counties with a small population [had] more representatives than others with a larger population.” In Stevens v. Faubus, similarly, the Court stated that “[i]t was because the allocation [of legislators] had not been changed for many years and had become inequitable that the voters declared in Amendment 23 that the apportionment must be adjusted every ten years.” Importantly, partisan politics do not appear to have played a role in the initiative campaign. Arkansas’s Democratic Party retained firm control of the state legislature both before and after Amendment No. 23 passed, and no one could have expected the initiative to challenge the party’s predominance in a state that since Reconstruction had been one of the country’s least hospitable terrains for Republicans.

2. Oklahoma, 1960 (Failed)

Prior to 1960, the Oklahoma state legislature was one of the most misapportioned in the country. An observer in the *Western Political Quarterly* noted that “[d]espite a continuing urbanization, the Oklahoma legislature remains ridiculously overpopulated with rural representatives,” with 27 percent of voters controlling a majority of the lower chamber’s seats and 25 percent controlling a majority of the state senate. The state senator from Marshall and Love Counties represented only 15,879 persons

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58 Bailey v. Abington, 148 S.W.2d 176, 180 (Ark. 1941).
59 Stevens v. Faubus, 354 S.W.2d 707, 710 (Ark. 1962); see also Butler v. Democrat State Comm., 160 S.W.2d 494, 496 (Ark. 1942) (“The purpose of the amendment was, of course, to secure equal and fair representation in the General Assembly upon the basis of proportionate population.”).
60 Walter F. Scheffer, *Problems in Municipal Finance*, 15 W. Pol. Q. 522, 525 (1962); see also George B. Merry, *Gerrymandering Lingers Across U.S.*, CHRISTIAN SCI. MONITOR, June 13, 1959, at 10 (noting that, in the 1958 congressional election, the Oklahoma Republican Party won just one of six seats despite receiving 31 percent of the vote).
while the senator from Tulsa County represented 248,000.\textsuperscript{61} Moreover, this misapportionment existed in direct violation of the Oklahoma state constitution, which required districts of roughly equal population and reapportionment after each census.\textsuperscript{62} The Oklahoma House of Representatives had last been reapportioned in 1920, and the Oklahoma Senate had never been reapportioned in the state's entire history.\textsuperscript{63}

In 1960, both the state's young Democratic governor, J. Howard Edmondson, and the League of Women Voters, a national good government group, supported an initiative that would have entrusted reapportionment to a three-member Legislative Apportionment Commission. The commission, composed of the attorney general, the secretary of state, and the treasurer, would have redrawn state electoral districts of about the same population every ten years (with the caveat that every county, no matter how small, would have been entitled to at least one representative in the lower chamber).\textsuperscript{64} Governor Edmondson backed the measure out of frustration with the rurally dominated legislature, which had refused to enact several policies that he favored. He campaigned hard for redistricting reform, organizing a fifty-two member committee to rally public opinion around the state,\textsuperscript{65} and delivering frequent speeches about the merits of the proposal and the danger that federal courts would intervene if Oklahomans did not address their legislature's misapportionment.\textsuperscript{66} He was joined in support of the measure by major

\textsuperscript{61} Jim Young, Reapportionment Poses One of State's Stormiest Problems, DAILY OKLAHOMAN, Apr. 3, 1960, at 83.

\textsuperscript{62} See OKLA. CONST. art. V, § 10 (repealed 1964) (distributing House seats to counties based in part on their population and requiring reapportionment every ten years); id. art. V, § 9 (repealed 1964) (same for Senate); see also James E. Clayton, State Apportionment Pressure Mounts, WASH. POST, TIMES HERALD, Apr. 27, 1962, at A1 ("Under Oklahoma's constitution, its two largest counties are entitled to 15 of the 44 State Senators. They have three.").

\textsuperscript{63} See Jim Young, Edmondson Reapportion Plan Lifts Ceiling, DAILY OKLAHOMAN, Sept. 11, 1960, at 68.

\textsuperscript{64} See id. The League of Women Voters, while supportive of the initiative, would have preferred a plan that strictly observed the principle of one-person, one-vote. See Apportion Petition Decision Looming, DAILY OKLAHOMAN, Mar. 21, 1959, at 3 ("[S]ome of the league members thought the governor's proposal was watered-down . . . ."); Women Voters Keep Their Plan on Shelf, DAILY OKLAHOMAN, Apr. 3, 1960, at 27 ("League leaders objected to the governor's plan to assure every county in the state at least one house member.").

\textsuperscript{65} See Jim Reid, Forces Massing in Petition Fight, DAILY OKLAHOMAN, Aug. 5, 1960, at 5; see also Fate of Reform Issue Depends on Voting Size, DAILY OKLAHOMAN, Sept. 18, 1960, at 1 ("[T]he Edmondson forces are putting on a drive for personal contact with voters to get them to the polls.").

\textsuperscript{66} See Federal Act Eyed in Apportionment, DAILY OKLAHOMAN, Sept. 11, 1960, at 68 (quoting Gov. Edmondson) ("[I]f we don't take this action it is a grave probability that the federal government will do it for us . . . . It is a fair assumption that unless we act and exercise our own rights we might well forfeit them."); Young, supra note 63 ("Edmondson contends his petitions will simply give 'fair representation to all of the people no matter what county they live in.'").
newspapers,\textsuperscript{67} city governments,\textsuperscript{68} civic groups such as the League of Women Voters, the Junior Chamber of Commerce, and the Tulsa Jaycees,\textsuperscript{69} and the Oklahoma Republican Party, which was one of the main victims of misapportionment.\textsuperscript{70}

Ironically, opposition came almost entirely from within the governor’s own party. Oklahoma Democrats, recognizing that redistricting reform would weaken their grip on the state legislature, launched a furious campaign against the initiative. They formed a new organization, Oklahomans for Local Government, to oppose the reapportionment measure as well as two other ballot proposals that threatened rural interests.\textsuperscript{71} They argued that the state should retain its existing constitutional reapportionment formula, rather than amend it so that there would be no cap on the number of seats a county could have.\textsuperscript{72} They claimed that the initiative would allow a small number of urban counties to dominate the state legislature and pass whatever laws they wished.\textsuperscript{73} Most importantly, they systematically rallied rural voters through vigorous rhetoric, frequent campaign events,\textsuperscript{74} and an organization extending all the way to the precinct level.\textsuperscript{75}

In the end, the reapportionment initiative was defeated handily, by a vote of 35 percent in favor versus 65 percent against. Only three of Oklahoma’s seventy-seven counties supported the measure, while “[t]he one-sided majorities” in many rural counties “were the most lop-sided ever

\textsuperscript{67} See infra note 72.

\textsuperscript{68} See Council Backs Reapportionment, \textsc{Daily Oklahoman}, Sept. 14, 1960, at 4 (reporting that the Oklahoma City Council passed a resolution in support of the reapportionment initiative, but only by a 5-3 vote).

\textsuperscript{69} See Otis Sullivant, Unity Is Sought on Legislative Apportion Plan, \textsc{Daily Oklahoman}, Sept. 4, 1959, at 1.

\textsuperscript{70} See Harris Urges GOP Support for Petitions, \textsc{Daily Oklahoman}, Sept. 13, 1960, at 17.

\textsuperscript{71} See Democrat Chiefs Fight Measures, \textsc{Daily Oklahoman}, Sept. 8, 1960, at 11. Other groups opposing the initiative—for example, the Rural Electrification Commission, the Farmers Union and Farm Bureau, the Cattlemen’s Association, and the County Officers Association—were also affiliated with the state Democratic Party and rural interests.

\textsuperscript{72} The irony of Oklahoma Democrats defending the constitutional formula after failing to apply it for forty years in the lower chamber’s case and ever in the senate’s case was pointed out by \textsc{Daily Oklahoman} editorials. See \textit{All the People All the Time}, \textsc{Daily Oklahoman}, July 3, 1960, at 10; \textit{What the Constitution Says}, \textsc{Daily Oklahoman}, Sept. 7, 1960, at 8 (“Actually the politicians who are hollering about the virtues of the constitutional formula have no desire whatever to see it or any other reapportionment proposal applied. What they really favor is the undisturbed status quo . . . .”).

\textsuperscript{73} See Anything But the Facts, Ma’am, \textsc{Daily Oklahoman}, Sept. 8, 1960, at 14 (“The voters are being told that ‘three or four heavily populated counties’ will have enough legislative strength to pass any laws they please if reapportionment passes September 20.”).

\textsuperscript{74} See Ray Parr, Governor Assailed at Petitions Rally, \textsc{Daily Oklahoman}, Sept. 13, 1960, at 1 (describing a rally at Tishomingo where former governor Raymond Gary denounced the reapportionment initiative).

\textsuperscript{75} See Reid, supra note 65.
given in the state on major issues." The most important factor in the initiative’s defeat was the intensity of opposition among the state Democratic Party and its rural backers, who rightly feared that their political clout would be diminished if the initiative passed. Turnout was extremely high—and voter sentiment almost uniformly negative—in rural counties, while city dwellers turned out in smaller numbers and supported the initiative by less impressive majorities. As the Daily Oklahoman remarked, "[r]ural voters were fanatically determined to protect what they considered their interests," while "[u]rban voters were only indifferently responsive to theirs." Oklahoma Democrats also seem to have framed the issues in the election more effectively than Governor Edmondson. While the governor spoke about fairness in political representation, a relatively abstract concern, state Democrats told rural voters that their power would be undercut if the initiative passed, that the state constitution would be amended in a manner contrary to the intentions of the document’s framers, and that state politics would come to be dominated by big city interests.

3. Oklahoma, 1962 (Succeeded)

Two years later, Oklahoma’s reformers tried again. The initiative they proposed this time differed subtly from the measure that failed in 1960, in that the 1962 initiative did not seek to change the constitutional reapportionment formula, only to enforce it by means of a commission. Counties would thus not be entitled to at least one representative in the lower chamber, nor would the cap on country representation in the lower chamber (seven) be eliminated, if the initiative passed. As in 1960, Governor Edmondson backed the measure, as did the state Republican Party and Oklahoma’s leading newspaper. In addition, both parties’

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76 Otis Sullivant, State Votes No, No, No, DAILY OKLAHOMAN, Sept. 21, 1960, at 1; see also Rural Vote Emphatically No, DAILY OKLAHOMAN, Sept. 21, 1960, at 27 (“Never before in the history of elections [have] such one-sided majorities been rolled up in the rural areas. In Cimarron County, in the far end of the Panhandle,” the vote was “1,240 votes against a mere 5 for reapportionment.”).  
77 See Rift in Oklahoma Hurts Democrats, N.Y. TIMES, Sept. 25, 1960, at 55 (“Rural voters turned out in record numbers to swamp the proposals. They were favored in the larger cities, but the majorities there were not so large as expected and the vote was much lighter than in the rural areas.”).  
79 The proposed Constitutional Apportionment Commission would also have been composed of the attorney general, the secretary of state, and the treasurer.  
80 See In re Initiative Petition No. 271, State Question No. 408, 373 P.2d 1017 (Okla. 1962) (holding that the 1962 initiative is “substantially different” from the 1960 initiative, and therefore not barred from the ballot by a constitutional provision prohibiting the resubmission of an initiative within three years of its initial defeat).  
81 See Apportion Drive To Get GOP Aid, DAILY OKLAHOMAN, Oct. 6, 1961, at 10.
candidates for governor expressed their support for the initiative, and a new group called Citizens for Constitutional Reapportionment spearheaded the signature-gathering process.

More importantly, the judicial landscape had shifted between 1960 and 1962. In March 1962, the Supreme Court held in Baker v. Carr that legislative apportionment presented a justiciable question and that electoral districts were required to have approximately the same population. That decision sparked widespread litigation and legislation, and galvanized supporters of redistricting reform across the country. In Oklahoma, a federal district court applied Baker to the apportionment of the state’s legislature, and concluded that the entire arrangement was unconstitutional. The court gave the Oklahoma legislature until March 8, 1963 to come up with an electoral regime that did not violate the Constitution and threatened to reapportion the legislature itself if the deadline was not met. The 1962 initiative campaign, therefore, was conducted under the looming cloud of federal judicial intervention.

Because of this cloud, the tone of the campaign on both sides was muted by comparison to the feisty 1960 confrontation. Both parties’ nominees for governor rarely discussed reapportionment and said they would defer to the voters’ judgment.

See At Long Last, DAILY OKLAHOMAN, Nov. 5, 1962, at 28 (endorsing the reapportionment initiative).

See Governor Foes To Let Voters Decide Issue, DAILY OKLAHOMAN, Sept. 29, 1962, at 3 [hereinafter Governor Foes] (“Both candidates early in the campaign had declared for constitutional apportionment as a general proposition, and each said he would call a special election on the measure if he became governor . . . .”). Governor Edmondson was unable to run for re-election because of term limits.


