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Designing Democracy:
A Normative and Empirical Analysis of Redistricting Reform

by
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Honors Thesis

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Abstract

A democracy is more than just an empirically observable mode of governance; it is an actively adopted ideal, an inherently value-laden concept that affects and permeates throughout all dimensions of society. It encompasses corresponding rights held by all democratic citizens, and various state obligations that arise directly from this unique status. As political institutions and practices are given tangible form in a democracy, these moral principles provide both a mandatory set of requirements and an ideal to be oriented towards in their construction. In majoritarian systems with single-member districts, the establishment of electoral boundaries through redistricting is one such process. The “status quo” method of redistricting is having legislatures construct districting schemes, which in recent years has been met with calls for reform due to the inherent conflict of interest in having those with the most at stake conduct a task so crucial to legitimacy, representational quality, and fairness. This paper takes a unique approach to the question of redistricting reform in the United States by combining empirical political analysis and institutional design theory to explore what considerations should guide debates about redistricting reform and what ultimate prescriptions should be made. I will use as a case study Virginia’s establishment of the citizen-legislator hybrid Virginia Redistricting Commission in 2020 to show that states should establish Independent Redistricting Commissions to undergo redistricting form, but that are specifically structured as all-citizen, bipartisan commissions with a tie-breaking mechanism, clear criteria, and productive voting rules so as to effectively meet normative and practical standards.

Keywords: Redistricting reform, normative theory, Virginia politics

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Introduction

Under a proportional system of representation, there is no need to draw electoral districts. Parties simply get a share of legislative seats that corresponds to their share of votes. In a majoritarian system with single-member districts, however, constituencies are necessarily created and established by drawing boundaries prior to elections (Beitz 1989, 150). Thus, in the United States, before citizens cast their votes for candidates both at the federal and state levels, the population is apportioned into territorially-delineated units that elect a single representative. These districts are altered according to the decennial census through the process of redistricting, boundaries adjusted based on various factors such as population numbers and demographic shifts. This timeline and the influence districts have over the political landscape make determinations about both how redistricting does and ought to occur even more important, as once established, such boundaries structure elections for at least ten years (Ancheta 2014, 109).

Given this structural importance, what procedures and criteria should guide district formation and who should be tasked with doing so have been extensively analyzed and debated. A crucial portion of this discourse concerns the traditional allocation of redistricting powers to the legislative bodies that will then be subject to the resulting schemes. This institutional design of redistricting grants a governing entity power over the procedures that determine its membership, which inherently yields the possibility of legislatures designing districts to their own benefit while compromising the overall quality of representation. As this idea of a legislature's inability—or, unwillingness—to adequately and fairly draw districts has grown as more and more redistricting efforts have been plagued by partisan politics and unjust district manipulation, so too has voter confidence decreased and more questions about how accurately institutions reflect the beliefs of voters arisen, threatening the legitimacy and security of

American democracy (Lowenthal 2019, 15). Contributing to this discussion, this paper presents a relevant normative framework for considering these issues and determining how redistricting ought to be conducted, demonstrating how various moral values and concepts inform this conversation and then combining them with empirical political analysis to advance a prescription for the ideal redistricting procedures. Even if some readers are left unpersuaded by my perspective on the need for, and how to ultimately design, redistricting reform as advanced in this paper, the principles and ideas in my normative framework will show how discourse about redistricting practices must be framed, presenting the types of considerations that must inform any conclusions reached about redistricting.

In a representative system of government, electoral districts should be drawn by an Independent Redistricting Commission (IRC), as this mechanism best realizes democratic aspirations related to political equality in political institutions, and, consequently, achieves the most desirable political outcomes. Furthermore, recent redistricting reform in Virginia further suggests the need to deliberately structure any IRC with certain features most conducive to fair and equitable results; mainly, an all-citizen, bipartisan commission with a tie-breaking mechanism, clearly incorporated criteria, and productive voting rules. In Part I, I will provide a contextual framework of the evolution of redistricting practices and controversies over time in the United States. In Part II, I will analyze normative values relating to political equality, democracy, citizen status, and appropriate consideration, as well as utilize institutional design theory, to show how these principles inform deliberations on how to design electoral processes such as redistricting. In Part III, I will examine different options for redistricting reform, using my moral framework and empirical evidence to support my claim that an IRC is the best option. Part IV will be a practical application of my analysis to Virginia's recent redistricting reform

efforts, drawing lessons from its enactment, its implementation, and the ultimate collapse of its redistricting commission to demonstrate how IRCs must be structured in order to actually achieve the broader benefits laid out in the previous section. The conclusion of this paper will combine the insights gained from political philosophy and empirical analysis to evaluate how a normative lens uniquely influences how to think about redistricting reform, and what should be expected and advocated for in terms of districting practices.

In one sense, the act of redistricting can be described as pre-political (Levitt 2011, 516). Prior to the campaigning and individual voting aspects of electoral politics, this process forms separate constituencies for electing representatives. How districts are constructed ultimately determines what political majority forms and gains power, as well as the degree to which its interests and policy preferences are represented in government (Levitt 2011, 518). More broadly, it shapes the division of power among elected officials and the political actions of the entire legislative body. Any adjustments to districts' composition also have the potential to affect which individuals decide to run for office, and ultimately who is chosen as a representative (Ancheta 2014, 109). Even before the dynamics of what is typically seen as being part of an election cycle begin, the formation of districts largely shapes consequent political results and the quality of representation that will be achieved in a majoritarian democracy.

The process of redistricting, however, is also a political one in itself, and increasingly so. Political institutions in the United States have traditionally been structured to allocate redistricting powers to legislatures, categorizing the process as a legislative responsibility. However, redistricting in the United States also has an extensive historical context of partisan gerrymandering—where a political party in power deliberately draws districts that benefit that party and disadvantage others—as well as voter dilution—where territorial districts are designed to

leave certain individuals or groups disproportionately represented (Wilson 2019, 216). Such gerrymanders have created large public concern over a “legislative conflict of interest” (Cain 2012, 1817). This term encompasses the general idea that those who inherently have the most to gain or lose by how districts are designed—in this case, legislators aiming to keep their political power—should not be the ones in control of redistricting, as it naturally invites corruption on the basis of self-interest. To many, this idea is logically and intuitively appealing, and is exemplified by the commonly invoked phrase in redistricting reform debates that “citizens should pick their legislators, legislators should not pick their citizens.” Such behavior on the part of legislators can result in less accountable public officials, more ideologically extreme candidates being elected, and inaccurate reflections of voters’ opinions and their changes over time (Lesowitz 2006, 540).

Aspects of the United States’ current political context have amplified these concerns and consequent efforts to see redistricting reform. First, although recent increases in technology may allow for more efficient redistricting, they also introduce risks of weaponization by political parties and legislators to more technically and effectively draw districts that maintain or increase their power rather than best represent citizens (Lowenthal 2019, 14). Second, rising political polarization has the potential to push more political actors to utilize redistricting as part of broader partisan competition. Third, the role of the judiciary in redistricting has altered considerably. Although the Supreme Court has weighed in on districting practices to combat malapportionment and preserve the rights of communities of color, such as in *Baker v. Carr* (1962), it has increasingly refused to take action in these areas and negatively altered the legal landscape through major rulings (Li 2021, 3). Conversely, litigation has overwhelmed courts at the state level, as individuals and parties have increasingly brought forward suits relating to unfair representation and accusations of partisan and racial gerrymandering. Not only do such

cases divert attention and resources away from state Supreme Courts, but their involvement is itself controversial, as many view it as a violation of the balance of power between branches and question their ability to remain neutral (Cain 2012, 1811). Current practices of leaving redistricting strictly in the hands of the legislature have been ineffective and highly problematic, and will foreseeably become even more so without intervention.

Current attempts at reform have occurred mainly at the state level, fulfilling their ideal of “laboratories of democracy” by instituting their own personalized measures. They mainly consist of forming various commissions to perform redistricting, albeit with varying features and degrees of power. The most recent example of such state-level reform is in Virginia, which took a unique approach by establishing a Virginia Redistricting Commission made up of both citizens and legislators. The state’s unique structuring of its commission and hope for improved practices given Virginia’s historical difficulties with composing districts generated much attention for the state’s 2021 redistricting process. The literature surrounding analysis of such enacted and potential redistricting reforms are overwhelmingly rooted in empirical analysis. Most discussions focus on the problems in political dynamics during current redistricting processes, but the normative values and democratic principles underlying the pre-political function of constructing districts are frequently neglected. To truly understand the urgency behind redistricting reform and how to best design it, emphasis must be placed on understanding the deeper problems underlying the controversy—partisan fairness, the underrepresentation of communities of color, and regional competition—and what values should inform the construction of democratic procedures, rather than solely focusing on the concept of legislative conflict of interest (Cain 2012, 1820). As adopting a single-member district electoral structure at the institutional level is

what creates greater opportunities for gerrymandering, solutions must be examined at a corresponding level of analysis (Thompson 2002, 28).

Before beginning my analysis, there is a necessary point of clarification. A large section of political literature is dedicated to analyzing the advantages and disadvantages of both proportional and single-member representation systems, pitting them against each other and trying to argue one is generally superior. This paper is not meant to contribute to that particular debate, as for the purposes of this paper I am not taking a position about the desirability of a system of single-member districts, the undesirability of a proportional system of representation, or vice versa. The United States currently has a single-member representation system, and its entrenchment in political and cultural life leaves this fact unlikely to change for some time. This paper is meant to examine, taking as a given that a single-member system of representation has been adopted by a democratic government, what values and practices should underlie the process of redistricting. Similarly, for the purposes of making my discussion concrete, I will focus my normative study on the United States, but I will identify at the end general prescriptions also applicable to other countries.

The Politics of Redistricting in the United States

In the United States, district boundaries for both federal- and state-level legislatures adjust through congressional and legislative redistricting, respectively. When presently considering the nature of the issues arising from the structuring of these practices and potential means of recourse, it is important to consider the various ways in which historical political context and federal actions inform and constrain the actions of states that have or would implement reform measures. Past controversies surrounding the process of drawing districts and

the changing roles of both state- and federal-level political actors provide insight into the need for further reforms and what specifically they can and should entail.

Although redistricting is an aspect of politics that has generally had low salience in the minds of citizens due to its highly technical nature, concerns of manipulation and corruption have plagued the practice since the beginning of district-drawing in the United States. More recently, growing partisan tensions and consequent pressures to compete have resulted in rising complications in the processes, garnering greater public attention. Deliberate abuse of the district-drawing process to cement the power of certain parties and candidates has become more prevalent and brazen, leading to growing public dissatisfaction with the traditional delegation of this responsibility to the legislature and rising concerns about election corruption (Confer 2003, 129). Although the federal government has responded to past controversies to correct some of the most obvious and egregious wrongdoings, its involvement in this legal area has largely waned, and many other problems have been left unaddressed.

The Importance and Problems Underlying Redistricting

A fundamental aspect of a legislature at any level is its connection with the people. The Constitution's Framers deliberately designed and structured this branch to be the most intimately connected to the citizenry (Lowenthal 2019, 7). Ideally, this should give citizens confidence in representatives' ability and willingness to prioritize and realize their interests, navigating complicated political issues and institutions while genuinely seeking to provide legislative representation as a public good (Levitt 2011, 518). The incentive structure of charging a legislative body with designing its own districts, however, inherently introduces the capacity for furthering personal interests at the cost of compromising the integrity of representation.

Allowing potential mechanisms for political maneuvering that influence which members are elected to the legislature and compromise the quality of the voting process threatens the protection and connections citizens are supposed to have with these elected officials.

When examining the relevant political actors and their motivations that exist in a legislature-controlled redistricting system, the pertinent entities are legislators individually and political parties as collectives. Incumbents that are more risk-averse and secure under an existing districting system are predisposed to maintain the status quo that produced their victory, as any changes in their own or neighboring districts risk harming their chances of reelection (McDonald 2004, 373). To contrast, those wishing to further secure their prospects for reelection by altering a districting scheme have a clear and effective way to ensure the constituent body in their district consists largely of supporters and excludes potentially threatening candidates. Political parties are different in that they generally look at the districting scheme as a whole rather than individual districts, and they are likely to try to maximize the number of overall elections they win and powerful incumbents they protect. Strategically, if the existing districting landscape has resulted in a certain party's electoral victory and comparative advantage, it creates a motivation to maintain the overall design and protect the most advantageous specifics. Minimizing the effectiveness of the votes of opposing parties while maximizing that of its own through geographical manipulation increases the chances that a party can achieve and maintain majority power in elections that continue under the districting scheme (McDonald 2004, 374). These are all considerations that inevitably arise under a system where legislators are tasked with drawing the districts for their own governing body, considerations that do not involve and often go against benefitting citizens themselves. Both deliberate preservation and alteration of the districting

scheme from motives to secure one's position, rather than a duty to ensure fair representation for citizens, interfere with the underlying purposes and intentions of such processes.

In the most general terms, gerrymandering entails utilizing available opportunities to act from motives related to advantage rather than fairness in the redistricting process. The two main, and often connected, dimensions of this strategy are racial and partisan gerrymandering, where legislators independently or jointly distort districts in the designing process to deliberately advantage a party and its members or alter the racial composition of districts for political benefit. Racial gerrymandering has typically been weaponized by the Republican party, as communities of color are more likely to support Democratic candidates and policies, which has prompted the party to use race as a proxy for political party support and thus seek to minimize these communities' voting power. Democrats have also engaged in this practice, however, as part of overall efforts to protect their own candidates and pursue majority power. The two main methods of gerrymandering are "packing" and "cracking." Packing occurs where districts are drawn with an over-saturated number of constituents from a specific group, which creates supermajorities in a small number of districts that the opposing party is essentially guaranteed to win, yet diminishes their prospects in other, more competitive districts (Confer 2003, 118). Opposingly, cracking overly divides and dilutes an opposing group's voters, resulting in a smaller number of those in the minority in a large number of districts that in each are outnumbered compared to the controlling group (Confer 2003, 118). Packing and cracking can be used independently or simultaneously, and can be based on constituents' party affiliation or race.

Depending on the composition of the legislative body at the time of redistricting, unique dynamics arise that lend themselves to specific gerrymandering practices and results. When a government is unified with a single party controlling both chambers of the legislature, party

alignment reduces the presence of effective inter-party conflict, allowing for gerrymandering benefitting the controlling power (McDonald 2004, 372). However, if the government is divided—either with different parties controlling the Senate and House, or the legislature and governorship being dominated by opposing parties—the sharing of power greatly minimizes the possibility of a single party completely controlling and gaining benefits from redistricting. In this scenario, bipartisan compromises are more likely to occur as parties negotiate and collaborate to establish a mutually beneficial districting scheme, making tradeoffs that establish and divide “secured victory” districts and mutually ensure incumbent protection (McDonald 2004, 372). Accordingly, it is impossible to depend on elections and accompanying changes to the composition of the legislature to counteract and control the prevalence of gerrymandering, as it alters how this ill is manifested rather than eliminating it.

Regardless of the specific ways that gerrymandering occurs, it has uniform and predictable negative consequences for an electoral system. Largely, such institutional manipulation overly-solidifies the election results occurring under the districting system by creating a high number of “safe seats,” which reduces the impacts of electoral competition and decreases how accurately changes in demographics and public opinion are reflected in the legislature. It also eliminates incentives for existing politicians to make compromises so that the body can accomplish important tasks and adopt moderate positions for the benefit of their overall constituencies, as well as allows more polarized candidates to emerge (Lowenthal 2019, 2). Similarly, political parties as a whole can more effectively pressure their representatives to comply with the wishes of party leadership, rather than exercise individual judgment, with threats of using gerrymandering to disadvantage them (Lowenthal 2019, 13). In this way, rather than being more responsive to their constituencies, politicians’ attention is diverted towards

special interests and political factions (Lowenthal 2019, 12). By reducing electoral competitiveness, gerrymandering also disenfranchises voters generally, and specifically those targeted by their race, by decreasing feelings of voter efficacy due to perceptions that election results are predetermined. Dividing districts to seek partisan advantage rather than to establish districts with shared preferences and values undermines the function that districts serve in establishing, and then empowering, a community to engage in the electoral process (Lowenthal 2019, 12). These consequences are amplified and solidified by the structure of redistricting, as the most effective check against such abuses and collusion in government—voters holding representatives accountable and making their policy preferences known at the polls—is rendered ineffective by elections being manipulated to yield certain results (Edwards et al 2016, 293).

Gerrymandering also has further implications for the intentional structuring of government meant to ensure an effective balance of power between the different branches and entities within them. The more gerrymandering that occurs, the more litigation ensues, either by political parties or interest groups representing communities of color that claim they have been unfairly and systemically disadvantaged in the voting process. Such involvement of the judicial system burdens courts with the utilization of extensive time and resources needed elsewhere, minimizing their overall effectiveness (Confer 2003, 131). Additionally, standstills and partisan gridlock in legislatures as they engage in the redistricting process, largely caused by perceived or actual attempts to gerrymander, may result in courts having to take over the process. By nature, redistricting is not a responsibility of the judiciary. Granting courts authority over drafting districts may result in unintended and undesirable changes in the allocation of powers between the legislative and judicial branches, as well as decrease the effectiveness or quality of outcomes given that courts lack the necessary expertise to best complete the task (Betts 2006, 176).

In response to the problems discussed above, several states have taken action to reform their redistricting practices—mainly, by altering the incentive structures and freedoms of legislators in the process or re delegating power entirely—and have had varying levels of success. Such inconsistencies in observable results raise questions about whether, despite all of its flaws, the traditional system of legislatures drawing their own districts should be kept, or, if reform is to be implemented, what it should look like to produce good outcomes.

Federal Constraints on Redistricting

When considering any potential reforms at the state level, understanding the parameters that the federal government has set in its actions is important in understanding what can and should be pursued. The main two sources of federal authority on redistricting are congressional legislation and decisions issued by the Supreme Court, which have yielded the following main requirements for districts: nearly equal population, compact and contiguous territory, compliance with the 14th and 15th Amendments, and respecting the Voting Rights Act (Chambers 2021, 86).

The main federal legislation influencing redistricting is the Voting Rights Act of 1965, which was enacted to combat racial discrimination in voting and was later amended to also extend protection to language minorities. This legislation emphasized and cemented the guarantees of the 14th and 15th Amendments relating to the rights of equal democratic participation by undermining state and local disenfranchisement of communities of color. Specifically, Section 2 provided disenfranchised voters with the opportunity to pursue litigation to combat discriminatory voting laws and practices, and has frequently allowed communities of color to legally advocate for and secure the creation of electoral districts favorable to them, known as “majority-minority” districts (Li 2021, 10). Sections 4 and 5 required that jurisdictions that have historically engaged in racial discrimination in voting practices obtain approval from

the Department of Justice before enacting any voting rule changes, including alterations to districting schemes, through the process of “preclearance,” as well as provided a formula for determining which parts of the country these proceedings applied to (Li 2021, 9). These measures served as effective blocks to any changes in state redistricting actions that would disadvantage communities of color.

The Supreme Court’s involvement in districting practices initially and largely focused on malapportionment, enforcing the “one person, one vote” standard by requiring districts be equipopulous with only few and justifiable variations (Scarinci and Lowy 2003, 824). It largely did so through the landmark case *Baker v. Carr* (1962), which broke through past trends of the Supreme Court failing to get involved in redistricting issues and opened the door for future involvement. Prior to this decision, the Court refused to address issues of redistricting and gerrymandering on the grounds that it was nonjusticiable and involved political questions outside of its jurisdiction (Sieg 2015, 915-916). This trend was largely problematic in that litigation was the main source voters could turn to for redress, as legislative bodies have historically declined to implement anti-gerrymandering reform because members are the ones who gain benefits from gerrymandered districts (Sieg 2015, 915). In *Baker v. Carr*, however, the Court ruled that there was a justiciable constitutional cause of action under the Equal Protection Clause of the 14th Amendment when it came to the apportionment of state legislative redistricting plans. *Wesberry v. Sanders* (1964) expanded this authority to congressional districts. After these cases, the primary mandate from the Court was ensuring roughly equal populations among districts, which still left a large breadth of discretion among the states to establish and rank by priority other factors (Edwards et al 2016, 291). *Karcher v. Daggett* (1983) solidified the requirement that

congressional districts must be equal in population, yet allowed variations if necessary to pursue legitimate state objectives (Scarinci and Lowy 2003, 825).

The Supreme Court expanded its authority to other redistricting problems in subsequent cases and rulings. In *Davis v. Bandemer* (1986), the Supreme Court held that redistricting challenges of partisan gerrymandering were justiciable, as well as established the standard that in order to be granted relief for it on 14th Amendment grounds, plaintiffs would need to show both legislative intent to discriminate based on political affiliation and a discriminatory impact caused by the districting plan. In *Thornburg v. Gingles* (1986), the Court addressed racial gerrymandering, and established a test for voter dilution where the following conditions must be proven: a minority group is large and compact enough to constitute the majority in a district, the minority group is politically cohesive, and the votes of the white majority could block the minority's preferred candidate. The presence of these conditions is sufficient to prove voter dilution that impedes the racial minority group's ability to elect candidates of its choice through the use of multimember districts, as prohibited by Section 2 of the Voting Rights Act.