See Alan L. Otten, Rural Lawmakers: Rapid Reapportionment Threatens Their Hold on State Legislatures, WALL ST. J., Aug. 9, 1962, at 1 (“With a speed and scope defying all forecasts, the Supreme Court’s landmark reapportionment decision is revolutionizing the makeup of state legislatures.”); Layhmond Robinson, 22 States Battle on Redistricting: Fight Spurred by High Court Ruling Is Spreading Fast, N.Y. TIMES, Aug. 6, 1962, at 23 (“The politically potent issue of legislative reapportionment is burning like a prairie fire across the nation. Only a small flame in a few states some months ago, the issue has blazed to new prominence following a landmark decision by the United States Supreme Court . . . .”).
not organize against the 1962 measure.\textsuperscript{90} Overall, the initiative generally was “not an issue that worked up the people as the contesting forces did on Gov. Edmondson’s reform program, which included reapportionment, in 1960.”\textsuperscript{91}

In the wake of this subdued campaign, the initiative passed by a margin of 55 percent for to 45 percent against.\textsuperscript{92} The Supreme Court’s decision in \textit{Baker} and the Oklahoma district court’s ultimatum to the state legislature were unquestionably the most important factors explaining the initiative’s victory. In 1960, Oklahoma’s rural voters had believed that they could prevent reapportionment, and so had turned out in large numbers to preserve their political influence. By 1962, it was clear that, one way or another, reapportionment was going to take place. Either the legislature would act on its own, or a popular initiative would pass, or a federal court would intercede on behalf of the principle of one-person, one-vote. The incentive to fight reapportionment tooth and nail no longer existed, and the 1962 initiative accordingly skulked its way to victory.\textsuperscript{93}

\textbf{4. North Dakota, 1973 (Failed)}

North Dakota’s 1973 redistricting initiative, like the Oklahoma measure eleven years earlier, arose in the context of litigation involving the one-person, one-vote principle. In the 1960s, courts thrice invalidated reapportionment plans drawn by the North Dakota state legislature.\textsuperscript{94} The North Dakota district court eventually imposed its own plan in 1965, which was notable for the multimember senate districts it created as well as the

\textsuperscript{90} See Otis Sullivant, \textit{Reapportionment Issue Fails to Stir up Election Interest}, DAILY OKLAHOMAN, Nov. 2, 1962, at 5.

\textsuperscript{91} Id.; see also Otis Sullivant, \textit{Apportionment Issue To Increase Vote}, DAILY OKLAHOMAN, Sept. 26, 1962, at 3 ("[T]he initiative measure, if it gets on the ballot, will not be as hot an issue as it was two years ago . . . . The rural areas will not be as excited because of the federal court decision . . . .").

\textsuperscript{92} But this was not the end of the initiative’s story. In \textit{Allen v. Burkhart}, 377 P.2d 821, 825 (Okla. 1963), the Oklahoma Supreme Court ruled that the initiative had actually \textit{failed} because “the aggregate number of affirmative votes fell short of a majority of the total number of ballots cast throughout the State in the general election.” Later in 1963, after further legislative inaction, a federal district court reapportioned the Oklahoma state legislature. See \textit{Moss v. Burkhart}, 220 F. Supp. 149 (D. Okla. 1963). In a nice twist, the federal district court imposed the same reapportionment plan that the commission created by the initiative had adopted before it was dissolved by the state supreme court in \textit{Allen}. See \textit{id}. at 156.

\textsuperscript{93} Also in the 1962 initiative’s favor (though much less important than the judicial developments) was that it defused the criticisms of supporters of the constitutional reapportionment formula. As noted above, the 1960 initiative had proposed various changes to the constitutional reapportionment formula, while the 1962 initiative left it undisturbed.

relatively large inter-district population discrepancies that it authorized. After the 1970 census, the state legislature failed to reapportion itself, and the district court struck down the existing district map—ironically, the same one that it had fashioned itself seven years earlier—and imposed yet another plan for the 1972 election only. This plan also included multimember districts and substantial inter-district population variance.

In 1973, the Republican-dominated North Dakota state legislature finally passed a reapportionment plan calling for five multimember senate districts and an inter-district population variance of 6.8 percent. The governor, Democrat Arthur A. Link, vetoed the plan but had his veto overridden by a vote of 72-30 in the House and 37-14 in the Senate. Supporters of the governor then filed a referendum petition subjecting the legislature’s plan to a statewide vote, and also launched an initiative to take redistricting out of the legislature’s hands altogether. The initiative would have required all of North Dakota’s legislative districts, for both the House and Senate, to elect only one representative, and created a bipartisan nine-member commission to draw the district lines.

Not surprisingly, the chief backers of the initiative were Governor Link, the state Democratic Party, and traditional Democratic allies such as organized labor and farm organizations. Democrats objected to both the boundaries of many districts, which they contended were unduly favorable to Republican candidates, and the multimember nature of some Senate and all House districts. According to Democrats, the latter feature allowed Republicans, who were the majority party in most of the multimember districts, to win far more seats than they deserved given their popular support. As the *Bismarck Tribune* observed, “[i]n a state which elected a Democratic governor and lieutenant governor as well as a state treasurer and tax commissioner, voters only elected 10 Democrats to the 51-member

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95 See Paulson II. The plan created five multimember senate districts, and managed to have only twenty-five of thirty-nine districts within 5 percent of the average district population. NORTH DAKOTA LEGISLATIVE COUNCIL, LEGISLATIVE REDISTRICTING - BACKGROUND MEMORANDUM 4 (2000), available at http://www.legis.nd.gov/assembly/56-1999/interim-info/docs/19043.pdf.

97 NORTH DAKOTA LEGISLATIVE COUNCIL, supra note 95, at 5.
99 The House and Senate minority and majority leaders would each have appointed two commission members, and those eight members would then have elected the ninth member, who would have doubled as the commission’s chairperson. See Average Voter Little Concerned with Special Election Issues, FARGO FORUM, Oct. 28, 1973, at C4 [hereinafter Average Voter] (“The constitutional amendment is a virtual creation of Democratic Gov. Arthur A. Link and the referred measure is [subjected] to a vote of the people largely through the efforts and with the support of the Democratic party.”); Bill Tillottson, N.D. Voters May Decide Remap Issue, BISMARCK TRIB., Nov. 23, 1973, at 1.
100 Id.
Senate and 22 Democrats to the 102-member House." The initiative's supporters' other important argument was that single-member districts would improve representatives' accountability to their constituents. In Lieutenant Governor Wayne Sanstead's words, "[s]ingle-member districts would create lines that would make candidates for public office come from one particular area. They would be voted on by a smaller number of people, thus making government more responsive to the needs of that area."

Opposition to the initiative was concentrated in North Dakota's Republican Party, which stood to lose influence if the measure passed. Republicans attacked the initiative on multiple grounds. The state party's chairman, Allan C. Young, declared repeatedly that the redistricting commission would amount to "yet another bureaucracy that would be completely unresponsive to the people of North Dakota."

Other prominent Republicans claimed that the creation of single-member House and Senate districts would disrupt existing political communities and dilute rural influence in the state legislature. Also leveled at the initiative were charges that it was merely an effort by frustrated Democrats to seize a greater share of the political spoils, that a new state census would be required if the measure passed, that the initiative "assumes that there will never be more than two parties or two factions in the legislative arena," and that decennial redistricting might be too inflexible for a state as

102 Remap Plan Gets Support of Sanstead, BISMARCK TRIB., Nov. 9, 1973, at 5; see also Tillottson, supra note 101 (paraphrasing Alton Schuette, chairman of the pro-initiative Committee for Equal Apportionment) ("If those multi-districts could be broken up . . . with legislators more closely representing their constituents and with each voter having to concentrate on electing only one senator and one representative on what would be a neighborhood basis, equality would be achieved.").
103 Phil Matthews, Constitutional Amendment Draws Election Spotlight, FARGO F., Oct. 29, 1973, at 3; see also Spokesmen Trade Views on Reapportionment Vote, BISMARCK TRIB., Nov. 16, 1973, at 7 (also quoting Young) ("I believe the people of North Dakota will reject the creation of yet another bureaucracy . . . with unlimited spending power and with responsibility to neither the executive, legislative or judicial branch of government or to the people.").
104 See Litten Calls Remap Vote 'Gerrymandering' Plan, BISMARCK TRIB., Nov. 19, 1973, at 3 (quoting State Senator C. Warner Litten) ("When you start trying to break up the cities of Fargo, Grand Forks and Minot into single Senate and single House districts, you will have a real gerrymandering hodge-podge."); Bill Tillottson, Voter Confusion Problem for Amendment's Foes, BISMARCK TRIB., Nov. 27, 1973, at 20 (State Senator David E. Nething "argues that the proposal, which also creates House subdistricts would break up rural voting patterns with a net result in weakening rural influence in the legislature.").
105 See Average Voter, supra note 99 ("Of course, if the Democrats had the majority, we could well imagine there would be little support from them for the proposed amendment."); Tillottson, supra note 104 ("Democrats have been unable to get into the legislature in greater numbers, [State Senator Myron H.] Atkinson said, so they have tried to change the procedures for electing lawmakers.").
107 Average Voter, supra note 100.
dynamic as North Dakota. Many of these charges were echoed by the state's two most important newspapers, the Bismarck Tribune and the Fargo Forum, both of which opposed the initiative.

On December 4, 1973, the initiative went down to defeat with 45 percent of the vote in favor compared to 55 percent against. (The referendum on the legislature's reapportionment plan also failed by a 53 percent to 47 percent margin.) The unified opposition of North Dakota's majority party and media establishment was a key factor in the measure's loss at the polls. The initiative's critics also made more (though not necessarily better) arguments than its supporters, and received more attentive press coverage. Furthermore, Governor Link, the most important Democrat in the state, barely involved himself in the campaign. Finally, voter turnout in the election—in which the only items on the ballot were the redistricting initiative and the reapportionment referendum—was exceptionally light, a situation that typically favors the proponents of the status quo.

5. Colorado, 1974 (Succeeded)

Reapportionment consumed much of the Colorado state legislature's calendar in 1972. Legislators took months to come up with their initial plan only to see it struck down by the Colorado Supreme Court for violating the state constitution's district compactness requirement. The legislature's next map was upheld in litigation, but attracted attention because of the oddly shaped districts that it created. One district, according to Representative Jerry Kopel, "looked like an equatorial line on a world globe dividing the city, with portions of the boundaries through

109 See Average Voter, supra note 100 (expressing the Fargo Forum's opposition to the initiative); Cure Worse Than the Ill, BISMARCK TRIB., Dec. 1, 1973, at 4 (same for the Bismarck Tribune).
110 These claims are based on my reading all initiative-related pieces in the Fargo Forum and Bismarck Tribune.
111 I found only one newspaper article quoting Governor Link about the initiative. See No New Census Needed for Remap, Link Says, BISMARCK TRIB., Nov. 30, 1973, at 3.
112 See Bill Tillotson, Light Voter Turnout Seen, BISMARCK TRIB., Dec. 3, 1973, at 1; id. (quoting State Senator Nething) ("I think all the publicity has confused voters more than helped them make up their minds... Confusion usually leads to a 'No' vote.").
113 See Amendment No. 9: Yes, DENVER POST, Oct. 22, 1974, at 22 [hereinafter Yes on 9] ("Anyone who recalls the 1972 legislative session can affirm that legislative leaders—as well as their rank-and-file 'troops'—were tied up for many weeks trying to redistrict the state... "); Bob Ewegen, Reapportion Plan on Ballot, DENVER POST, Oct. 14, 1974, at 3 ("The Colorado Legislature... was snarled for months in 1972 as it tried to reapportion itself... ").
city parks just several yards wide. That district was nicknamed the
“Bettymander” because it was designed to weaken Representative Betty
Benevidez’s hold on her seat.

In the wake of this controversial redistricting exercise, Colorado’s
League of Women Voters proposed an initiative that would delegate
district-drawing responsibilities to an eleven-member commission. The
commission would include the majority and minority leaders of both state
legislative chambers, three members appointed by the governor, and four
members appointed by the chief justice of the Colorado Supreme Court.

It would redistrict the state legislature every ten years, and craft districts
that were compact, that preserved communities of interest, and that
deviated less than 5 percent in their population.

The debate over the Colorado initiative was placid by comparison to the
firestorms that enveloped similar measures in other states, both before and
after 1974. Good government groups such as the League of Women
Voters and Common Cause supported the initiative, but their main
argument on behalf of the measure was just that it would allow the state
legislature to focus on more important issues. They did not denounce
the Republican Party for its 1972 gerrymander or emphasize the inherent
unseemliness of legislative redistricting. Colorado’s main newspapers also
devoted relatively little coverage to the initiative and expressed their
(conflicting) editorial positions in moderate language.

Most surprisingly, the state’s parties and prominent politicians were almost
entirely silent about the initiative. No new organizations were formed to
fight for or against the measure, and I did not find a single newspaper
Reforming Redistricting

article quoting the governor or any major legislative figure about the initiative. In fact, the only reference to politicians’ views on the initiative that I was able to find came two days before the election, and merely cited unnamed legislators who had “come out in opposition to Amendment 9, insisting that redistricting is a job done best by lawmakers, using the give-and-take of the legislative process.”

The explanation for the campaign’s strange calm—and for the initiative’s resounding 60 percent to 40 percent victory on election day—is that 1974 was not a normal year in the annals of American politics. It was, rather, the year of Watergate and of President Nixon’s resignation, and one of the best years ever for Democrats across the country. In Colorado, Democrats defeated an incumbent Republican governor, U.S. senator, state attorney general, and state treasurer, while also winning control of the General Assembly. The election’s dramatic pro-Democratic tilt reduced both parties’ incentives to talk much about the initiative. Republicans, sensing imminent electoral catastrophe, were reluctant to criticize a measure that was leading in the polls, and unable to make the argument that the initiative was an effort by sore loser Democrats to seize more political power. Democrats, on the other hand, did not need to lobby hard for a measure that was already almost sure to pass, and were more focused on the many contested candidate elections in 1974 than the initiative campaign. In the end, Amendment 9 cruised easily to victory atop the year’s pro-Democratic and pro-reform tidal wave, escaping almost unscathed from the attacks that typically befall redistricting initiatives.

6. Ohio, 1981 (Failed)

Ohio already had a redistricting commission in place in 1981. Fourteen years earlier, the state legislature had passed (and Ohio’s voters had ratified) a constitutional amendment transferring redistricting authority for state elections to a five-member Apportionment Board. In the early

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122 Suzanne Weiss, 10 Constitutional Amendments and Referred Laws on Ballot, ROCKY MOUNTAIN NEWS, Nov. 3, 1974, at Trend 3.
123 See Leroy F. Aarons, Colorado Tide Not One of Liberalism, WASH. POST, Dec. 15, 1974, at A1 (“There is a strange wind blowing in the Colorado Rockies...[It] achieved hurricane force last November and turned into a disaster for Colorado Republicans.”).
124 See Bob Ewegen, 9 Proposals Firm, DENVER POST, Nov. 3, 1974, at 15 (noting that the redistricting initiative enjoyed a thirteen-point lead in October 1974, virtually unchanged from its eighteen-point lead the previous month).
125 See History of Ohio Redistricting, http://www.researchfortherestofus.org/SafeSeats_DangerousDemocracy/history.htm (last visited Oct. 15, 2007). The Board is made up of the governor, the auditor, the secretary of state, and two members
1980s, however, Republicans were dissatisfied with the Board because Democrats enjoyed a three-to-two advantage on it, and had twice used that advantage to enact pro-Democratic redistricting plans. Accordingly, the Ohio Republican Party proposed a measure that would have replaced the existing Board with a bipartisan commission made up of two Democrats, two Republicans, and a fifth member chosen by the four partisan appointees. The new commission would not actually have drafted district maps itself, but rather would have adopted the state and federal plans submitted to it in which districts were most compact, as measured by the ratio of districts’ area to their perimeter.

Ohio Republicans and good government groups were the initiative’s main backers. Republican Party state chairman Earl Barnes declared that “regardless of whether it’s Republican or Democratic, I think the people are getting damned tired of gerrymandering.” John Evans, the coordinator of the pro-initiative campaign, termed the proposal “innovative” and stated that “better government through fair and impartial redistricting is our goal.”

Republicans were joined in support of the measure by the League of Women Voters and the Ohio Council of Churches. Together, they created a new organization, the Committee for Fair and Impartial Redistricting, and spent in the vicinity of $750,000 collecting signatures and $600,000 “on a media campaign aimed at discrediting the political methods currently used for apportioning districts.”

In opposition, Ohio Democrats accused the initiative’s backers of attempting to seize political influence that they had been unable to win at the ballot box. James Leahy, executive director of the state Democratic Party, scoffed that “[i]f they don’t like the game, they try to change the

appointed by legislative leaders. The Board draws House and Senate districts on the basis of equal population, compactness, contiguity, and respect for existing political boundaries.

126 See Adam Clymer, Ohio G.O.P. Asks Redistricting Aided by Computer, N.Y. TIMES, Feb. 27, 1981, at A13 (quoting Ohio Republican Party chairman Earl Barnes) (“I’m not saying that if we had control of the Apportionment Board, we’d be pushing [the initiative] at this time.”); id. (“As they did after the 1970 census, the Democrats now hold a three-to-two majority on the Apportionment Board . . . .”). However, neither the 1970 nor the 1980 reapportionments in Ohio were especially flawed.

127 See id. Districts would also have had to vary by no more than 3 percent from the average district population.

128 Id.

129 See George B. Merry, Redistricting by Computer: Some Politicians Worry They’ll Lose Control, CHRISTIAN SCI. MONITOR, Apr. 27, 1981, at 10.

130 See Clymer, supra note 126.

131 See id.

Another Democratic official, noting that Ohio had adopted its present Apportionment Board just fourteen years before and that Republicans had also tried and failed to place a similar initiative on the 1980 ballot, commented that “I’m not sure how many times you can build the ark, especially if it don’t flood.” Democrats also cited the likely consequences of the initiative as evidence that it was nothing but a Republican power grab; “the plan could insure that both of Ohio’s lost Representatives [after the 1980 census] would be Democrats. If the initiative fails and the politically divided Legislature does the job, each party would lose one safe seat.” Finally, Democrats attacked the initiative’s supporters for raising most of their funds from large corporations, and threatened those corporations with a reduction in their political influence if they continued their contributions.

On election day, Issue 2 lost with 42 percent of the vote for versus 58 percent against—a somewhat surprising result given that Republicans controlled the state’s governorship as well as one of the two legislative chambers. The main explanation for the initiative’s defeat was probably the relatively tepid support that it received from the state Republican Party, compared to Democrats’ energetic opposition. Governor James Rhodes was almost entirely silent on the subject of the initiative. More importantly, Ohio’s Republican legislators were quite uneasy about Issue 2, which would have required the redistricting commission automatically to adopt the state and federal plans with the most compact districts. Compactness may be a virtue when all else is equal, but its elevation above all other redistricting considerations—such as respect for communities of

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133 See Clymer, supra note 126; see also William Carlson, Issue 2 Is Significant for Many Ohioans, PLAIN DEALER (Cleveland), Oct. 12, 1981, at 20-A (“Democrats charge that the incumbent Republican or any subsequent governor would provide a political edge in all but the most isolated counties” because of a provision authorizing the governor to divide municipalities with a population greater than 5,000 into subunits for the purpose of district-drawing.); Joseph D. Rice, Rep. Stokes Leads Big Fight Against Remap Issue, PLAIN DEALER (Cleveland), Oct. 31, 1981, at 4-A (quoting black Ohio congressman Louis Stokes) (“It would wipe out my congressional district. There is just no way I could survive.”).

134 See Clymer, supra note 126.


137 See United Press International Release, Nov. 4, 1981 (“An elated C. Paul Tipps, chairman of the Ohio Democratic Party, said he believed a strong turnout across the state helped seal the defeat of Issue 2.”).

138 See Joseph D. Rice, Rhodes Likely To Say He’s for State Issue 2, PLAIN DEALER (Cleveland), Oct. 28, 1981, at 11-A (noting, a week before the election, that the governor had not yet announced his position on the redistricting initiative, and that he had “publicly steered clear of the issue”).
interest and political boundaries, district continuity from one election to another—posed a serious threat to all incumbent legislators, Democratic and Republican.¹³⁹

7. California, 1982 (Failed)

The first of four California redistricting initiatives took place in 1982. During the previous year’s legislative session, Democrats had pushed through a reapportionment plan that promised to strengthen substantially their party’s hold on both the state legislature and California’s congressional delegation.¹⁴⁰ Republicans, furious at what they considered to be a blatant partisan gerrymander, initiated two direct democracy campaigns to undo the legislature’s handiwork. First, they obtained enough petitions to subject the three reapportionment plans (for the Assembly, the Senate, and the congressional delegation) to a statewide referendum. The referendum occurred in June 1982, and resulted in the three plans being rejected by an average margin of 63 percent to 37 percent.¹⁴¹

Second, state Republicans joined forces with Common Cause to draft and promote a redistricting initiative. The initiative would have created a ten-member redistricting commission with four members appointed by the Assembly and Senate party caucuses, two members appointed by the major parties’ chairmen, and four members appointed by senior state appellate judges. The commission would have been required to draw state and federal districts that were compact, respectful of political subdivisions, and divergent by no more than 2 percent from the average district population. Any reapportionment plan would have needed the approval of seven commission members, including at least three of the court-appointed commissioners and one of each party’s appointees. If the commission

¹³⁹ Cf. No on State Issue 2, PLAIN DEALER (Cleveland), Oct. 23, 1981, at 12-B (“We have difficulty accepting the idea that compactness . . . is the sole relevant criterion for forming districts . . . .”).

¹⁴⁰ See Jerry Gillam & Claudia Luther, 2 Redistricting Bills Advance, L.A. TIMES, Sept. 12, 1981, at 1 (“Democrats in the Legislature bulldozed down angry Republican opposition Friday night and approved reapportionment plans aimed at strengthening Democratic domination of the state senate and California seats in Congress for the next decade.”); Claudia Luther & Jerry Gillam, 3 Plans for State Redistricting OKd, L.A. TIMES, Sept. 16, 1981, at B1 (“One Republican assemblyman likened the Democrats’ treatment of the GOP to the Holocaust of World War II while another accused Assembly Speaker Willie L. Brown Jr. . . . of killing off his political foes as does Iran’s Ayatollah Ruhollah Khomeini.”).

Reforming Redistricting

deadlocked, the California Supreme Court would have appointed special masters to carry out the redistricting.\footnote{142 Claudia Luther, New Redistricting Initiative Submitted, L.A. TIMES, Dec. 17, 1981, at B3.}

California Republicans were the 1982 initiative’s most important backers. They spent about $350,000 gathering signatures for the measure and another $250,000 campaigning for it,\footnote{143 Claudia Luther, Initiative To Create Redistricting Commission Qualifies for Ballot, L.A. TIMES, June 22, 1982, at B3.} and also provided significant financial support for a pro-initiative group called Citizens for Fair Representation.\footnote{144 See Bill Billiter, Prop. 14: Election Reform or a Trojan Horse?, L.A. TIMES, Oct. 14, 1982, at E1.}

Joining the Republicans in support of the initiative were an array of interest groups (e.g. Common Cause, the League of California Cities, the California Chamber of Commerce, the American Association of University Women, the California Church Council, the National Association of Retired Persons, and the National Association of Retired Teachers), as well as President Reagan and former President Ford.\footnote{145 See Claudia Luther, GOP To Aid Remapping Reform Bid, L.A. TIMES, Dec. 6, 1981, at A3 ("[E]ven if the referendums succeed, Democrats—who hold majorities in both houses—have the power to enact similar reapportionment plans again. The most the referendums could accomplish is to keep intact the current districts . . . .").}

The main arguments of the initiative’s supporters were that a redistricting commission was the only way to prevent the Democrats from repeating their 1981 power grab,\footnote{146 See Michael Asimow & Walter Zeiman, Prop. 14: Is It Real ‘Reform’?, L.A. TIMES, Oct. 10, 1982, at E3 ("When it comes to drawing district lines and determining their own political fate, even the most noble legislators place personal and public interests over the public interest. . . .").} and that legislators are intrinsically unable to separate their personal interest from the public good during redistricting.\footnote{147 See Billiter, supra note 144 ("By contrast, there is no coalition or separate campaign organization for the opponents of Proposition 14. Almost all of the organized opposition comes from the state Democratic Party . . . .").}

California’s Democratic Party and Democratic Governor Jerry Brown—the architects of the 1981 reapportionment—were the initiative’s principal opponents.\footnote{148 1 found only one newspaper article that described interest group opposition to redistricting reform. See Claudia Luther, Remapping Challenge May Be Just Warm-Up, L.A. TIMES, May 10, 1982, at B3 (claiming that organized labor would help run the campaign against the June referenda).}

Interestingly, few interest groups joined the Democrats in opposition,\footnote{149 See Reapportionment: No on 14, L.A. TIMES, Oct. 17, 1982, at E4 [hereinafter No on 14].} though the Los Angeles Times did come out against the initiative. Democrats spent about $250,000 campaigning against redistricting reform,\footnote{150 See Luther, supra note 143.} and made a wide assortment of claims about the initiative. Assembly Speaker Willie Brown asserted that a redistricting commission would be just as roiled by partisan strife as the state
and that commissions generally work no better than legislative redistricting. Assembly Democratic Caucus Leader Douglas Bosco predicted that the commission would be composed of "a bunch of old, white, upper-middle-class men," thus failing to reflect California's diversity. And other Democrats argued that the commission would lack accountability to the public, and that it would be prone to deadlock because of its peculiar requirements for passing a reapportionment plan.

On November 2, 1982, the initiative was defeated by a vote of 45 percent for versus 55 percent against. The measure's backers actually spent more money and received more support from third-party groups than the initiative's opponents, meaning that the loud and persistent criticism by the Democratic Party and Governor Brown was probably crucial to the measure's loss at the polls. As was also the case in other initiatives, the measure's opponents seem to have been more mobilized and more creative in their arguments than proponents of redistricting reform, enabling them to prevail in the end despite their initially inauspicious position.

8. California, 1984 (Failed)

After the November 1982 redistricting initiative failed, the California state legislature passed a new reapportionment plan similar to (and just as pro-Democratic as) the one that had been rejected by the state's voters in the June 1982 referendum. Angry Republicans responded by launching another initiative, this one prescribing the actual district lines for state and federal elections. The initiative was scheduled for a December 1983
vote, and both parties began preparing for what one Democrat described as "the political fight of a generation." However, the preparations were cut short by the California Supreme Court, which ruled in September that the initiative violated the state constitution because it would have authorized an impermissible second redistricting during a single decade.

Unfazed by the court's decision, California Republicans drafted yet another redistricting initiative for the 1984 election. This initiative would have created a redistricting commission made up of eight retired state appellate judges, four appointed by Republican governors and four by Democrats. The commission would have formulated district maps on the basis of competitiveness, compactness, contiguity, and equipopulation, and then submitted the maps to the electorate for approval in a statewide referendum. If the commission found itself deadlocked, one member would have been eliminated at random to break the logjam.

The 1984 battle lines closely resembled those from two years earlier, except that Governor Jerry Brown, a Democrat, had been replaced by George Deukmejian, a Republican. Governor Deukmejian led the Republican effort in support of the initiative. According to one observer, he "devoted virtually his full-time efforts for weeks and more than $1 million in his personal election funds to the campaign," and repeated his campaign theme, "fairness, not politics," at rally after rally.