Both past redistricting practices and prescriptions by the federal government have established common criteria, some mandatory and others more flexible. Along with requirements established in federal legislation, legally binding criteria specifically includes equal apportionment based on population among districts and compact districts of contiguous territory. Along with these, states can officially adopt other rules and standards via statutes or amendments to their constitutions. In evaluating other potential districting criteria, it is important to acknowledge the impossibility of having a districting scheme that clearly serves all members of the population or meets all criteria standards equally, as how they are adopted and ranked by priority inevitably yields different impacts on different groups and individuals due to the

complex tradeoffs and compromises required (Levitt 2011, 516). Common redistricting criteria of this kind includes respect for political subdivisions, respect for geographical or natural boundaries, and coterminality between state House and Senate districts (Kubin 1996-1997, 851). Another frequent one is the preservation of communities of interest, or groups with common concerns that can be addressed through legislation, which allows greater protection of their interests and representational fairness (Wang et al 2022, 5). Although the adoption of criteria is meant to guide redistricting and, theoretically, control abuses of power in the legislature, there is still freedom for representatives and partisan collectives to problematically prioritize their protection and organize criteria to their own advantage with no accountability, rather than them being bound to consider and apply them in a fair and unbiased manner (Lowenthal 2019, 4).

The willingness of the federal government to set and enforce standards and parameters for state districting practices has increasingly diminished, posing an additional threat to redistricting. Related to federal legislation, in *Shelby County v. Holder* (2013), the Court struck down Section 5 of the Voting Rights Act mandating preclearance, stating that its formula for determining what parts of the country it applied to was out of date (Li 2021, 9). *Bartlett v. Strickland* (2009) lessened the impacts of Section 2 by establishing that in order to create a Section 2 district, it would have to be shown that a minority group could be the majority of the citizen voting age population, rather than the general population (Li 2021, 11). Aside from the Voting Rights Act, in *Vieth v. Jubelirer* (2004), the Court symbolically declined to intervene in a partisan gerrymandering case, which although left intact the possibility of future judicial intervention, failed to establish a precedent, leading to a trend of the Court ruling that plaintiffs had failed to sufficiently prove claims of partisan gerrymandering (Sieg 2015, 917-918). Later, in *Rucho v. Common Clause* (2019), the Supreme Court ruled that partisan gerrymandering was a

political issue that the federal courts could not address, ending the potential for future litigation in the area (Li 2021, 9). This decline in the prevalence and strength of the federal government in districting-related concerns makes state-level reform even more pressing, as traditionally relied-upon checks to protect voters have largely disintegrated. However, the federal prescriptions for redistricting that still stand must be considered and respected in reform.

Redistricting: Normative Insights from the Theory of Institutional Design

Academic analysis of democratic electoral processes largely focuses on mechanics, practically analyzing their designs as a function of aggregating the preferences of voters and reflecting the public will in their results (Thompson 2002, 196). The distinctive moral elements of institutional design, however, have been discussed far less. The procedures in a democracy that produce policy- and representative-related outcomes have a distinct, value-laden dimension that can be evaluated entirely separate from any substantive outcomes. When evaluating these processes, there is the independent ideal of procedural justice distinct from electoral results that is met when practices are constructed in accordance with fundamental moral principles.

Achieving this institutional status uniquely establishes political legitimacy by limiting controversies and public disagreement surrounding democratic outcomes, as regardless of what political action citizens may personally want to see, the settled upon result will be universally seen as just and acceptable because the processes that produced them were unquestionably so (Thompson 2002, 185). In this way, procedural justice practically ensures stability, but is also a fundamental aspect of the moral justification and superiority of democratic government.

Conceptually, the core of democratic procedures is the idea that citizens express their will, and that this expression then becomes the basis for choosing rulers and making binding governmental

decisions (Thompson 2002, 187). For a democracy to live up to these requirements, the values and reasons underlying institutional design must be rationally and morally defensible.

The implementation of procedures surrounding the redistricting process is an example of such institutional design that demands aspiration towards procedural justice. Therefore, normative analysis of the types of principles and ideals that should underlie the formation of democratic processes serves as the foundation for discourse on how to best carry out redistricting in a single-member representation system. This section is subsequently dedicated to outlining and analyzing the moral considerations inherent to the construction of any and all procedures of democratic government, and then specifically demonstrating how they manifest in and apply to deliberation about districting practices in the United States.

Political Equality in Democratic Institutions

Determining the more abstract goals and concepts that guide what we think democratic procedures should be about largely shapes what conclusions we reach about what tangible practices should be adopted. For example, if we think that elections are about maximizing voter satisfaction, we may recommend designing districts that pack as many like-minded citizens in them as possible, as some studies demonstrate a “winning effect” where voters whose preferred candidates win elections are generally happier with their representation and more trusting of government than those who voted for losing candidates (Brunell 2006, 77). However, if we instead think that they are about respecting the political and moral status of all citizens, we may design districts that best ensure fair political competition and debate through diverse membership and equal influence. It is subsequently important to use as a starting point the evaluation of what democracy as an ideal entails, and what gives it moral weight and legitimacy. In this subsection, I will invoke the political philosophical works and frameworks of James Lindley Wilson, Charles

Beitz, and Dennis Thompson, which all examine the normative requirements of democratic institutional design and invoke values connected with political equality.

In Wilson's work, *Democratic Equality*, he advances a theory of political equality and what obligations it generates for the design of electoral and law-making institutions in a democracy, which relates mainly to respecting the equal political status of citizens. Given that the crux of the idea of democracy as a form of government is the participation of and allocation of authority to citizens politically, Wilson begins by stating that democracies bestow a unique status on all citizens by giving them entitlements to participate in collective decision-making processes, and identifies this "equal political status" as the democratic ideal (Wilson 2019, 17). Examining the meaning and unique importance of this status, he characterizes statuses in terms of "recognition respect," or the possession of authority over how individuals choose to conduct themselves by creating expectations about how one is to be treated (Wilson 2019, 20-21). For citizens in a democracy, their equal political status is aspirational and foundational in that it categorizes people as inherently "being" of a certain status rather than "having" one (Wilson 2019, 21). A government accepting their citizens as being of this unique status through the enactment of democracy as its method of governance yields the requirement that political processes be constructed in ways that respect that citizens are politically equal.

The natural next question then becomes what obligations and requirements for institutional design arise from this equal citizen status. Wilson first answers with egalitarian relationships, or ensuring "nonhierarchical modes of relating" in governmental practices and general political society which then grant citizens relatively similar entitlements in their interactions (Wilson 2019, 23). Political equality requires setting as the ideal that all citizens have equal authority, and consequently orienting all governing processes towards realizing it.

More specifically, equal political status of democratic citizens is affirmed through the recognition that all citizens are “equally entitled to render authoritative judgements as to how to organize and regulate all citizens’ common life,” and this imperative is respected when institutions are created in such a way that they preserve and foster the ability of all citizens to equally influence political decision-making mechanisms (Wilson 2019, 49).

What tangible democratic practices, then, are meaningfully politically egalitarian in that they ensure this type of equal and joint jurisdiction over matters of common concern? Wilson answers that they consist of decision-making procedures that give authority to citizens’ judgements by fulfilling the moral claim that all democratic citizens have to appropriate consideration in political processes (Wilson 2019, 97). Appropriate consideration grants citizens “an entitlement to some practical consequence” in relation to their views in different ways at various points as government officials make decisions (Wilson 2019, 114). He categorizes this claim to consideration as a type of authority, as it guarantees a special standing in others’ deliberations that obligates others to give serious weight to and influence their actions based on citizens’ judgements on what to do (Wilson 2019, 99). Therefore, a democratic government’s moral obligation to respect this condition requires institutional practices “reliably and publicly secure... appropriate consideration of all citizens’ views in the course of collective decision-making processes” (Wilson 2019, 105), which guarantees all citizens with a corresponding “minimum set of political entitlements” related to the different forms that consideration can take throughout the process of making a single decision (Wilson 2019, 117). These minimum entitlements include a “universal extension of basic freedoms of political speech and assembly,” as well as prohibitions on large formal inequalities related to voting (Wilson 2019, 119-120). Political equality, then, requires that electoral systems be structured to “publicly

and reliably secure” at the minimum—and ideally, maximize—the different forms of appropriate consideration for all citizens’ judgements that could exist in political decision-making processes (Wilson 2019, 143).

Beitz outlines his theory of “complex proceduralism” in *Political Equality*, which, similarly to the conclusions Wilson reaches, states that democratic procedures must be designed in ways that treat citizens as equals. However, for his analysis, Beitz approaches the subject from another perspective and utilizes a different starting point. He initially asserts that “the terms of democratic participation are fair when they are reasonably acceptable from each citizen’s point of view,” which he more specifically categorizes as procedures that citizens with certain regulative interests would have no reasonable way to reject (Beitz 1989, 23). These regulative interests, he maintains, are higher-order ones that all democratic citizens presumably share and “that arise in connection with the complex status of democratic citizenship,” or express different normative aspects of being a citizen under a democratic government (Beitz 1989, 100). They include communal recognition of worth and status accompanied by procedural roles, equitable treatment of citizens and their interests, and deliberative responsibility reflecting a commitment to resolving political issues through open and informed public deliberation (Beitz 1989, 100). In developing a normative framework for evaluating the conditions political institutions must meet to truly reflect the equal status of citizens, Beitz in this way utilizes a social contract conception to determine the justification of democratic principles and evaluations of the terms of participation in terms of fairness (Beitz 1989, 101).

Similar to this methodological approach and perspective, in *Just Elections*, Thompson categorizes procedural justice as requiring the adoption of electoral practices that all citizens could rationally accept “as an equitable basis for making collective decisions” (Thompson 2002,

1), and argues that democratic practices “are just to the extent that they realize principles that could be freely adopted under conditions of equal power” (Thompson 2002, 2). The three principles he identifies are equality, free choice, and popular sovereignty (Thompson 2002, 2). Equality entails equal respect of citizens’ votes (Thompson 2002, 9), free choice requires liberty in electoral processes (Thompson 2002, 10), and popular sovereignty reflects that it is that the people’s majority ultimately determines who governs them in electoral practices (Thompson 2002, 11). Both Thompson and Beitz’s use of what is mutually acceptable to free and equal agents as a legitimizing starting point is grounded in the inherent moral statuses citizens in a democracy uniquely possess, which connects to Wilson’s ideas of democratic citizens’ status in the aspirational sense and the subsequent imperative to maximize avenues for appropriate consideration in democratic procedures.

The crucial idea that connects these various accounts of political equality and institutional design is that “the moral core of any adequate conception of electoral justice” is ensuring that institutions reflect the proper moral status of citizens and secure on their behalf specific rights to participation in creating laws and electing representatives (Thompson 2002, 4). Rather than emphasizing an equal distribution of political power or probability of electoral success, they instead describe a moral obligation of the state to treat citizens comparatively equal and objectively at an individual standard as required by their political status. This duty is largely fulfilled in how a government’s electoral procedures are structured, giving institutional design its distinct moral dimension. Consequently, when evaluating any set of practices in a democratic government, such as redistricting, these normative concepts of political equality demonstrate what institutional ideals and obligations exist.