Republicans spent $1.3 million to qualify the initiative for the ballot, and about $2

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159 Kevin Roderick, 'Political Fight of Generation' Slated, L.A. TIMES, Aug. 5, 1983, at B3 (quoting California Democratic Party Chairman Peter Kelly); see also John Balzar & Douglas Shuit, Governor Orders Remapping Vote, L.A. TIMES, July 19, 1983, at B1 (reporting that Republicans were prepared to spend $3-5 million supporting the initiative, and Democrats up to $5 million to oppose it); Jerry Gillam & Carl Ingram, Democrats Push Hard for 'Survival' Money, L.A. TIMES, July 31, 1983, at A3 (quoting Speaker Brown) ("This is the Super Bowl. [Republicans are] trying to take my seat in the Assembly as well as my job as Speaker.").


161 The eight commission members would have been chosen by lot by the president of the University of California.


164 William Endicott, Prop. 39 Ads Point Up Politicians' Bad Image, L.A. TIMES, Oct. 30, 1984, at B3 (describing an ad in which Governor Deukmejian said that "Proposition 39 will simply remove legislators from the process of drawing their own district lines. Proposition 39 will assure fairness."); see also Keith Love, Governor Blasts Anti-Prop. 39 Ads, L.A. TIMES, Oct. 10, 1984, at B18 (quoting Governor Deukmejian) ("Why should you be concerned about reapportionment? Because (now) it is virtually impossible to unseat incumbents and it is hard to recruit good people to run for office. You are denied the best candidates possible.").
million more on advertisements on behalf of redistricting reform. As in 1982, President Reagan and numerous pro-business groups (for example, the California Manufacturers Association, the California Chamber of Commerce, the Western Growers Association) joined the state Republican Party in support of the initiative.

Democrats, not surprisingly, responded to the initiative by commencing "all-out warfare" against it. They blasted the proposed commission for "relying on a small pool of elderly, predominantly Republican retired appellate court justices" who might be influenced by conflicts of interest, for creating nominally competitive districts that would actually favor the Republican Party, and for reducing public input into the redistricting process. They raised more than $4 million to fight the initiative, and won the support of the Los Angeles Times as well as several groups that had largely sat out the 1982 election, such as the California AFL-CIO, the California Trial Lawyers Association, the Mexican American Political Association, and the NAACP. They also mounted an extremely effective ad campaign that attacked the initiative for involving judges in redistricting, and featured actor Jack Lemmon.


John Balzar, GOP Remap Plan Trounced in Assembly, L.A. TIMES, May 2, 1984, at B3; see also Tom Hayden, The GOP Takes the Initiative, L.A. TIMES, Aug. 19, 1984, at E3 ("Of the 37 retired judges available to serve, 34 are white, two are black, one is Asian and none is Latino. Only one is a woman. Twenty are Republicans, 11 are Democrats and the registration of the other six is unknown. The youngest is 58 years old and the oldest 94; their average age will be 75 in 1986.").

See John Balzar, Remapping Plan Causes Turmoil on Wide Front, L.A. TIMES, Oct. 16, 1984, at B3 ("Many retired judges have taken up new vocations that could pose political conflicts with reapportionment.").

See Hayden, supra note 1688 ("[A]ny district composed of an equal number of Democrats and Republicans works to the advantage of the latter because of Republicans' higher turnout and greater support from special interest groups.").

See Balzar, supra note 165 ("Democrats argue that it would not permit public participation and therefore not earn public confidence . . . ").

Mark Gladstone, $4 Million To Battle Remap Plan Sought, L.A. TIMES, July 18, 1984, at B3.


See Balzar, supra note 166.

See John Balzar, Brown Labels Anti-Prop. 39 Ads 'Con Jobs', L.A. TIMES, Nov. 22, 1984, at A3 ("[T]he anti-39 commercials focused tightly on the fact that retired judges, not legislators, would do the reapportionment. This would lead to backroom judicial deals and politicization of the courts, the commercials argued.").

Douglas Shuit, Deukmejian Remap Effort Gets Boost in Washington, L.A. TIMES, Oct. 4, 1984, at 3 (quoting one Democratic ad) ("Judges would be dragged into the political
making statements like "Proposition 39, it would make a great movie—money, power, back room deals with judges. Ohhh. But it would make one lousy law."\textsuperscript{176}

On election day, 45 percent of the electorate supported Proposition 39 and 55 percent voted against it. Republicans benefited relative to 1982 from the energetic support of a popular governor. But, unlike in 1982, they were outspent by the initiative's opponents and did not enjoy the same unified backing from third-party groups. More importantly, Democrats appear to have been exceptionally successful at framing the issues in the initiative campaign. Powerful anti-initiative ads swamped Governor Deukmejian's message about fair representation, and convinced voters that judges could not be trusted to conduct redistricting. The governor admitted the effectiveness of the commercials a month before the election,\textsuperscript{177} and observers afterwards concluded that "television commercials [had] a lot to do with" the initiative’s loss at the polls because "they play[ed] not only upon people’s rational understanding of these issues but also their emotions."\textsuperscript{178}

9. California, 1990 (Failed)

California’s next campaign over redistricting initiatives unfolded in 1990, when two separate reapportionment-related measures were on the ballot. The first, sponsored by Republican businessman Gary Flynn, would have allowed the state legislature to continue drawing district lines, but would have required a two-thirds vote by the Assembly and Senate as well as voter approval before a redistricting plan could become law.\textsuperscript{179} The second, of more interest here, would have created a twelve-member commission to conduct redistricting. The commission members would have been selected by a panel of three retired state appellate judges, and would have included five Democrats, five Republicans, and two independents. The commission would not actually have drafted district

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\textsuperscript{177} See Love, supra note 1644 (quoting Governor Deukmejian) (The Democrats’ ads ‘‘are considered effective by some people I’ve talked to.”).

\textsuperscript{178} See William Endicott, \textit{State’s Voters Continue Pattern of Inconsistency}, L.A. TIMES, Nov. 8, 1984, at A8 (quoting political scientist Alvin Sokolow). Speaker Brown, a prominent California Democrat, ironically referred to the anti-initiative commercials as ‘‘the most extensive collection of con jobs I’ve ever seen.’’ Balzar, supra note 175.

\textsuperscript{179} See Tim Schreiner, \textit{Broad Redistricting Plan on June Ballot}, S.F. CHRON., Jan. 19, 1990, at A3. The measure would have also imposed new ethics requirements on California state legislators.
maps itself, but would have chosen among plans submitted to it on the basis of compactness, equal population, preservation of communities of interest, fair representation for minorities, and competitiveness.\textsuperscript{180}

The initiative’s supporters were a motley crew. The measure was announced by Paul Gann, best known as a co-sponsor of the notorious property tax-cutting Proposition 13, Alan Post, for three decades the state legislature’s nonpartisan budget adviser, and Ellen Elliott, a leader of the League of Women Voters.\textsuperscript{181} Also prominent in their support for the initiative were Alan Heslop, former executive director of the California Republican Party,\textsuperscript{182} former President Reagan,\textsuperscript{183} major corporations such as Chevron and Hewlett Packard,\textsuperscript{184} and a handful of Democrats not holding elected office.\textsuperscript{185} Unlike in 1984, however, Governor Deukmejian was not very active in the campaign,\textsuperscript{186} and many Republican state legislators actually opposed the initiative because they were afraid that its competitiveness requirement would imperil their seats in addition to those of their Democratic opponents.\textsuperscript{187} Supporters of the measure spent about $700,000 gathering signatures\textsuperscript{188} and close to $1 million on campaign commercials,\textsuperscript{189} some of which featured actor Charlton Heston accusing


\textsuperscript{181} See id. (referring to the “curious coalition” in support of the initiative); Carl Ingram, Reapportion Plan Calls for Bipartisan Commission, L.A. TIMES, May 24, 1989, at B3.


\textsuperscript{186} See John Balzar, Stunned State GOP Looks to Voters for Rescue on Redistricting in ’90, L.A. TIMES, Jan. 18, 1989, at 21 (quoting Governor Deukmejian) (“I would be happy to talk about it to individuals who are interested in [the initiative], but I think it’s a very difficult subject we learned from...a few years ago. It’s a very difficult topic to be able to get the average voter to relate to.”). I did not find any quotes about the initiative from Governor Deukmejian until the eve of the election. See Vlue Kershner, Crucial Effect of Reapportionment Vote, S.F. CHRON., June 4, 1990, at A12.

\textsuperscript{187} See Tim Schreiner, Defeat of Redistricting Plans Casts Pall on GOP Session, S.F. CHRON., July 20, 1990, at A11 (“[A]lmost all GOP legislators, afraid of losing their own seats in a commission-drawn redistricting, opposed [the initiative].”). In my view, this overstates the extent of Republican opposition to Proposition 119. But it is true that most elected Republican politicians preferred Proposition 118, which would have left the redistricting power with the legislature, to Proposition 119.

\textsuperscript{188} See Ingram, supra note 181.

Democrats of "conn[ing]" the public. The most common arguments made on behalf of the initiative were that it would make California's elections more competitive, and eliminate districts that "look like pieces in an intricate jigsaw puzzle."

California Democrats mounted a unified—and very well-funded—campaign against the initiative. Assembly Speaker Willie Brown led the opposition (and even promised to make legislative redistricting fairer if the initiative failed), while State Senator Bill Lockyer, civil rights leader Jesse Jackson, and Senate President Pro Tem David Roberti also loudly criticized the measure. As in 1982 and 1984, Democrats accused Republicans of trying to "gain control by line-drawing rather than by political competition," and of proposing a commission that would be dominated by special interests and "mostly old, white men." The Democrats were joined in opposition to the measure by the National Organization for Women, various Hispanic groups, the Sierra Club, the Los Angeles Times's editorial page, and, most surprisingly, Common Cause, a prominent good government group that initially backed the initiative but later changed its mind. Democrats and their allies also massively outspent the measure's supporters, with estimates of their expenditures ranging from five to eight million dollars. This enormous war chest was used to fund a series of devastatingly effective commercials.


See Weintraub, supra note 185 (quoting League of Women Voters leader Ellen Elliott) ("'We have legislators who are less responsive to voters and less focused on resolving major issues, because they know they have a very good chance of being reelected, regardless of how ineffective they may be.'"); Weintraub & Gillam, supra note 1822 ("Since 1984, incumbents in the state Senate, Assembly and California's congressional delegation have won 393 races and lost only 7.").


See Greg Lucas, Jackson in Redistricting Fight, S.F. CHRON., May 22, 1990, at A7 ("Propositions 118 and 119, Jackson said in his trademark rhyming style, represent a 'scheme of dilution, a scheme of exclusion.'").

See Vlas Kershner, Stars’ Role in Redistricting Vote, S.F. CHRON., June 11, 1990, at A2 ("The Democrats' television commercials ... were so effective in crushing Propositions 118 and 119 by 2-to-1 ratios that Republicans hardly knew whether to complain or nominate them for awards.").

See Weintraub & Gillam, supra note 1822 (quoting Speaker Brown).


See Schreiner, supra note 187; Weintraub, supra note 1899.
starring actors James Garner, Bea Arthur, and, in a reprise appearance, Jack Lemmon.\footnote{See Kershner, supra note 196.}

Both redistricting initiatives on the ballot were trounced at the polls, with Proposition 119 (which would have created the commission) winning just 36 percent of the vote. As in 1984, Democrats’ speeches and ads convinced much of the public that the measure would have enabled sinister special interests to seize control of the state’s redistricting process. Bob Marks, campaign manager for the Yes-on-119 campaign, said that he knew his side was in trouble “when my mother called me up after she saw the Jim Garner ad and said ‘Are you sure I should vote for this?’”\footnote{Id. Poll data reveals the impact of the Democrats’ ad blitz, which was unleashed in the final two weeks of the campaign. A month before the election, Proposition 119 led by eight points. See Weintraub, supra note 185. It ended up losing by twenty-eight.}

Compared to 1984, the Democrats also enjoyed a much greater spending advantage, more backing from third-party groups, and, critically, a fractured opposition. As noted above, Governor Deukmejian was lukewarm in his support for Proposition 119 and many Republicans criticized the measure. At an acrimonious party conference a month after the initiative was defeated, conservative rebels actually submitted a resolution criticizing the “ineffectual, incompetent, and wasteful” campaign on behalf of the measure, and asked for an audit to “determine where the party’s money was spent and why it fumbled the campaign[].”\footnote{See Schreiner, supra note 1877.}

10. Arizona, 2000 (Succeeded)

During the 1990s, Arizona’s state and federal elections were strikingly uncompetitive,\footnote{See Chris Moeser, House Supports Redistricting Plan, ARIZ. REPUBLIC, Mar. 5, 1999, at 23A (noting that seventeen state senators and twenty-two state representatives had no opponent in the last election); Put the Crayons Back in the Box!, ARIZ. REPUBLIC, June 27, 1999, at 6B [hereinafter Crayons in Box] (“Arizona legislators seeking re-election have won 96 percent of their races since 1992 .....”).} and complaints were raised about the strange shapes of some electoral districts.\footnote{See Pat Flannery, Keeping Politics in Line, ARIZ. REPUBLIC, Aug. 23, 2000, at 1 (describing Congressional District 7 as “a beast gobbling up disparate communities from the Cashion neighborhood in the West Valley to Guadalupe in the East Valley and from the Fort McDowell Indian Community near Scottsdale to Casa Grande.”).} In 2000, a coalition of good government groups, the Arizona Democratic Party (long the minority in the state legislature), and wealthy real estate developer Jim Pedersen sought to enact redistricting reform. The initiative they drafted would create a five-member redistricting commission; state appellate judges would select a pool of twenty-five candidates, the House and Senate majority and
minority leaders would each appoint one commission member from this pool, and the four partisan appointees would choose a fifth individual to be the commission’s chairperson. The commission would then draft state and federal district maps on the basis of equal population, compactness, contiguity, respect for communities of interest, preservation of political boundaries, and competitiveness.  

The redistricting initiative, Proposition 106, was supported by an unusual mix of actors. Arizona Democrats, not surprisingly, strongly backed the measure in hope that it would weaken Republicans’ grip on the state legislature and congressional delegation. Good government groups such as Common Cause and the League of Women Voters also endorsed the measure, seeing it as an “antidote to Arizona’s checkered redistricting history.” These predictable supporters were joined by a number of prominent Republicans: former Governor Rose Mofford, Superintendent of Public Instruction Lisa Keegan, former Attorney General Grant Woods, Phoenix Mayor Skip Rimsza, State Representative Sue Gerard, among others. Almost every executive branch official in Arizona also supported the initiative, and the governor, Republican Jane Dee Hull, kept her views on redistricting reform to herself. Finally, Arizona’s most important newspaper, the Arizona Republic, maintained a steady drumbeat of support for Proposition 106. From February 1999 through election day, the Republic published a series of editorials with titles such as

208 See, e.g., Andy Nichols, Let Commission, Not Legislature, Redistrict State, ARIZONA REPUBLIC, Jan. 3, 1999, at 6B (column in support of redistricting commission by Democratic State Representative Andy Nichols); Robbie Sherwood, Nov. Ballot May Carry 17 Questions, ARIZONA REPUBLIC, July 7, 2000, at 1A (quoting Democrat Attorney General Janet Napolitano) (“This will create more competitive districts where you have strong candidates fighting each other over ideas. Will it work or be perfect? Who knows? But it’s a good start.”); Voters Deserve Fair Redistricting, ARIZONA REPUBLIC, Feb. 5, 1999, at 6B (hereinafter Voters Deserve) (quoting failed Democratic congressional candidate Sam Coppersmith) (“Republicans like competition in everything except their own seats.”).
209 Flannery, supra note 206.
210 See Pauole, supra note 207, at 1220; Chris Moeser, Redistricting Change Sought, ARIZ. REPUBLIC, Sept. 14, 1999, at 1B (quoting Woods) (“I don’t believe our Legislature has reflected the will of Arizonans on the most important issues very often in the ‘90s.”); Voters Deserve, supra note 208.
211 Nonpartisan Panel is Vital, ARIZ. REPUBLIC, Jan. 30, 2000, at 6B (“Phoenix Mayor Skip Rimsza and Scottsdale Mayor Sam Campana and every other mayor who has so far seen a presentation of the [initiative] plan” have supported it.).
212 I was unable to find a single newspaper story describing Governor Hull’s position on Proposition 106.
213 The Republic is no bleeding-heart liberal newspaper. It endorsed George W. Bush for President in 2000. See In Election 2000 . . . We Recommend, ARIZ. REPUBLIC, Nov. 5, 2000, at 9B.
Put the Crayons Back in the Box\textsuperscript{214} and Stop the Music on Redistricting,\textsuperscript{215} and at one point issued a weekly “redistricting countdown” tracking the progress of the initiative’s backers in gathering signatures.\textsuperscript{216} Proposition 106’s supporters stressed the enormous advantage enjoyed by Arizona incumbents during the 1990s\textsuperscript{217} as well as the unseemliness of legislators custom-designing their own districts.\textsuperscript{218}

Opposition to the initiative stemmed almost entirely from Republican legislators and a handful of pro-business interest groups. Arizona’s five Republican congressmen criticized the measure because they believed it would “lack accountability to voters” and “prove less representative of the state as a whole.”\textsuperscript{219} State Senate Majority Leader Rusty Bowers attacked the initiative because, in his view, a redistricting commission would be just as political as the legislature but less savvy and knowledgeable about the state.\textsuperscript{220} And Arizona Republican Party chairman Nathan Sproul denounced Jim Pedersen, the largest contributor to the pro-initiative side, and described the Proposition 106 campaign as “just a small group of special interest individuals trying to hijack the process.”\textsuperscript{221} As mentioned above, Arizona Republicans’ opposition to Proposition 106 was less than unanimous, with several important party members either supporting or remaining silent about the measure.\textsuperscript{222} In addition, the initiative’s foes were forced to raise funds from outside the state in the waning days of the

\textsuperscript{214} Crayons in Box, supra note 205.
\textsuperscript{215} Stop the Music on Redistricting, ARIZ. REPUBLIC, Nov. 7, 1999, at 8B.
\textsuperscript{216} See, e.g., Redistricting Countdown, ARIZ. REPUBLIC, Apr. 17, 2000, at 6B.
\textsuperscript{217} See Hal Mattern, Redistricting Process Targeted, ARIZ. REPUBLIC, Oct. 8, 2000, at 1A (quoting Arizona Common Cause Executive Director Dennis Burke) (“This proposition would enliven Arizona politics in a good way. We wouldn’t have all of these unopposed elections . . . .”).
\textsuperscript{218} See Pauole, supra note 207, at 1239 (“The most frequently cited argument in favor of Proposition 106 concerned the prevalent role of political self-interest in the drawing of district boundaries.”); Redrawing Districts Is a Right of Citizens, ARIZ. REPUBLIC, Nov. 2, 2000, at 8B [hereinafter Right of Citizens] (arguing that the initiative’s opponents “have the existing system greased for their own self gain”).
\textsuperscript{219} See Mattern, supra note 2177 (quoting Bowers) (“If you think [the members of the commission] are going to have an increased amount of intelligence and less political interest, you are wrong.”).
\textsuperscript{220} See Sherwood, supra note 2177 (quoting Bowers) (“One man, wealthy shopping mall developer Jim Pederson, has bankrolled Prop. 106 . . . . Who is he? What’s his political background? What’s in it for him?”).
\textsuperscript{221} See Right of Citizens, supra note 2188 (“[Opponents to Proposition 106] don’t represent the party as a whole, because many prominent Republicans . . . all support redistricting reform in the name of basic fairness.”).
Reforming Redistricting

2007] 371

campaign as they found themselves behind in the polls and short on cash.\footnote{223 See id. ("No wonder the opposition to Proposition 106 has had to appeal to the Nevada Republican Party for a substantial part of its funding.").}

In the end, Proposition 106 prevailed by a vote of 56 percent for to 44 percent against. The most significant explanation for the initiative's success was probably the dissension within the Arizona Republican Party. With Governor Hull uncharacteristically taciturn and many Republicans voicing their support for the measure, the party was unable to mount a unified campaign in opposition. Why Arizona Republicans were so fractured, though, is a more vexing question; legislative majorities in other states have not had nearly as much difficulty maintaining a common front when challenged by redistricting initiatives. The answer appears to be threefold. First, the \textit{Arizona Republic}'s extraordinary campaign on behalf of redistricting reform made the commission a major issue from early 1999 onward, and generated negative attention for all Republicans that tried to thwart it—but praise for politicians that bucked their party on the issue. Second, Republicans in the state legislature made the tactical mistake in 1999 of proposing a redistricting commission themselves, albeit one that would have been staffed by six Republicans and three Democrats.\footnote{224 See Ruben Navarette Jr., \textit{Grosscut Moves Toward Gluttony on Redistricting}, \textit{ARIZ. REPUBLIC}, Feb. 24, 1999, at 2B.}

Because of this decision, party members found it difficult down the road to argue that commissions were intrinsically unrepresentative and susceptible to special interest domination. Third, it was primarily Republicans who were not legislators (such as mayors and state cabinet members) that supported the initiative. These politicians had much less to lose if the measure passed, and were also less susceptible to pressure from the party apparatus.

11. California, 2005 (Failed)

The highest-profile redistricting initiative ever—thanks to the enthusiastic support of Republican Governor Arnold Schwarzenegger—recently took place in California. In the 2004 general election, not a single incumbent in the Assembly, Senate, or California congressional delegation had been beaten, and not a single seat had changed parties.\footnote{225 See John Wildermuth, \textit{Some Suspect Governor's Plan to Redraw District Lines}, \textit{S.F. CHRON.}, Jan. 2, 2005, at A17.} Governor Schwarzenegger therefore made redistricting by nonpartisan commission a central pillar of the reform package that he pushed in 2005. He first tried
to convince the Democratic-dominated state legislature to enact his proposal.\textsuperscript{226} When this effort (rather predictably) failed, he ordered a special election in which redistricting reform and several other measures would be put to a statewide vote.\textsuperscript{227}

Proposition 77 would have created a three-member commission to carry out California's state and federal redistricting. The state's Judicial Council would have chosen at random a pool of twenty-four retired judges, the Assembly and Senate majority and minority leaders would each have selected three judges from the opposing party, the four legislators would then each have vetoed one of the remaining twelve judges, and finally the three commission members would have been picked randomly from the eight judges still on the list. The commission would have drawn districts on the basis of equal population, compactness, contiguity, and respect for political boundaries, and would have been barred from considering the potential effects of redistricting on incumbents or political parties.\textsuperscript{228}

Governor Schwarzenegger was by far the most important proponent of Proposition 77. He made redistricting reform a major issue in 2005, personally involved himself in the initiative's drafting, raised large amounts of money for the pro-initiative side, and campaigned vigorously on behalf of the measure. According to Schwarzenegger, Proposition 77 would have made California's elections more competitive,\textsuperscript{229} helped more moderate politicians at the expense of extremists on both ends of the political spectrum,\textsuperscript{230} and returned California to the widely respected judge-drawn districts that the state enjoyed in the 1990s.\textsuperscript{231}

Several important organizations joined Schwarzenegger in support of the initiative, including Citizens to Save California,\textsuperscript{232} the Rose Institute,\textsuperscript{233} Common


\textsuperscript{229}See Wildermuth, \textit{supra} note 2255 ("'I think we have to do a redistricting' to make the elections more competitive, Schwarzenegger said. 'I think this is a very, very important thing that we have to make part of our reforms.'").

\textsuperscript{230}See id. ("[T]he governor is trying to put more moderate Republicans in office at the expense of conservatives. . . .").

\textsuperscript{231}See Nancy Vogel, \textit{Looking To Design a Fairer Map}, L.A. TIMES, Feb. 13, 2005, at B1 (referring to the "rosy rearview glow of California's judge-drawn lines in the 1990s"); id. (quoting a Rose Institute official) ("'We had 10 years of really good districts, and people saw that it was possible for an unbiased source to draw [them].'")).

\textsuperscript{232}See Peter Nicholas, \textit{Group to Aid Gov. 's Push for Reforms}, L.A. TIMES, Jan. 12, 2005, at B1. Citizens to Save California was an umbrella organization dedicated to promoting all of Governor Schwarzenegger's 2005 initiatives.

\textsuperscript{233}See Vogel, \textit{supra} note 231.
Reforming Redistricting

Both the Los Angeles Times and the San Francisco Chronicle also endorsed Proposition 77. Together Schwarzenegger and his allies raised approximately $5 million for advertising and other campaign activities.

A coalition of California Democrats, traditionally pro-Democratic groups, and skeptical Republicans opposed Proposition 77. Some of the most vocal Democratic critics were U.S. House Representatives Nancy Pelosi and Howard Berman, both of whom raised significant sums to defeat the measure. Groups that came out against the initiative included the Alliance for a Better California, the Mexican American Legal Defense and Education Fund, the California Teachers Association, the California State Council of Service Employees, and other major unions. Most notably, a number of prominent California Republicans publicly broke with Governor Schwarzenegger over Proposition 77. U.S. House Representative John Doolittle declared that "[a]s a conservative Republican, it makes me very nervous when I hear people say that their overt objective is to remove the conservatives." The national Republican Party also opposed the initiative, and by some counts sixteen of California’s twenty Republicans in Congress disagreed with Schwarzenegger about redistricting reform. The opponents of Proposition 77 dramatically outspent the measure’s supporters. Their

See Carla Marinucci & John Wildermuth, Prop. 77 Splits Common Cause in State, S.F. CHRON., Oct. 18, 2005, at B2. However, several board members of the California chapter of Common Cause opposed the national organization’s decision to endorse Proposition 77. See id.

See Nicholas, supra note 232.


See Dan Morain, Coffers Bulging for Special Election, L.A. TIMES, May 3, 2005, at B1. Alliance for a Better California, dedicated to defeating all of Schwarzenegger’s 2005 initiatives, was the Democratic counterpart to Citizens to Save California.


See John Wildermuth & Carla Marinucci, Business, Labor Ante up in Play for Power, S.F. CHRON., Sept. 26, 2005, at A1 ("California public employee unions, fighting for their political lives, are betting more than $60 million that they can defeat Gov. Arnold Schwarzenegger’s package of initiatives Nov. 8.");


See id.; see also Wildermuth, supra note 240 ("Gov. Arnold Schwarzenegger also faces a revolt from GOP congress members worried that the initiative could cost them their seats.").
arguments focused on the impossibility of removing politics from the redistricting process, the impropriety of conducting a second, mid-decade redistricting, the sense that the initiative was nothing more than a “power grab by the party that’s not in power,” the difficulty of implementing the initiative’s proposals in time for the 2006 election, and the fear that the national Democratic Party would be hurt if the measure passed and California Democrats lost seats in Congress as a result.