Deliberation on Districting Practices

These more abstract concepts and arguments necessarily provide a formational lens through which to more concretely view and discuss current redistricting practices and possibilities for reform. They outline the requirements that institutions have a moral obligation to fulfill in order to live up to the ideals of democracy and respect the political status of its citizens, as well as what democratic citizens should aspire to see their governing institutions portray. In this subsection, I will show how these concepts contribute to substantive conversations in redistricting about the specific issues of malapportionment, partisan gerrymandering, and voter dilution, and then how different ideas that fall under the various values encompassed by political equality can ultimately inform the overall procedural design of redistricting.

While engaging in this type of procedural analysis, having laid the groundwork for why political equality is morally required and desirable, the central question is to what extent certain practices reflect the democratic aspiration that the people should rule, where “the people” consists of universal inclusion for citizens and their engagement on equal terms (Wilson 2019, 19). According to the political philosophical framework, they must reflect and enhance egalitarian attitudes and relationships in order to foster and manifest the ideals of democracy relating to both electoral mechanics and respecting the status of “democratic citizen” (Wilson 2019, 24). This section will demonstrate a dichotomy, as my discussion about three specific redistricting concerns demonstrates the use of mandatory requirements stemming from crucial moral and political considerations, whereas my discussion of general procedures towards the end of this subsection will more so demonstrate fluidity in how a single principle can be used differently to give weight to opposing positions and considerations .

Reflecting on normative prescriptions related to equality largely gives weight to protests against malapportionment and traditional views on the size and territorial basis for district formation. The most common and foundational apportionment principle is seeking near equal district size to achieve the “one person, one vote” ideal, ensuring that a disproportionate population size among districts does not comparatively strengthen the power of citizens’ votes in less populated districts and weaken those in more populated ones. Understanding what, or if any, normative principles ground this standard, and thus its justifiability, can inform how much weight should be given to this design consideration, or if it is necessary at all.

One potential answer to the question of what moral values underlie equal apportionment is the concept of equal power. Under this concept, equal district size would be an aspect of distributive fairness necessary to ensure equal political power for citizens (Wilson 2019, 75). However, not only is it seemingly impractical to achieve equality of electoral success in pursuit of this idea, but it would also not achieve proper democratic representation. Not only would it fail to allow for the delegation of power to representatives, a fundamental aspect of most large-scale democracies, but its emphasis on the initial distribution of voting power would allow for “radically inegalitarian delegations of power” that developed to persist, such as a completely non-representative and undiverse legislature (Wilson 2019, 85).

A more plausible alternative focuses not on power, but in the deliberative interests of citizens as related to Wilson’s concept of appropriate consideration. Fostering circumstances that allow citizens to develop informed political judgements allows them to freely form their own beliefs, which is a necessary primary step for achieving the moral imperative of appropriate consideration of all citizens’ views in collective decision-making processes (Wilson 2019, 120).

This does not require equal power, or the guarantee of a certain objective or comparative likelihood of having political preferences reflected in electoral outcomes.

Moving forward, operating off of this principle of appropriate consideration, when examining how apportionment factors into district design, the current requirement of maintaining the “one person, one vote” standard ensures the fair and free deliberation citizens are entitled to in virtue of their political and equal status in a democracy. It ensures citizens’ informed judgements, in the form of votes, are granted equal consideration, in the form of equal political consequence and weight given to votes. Disproportionate populations across districts would consist of “deliberative neglect and... discriminatory procedures” (Wilson 2019, 134). Allowing for such large and legally sanctioned inequalities to persist under malapportionment is “symbolically degrading,” both in undermining the ideals of egalitarian relations and equal entitlement to consideration throughout electoral processes (Wilson 2019, 124).

This moral rationale also applies to partisan gerrymandering, as well as racial gerrymandering that results in voter dilution. In considering these two concepts, it is less immediately clear how they violate the appropriate consideration conception than malapportionment, as they do not infringe on citizens’ capacity to cast a vote or procedurally weigh votes unequally among citizens (Wilson 2019, 218). However, both of these phenomena still contradict democratic citizens’ entitlements by enacting a redistricting scheme that knowingly and predictably subjects both partisan and racial minority groups to political neglect. Partisan gerrymandering is unjust in its placement of political interests over ensuring fair and accurate representation, and it “objectionably neglect[s] the citizens supporting disadvantaged parties” by disregarding their claims to consideration (Wilson 2019, 233). Voter dilution at best fails to minimize—and at worst, knowingly allows—“racial hostility and discrimination in

democratic deliberation, voting, and representation” (Wilson 2019, 220). Preventing the enactment of redistricting schemes with voter dilution actively works towards the elimination of unequal and unjust treatment of communities of color historically subject to political disadvantage, providing important safeguards against governmental violation of any of the normative requirements of political equality (Wilson 2019, 232). Both of these practices fail to meet the institutional obligation to enact electoral practices that maximize and equalize various forms of citizen consideration, as allowing them entails enacting certain redistricting schemes over available alternatives that would better reflect ideals of political equality.

When examining who carries out redistricting and how, democratic theory provides the moral considerations necessary to discuss institutional design, but leaves room for specific procedures to be actively deliberated about. An example to demonstrate this idea is Thompson’s principle of popular sovereignty, which requires that democratic institutions be aligned with the ideal of reflecting the will of the majority. When examining the “who” of redistricting, the principle of popular sovereignty may serve as a basis for providing reasons to reject the adoption of IRCs, as the people as a whole cannot hold appointed members as directly accountable for their actions as they can legislators through their voting power (Thompson 2002, 173). However, an IRC may better reflect the principle of popular sovereignty by better securing electoral competition that allows for greater popular control over the composition of the legislature, as they are more likely to draw more competitive and politically responsive districts that better reflect changes in public opinion than parties and legislators motivated to protect incumbents (Thompson 2002, 177). Applied to the specific criteria and principles that a body appointed to redistrict should use as guidance, IRCs may focus too much on increasing electoral competitiveness rather than an optimal level, neglecting other worthwhile goals that the public

cares about more (Thompson 2002, 176). However, IRCs may actually allow for a wider breadth of goals to be figured in by creating more open and citizen-oriented mediation processes where members will openly deliberate about what a redistricting scheme that best benefits the people should look like, rather than only focusing on legislator-relevant considerations (Thompson 2002, 176). This discussion thus demonstrates how the various moral ideals that fall under the idea of political equality do not necessarily prescribe definite answers, but instead outline normative obligations that individuals should invoke when considering, and ultimately arguing for, certain positions on democratic procedural design.

Normative democratic theory provides valuable guidance for the type of deliberation on redistricting practices I engage in in the next two sections of this paper, as well as the design of various other deliberative procedures. It helps to “identify the issues that should be subject to deliberation, clarify the moral values at stake, distinguish good from bad reasons offered in support of electoral practices, and establish some common ground for compromise ” (Thompson 2002, 17). In this way, it is both formal and flexible. Although it includes moral imperatives that must be met absolutely, it leaves many of the specifics to be figured out in rational reasoning, rather than providing definitive answers, and it is “pluralistic” in allowing for various types of and uses for considerations in deliberations about political practices (Beitz 1989, 225). It provides a unique role for the deliberation of democratic citizens, and the potential for fluidity and adaptability. Transitioning to empirical political analysis of different proposed and implemented forms of redistricting reform, the processes themselves and their consequences must be evaluated both in terms of efficiency and expression. Not only is it important to ask which redistricting procedures produce the most politically just and practical results, but also

what they symbolically convey about citizens' statuses and how this aligns with democratic ideals.

To conclude, the key normative considerations for choosing between alternative redistricting models are best encapsulated by the concept of equal political status. The most foundational moral dimension of any democracy is the act of recognizing and committing to respecting the unique status of citizens, an inherent element of adopting a democratic form of government. Embedded in such a value-laden status are interests that all citizens can be reasonably presumed to have in connection to the flourishing of a true democratic society, and a corresponding obligation for governing practices to be rationally acceptable to said citizens as just and equitable. It also includes a right for them to hold a meaningful type of authority over lawmakers constituting a right to influence political decision-making in a consequential way, and on an equal basis. As one of many institutional practices, redistricting procedures must meet requirements tied to respecting citizens' entitlement to equal respect and consideration absolutely. Within these particular parameters, though, the merits of different reform measures can be freely debated. Much room exists to consider which tangible practices best manifest relevant moral ideals and reflect a deep commitment to democratic values, as demonstrated by the different types of arguments mentioned in my deliberation on districting practices and will be demonstrated in my following empirical empirical.

Feasible Alternatives for Redistricting Reform

Current redistricting reform has been enacted on a state-by-state basis, and these efforts include a large variety of approaches and logistics. Not only does the state-level nature of these reform measures allow for comparative evaluations of the empirical realities of different propositions, but it also ensures that there are still untapped, ideal settings and circumstances for

future experimentation. For redistricting, federalism has to an extent provided both case studies of different implemented reforms and possibilities for other measures to be similarly tested. Consequently, this section entails giving form to processes in the tangible political world that reflect and apply normative and theoretical deliberation on institutional design, and consequent speculation and evaluation of both expected and observed consequences.

Constructing and planning for political reform relies on two key steps: identifying the aims and mechanisms underlying it, and then gaining an understanding of the relevant political and legal landscape to create an ideal path to reform (Ancheta 2014, 136). This section builds on previous normative deliberation that identified the goals of redistricting reform, transitioning to the second step by critically evaluating possible reforms for achieving them given the context of federal and state politics. I identify and classify different types of redistricting reform according to the typology provided by Michael McDonald, which sorts them into process-based regulations that impose neutral criteria, outcome-based regulations that set strict political goals, and institution-selecting regulations that change who draws district lines (2007). This categorization is not to imply that a redistricting reform measure can include only one type of regulation and necessarily excludes the others, as a single proposal can incorporate some combination of the different forms. However, these conceptual distinctions clarify the different elements of the redistricting process that can be targeted for adjustment. I will ultimately defend institution-selecting regulations as the most effective approach given relevant moral imperatives and desirable political outcomes, first by examining the weaknesses of the alternatives if implemented alone and then by demonstrating the benefits of this category of reform.

While engaging in this type of analysis and assessing it from an outside perspective, it is important to utilize appropriate standards for evaluation. The ultimate aim is not to identify

redistricting practices that all people will be pleased with, as doing so is impossible given that redistricting inherently entails tradeoffs in realizing different goals that individuals give varying weights to (Cain 2012, 1842). Instead, a “reasonably imperfect” perspective balances fulfilling mandatory moral prescriptions and making necessary compromises (Cain 2012, 1813). This type of thinking entails, after ensuring that any reform being seriously considered meets the minimum necessary normative requirements, contrasting possible reform measures specifically against the current status quo in terms of desirability (Keena, Gilbert, and Green 2020).