Proposition 77 lost by a wide margin on election day, with 40 percent of the vote in favor compared to 60 percent against. As in previous California initiative campaigns, the unified and forceful opposition of the state Democratic Party framed the debate as a partisan struggle rather than a question of good government. The measure’s prospects were also damaged by the dissension within the California Republican Party. While almost every major Democrat loudly criticized the initiative, many Republicans remained silent or joined the disparaging Democratic chorus. Governor Schwarzenegger did enthusiastically back Proposition 77, but previous California campaigns show that gubernatorial support alone does not ensure a measure’s passage. Moreover, Schwarzenegger’s once sky-high approval ratings had plummeted by November 2005, thus further reducing his influence over the electorate. As one observer commented just before the election, “[t]here’s a negative drag created by Arnold that spans across all of the propositions that he’s supporting, and it doesn’t leave a lot of room for him to move.”

12. Ohio, 2005 (Failed)

The last of the twelve redistricting initiatives took place in Ohio in 2005. In the previous year’s election, Ohio Democrats had won 49 percent of the congressional vote but just 33 percent of the seats, 48 percent of the state House vote but just 42 percent of the seats, and 37 percent of the state

247 See Peter Nicholas, Gov. To Call for Special Session, L.A. TIMES, Jan. 1, 2005, at A1 (quoting Assembly Speaker Fabian Nunez) (“‘You’ll never be able to rid [redistricting] of politics.’”).

248 See Hubbell, supra note 226 (quoting Rep. Pelosi) (“‘[I]t’s up to the public to ask . . . why the governor would want to do this in mid-decade. That is a question fraught with meaning.’”).

249 See Vogel, supra note 231 (quoting Speaker Nunez); see also John Wildermuth, ‘Nonpartisan’ Measure Draws Partisan Debate, S.F. CHRON., Sept. 27, 2005, at B2 (quoting State Senator Gloria Romero) (“‘One party is trying to get more control, and another party is trying to defend against it.’”).

250 See Wildermuth, supra note 2499 (quoting election expert Karin MacDonald) (“‘It would be incredibly difficult, if not impossible, to get this done before Dec. 30.’”).

251 See Ethan Rarick, Learning To Love Gerrymandering, L.A. TIMES, Oct. 2, 2005, at M5 (“‘I will support a nonpartisan redistricting of Democrat-dominated California on the same day I can be assured of similar fairness in Republican states.’”).

Senate vote but just 19 percent of the seats. Moreover, the average margin of victory in Ohio’s state and federal races was 35 percentage points. In response to these perceived electoral flaws, a group called Reform Ohio Now proposed an initiative that would have created a new five-member redistricting commission for Ohio. Senior state court judges of different party affiliations would have chosen the first two commission members, and those two commissioners would have selected the remaining three members (one Democrat, one Republican, and one independent). The commission would have adopted the state and federal district maps that created the most competitive districts, except that plans that sacrificed some competitiveness for greater compactness and community preservation could be chosen.

Reform Ohio Now, the main backer of the redistricting initiative (Issue 4) as well as two other propositions on the 2005 ballot, was a “nonprofit coalition of mostly moderate and liberal-leaning interests.” It was funded primarily by foundations and individual donors (many of them from outside Ohio), and endorsed by groups such as Common Cause, the AFL-CIO and other unions, the NAACP, and the Sierra Club. Ohio’s Democratic legislators were also nominally in favor of Issue 4, but were not especially vocal in their support, probably because more competitive districts would have put their own seats in play in addition to those of their Republican opponents. The initiative’s backers highlighted Ohio’s history of uncompetitive races and argued that the ethical scandals surrounding Republican Governor Robert Taft were evidence of the need

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253 See Joe Hallett, Ohio Ballot Issue 4: Redistricting Comes Under Scrutiny, COLUMBUS DISPATCH, Oct. 27, 2005, at 01A.
255 See Hallett, supra note 253 (“The commission could accept a plan that scores two points lower on the competitiveness scale for congressional districts and four points lower for legislative districts if the plan does a better job of making the districts compact and keeps communities intact.”); Joe Hallett, Reform Would Wrest Pen of Power from State’s Political Line-Drawers, COLUMBUS DISPATCH, June 26, 2005, at 01C.
256 Jim Siegel, Group Pushing Election Reform Inches Closer to Ballot, COLUMBUS DISPATCH, July 22, 2005, at 03B.
257 See id. (“The group has raised money from a variety of sources including: Alida Messinger, of New York, a major donor to liberal causes and daughter of oil magnate John D. Rockefeller III; the Ohio Federation of Teachers; the Rockefeller Family Fund; the Ohio Public Interest Research Group Citizen Lobby; the Public Interest Projects Inc., of New York; and therestofus.org....”).
260 See Jim Siegel, Redistricting Amendment: Proposal Could Mean Fewer Black Legislators, COLUMBUS DISPATCH, Sept. 25, 2005, at 01A (noting that one prominent Ohio Democrat "still ha[d] some questions" about a month before the election, and that the Ohio black caucus had not yet decided to endorse Issue 4).
for redistricting reform. A typical commercial intoned that “[t]here’s a culture of corruption in our government” and claimed that Issue 4 would “help get rid of the special interest money, hold the politicians accountable and clean up the corruption once and for all.”

Ohio’s Republicans furiously opposed Issue 4, forming a new organization, Ohio First, to direct the effort against the measure. Because of his poor poll numbers, Governor Taft kept a relatively low profile during the campaign, but prominent legislators such as House Speaker Jon Husted, State Senator Kevin Coughlin, and State Representative Kevin DeWine loudly denounced the initiative. Thanks to intense fundraising and support from pro-business groups such as the Ohio Chamber of Commerce, opponents of Issue 4 substantially outspent the measure’s backers. They used their war chest to assemble a large team of consultants (including the producers of the anti-John Kerry Swift Boat ads) and bombard the Ohio airwaves with critical commercials. The main themes sounded by the ads were that Issue 4 was put on the ballot by “wealthy, out-of-state liberals trying to hijack Ohio’s elections,” and that the initiative would transfer control of redistricting to faceless bureaucrats. Opponents of Issue 4 also argued that it was a mistake to privilege competitiveness above other redistricting criteria, proving their point by producing a sample district map with “districts shaped like string beans” that the new commission would be required to adopt because of its...

261 See Hallett, supra note 249 (quoting Erin Bowser, director of the Ohio Public Interest Research Group) (“All of the various scandals happening now . . . reinforce how regular citizens are being shut out of the process and how difficult it is to hold elected officials accountable when they’re in safe districts and they can’t get beat.”).

262 Bureaucrats Bad; So Are Politicians, CINCINNATI ENQUIRER, Nov. 3, 2005, at 9C.

263 See Hallett, supra note 253; Siegel, supra note 256. Coughlin even “admitted telling another lobbyist that he killed [a bill favored by Democrat Paul Tipps] to get back at Tipps for co-writing” the redistricting initiative. See Joe Hallett, Legislator Put Preserving a Safe District over Saving Cities’ Money, COLUMBUS DISPATCH, July 3, 2005, at 05D.

264 See Siegel, supra note 252 (“The Ohio Chamber of Commerce, a major player in state elections, is concerned that the provisions create an uneven playing field that favors unions over businesses.”).

265 See Mark Niquette & Jim Siegel, Election-System Proposals: Initiatives’ Friends, Foes Search for Easy Labels, COLUMBUS DISPATCH, Sept. 25, 2005, at 01B.


267 See Niquette & Siegel, supra note 265; see also Sandy Theis, Two Ballot Issues Unclear, Poll Finds, PLAIN DEALER (Cleveland), Oct. 27, 2005, at B3 (“A new ad that appears in Christian newspapers even tags [Reform Ohio Now] supporters as those who ‘took prayer out of our public schools’.”).

268 See Bureaucrats Bad; So Are Politicians, supra note 262 (quoting an anti-Issue 4 ad) (“[T]he costly election amendments would create new state bureaucracies filled with political appointees who have no minimum qualifications . . . With all the scandals in Columbus, do we really want bureaucrats to have more control?”).
Reforming Redistricting

high competitiveness score. 269 Most of Ohio’s newspapers joined Republicans in calling for a ‘No’ vote on Issue 4. 270

On November 8, 2005, Issue 4 lost with just 30 percent of the vote for compared to 70 percent against—the worst defeat of any of the twelve redistricting initiatives. Following a sort of political Murphy’s Law, almost everything that could go wrong did go wrong for the measure. Issue 4’s natural supporters, Ohio Democrats, were lukewarm in their advocacy because of concern about how their own reelection chances might be affected if the initiative passed. Reform Ohio Now was easily dismissed as a collection of out-of-state liberals. The initiative’s critics were well-organized and well-funded, and their media barrage was considered to have been particularly effective. And turnout on election day was low, particularly in Ohio’s cities, as voters confused by the complicated initiatives and reluctant to participate in a special election stayed home. 271

III. PATTERNS AND LESSONS

In seventy years of effort, four redistricting initiatives have succeeded and eight have failed. Part II described in detail all twelve initiatives, and posited some explanations for why each one passed or was defeated. This section considers the measures collectively rather than individually, and attempts to reach some broader conclusions about why redistricting initiatives succeed or fail, what reformers can do to make success more likely in the future, and how accurately the academic literature explains the initiatives’ outcomes.

A. Patterns in the Past

Redistricting initiatives’ odds of passage are actually worse than they seem. In total, four out of twelve have prevailed at the polls, but two of those successes—Arkansas (1936) and Oklahoma (1962)—took place

269 See Hallett, supra note 253; see also Joe Hallett, Jim Siegel & Mark Niquette, Ohio’s Issue 4 Aims To Inject Competition into Legislative Races, COLUMBUS DISPATCH, Oct. 16, 2005, at 01A (quoting Ohio First spokesman Jim Tilling) ("In order to get competitiveness, you have to distort everything else."). 270 See Mixed Bag of Reforms, PLAIN DEALER (Cleveland), Oct. 23, 2005, at H2; Vote Today—There’s Lots at Stake, CINCINNATI ENQUIRER, Nov. 8, 2005, at 12B. But see There Is a Better Way, supra note 250 (expressing support for the principle of redistricting reform).

271 See Sandy Theis & Reginald Fields, Scandals Get Little Reaction on Issues, PLAIN DEALER (Cleveland), Nov. 9, 2005, at B1 (“[L]ow turnout in the cities indicated that Democrats failed to get their supporters to the polls. Others blamed voter confusion and said [Reform Ohio Now] made a mistake by pitching four complex issues at once.”).
before or around the time of Baker v. Carr.272 Those measures' supporters, unlike backers of redistricting reform in the forty years since Baker, were able to point out the obvious unfairness of electoral districts that vary widely in population. They did not have to resort to the second-order argument that even when the one-person, one-vote principle is respected, democratic values can still be subverted by clever district-drawing. In the post-Baker era, only two out of nine redistricting initiatives have succeeded, compared to two out of three in the period before the Supreme Court entered the political thicket.

As a group, the campaigns over the failed redistricting initiatives were quite different from the campaigns over the successful measures. As Appendix B, infra, indicates, the initiatives' proponents were outspent in four of the seven failed campaigns for which I have information, but had greater resources than their adversaries in the one successful campaign for which an assessment is possible.273 The state governor twice opposed the initiative in failed campaigns but never fought against a successful initiative. The majority party in the state legislature strongly opposed all eight failed initiatives, but never vigorously resisted a successful initiative. (In the three successful campaigns for which I have information, the legislative majority party was split once and weakly opposed to the initiative twice.)274 The minority party in the state legislature was split twice and weakly in favor thrice in the failed campaigns, but supported all three of the successful measures for which I have information.275 In failed campaigns, major newspapers supported the initiative twice, opposed it four times, and were split twice, while in successful campaigns they endorsed the measure thrice and were split once.276 Interest groups were split six times and supportive of the measure twice in failed campaigns, but were split just once and supportive twice in successful campaigns.277 All of the successful campaigns unfolded in the wake of a recent egregious gerrymander, and twice they took place in the shadow of important relevant national developments; on the other hand, one of the failed campaigns was not provoked by an especially awful gerrymander, and none of them were accompanied by major national events.278 Finally,
The opponents of redistricting reform were more effective at framing the debate in seven of the failed campaigns but none of the successful campaigns. \(^{279}\)

The (rather intuitive) upshot is that redistricting initiatives are more likely to succeed when their supporters outspend and outframe the opposition, the legislative majority party is split or weakly opposed, the governor and the legislative minority party are strongly supportive, newspapers and interest groups endorse the measure, a blatant gerrymander has recently occurred, and favorable developments are transpiring on the national stage. But it is possible to advance this analysis further. First, state governors are basically powerless to get a redistricting initiative to pass (though they may be able to accomplish the reverse, that is, to ensure a measure’s defeat through their energetic opposition). In three cases—Oklahoma (1960), California (1984), and California (2005)—governors made the passage of a redistricting measure their top campaign priority, only to see those initiatives lose by an average of twenty points. Moreover, none of the four successful initiatives enjoyed strong gubernatorial support; only once, in Oklahoma (1962), was the governor’s favorable position clear from newspaper coverage, and even in that campaign Governor Edmondson was a lame duck and devoted little effort to passing the initiative.

Second, the minority party in the state legislature is similarly incapable of propelling a redistricting initiative to success at the polls. The minority party strongly supported a redistricting measure four times\(^{280}\) and weakly supported such a measure five more times,\(^{281}\) yet only three of those initiatives succeeded. And in the three successful cases, the minority party’s support for the initiative was weak twice—Oklahoma (1962) and Colorado (1974)—and strong only in Arizona (2000), a campaign in which the Republicans’ internal strife was probably more important than the Democrats’ unified advocacy. However, actual splits in (as opposed to lukewarm support from) the minority party correlate perfectly with defeat on election day. California Republicans divided over the 1990 and 2005 redistricting initiatives, and those measures lost by twenty-eight and twenty points, respectively.

Third, the actual content of a redistricting initiative also has little impact on the measure’s fate at the polls; the eight failed proposals do not look

\(^{279}\) See *id.*

\(^{280}\) These cases were North Dakota (1973), California (1982), California (1984), and Arizona (2000).

\(^{281}\) These cases were Oklahoma (1960), Oklahoma (1962), Colorado (1974), Ohio (1981), and Ohio (2005).
appreciably different from the four that passed. Oklahoma’s successful 1962 initiative, for example, was almost identical to the measure that the state’s voters rejected in 1960. Similarly, the successful initiatives in Colorado (1974) and Arizona (2000)—both of which created commissions that draw districts on the basis of a set of familiar redistricting criteria—strongly resemble the failed initiatives in California (1982), California (1984), California (1990), and California (2005). The only conclusion that can be drawn about initiatives’ content is that relatively unorthodox proposals are certain to fail. Ohio’s 1981 initiative, which would have required the commission to adopt the plans with the greatest district compactness, and Ohio’s 2005 initiative, which would have privileged competitiveness above all other redistricting criteria, were defeated by an average of twenty-eight points.

Two more factors that seem relatively unimportant in explaining initiative success or failure are interest group positions and recent egregious gerrymanders. In most campaigns—seven of the eleven that I was able to assess—important interests lined up on both sides of the measure, making their overall influence a wash. In the four campaigns in which most interests backed one side (always the pro-initiative side), the measures passed twice and were defeated twice. And those two successes—Colorado (1974) and Arizona (2000)—were almost certainly not attributable to interest groups’ endorsements or mobilization, which by all accounts played a small role in both campaigns. As for glaring gerrymanders, they are unfortunately so prevalent that they provide no meaningful distinction between successful and unsuccessful redistricting initiatives. Seven of the eight failed initiatives took place shortly after an especially offensive redistricting exercise, as did all four of the initiatives that prevailed.

So what factors do account for why some initiatives succeed and some fail? The most important single variable appears to be the intensity of the legislative majority party’s opposition to the measure. In the eight cases where the majority party strongly opposed an initiative, the initiative failed every time. But in the four cases where the majority party’s position was unclear or split or only weakly opposed, the initiative succeeded every time. This finding makes a good deal of sense. Legislators from the majority party in a state are the main targets of redistricting initiatives (as well as the primary beneficiaries of the gerrymandered status quo). They are also members of the party that most of the electorate supports, at least
in legislative elections.\textsuperscript{282} So it is not surprising that the majority party in the state legislature vehemently opposes most redistricting initiatives, or that those initiatives fail as a result of its strident opposition.

But it is not just the fact of intense majority party resistance that dooms initiatives, but also the kind of campaign that the resistance engenders. In case after case, majority party legislators responded to a threatening redistricting measure by raising large sums of money, campaigning furiously against the measure, and striving to frame the debate in the most advantageous possible terms. As Appendix B shows, when the majority party strongly opposed a redistricting initiative, it outspent the measure’s supporters four times and was outspent thrice, and was more effective at framing the debate six times, while never allowing the other side clearly to seize the rhetorical advantage.\textsuperscript{283} This means that strong majority party opposition produces a political environment in which proponents of redistricting reform face almost insurmountable obstacles. They are confronted not only by the official hostility of the largest partisan entity in the state, but also by an anti-initiative effort that is better-funded, able to call on more prominent politicians as spokesmen, and made up of legislators desperately fighting for their political lives.

The deeper mystery, then, is why redistricting initiatives ever win—or, which is to say the same thing, why the state majority party does not always strongly oppose such measures. The answer is that while the majority party would always like to fight forcefully against redistricting reform, forces beyond its control sometimes prevent it from doing so. In Oklahoma (1962) and Colorado (1974), it was important national developments that interceded. The Supreme Court’s decision in \textit{Baker v. Carr} made it clear to Oklahoma Democrats that reapportionment could no longer be resisted. Even if they thwarted both the 1962 initiative and similar proposals in the state legislature, reapportionment would still take place, just by court decree instead of democratic decision-making. Accordingly, the Oklahoma Democratic Party barely even tried to fight the 1962 initiative even though two years earlier it had ferociously opposed an almost identical measure. Similarly, Colorado Republicans in 1974 recognized the threat that the redistricting initiative posed to their dominance in the state legislature. But they also realized that the 1974 elections, taking place shortly after the Watergate scandal, would be

\textsuperscript{282} This assumes that the existing gerrymandering is not so egregious that the majority party in the state legislature only enjoys the support of a minority of the electorate. In none of the twelve cases does such minority entrenchment appear to have occurred.

\textsuperscript{283} See \textit{infra} Appendix B.
exceptionally favorable to Democrats and self-proclaimed reformers. They therefore muted their opposition—which would have been futile anyway—to the initiative, and focused on holding onto their seats.

There were no comparably important national developments in 2000, but the Arizona Republican Party still failed strongly to oppose the redistricting initiative on the ballot. There is no single explanation for the party’s halfhearted resistance; it appears, rather, to have stemmed from an unusual confluence of factors. First, Arizona Republicans themselves had earlier proposed a redistricting commission, making it difficult for them to argue convincingly against the initiative. Second, a number of prominent Republican executive branch officials declared their support for the measure, thus hampering legislators’ effort to present a vigorous and unified opposition front. Third, and perhaps most importantly, the Arizona Republican tirelessly editorialized in favor of the initiative and criticized the measure’s opponents. Newspapers in other states also endorsed redistricting initiatives, but the persistence and high profile of the Republic’s campaign were unique among the twelve cases that I examined.

It is now possible to answer this Article’s motivating question: Why do redistricting initiatives succeed and why do they fail? In short, redistricting initiatives generally fail because they provoke fierce opposition from the majority party in the state legislature, which feels threatened by the possibility of fairer district lines. The majority party typically raises more money than the initiative’s supporters, argues more creatively and vociferously for its position, and manages to cast the debate in a light more favorable to it. On the other hand, redistricting initiatives succeed when for some reason the legislative majority party is unable to mobilize in opposition. Sometimes national developments such as Supreme Court decisions or political groundswells account for this inability; sometimes local factors such as media coverage or poor tactical decisions by the majority party are responsible. The default, unfortunately, is that redistricting initiatives fail, and something out of the ordinary must transpire for them to prevail at the polls.

The Arizona case is the most inexplicable of the twelve, as an initiative that benefited Democrats passed despite Republican control of the governorship and both chambers of the state legislature. I should note that I do not find my explanation for weak Republican opposition completely convincing. Majority parties in other cases faced political environments just as challenging but were able to mount energetic—and effective—campaigns against redistricting initiatives.

In no other case did newspaper support for a measure play nearly as large a role as Arizona (2000). However, newspaper opposition helped doom initiatives in North Dakota (1973), California (1982), California (1984), and Ohio (2005).
B. Lessons for the Future

The above analysis of the twelve redistricting initiatives suggests that the situation for would-be reformers is dire. In general, any measure that they draft—no matter how well-written or admirable in its policy implications—will be defeated. The majority party in the state legislature will rally against the initiative, and reformers will be outspent, outframed, outcampaigned, and, ultimately, outvoted. It matters little whether the governor supports the measure, whether newspapers and interest groups are in favor, or whether the existing electoral districts undermine everything that democracy stands for. The outcome of the campaign will still be the same: failure.

But there are a few glimmers of hope for proponents of redistricting reform. First, and most importantly, history shows that redistricting initiatives do succeed when they are launched at the same time that favorable national developments are taking place. The challenge, then, is to identify propitious moments for reform in the future. Unfortunately, such moments are more apparent with the benefit of hindsight, but it does seem like we may currently be on the verge of one. Thanks to the California and Ohio initiatives in 2005, the uproar over Texas's mid-decade redistricting, and the Supreme Court's recent decisions in *Vieth v. Jubelirer* and *LULAC v. Perry*, redistricting is in the news more than ever before. Moreover, though it is still too early to tell for certain, the 2008 elections look like they will be favorable for Democrats—who, outside of California, have been the main supporters of redistricting reform in the modern era. The combination of greater public awareness of redistricting abuses and a pro-Democratic political environment may produce an unusually auspicious setting for redistricting initiatives. If current trends hold, reformers should be sure not to let the opportunity slip away.

What happens if, as will usually be the case, there are no favorable national developments but a redistricting initiative is nevertheless on a state's ballot? In such a situation, reformers should learn as much as possible from the 2000 Arizona campaign, the one modern case in which a redistricting initiative prevailed despite the absence of any dramatic national events. One lesson from Arizona is that reformers should try not

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only to win major newspapers' endorsements, but also to garner their committed and vocal support. An unrelenting editorial campaign on behalf of an initiative, like that mounted by the Arizona Republic in 2000, has the capacity to focus the public's attention on redistricting and embarrass opponents of the measure. Media backing is especially important for proponents of redistricting reform since they are typically at a disadvantage when it comes to conventional campaigning and television advertising.

A second lesson from Arizona is that it is vitally important for an initiative's supporters to create rifts in the legislative majority party. State legislators from the majority party are, of course, the politicians least likely to back a redistricting measure, but they may be convinced to do so if they hold seats that would be safe under virtually any electoral arrangement, or if they are unusually reform-minded. Several Republican members of the Arizona state legislature, for instance, came out in support of Proposition 106 in 2000.289 A more promising way for reformers to sow dissension in the majority party's ranks, though, is to target the party's current and former executive branch officials. Such officials have much less to lose than state legislators if redistricting is entrusted to a neutral commission, and they are also more likely to buck the party establishment, especially if they no longer hold elected office. The most important Republican supporters of Proposition 106 in 2000 were all past and present executive branch officials.

A final bit of advice for reformers, derived from the failed campaigns of Ohio (1981), California (1990), California (2005), and Ohio (2005), is that they must at all costs maintain unity in the legislative minority party. In those four races, whatever hopes the initiatives' backers had were dashed by tepid support from, or outright splits in, the minority party.290 Unfortunately, the best way to prevent minority party defection is for reformers to propose measures that are unthreatening to minority party politicians—and hence less likely to produce genuinely fair district maps. The common theme in the four cases above is that each measure would have imperiled the seats not only of majority party legislators, but also of many minority party politicians. The 1981 Ohio initiative would have made district compactness the sole redistricting criterion; the 1990

289 See Right of Citizens, supra note 218 (noting that Republican State Senator Sue Grace and State Representative Susan Gerard supported the Arizona redistricting initiative).

290 It is true that legislative minority party support for redistricting reform was also weak in Oklahoma (1962) and Colorado (1974), but the initiatives nevertheless passed. However, this is almost certainly because the major national developments in each case made the intensity of local party support almost irrelevant. In more typical campaigns, the absence of minority party mobilization does indeed always prove fatal to an initiative’s chances.
Reforming Redistricting

California initiative would have required the commission to consider district competitiveness when choosing among plans; the 2005 California initiative would have barred the commission from examining the party affiliations or voting histories of the electorate; and the 2005 Ohio initiative would have made competitiveness the most important factor in redistricting. Reformers, then, should avoid proposing schemes that promise to change most districts’ shapes (as the 1981 Ohio initiative would have), or to make reelection more difficult for minority party legislators (as the other three measures would have). The proposals that are left may seem watered-down, but they would still dramatically improve the status quo—and, crucially, have a prayer of passing.

In sum, the playbook for advocates of redistricting reform should read as follows: Wait for favorable national developments to take place, and launch redistricting initiatives in their wake. If a measure is not buoyed by important national events, try to win the enthusiastic support of major newspapers, to peel off some members of the legislative majority party in the state, and to avoid proposals that are overly threatening to minority party legislators’ job security. Even if all these goals are met, of course, the initiative may fail. But at least reformers will have learned the right lessons from the few successful initiative campaigns, and avoided repeating all the mistakes of the eight failed campaigns—not one of which featured a unified minority party, a divided majority party, and support for the measure from the state’s media establishment.

C. Implications for the Academic Conventional Wisdom

Section II.A, supra, presented the variables that, according to political scientists, best explain the outcomes of popular initiatives. These variables include campaign spending, especially when deployed against a measure; voters’ appraisal of a measure’s merits; the positions taken by elites, in particular interest groups and the media; and the framing of a measure by its supporters and detractors. On the other hand, political scientists tend to downplay the importance of political parties, arguing that parties rarely take positions on initiatives and that voters in initiative elections are deprived of the partisan cues that assist their decision-making in candidate elections. How accurate is the academic conventional wisdom on initiative outcomes (at least in the redistricting context)?

291 See supra note 50. The scholarly consensus on political parties is not absolute, though. Regina Branton, for example, analyzed initiative outcomes across a range of states and issues, and found that there is a “more general relationship between partisanship and voting behavior in ballot elections than previously hypothesized,” and that “although [initiative] elections lack traditional partisan labels, voters
Not very. First, several of the factors identified as significant by political scientists are unhelpful in explaining why redistricting initiatives succeed or fail. For instance, initiative supporters outspent opponents in at least four campaigns but prevailed in only one of those cases.\(^2\)

Initiatives’ merits also could not have played too large a causal role since all twelve of the measures were relatively similar—seeking to combat gerrymandering by creating redistricting commissions that would draw district lines on the basis of specified criteria—but their fates at the polls diverged widely. As noted above, the Oklahoma (1960) and Oklahoma (1962) initiatives were almost identical, but the former passed while the latter was defeated; and the successful initiatives in Colorado (1974) and Arizona (2000) closely resembled the four failed California initiatives. Interest group and media positions seem relatively unimportant as well, since initiatives usually fail even when strongly backed by major groups and newspapers. Arizona (2000) is the only case where media support for a measure was an important reason for success at the polls, and it must be weighed against Oklahoma (1960), Ohio (1981), California (1982), and California (2005), all cases where initiatives were defeated despite strong interest group and newspaper backing.