Process-Based Regulations

Process-based regulations as a mode of redistricting reform leave redistricting powers in the hands of the legislature, but implement strictly binding rules on legislators to tightly constrain their discretion (McDonald 2007, 676). These rules could be both prohibitory, banning certain explicit actions and underlying motivations such as partisan and racial gerrymandering, as well as prescriptive, providing a comprehensive list of ranked criteria to guide how they design districting schemes. Necessarily, any such rules would be secondary to and in compliance with federal action, but beyond these minimum requirements, states themselves would be able to set and rank their own objectives to direct and control legislative action (Kubin 1996-1997, 853). Ideally, states would adopt “neutral” criteria that achieves worthwhile and publicly supported goals without having been implemented for specifically partisan reasons. Different possibilities for such criteria include respect for city and county boundaries, neighborhoods, and communities of interest, compactness, and the nesting of Assembly districts into Senate districts and Senate districts into Board of Equalization seats, which were included in California’s Proposition 11 that established California’s Citizen Redistricting Commission in 2008 (Mac Donald 2012, 475).

In a sense, implementing this type of reform is not entirely different from tasking a machine with drawing districts to remove human discretion and prejudice, and unfortunately has the same possibility of producing unintended and unanticipated negative consequences (Levitt 2011, 527). Although adjustments could be made over time to correct any undesirable outcomes, without any deeper complimentary regulation in place, the responsibility of doing so is given to legislators, which runs into the same problems of manipulation on the basis of self-interest that plague the status quo redistricting system. Additionally, one of the greatest problems with process-based regulations is that it is highly questionable whether purely neutral redistricting criteria exists. Criteria that initially appears neutral can have “second-order biases” that alter political outcomes, and can consequently be altered intentionally or unintentionally to produce certain skewed or undesirable outcomes (McDonald 2007, 676). Any criteria being considered conceptually will undeniably have certain tangible political consequences that benefit some legislators and political groups at the cost of others, no matter how genuine the motivations behind adopting them, which allows too many opportunities for individuals to act for personal gain rather than a sense of public duty. The impacts of criteria are also highly dependent on the specific political geography of different states.

This approach to redistricting reform also has problems in regards to enforcement. Courts would be responsible for overseeing any litigation alleging the legislature failed to properly abide by the adopted rules, making the judicial system the mechanism for providing recourse and imposing accountability. However, when tasked with intervening in political areas traditionally dominated by the legislature and outside of their expertise, courts tend to be “deferential to the political process” (McDonald 2007, 677). Consequently, unless criteria was very strict and explicit, the rules underlying these reforms would not be adequately or meaningfully enforced

(McDonald 2007, 677). However, any adopted criteria would most likely be more traditional and obtuse rather than stronger and more innovative because of lower public understanding of redistricting issues and the desire of the dominant political party at the time of enactment to preserve its political advantage (Nagle 2019, 76). These dynamics make process-based regulations largely ineffective, and likely to fall short of public expectations.

Outcome-Based Regulations

Outcome-based regulations similarly seek to limit the discretion of a redistricting body without reallocating redistricting authority, but rather than targeting legislators as they move through the process, they influence the end results by prescribing explicit political goals that such a body must achieve (McDonald 2007, 677). These types of reforms ensure that the achieved consequences, regardless of how they are arrived at, are beneficial to the constituency rather than serve the interests of those in power. For example, when Arizona voters established the Arizona Redistricting Commission in 2000 through Proposition 106, the state constitution was amended to include specific redistricting goals the commission had to achieve, such as compliance with federal requirements, equal district population, compactness, contiguity, preserving communities of interest, and competitive districts (Betts 2006, 191-192).

The main problem with this avenue for reform, which process-based regulations also face, relates to judicial enforcement. Federal courts have historically only been willing to enforce the achievement of explicit political outcomes related to racial gerrymandering (McDonald 2007, 677). It is highly unlikely that courts at any level would be willing to expand their role by actively intervening to ensure other types of results are reached. There are also no clear, uncontroversial standards for judging whether an outcome has been adequately reached. In general, the sought-after benefits of both process- and outcome-based regulations can be more

effectively and less problematically achieved through altering the criteria-related legislation that guides redistricting bodies. The flexibility of focusing on criteria to guide redistricting authorities ensures they abide by important rules and pursue worthwhile objectives while utilizing discretion to avoid many of the above-mentioned negative consequences.

Institution-Selecting Regulations

The final of the three regulatory categories is institution-selecting, which entails removing redistricting power from legislative bodies and placing it with another entity so that those with the most to gain or lose from election results are not tasked with designing the districting schemes that structure said elections (McDonald 2007, 677). The most recognizable reform of this type is the establishment of an Independent Redistricting Commission, or IRC. An IRC is also the type of redistricting reform that I will ultimately advocate for, but not in such general terms. Later, in my case study of Virginia, I will examine the specific design elements an IRC must have to be a truly successful reform measure, meeting both normative and practical demands, but for the purposes of this subsection, I will be describing and advocating for them in broader terms.

IRCs are not the only entities which can be granted power over redistricting, however, and other potential entities to redelegate redistricting powers to are worth consideration. One possibility is using automation for drawing districts, or using available technology and map-drawing tools to construct districts so as to eliminate the capacity for human biases and motivations to taint results (Levitt 2011, 523). Using computers and specifically-designed software could also lead to more systematic identification of gerrymandering, as well as better allow citizens to engage with the process by establishing a “computing infrastructure” (Altman and McDonald, 69). Yet, it is highly questionable whether current technology has the

computational capacity to fairly and accurately draw districts, as fully automated redistricting still has significant demonstrable limits (Levitt 2011, 523). Similarly, just as likely, if not more so, as reducing human prejudices is the possibility of those in positions of political power manipulating programming in perverse ways, as any seemingly neutral or strictly mathematically precise rule has predictable political results (Levitt 2011, 523).

Another possible entity for redistricting is an independent body, but rather than an IRC, it would be a nonpartisan group of experienced technocrats with extensive skills lending themselves to effective map-drawing. However, this idea assumes that people with such skills are obviously identifiable, and that it is easy to agree upon the skills that should be sought after (Levitt 2011, 531). It also assumes that labeling the body as nonpartisan and seeking members who identify as such would actually result in a genuinely nonpartisan body. More fundamentally, however, is that technocratic decision procedures are typically not viewed publicly as legitimate or acceptable when there are high levels of controversy surrounding related goals and the means for achieving them, which has proven to be the case with redistricting (Levitt 2011, 531).

On the opposing side of the spectrum is the option of opening the redistricting process to more widespread involvement, utilizing public redistricting contests to select new districting schemes. In these contests, individual citizens and joint entities would be able to submit maps to be scored on explicit criteria, theoretically creating high levels of citizen participation and transparency that substitutes legislator distortion with legitimacy (Levitt 2011, 527-528). However, there is no guarantee that such maps would produce more desirable outcomes, particularly given the complex nature of drawing districts and lack of public expertise in the area, even if they have valuable personal insights. Additionally, it then becomes unclear which entity

should judge submitted maps, as well as which scoring protocol should be used, as any seemingly objective ones would, in reality, reflect value judgements (Levitt 2011, 528).

A more unorthodox reform that falls under this category is subjecting legislatures to temporal shifts. Legislative actors would still be the individuals responsible for designing districts, but when a legislature did so, it would be designing districts for a future date, and consequently a future legislative body, using projected demographic estimates (Levitt 2011, 529). This reform preserves the benefits of the status quo district-drawing mechanism, legitimacy and political expertise, while still reducing the ability of individual legislators or political parties to strategically help or hinder certain candidates' electoral prospects (Cox 2006, 2). It does so through the deferred implementation, which creates greater uncertainty for those drawing districts in terms of their personal prospects because it is extremely difficult to predict voter behavior in future election cycles (Cox 2006, 6). This approach is largely problematic, however, also in virtue of this uncertainty. Having districts drawn based on demographic projections rather than realities leaves a great possibility that when the scheme is enacted, it will leave out significant population changes in ways that greatly compromise representational quality, such as in racial composition or simply regional population differences (Levitt 2011, 530). Beyond its representational issues, it also merely reduces and minimizes the effectiveness of, rather than eliminating entirely, legislators' capacities to act from undesirable motivations (Cox 2006, 9).

Having considered and rejected other entities to possibly allocate redistricting powers to, analyzing the potential of IRCs through the same critical lens will reveal why it is the most desirable mechanism for drawing districts. Choosing between most, if not all, political processes involves making tradeoffs between different consequences and attributes, and IRCs have significant potential negative implications that are worth considering. A complete and

comprehensive evaluation of them, however, clearly reveals the superiority of IRCs as a redistricting entity, both in terms of adherence to values of political equality and producing desirable outcomes. However, as previously stated, it must be kept in mind that IRCs as a category of redistricting reform is extremely broad due to the number of variables that can differ between bodies, and that changing their combination produces different results. Although I will wait to make my specific prescriptions for how IRCs should be logistically constructed and practically implemented, it is still crucial to understand all of the changeable factors that exist. This knowledge builds the foundation for making decisions about which features IRCs should be given in light of the various moral and political goals behind redistricting and how the different mechanics individually affect these outcomes, as I will do towards the end of this paper. Therefore, moving forward, I will provide a framework for understanding the different design elements of IRCs before examining the merits of these bodies more generally.

The biggest, most fundamental differences that can exist between IRCs relate to their overall composition. They can be either nonpartisan or bipartisan, explicitly made up of either members who are intended to not be predisposed towards any political party or a balance of individuals identifying with the two major parties and potentially other voter groups. IRCs can also be politician commissions, made up of elected officials or their designees, or independent citizen commissions (Cain 2012, 1815). On a more individual level, specific membership can vary based on the number of people appointed to an IRC, whether a neutral chair is used, what appointment process is used to name commissioners, and the requirements commissioners must meet to be selected. Specifically, the decision to have a neutral chair or not for bipartisan commissions allows further variation in internal dynamics based on the presence or absence of a tie-breaking vote (Kubin 1996-1997, 839).

More logistically, the potential design of any IRC also depends on certain design facets that influence the district drawing process itself. Time-wise, IRCs can vary based on the stage of the redistricting process in which they act, and the time frame for developing a redistricting plan. The stage during which an IRC is involved influences the binding power of its work and the amount of influence it can exert over the redistricting process. IRCs can be purely advisory, serve as a backup mechanism if a legislature cannot enact a plan by the required deadlines, draw initial maps that the legislature can then amend either to a minor or major extent, or have full authority over the entire map-drawing process (Cain 2012, 1813). Another important element is the degree to which courts are involved in redistricting when an IRC is used. In some instances, state judicial review can be made mandatory for any maps that an IRC provides, whereas in other cases, it would only be necessary if relevant litigation arose (Kubin 1996-1997, 843).

The more consequentialist benefits provided by the general adoption of an IRC can largely be sorted under the broader categories of decreased political influences, increased legitimacy, higher-quality representation, greater transparency, and heightened efficiency. The redistricting schemes adopted by IRCs contain far less partisan-biased outcomes, and the process of drawing districts itself is similarly subject to less gridlock and political dealings (Confer 2003, 124). Although commissioners will inevitably be influenced by their personal political beliefs, they are removed from political and electoral consequences in a way that legislators are not, vastly decreasing gerrymandering efforts and more targeted manipulations, such as incumbent protection or drawing challengers out of districts. In other words, it removes the direct conflict of interest and high personal stakes from those establishing districts (Levitt 2011, 522).

Accompanied by this decrease in political corruption and power struggles is inevitably a

heightened and more accurate reflection of other valuable redistricting considerations, such as electoral competitiveness and “basic constitutional principles” (Edwards et al 2016, 340).

Similarly, both the mere idea of removing self-interested political actors from such impactful electoral mechanics and the tangible improvements to the redistricting process and its results will restore citizen confidence in democratic legitimacy and integrity. IRCs will also improve the public’s current perceptions of inefficiency and corruption in virtue of having a more reflective and transparent redistricting process. Creating a new redistricting body, rather than the task being performed by a legislature, in theory also results in a more randomized selection of commission members, resulting in a body that better reflects local demographics and offers more diversity in terms of race, ethnicity, gender, sexual orientation, etc. (Levitt 2011, 532). Having a body with more variety among its members not only allows for a wider range of perspectives based on different lived experiences, but also results in fairer representation, as it more accurately reflects the will of the people in its entirety in its outcomes and more equally considers different groups’ interests. IRCs also do not have backroom, insider politics as legislatures often do during redistricting, instead allowing for greater public involvement by increasing opportunities for citizen input, the ability of citizens to be commissioners, the reporting abilities of the press, and saliency in the mind of the public (Kubin 1996-1997, 858).

Finally, reallocating the responsibility of redistricting to an IRC allows for greater political efficiency across different elements and bodies in government. For state legislatures, not having to engage in such a technical, lengthy, and complicated process allows it to focus more time and resources on other important responsibilities and policy issues, particularly given the typical contrast between large political agendas and small session lengths (Confer 2003, 128). In general, people “expect elected representatives to be responsive to their public policy desires,”

and legislative district drawing “is not one of the primary public policy interests,” meaning that placing this task in the hands of others would allow state legislatures to more efficiently act as intended to and is deemed necessary (Confer 2003, 128). For the courts, district schemes created by state legislatures are far more likely to result in litigation, whether it be from an opposing party, interest group, or citizens. IRC maps have generally proven to result in less litigation connected to district maps, and be “more likely to survive legal challenges” (Edwards et al 2016, 326). Both the legislature and court system function better overall, and more in line with their intended purposes and areas of expertise, when IRCs are established as distinct entities.

Weighed against these practical political benefits of accomplishing redistricting reform through IRCs are potential drawbacks to be cognizant of, which generally fall under the ideas of forfeited benefits of the legislature, decreased political party cohesion, decreased incumbent safety, and potential inefficiency. Although there is an overwhelming amount of complications with legislatures redistricting, as has been extensively explored, this power allocation does have some benefits that would be lost if an IRC were to instead draw districts. For all of the flaws, a “strong institutional history and identity,” “well-developed mechanisms for fact finding and moving legislation,” and large amounts of resources and expertise are great advantages that legislatures bring to redistricting (Ancheta 2014, 112). Elected legislators would also not face a unique type of challenge to legitimacy that IRCs may face, as arguably IRCs are not empowered to represent the will of the people through votes in a way that aligns with the requirements of democracy as legislators are, particularly if a commission does not adequately reflect the larger population’s composition in terms of membership diversity (Levitt 2011, 539-540). To these objections, I argue that these lost benefits are far outweighed by the benefits. The ills of gerrymandering and political corruption pose far greater threats to democracy and the welfare of

citizens in ways that warrant the acceptance of such a tradeoff through reform. Specific measures can be taken to ensure that demographics are proportionately translated into commission membership so as to ensure fair and just representation, such as randomized selection from the pool of acceptable applicants and efforts to equitably and effectively solicit applications from different groups.

It is also alleged that the development of IRCs may have unintended consequences on the functioning of state legislatures as a whole. Arguably, legislative redistricting fosters the bonds of legislators in a certain party by incentivizing them to work together to maximize the number of seats protected for that party, rather than seeking individual advantage (Confer 2003, 135). Not only does this dynamic increase the efficiency of political parties by ensuring they endorse higher-quality candidates and increasing their likelihood of electoral success, but it also theoretically assists citizens by ensuring they have clearer choices between candidates and policies rather than deciding based on less significant differences (Confer 2003, 133-134). In reality, however, such party cohesion tends to only develop around specific policy issues, and, given how hyperpartisanship and political polarization plague politics, this weakening of parties as political entities may even be desirable (Confer 2003, 139). A similar concern is that IRCs undermine the privilege incumbents seeking reelection have of increased electoral safety. Changing this dynamic can be problematic in decreasing the stability of the composition of the legislature while increasing the number of less experienced, and therefore lower-quality, candidates being elected (Confer 2003, 133). This forfeiture of seniority advantage may also decrease legislative effectiveness and the political power of certain groups (Confer 2003, 133). However, there are several Constitutional measures that prevent instability separate from and regardless of incumbent turnover rates, and regardless, current reelection rates are currently far

too high in a way that reflects rampant self-dealing more so than the merits of continuity (Confer 2003, 141).

Finally, although one of the supposed benefits of IRCs is increased political efficiency at the state level, speculation reveals potential for the exact opposite effect. IRCs could be comparatively worse at redistricting, or fail at completing their assigned task entirely, based on a variety of potential circumstances. Poor training and lack of knowledge or experience could result in members making inferior choices or “defaulting on difficult political judgements” to positions held by the majority or staff members with their own agendas (Levitt 2011, 540). IRCs may also still be subject to the partisan tension and gridlock that often corrupts traditional redistricting practices, particularly given the typical high level of involvement party-affiliated individuals have in the selection process (Reyes 2011, 660). The stakes are especially high if the public has high expectations for reform that go unmet, as a disappointing performance could result in further citizen skepticism and removal from politics, rather than the sought-after increase in public confidence (Levitt 2011, 541). Additionally, litigation may still remain a problem because of a “sore-loser incentive” for parties to seek court intervention in the hopes of getting a redistricting scheme that is more advantageous to them than the IRC’s (Cain 2012, 1812). However, the proper design of an IRC serves as a highly effective safeguard against these potential problems. Even if they are not entirely prevented, IRCs are still undoubtedly superior efficiency-wise to legislative redistricting per the status quo.

To again reflect on and invoke institutional design theory, the positive deontological attributes of IRCs relate to further respecting the equal political status of and securing appropriate consideration for all citizens. They minimize the influence that untoward motivations and considerations have in the redistricting process, as well as effectively combat

gerrymandering, which prioritizes legislators' personal gain over the imperative of viewing and treating all citizens equally. In this way, IRCs also best achieve the social contract elements outlined by Beitz and Thompson, as they are most likely to realize the higher-order interests that the people possess in virtue of their status of citizens under a democracy and could rationally accept as just collective decision-making mechanism; after all, in the case of Virginia, close to 70% of citizens supported the measure, and in other states, the general citizenry overwhelmingly supports ending the status quo redistricting system in the United States (OneVirginia2021 2021). Importantly, however, such benefits can only be accomplished under a flourishing IRC, which requires carefully considering their different malleable elements and then deliberately constructing a body so that it most effectively fulfills its potential for securing electoral integrity. Otherwise, the great work that an IRC can do will be squandered, failing to fully achieve a politically just districting scheme to the degree that it can by being opened up to gridlock, conflict, and half-hearted measures. It may be true that even a poorly constructed IRC is better than the status quo redistricting system; however, as an institutional element of democracy, the redistricting process and its resulting maps should be made as equitable and efficient as possible, aligned in pursuit of the most ideal system for ensuring democratic representation.

Examining some of the various states that have thus far established IRCs as a form of redistricting reform provides further insight into the more theoretical and predicted consequences considered above. However, more importantly, they also reveal inconsistencies. In 1990, the New Jersey Redistricting Commission was established, and was so successful that although the law was set to expire in 2001, it was adopted as a constitutional amendment, resulting in the successful adoption of a plan after the 2000 census (Scarinci and Lowy 2003, 827). Kansas adopted the Schmidt-Downey Redistricting Reform Proposal in 2002 to establish a redistricting

commission, which largely contributed to the state having its longest legislative session in history, lasting 107 days (Confer 2003, 117). California adopted Proposition 11 establishing an IRC at the state level in 2008, and for congressional redistricting with Proposition 20 in 2010, which were largely effective at minimizing the state's historical redistricting conflict (Ancheta 2014, 116). Arizona adopted Proposition 106 to amend Article IV of the state constitution to create an IRC, yet the commission's maps were subject to frequent litigation and accepted only on an interim, emergency basis before eventually being deemed unconstitutional by the Supreme Court in 2004 (Edwards et al 2016, 303). Although the majority of the state redistricting reforms through IRCs, including the ones above, support the superiority of IRCs, they overall reveal mixed empirical evidence of the effects of redistricting on election outcomes (Edwards et al 2016, 319). Questions related to these inconsistencies and unexplored possibilities for IRC design are still largely unanswered. An in-depth analysis of one of the most recent instances of a state implementing an IRC can help provide important insights related to these discrepancies, how they impact the ability of IRCs to meet normative requirements, and how to properly design an IRC to achieve the most politically desirable results.

Virginia's Redistricting Reform: A Case Study

Virginia officially became the first southern state to adopt redistricting reform after voters approved an amendment to the state constitution via referendum on November 3, 2020. The amendment calls for the establishment of an IRC, called the Virginia Redistricting Commission (VRC), in Article II Section 6-A, which broadly outlines the commission structure and procedural mechanics. In the most general terms, the VRC is made up of eight legislators and eight citizens, and is tasked with drawing both congressional and state districts that the General Assembly must then vote on without changing. If either the VRC cannot draw districts or the

General Assembly fails to approve a districting scheme by certain deadlines, the Supreme Court of Virginia (SCOVA) is then tasked with the responsibility of redistricting.

The legislative process that ultimately led to the creation of the VRC was riddled with intense debates and partisan politics. Virginia's amendment process mandates that a proposed amendment must pass through the General Assembly in two concurrent years before it can be given to voters in a referendum, and accordingly, the General Assembly passed HJ 615 in 2019 and SJ 18 in 2020 approving the transfer of redistricting authority (OneVirginia2021 2021). Time played a central role in these political developments, both with the difficulty maintaining political will over two years and the pressure to enact reform before the 2020 census, after which it would take a minimum of ten more years for reform to have an effect. Political support and opposition for the VRC as designed also shifted in quantity and composition across the two years, but the overall political context ultimately facilitated enactment. However, what originally represented a new type of redistricting that, without hyperpartisanship, could freely pursue fairer representation instead came to reflect the evils of partisan conflict, as the VRC was ultimately unsuccessful in its first attempt to draw districts and had to forfeit the task to SCOVA. This section will examine the history and circumstances behind the creation and adoption of Virginia's redistricting reform, as well as the consequent problems and failure of the reform measure. I will then extrapolate from this analysis important lessons to be applied to future reform efforts, mainly relating to how an IRC must be specifically constructed in order to achieve its promises of moral superiority.