Not only are the variables identified by political scientists unable to explain the outcomes of redistricting initiative elections, but the most important causal factor—the position of the legislative majority party and the intensity with which it is held—is one that the academic literature typically neglects. This Article’s analysis of the twelve redistricting initiatives shows that the measures universally failed when they were strongly opposed by the majority party in the state, and universally succeeded when the majority party was split or only weakly opposed. This finding would come as a complete surprise to observers such as Cronin, Magleby, Gerber, and Lupia, all of whom argue that the absence of obvious partisan cues in initiative elections deprives parties of their usual reliance on cues to formulate a decision on ballot initiatives. Regina P. Branton, *Examining Individual-Level Voting Behavior on State Ballot Propositions*, 56 POL. RESEARCH Q. 367, 368, 372 (2003); see also Hasen, *supra* note 50, at 734 (“[P]arties no longer are passive observers of the initiative process. . . . Though it would be premature to consider parties as 'major players' in the process, the data show that parties are highly adaptable organizations, making selective use of initiative campaigns as part of their set of political tools.”).

\(^2\) See *infra* Appendix B. In the one campaign where a redistricting initiative’s supporters clearly outspent its opponents, Oklahoma (1962), the extra funding was almost certainly not decisive. As discussed above, *see supra* Part II.B.3, the Supreme Court’s one-person, one-vote decision earlier that year was the most important reason why that measure passed. It is worth noting, however, that as scholars would expect, every time that a redistricting measure’s opponents were better-funded, the measure was defeated.
Reforming Redistricting

electoral clout. These scholars (along with most of the political science establishment) believe that parties do not matter in initiative elections, but not only do parties matter in the redistricting context, they matter more than any other variable.

There are three reasons why the academic conventional wisdom is so wrong about redistricting initiatives. First, and most importantly, redistricting initiatives are fundamentally different from other exercises in direct democracy because they are designed to upset the political balance of power. Political scientists may be right that parties do not get too exercised over fiscal, environmental, or legal initiatives, but it stands to reason that they will be far more involved in campaigns over measures that could sharply enhance or undercut their political prospects. Other interest groups also have less at stake in redistricting initiative elections, meaning that it is easier for parties to assume the lead role in the debate. Second, political scientists are inclined to minimize the relevance of political parties across all initiative contexts. If this perspective is flawed and parties are generally more influential than was previously thought to be the case, as some recent evidence suggests, the error will be especially severe in the arena where parties have the most to gain and lose. Third, no political scientist has ever conducted a detailed analysis of all the redistricting initiatives that have taken place over the course of American history. (Nor, to be fair, has anybody else.) But without such an analysis it is impossible to assess accurately the importance of political parties in redistricting initiative elections—especially since party positions and the manner in which they influence campaigns are not very susceptible to quantification and statistical study. This Article's methodology, and the unexpected results it produced, thus suggest a need for more case study-style investigations of popular initiatives (and other political science phenomena as well). Case studies tend to be more laborious to generate than multiple regressions, but they can also reveal insights that are otherwise lost in the statistical fog.

CONCLUSION

This Article has sought to answer two questions about redistricting initiatives, which after Vieth and LULAC represent the only realistic way to curb political gerrymandering. First, are redistricting initiatives (and the

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293 See supra note 50.
294 See supra note 290.
redistricting commissions they invariably seek to create) a good idea? Second, and more importantly, why do redistricting initiatives generally fail, and what can reformers do to improve such measures’ odds of success in the future? Part I made the case for redistricting initiatives and redistricting commissions. Redistricting initiatives unblock stoppages in the democratic process, thereby allowing the public to enact electoral reform over the opposition of self-interested legislators. And redistricting commissions are in theory better suited to district-drawing than state legislatures, and empirically have produced more competitive elections and more representative results.

Part II, the heart of the Article, first discussed a series of variables that might be expected to influence initiative outcomes. The section then examined in detail the twelve redistricting initiatives that have taken place over the course of American history. For each initiative campaign, the measure’s supporters and opponents (as well as their principal arguments) were described, and tentative explanations for the measure’s eventual success or failure were proposed. Part III, finally, considered the twelve redistricting initiatives holistically in search of broader explanations for their outcomes and lessons applicable to future campaigns. The section’s main finding was that, contrary to the academic conventional wisdom, redistricting initiatives always fail when they are strongly opposed by the majority party in the state legislature. If reformers are to have any hope of success, they need to find some way—e.g. capitalizing on favorable national developments, winning the enthusiastic support of a state’s media establishment, sowing dissension between the majority party’s executive branch officials and its legislators—to defuse majority party opposition.

This finding is especially ironic because it undermines one of the central premises of direct democracy: that it enables the people to bypass the legislature and enact desired policies despite the politicians’ resistance. If redistricting initiatives fail when they are strongly opposed by most legislators, and succeed when they are not, then they seem to be no different from conventional legislation. There are, however, two characteristics of redistricting initiatives that distinguish them from regular bills and make them (slightly) more likely to become law. First, they may be (and usually are) placed on the ballot by groups other than state legislators. This means that redistricting reform may become a major political issue even when there is nothing that elected officials would rather talk about less.

Second, redistricting campaigns have a way of unfolding unpredictably. Polls gyrate up and down, media barrages shift public opinion back and
forth, party fissures are revealed and then healed, national developments intercede, and so on. The final outcome may usually be defeat for the pro-initiative side, but there is at least more volatility, and hence more hope, in initiative campaigns than in state legislative chambers. Proponents of redistricting reform, then, should not yet conclude that the direct democracy game is not worth the candle. The odds of success for redistricting initiatives are low—but they are not zero, and they are higher than the probability of meaningful legislative or judicial action.
## APPENDIX A: FEATURES OF THE TWELVE REDISTRICTING INITIATIVES

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Success</th>
<th>Level</th>
<th>Redistricting Criteria</th>
<th>Commission Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AR</td>
<td>1936</td>
<td>Yes</td>
<td>State</td>
<td>Commission draws districts with equal population that are contiguous and do not divide counties.</td>
<td>Three members: governor, secretary of state, and attorney general.</td>
</tr>
<tr>
<td>OK</td>
<td>1960</td>
<td>No</td>
<td>State</td>
<td>Commission enforces standards already in OK constitution; each county guaranteed one House member, removed ceiling on House members per county.</td>
<td>Three members: attorney general, treasurer, and secretary of state.</td>
</tr>
<tr>
<td>OK</td>
<td>1962</td>
<td>Yes</td>
<td>State</td>
<td>Commission enforces standards already in Oklahoma constitution; constitutional formula is unchanged.</td>
<td>Three members: attorney general, treasurer, and secretary of state.</td>
</tr>
<tr>
<td>ND</td>
<td>1973</td>
<td>No</td>
<td>State</td>
<td>Commission draws single-member districts with equal population.</td>
<td>Nine members: two each picked by Senate majority and minority leaders, and House majority and minority leaders; the eight then a chairman.</td>
</tr>
<tr>
<td>CO</td>
<td>1974</td>
<td>Yes</td>
<td>State</td>
<td>Commission draws districts while considering equal population, compactness, contiguity, and preservation of political boundaries and communities of interest.</td>
<td>Eleven members: four picked by legislature, three by governor, and four by judiciary.</td>
</tr>
<tr>
<td>OH</td>
<td>1981</td>
<td>No</td>
<td>State and federal</td>
<td>Commission chooses among submitted plans, on basis of district compactness.</td>
<td>Five members: two Democrats, two Republicans, and a fifth member chosen by the first four.</td>
</tr>
<tr>
<td>CA</td>
<td>1982</td>
<td>No</td>
<td>State and federal</td>
<td>Commission draws districts while considering equal population, compactness, and respect for political boundaries.</td>
<td>Ten members: four selected by appellate judges, four selected by Senate and Assembly party caucuses, four selected by party chairmen.</td>
</tr>
<tr>
<td>CA</td>
<td>1984</td>
<td>No</td>
<td>State and federal</td>
<td>Commission draws districts while considering competitiveness, compactness, respect for political boundaries, and equal population.</td>
<td>Eight members: all retired judges selected by lottery, four from each major party.</td>
</tr>
<tr>
<td>CA</td>
<td>1990</td>
<td>No</td>
<td>State and federal</td>
<td>Commission chooses among submitted plans, on basis of equal population, minority group power, respect for county boundaries, compactness, contiguity, respect for political boundaries, and competitiveness.</td>
<td>Twelve members: ten from major parties and two independents, picked by judges.</td>
</tr>
<tr>
<td>AZ</td>
<td>2000</td>
<td>Yes</td>
<td>State and federal</td>
<td>Commission draws districts while considering equal population, compactness, contiguity, preservation of political boundaries and communities of interest, and competitiveness.</td>
<td>Five members: appellate court picks twenty-five candidates; state legislature leaders pick four commissioners; those four pick chair.</td>
</tr>
<tr>
<td>CA</td>
<td>2005</td>
<td>No</td>
<td>State and federal</td>
<td>Commission draws districts while considering equal population and minimization of county and city splitting, and ignoring party affiliations of voters.</td>
<td>Three members: retired judges chosen by legislature leaders through complicated formula.</td>
</tr>
<tr>
<td>OH</td>
<td>2005</td>
<td>No</td>
<td>State and federal</td>
<td>Commission chooses among submitted plans, on basis of competitiveness.</td>
<td>Five members. two chosen by sitting judges; those two then pick remainder.</td>
</tr>
</tbody>
</table>
## APPENDIX B: FACTORS IN REDISTRICTING INITIATIVES’ SUCCESS OR FAILURE

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Success</th>
<th>Side spending more</th>
<th>Governor position</th>
<th>Governor position strength</th>
<th>Majority party position</th>
<th>Majority party position strength</th>
<th>Minority party position</th>
<th>Minority party position strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>AR</td>
<td>1936</td>
<td>Yes</td>
<td>Unclear</td>
<td>Weak</td>
<td>Unclear</td>
<td>Weak</td>
<td>Unclear</td>
<td>Weak</td>
<td>Strong</td>
</tr>
<tr>
<td>OK</td>
<td>1960</td>
<td>No</td>
<td>Unclear</td>
<td>For</td>
<td>Strong</td>
<td>Against</td>
<td>Strong</td>
<td>For</td>
<td>Weak</td>
</tr>
<tr>
<td>OK</td>
<td>1962</td>
<td>Yes</td>
<td>For</td>
<td>Weak</td>
<td>Against</td>
<td>Weak</td>
<td>For</td>
<td>Weak</td>
<td>Weak</td>
</tr>
<tr>
<td>ND</td>
<td>1973</td>
<td>No</td>
<td>For</td>
<td>Weak</td>
<td>Against</td>
<td>Strong</td>
<td>For</td>
<td>Weak</td>
<td>Strong</td>
</tr>
<tr>
<td>CO</td>
<td>1974</td>
<td>Yes</td>
<td>Unclear</td>
<td>Weak</td>
<td>Against</td>
<td>Strong</td>
<td>For</td>
<td>Weak</td>
<td>Weak</td>
</tr>
<tr>
<td>OH</td>
<td>1981</td>
<td>No</td>
<td>For</td>
<td>Against</td>
<td>Strong</td>
<td>Strong</td>
<td>For</td>
<td>Strong</td>
<td>Weak</td>
</tr>
<tr>
<td>CA</td>
<td>1982</td>
<td>No</td>
<td>Against</td>
<td>For</td>
<td>Weak</td>
<td>Against</td>
<td>Strong</td>
<td>For</td>
<td>Strong</td>
</tr>
<tr>
<td>CA</td>
<td>1984</td>
<td>No</td>
<td>Against</td>
<td>For</td>
<td>Weak</td>
<td>Against</td>
<td>Strong</td>
<td>Split</td>
<td>Weak</td>
</tr>
<tr>
<td>CA</td>
<td>1990</td>
<td>No</td>
<td>Against</td>
<td>For</td>
<td>Weak</td>
<td>Against</td>
<td>Strong</td>
<td>Split</td>
<td>Weak</td>
</tr>
<tr>
<td>AZ</td>
<td>2000</td>
<td>Yes</td>
<td>Unclear</td>
<td>Weak</td>
<td>Against</td>
<td>Weak</td>
<td>For</td>
<td>Strong</td>
<td>Weak</td>
</tr>
<tr>
<td>CA</td>
<td>2005</td>
<td>No</td>
<td>Against</td>
<td>For</td>
<td>Strong</td>
<td>Against</td>
<td>Strong</td>
<td>Split</td>
<td>Weak</td>
</tr>
<tr>
<td>OH</td>
<td>2005</td>
<td>No</td>
<td>Against</td>
<td>Weak</td>
<td>Against</td>
<td>Strong</td>
<td>For</td>
<td>Weak</td>
<td>Weak</td>
</tr>
</tbody>
</table>

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* Control over the Ohio state legislature was split in 1981, with Democratic control of the House and Republican control of the Senate.