The History of Redistricting in Virginia

Virginia's prescriptions for redistricting in its state constitution have undergone numerous revisions since its adoption in 1776. In this original form, the practices for allocating delegates

were designed with the underlying intention of furthering regional interests, favoring the east over the west (Altman and McDonald 2013, 775). It established, as a base, that each county got two delegates and named cities and boroughs got one, but allowed the General Assembly the discretion to give representation to other “sub-county governments,” effectively allowing it to directly control the weight of representation in different areas (Altman and McDonald 2013, 774-775). The specific concept of reapportionment was mentioned in revisions in 1830, although the only requirement was respecting political boundaries, giving the legislature full authority over population variations (Altman and McDonald 2013, 775-776). Apportioning districts “explicitly on a population basis” would not be made a binding requirement until 1865 (Altman and McDonald 2013, 777). The revisions in 1851 explicitly incorporated procedures in the event a legislature failed to agree on a plan, particularly under a divided government, revealing emerging concerns about the ability of parties to reach agreements on redistricting (Altman and McDonald 2013, 776). Similarly, the frequent changes in explicit criteria point to the controversial and complex layers of the task. Contiguity was included as a requirement in 1851 (Altman and McDonald 2013, 776), overlapping districts and compactness included in 1870 (Altman and McDonald 2013, 778), and in 1969, the State Commission on Constitutional Revision’s proposal eliminating the provision requiring respect for political subdivisions was approved (Altman and McDonald 2013, 782).

Past the 1950s, demographic changes revealed in federal censuses led to more explicit conflict between political groups. In 1960, although Democrats held “comfortable majorities in both chambers,” population imbalances from growth in urban areas generated regional conflict (Altman and McDonald 2013, 779). The contention prompted Governor J. Lindsay Almond to appoint an advisory citizen-legislator hybrid commission to help balance the interests of urban

and rural areas, foreshadowing future reform (Altman and McDonald 2013, 780). However, after a plan was eventually adopted, defendants alleged unequal district populations that left Northern Virginia underrepresented and violated the Equal Protection Clause in *Davis v. Mann* (1964), claims which the Supreme Court agreed with before remanding the issue to the legislature so that the malapportionment could be corrected before state elections in 1965 (Altman and McDonald 2013, 781). The next round of redistricting occurred after the census in 1970, with population equality requirements at the forefront. It was also the first subject to federal authority through Section 5 preclearance under the VRA. The Department of Justice rejected the House districts due to concerns of “potential minority representation retrogression among some multi-member districts,” postponing primaries until the problems were addressed (Altman and McDonald 2013, 784). However, efforts to balance regional interests again resulted in a malapportionment lawsuit, a federal court ruling in *Howell v. Mahan* (1971) that both the Senate and House plans were unconstitutional before imposing its own district scheme (Altman and McDonald 2013, 784). However, the Supreme Court restored the state’s legislative redistricting plan, apart from the lower court’s alterations to a Norfolk Senate district (Altman and McDonald 2013, 784). The Court also, however, overturned the congressional plan (Altman and McDonald 2013, 785).

Further problems emerged after the 1980s census, partisan conflict increasing. Tension grew between Republican Governor John Dalton and the Democratic-controlled Assembly, resulting in legal challenges alleging population inequalities and voter dilution (Altman and McDonald 2013, 785). The Department of Justice found voter dilution problems in the House and Senate districting schemes, and only after exhaustive back-and-forth efforts was a compromise between the Governor and legislature eventually passed in 1982 (Altman and McDonald 2013, 786). With further revisions to the House plan, it was the sixth redistricting

plan that was finally approved (Altman and McDonald 2013, 787). In the 1990s, population growth in the Republican-dominated suburbs threatened the Democratic majority in the Assembly, prompting “creative pairings of Republican incumbents in order to retain control” (Altman and McDonald 2013, 788). Federal courts refused to take action in response to Republican accusations of partisan gerrymandering. For congressional redistricting, Democrats further attempted to maintain power by calling a special session before the new legislature, which had more Republican members, was seated, but were unsuccessful (Altman and McDonald 2013, 789). Both plans also underwent extensive revisions to ensure proper representation for communities of color, and although congressional districts were ultimately approved by all parties, a 1997 legal case found a racial gerrymander (Altman and McDonald 2013, 789-790).

Virginia’s last two attempts at successfully and effectively redistricting prior to the establishment of the VRC also suffered from extensive partisan conflict and influence, which would eventually lead to the emergence of ideas of reform. The General Assembly was Republican-controlled in the 2000s, and just as Republicans had alleged in the 1990s, Democrats claimed partisan gerrymandering in the form of incumbent pairing, along with “violations of compactness, contiguity, and... state racial provisions,” but litigation ultimately yielded no results (Altman and McDonald 2013, 790). Litigation alleging voter dilution in congressional districts also failed (Altman and McDonald 2013, 792). These efforts, however, significantly slowed down and increased the costs of redistricting, as well as left the general public disillusioned with the entire process.

In the 2010s, the uncertainties of redistricting under a divided government led to a bill proposing a bipartisan redistricting commission, but it died in a subcommittee in the House

(Altman and McDonald 2013, 792). In response, Governor McDonnell, who had made campaign promises of reform, established an advisory commission, IBARC, through executive order to assist in redistricting efforts (Altman and McDonald 2013, 794). However, the Governor ultimately revoked his support, and neither chambers used their recommendations (Altman and McDonald 2013, 794). A bipartisan compromise for the Assembly's districts was reached after elaborate dealings with the Governor, although passage was delayed until 2012 when redistricting was supposed to have occurred in 2011 (Altman and McDonald 2013, 797). The plans ultimately prioritized incumbency protection over the preservation of majority-minority districts, and resulting litigation led to some redrawing that confused many voters (Altman and McDonald 2013, 796). Later, however, voters in twelve majority-minority districts alleged violation of the Equal Protection Clause in *Bethune-Hill v. Virginia State Board of Elections* (2017), resulting in the District Court ordering the Assembly to revise the plan by October 30th, 2018 (Wang et al 2021, 7). Governor Ralph Northam called a special session to create a remedial redistricting plan, which was ultimately plagued with partisan conflict and strengthened views on the need for reform (Schroth 2019, 60). The day before the special session began, Democrats proposed a redistricting plan that altered the boundaries of 29 districts, generating "harsh criticism from Republicans" and tense political gridlock that ultimately led to the session ending without a plan (Schroth 2019, 61). Although Governor Northam urged Republican Speaker Kirk Cox to request the District Court begin drawing new districts, he instead appealed the original court decision to the Supreme Court, which agreed to hear the case (Schroth 2019, 61). Still, the District Court constructed and implemented, without approval from the Assembly, a final remedial plan that was more favorable for Democrats, and following the Supreme Court's ruling

that there was a lack of standing, a complete districting scheme was finally implemented in 2019 (Schroth 2019, 61).

These historical trends in Virginia's redistricting reveal the highly problematic nature of charging legislators with this task. Not only have the dynamics and incentives within the district drawing process caused legislators to often reach stalemates or make undesirable compromises, but its overarching mechanics have led to costly litigation, delayed enactments, and election disruption. All of these occurrences in past redistricting efforts established public fatigue with the status quo, and more strategically, legislators from both political parties began tiring of being systematically disadvantaged when in the minority. Consequently, legislators, advocacy groups, and ordinary citizens began more seriously considering redistricting reform and what it could look like in Virginia.

The Mechanics of Virginia's Redistricting Reform

Understanding the different components of the redistricting reform that passed in Virginia is essential to understanding not only the different changes that were made throughout the legislative process, but also which specific elements directly contributed to the VRC's failed attempt to create a new district scheme. The VRC is a bipartisan body with 16 members, eight legislators and eight citizens. The legislator members include four from the Senate and four from the House, two of each representing the two political parties with the highest and next highest number of members in the respective chambers—presumably, Democrats and Republicans. The commissioners from the House are chosen by the Speaker of the House and the leader of the other political party, and those of the Senate are chosen by the President pro tempore and the other party leader.

The citizen members are chosen by a Redistricting Commission Selection Committee composed of five retired judges of the circuit courts of Virginia. A committee member is chosen from a list of retired judges willing to serve compiled by the Chief Justice of SCOVA by each of the four party leaders, and these four judges will then select a fifth member and chairman of the committee from the list. The committee will then appoint the citizen members by majority vote, one from each of the different lists presented by the four party leaders of at least sixteen citizen candidates that all meet the necessary criteria established by complementary legislation. The commission then selects a chairman, which must be a citizen member, at a public meeting. Additionally, enabling legislation added to the state budget during the 2020 special session states that all appointing authorities must “endeavor to have their appointees reflect the racial, ethnic, geographic, and gender diversity of the Commonwealth,” and that in making its selections, the VRC must also reflect such diversity.

Plans for the Assembly districts need to be approved by the commission no later than 45 days after receiving census data, and 60 days after for congressional districts. In order for a proposed plan to move forward, for Assembly districts, it must receive affirmative votes from at least six of the eight citizen members and legislator members, including at least three of the four commissioners appointed from the chamber that the map pertains to. Congressional districts, in comparison, require the affirmative votes of at least six of eight of both the legislator and citizen commissioners. Once maps are agreed upon, the VRC will submit them to the General Assembly, where it would have to be passed in one bill without amendments in order to be adopted. If the Assembly fails to do so, the VRC must submit a new plan within 14 days, and if it is then rejected again, the responsibility of establishing districts will fall on SCOVA. The reform

also entails a public participation component, requiring at least three meetings across the states for public comment and that all meetings, records, and documents be public information.

Given the eventual removal of the criteria from the proposed constitutional amendment, also considered in the 2020 session was SB 717, the criteria bill with Democratic Senator Jennifer McClellan (SD-9) as its patron. This legislation ultimately failed to fully explain how commissioners should use the criteria or how to balance the different elements, greatly undermining its effectiveness. Regardless, it required proportional populations among districts, respect for federal legislation and the rest of the state constitution, respecting the interests of minority communities to elect leaders of their choice, ensuring equal opportunity to participate for language and racial minorities, preserving communities of interest, contiguous and compact districts, and no favoring or disfavoring any political party.

The Politics of Enacting Reform

HJ 615 and SJ 18 were not the first bills considered by the General Assembly proposing changes to the redistricting process, although they were the ones with the right features and political context to make redistricting reform a reality in Virginia. Many of the initial efforts were interim study bills to simply examine Virginia's status quo redistricting process and evaluate potential alternatives. For example, in 2007, Republican Delegate Chris Peace (HD-97) sponsored HJR 703, which would establish a joint subcommittee of mostly legislators to "examine the current process's impact on competitive elections and district criteria," but it died in committee (Schroth 2019, 64). Democratic Delegate Brian Moran (HD-46) sponsored a similar measure in 2008, which suffered the same fate (Schroth 2019, 65).

The number of bills proposing redistricting reform significantly increased in the 2010s as the sense of urgency around the issue rose. Their content varied in terms of the number of

members, who should appoint members, and the types of individuals that should serve. Different bills proposed 5, 7, and 13 members, and in 2010, SB 173 proposed allocating appointment power to the chairs of the state political party committees and SJR 113 to SCOVA (Schroth 2019, 65-66). A bill in 2016 suggested the Executive Director of the Division of Legislative Services have appointment power (Schroth 2019, 66). Suggestions for the type of commissioners have included individuals affiliated with different parties, state officials, judges, independent and nonpartisan people, and more. These variations show how there was no clear consensus, not even broadly, on how to design and implement redistricting reform, much less the cohesive political will necessary for a constitutional amendment.

By 2019, agreement on the need for redistricting reform had taken hold in Virginia, and support was fairly bipartisan. For Republicans, although they held the majority in the Assembly, they faced the possibility of losing this status in one or both chambers after elections. If so, they would have a greater degree of influence over redistricting if there was a commission than if the task was performed by a Democratic-controlled legislature (Schroth 2019, 79). If not, a commission would still allow Republicans to avoid being directly involved in future legal battles, as had been the case after the previous districting cycle (Schroth 2019, 79). For Democrats, if they achieved the majority after elections, the burden of lawsuits would be significantly decreased, and if they did not, a commission would help them avoid political battles, gridlock, and partisan gerrymandering (Schroth 2019, 79). Fear of backlash from the opposing party seemed to overwhelm the allure of possibly having full control over redistricting. Additionally, public support for establishing a redistricting commission was high, extremely prevalent in media, the activities of nonpartisan groups, such as OneVirginia 2021, and public polls (Schroth 2019, 80).

However, Democratic support eventually fragmented, both because of power gains in the Assembly and concerns about representation protections for communities of color. After the 2019 state elections, Democrats controlled both chambers of the Assembly and the governorship, introducing an incentive to maintain complete power over the upcoming redistricting cycle rather than pursuing reform. Particularly, Democrats in the House gained more power, and correspondingly had a larger decline in support for the reform measure passed in the previous session as compared to the Senate Democrats (Moomaw 2020, “Virginia Democratic Party...”). There were also extensive concerns among Democratic legislators about if steps taken to protect the voting rights of BIPOC citizens had gone far enough. Many expressed worries that the language was not strong enough, and that having a criteria bill instead of embedding such safeguards in the text of the amendment itself made them more vulnerable to underenforcement, or even eventual removal. Democrats were essentially torn between two alternatives: first, to not pass the reform, enact district boundaries favorable to them, and hope that it would be possible politically to pursue an improved reform measure in 2031, or second, to sacrifice their newly gained advantage by pushing through the legislation, despite its flaws, to ensure more power sharing in the long-term.

The redistricting legislation that would eventually be adopted in Virginia began with HJ 615 in the 2019 session, with Republican Delegate Mark Cole (HD-88) as its patron (Virginia’s Legislative Information System 2019). It was first evaluated by the Committee on Privileges and Elections, and ultimately reported from committee with a substitute with 12 votes in favor and 10 against (Virginia’s Legislative Information System 2019). However, this version was significantly different from what would eventually be enacted. At this stage, the constitutional amendment establishing a bipartisan commission would explicitly contain criteria to guide the

process, there were 12 citizen commissioners—4 commissioners each appointed by the Speaker of the House, the Senate Committee on Rules, and the Governor—and congressional plans would need at least 8/12 votes while both the House and Senate ones required votes from 3/4 of the members appointed by said chamber (Virginia’s Legislative Information System 2019). In this committee meeting, several immediate concerns were raised. Democratic Delegate Marcia Price (HD-95) stated that due to the increased weakening of the VRA, it would be better to “have actually seen the language of the VRA [in the amendment] as opposed to just a reference to it,” foreshadowing the major debates about where and to what extent provisions protecting the voting rights of BIPOC citizens should be included (House Privileges and Elections Committee 2019, 9:34:30). There were also early concerns of an inadequate elimination of partisanship, as Democratic Delegate Schuyler VanValkenburg (HD-72) expressed concerns that not having “a line amendment prohibiting partisan political data” threatened the goal of achieving more representative, competitive districts (House Privileges and Elections Committee 2019, 9:35:00). Democratic Delegate Mark Sickles (HD-43) questioned the appointment process’ heavy entanglement with legislators, stating that “it gives the Speaker, whoever that may be, extraordinary power, and takes it away completely from citizens” (House Privileges and Elections Committee 2019, 9:37:30).

The bill passed in the House overall on a very narrow margin, 51 votes in favor and 48 against, reflecting the mounting concerns of House Democrats about the redistricting reform’s specific design (Virginia’s Legislative Information System 2019). In discussions before the official vote, Delegate VanValkenburg asserted that the committee substitute was an “independent commission in name only” (Regular Session of the House Chamber 2019, 7:27:20), and Democratic Delegate Joshua Cole (HD-28) expressed concerns with “stealth

partisans... corrupting the process” (Regular Session of the House Chamber 2019, 7:28:42). In the Senate Privileges and Elections Committee, significant changes were made to the bill so that it conformed with SJR 306, Democratic Senator George Barker’s (SD-39) proposed reform action, after which it was reported with a substitute with 11 votes in favor and 1 abstention (Virginia’s Legislative Information System 2019). This version of HJ 615 removed the criteria from the Constitution, although it left language recognizing the need to comply with federal and state laws and “provide where practicable opportunities for racial diversity” (Virginia’s Legislative Information System 2019). The composition was also changed to 16 commissioners, eight legislators and eight citizens, and the power to appoint legislators was divided between the two major party leaders in the House and Senate whereas citizens would be appointed by a Redistricting Commission Selection Committee of five retired judges of the circuit courts of Virginia (Virginia’s Legislative Information System 2019). Also, the voting requirements for submitting a proposed plan to the General Assembly were changed so that they would all require at least 6/8 votes from legislator and citizen members, respectively. Finally, a provision of openness and transparency to the public was included in the amendment.

The switch from an all-citizen commission to a hybrid version reflects a reluctance on the part of legislators to fully relinquish their influence over the redistricting process. This structure “ensures that legislators are still ultimately picking the entire commission and controlling the entire process” (Lewis 2020). It is not unreasonable to expect that citizens would be negatively influenced by the partisanship and attitudes of the legislator members, and be encouraged to defer to legislators’ judgements for areas they had less expertise in. This structural adjustment significantly undermined the effectiveness and potential of Virginia’s redistricting reform, as rather than fully reallocating redistricting power to citizens, it effectively allowed “a smaller

group of politicians and the politically connected to wield redistricting power” (Moomaw 2020, “Who Do You Think...”). However, it is worth noting that it was largely this greater inclusion of legislators that allowed the amendment to overcome the extreme difficulty of being passed in two different sessions.

The Senate unanimously passed its version, after which the House rejected the Senate amendment, 52 members voting against and 47 in favor of accepting the adjusted version (Virginia’s Legislative Information System 2019). After the Senate insisted on the substitute, a Conference Committee formed to reconcile the two versions. These meetings held some of the most in-depth public legislative debates on the merits of reform overall, as well as how it should be designed specifically. In them, two overarching issues quickly emerged. The first was how to include the criteria, and specifically where and how strong language preventing voter disenfranchisement along racial lines should be. Some delegates were willing to acquiesce to the Senate by accepting a criteria bill, rather than having such language in the amendment itself, as it would allow for reform to easily pass through the legislature while ensuring the specifics of the criteria could be determined and perfected at a later date with more long-term flexibility. Democratic Delegate Sam Rasoul (HD-11) voiced, “we can come back in a criteria bill later on and designate that we need to... represent communities of color” (Conference Report 2019, 5:09:05). Others, however, saw the separation of the criteria as a clear unwillingness to establish a clear legal obligation to pursue racial justice. Delegate Price specifically disavowed the use of the phrase “where practicable” with directions to maximize the opportunities for BIPOC representation, stating that “we are about to pass to change our Commonwealth’s Constitution, and I just don’t think that racial fairness, language minority fairness, and cultural fairness should be parenthetical and optional” (Conference Report 2019, 5:26:35).

The second main concern related to the composition and mechanics of the commission's impacts on partisanship, which ultimately boiled down to a decision legislators had to make: blocking the immediate reform measure in order to pursue a more perfect version in the future, or implementing what they could in the moment and attempting to improve it later. Some members of the committee, such as Republican Delegate Steve Landes (HD-25), expressed a sense of urgency because HJ 615 was the last chance to implement reform before 2030, and argued that despite its flaws, it was better than tolerating the status quo for another redistricting cycle (Conference Report 2019, 5:15:15). Democratic Delegate Jay Jones' (HD-89) comment that he thought redistricting should be done by the legislature and not a commission, but that HJ 615 was "the best that I have seen in my tenure of an attempt to take as much of the politics out of it [as possible]" reflected the sheer exasperation felt from the redistricting politics of the past and an acceptance of the need to compromise for the sake of ending past trends (Conference Report 2019, 5:22:30). Others, such as Democratic Delegate Joseph Lindsey (HD-90), countered that they were wrongly rushing to pass reform, and instead should "take the time to get it right" (Conference Report 2019, 5:15:50). Even if legislators did not agree on what elements of the reform needed adjusting, or how to do so, there was general consensus that the measure had significant problems and could have been constructed better, leading to a focus and disagreement on what was the best and most strategic response in light of the process for amending the state constitution.

The Conference Committee issued a conference report that adopted a version of HJ 615 that incorporated the Senate's stance on criteria and commissioner composition, deferred more to the House's stance on voting rules, and uniquely altered the selection process for citizen members (Virginia's Legislative Information System 2019). Both chambers then voted in favor

of adopting the conference report, unanimously in the Senate and with 83 votes in favor and 15 against in the House, passing for the first time the version of the reform that would eventually come to be enacted in Virginia (Virginia's Legislative Information System 2019). A large number of members of the Legislative Black Caucus voted against HJ 615, citing the need to embed language protecting the voting rights of communities of color in the amendment itself to adequately and effectively safeguard against disenfranchisement and racial gerrymandering (Noe-Payne 2020). However, the majority ultimately voted in favor of the legislation due to general support for the bill and the knowledge that it was the only version of reform with enough support to pass before the next round of redistricting occurred.

In the 2020 session, the amendment that would enact redistricting reform was once again considered, this time originating in the Senate as SJ 18. Senator Barker was the chief patron and Democratic Senator Richard Saslaw (SD-35) the chief co-patron (Virginia's Legislative Information System 2020). The decision to have a separate criteria bill was again central to the debates in the Privileges and Election Committee, as despite Greg Lusick, a consulting attorney focusing on redistricting litigation, asserting that "the diversity requirement is extensive and runs through every phase of the process," the matter was still highly contentious (Senate Privileges and Elections Committee 2020, 1:10:34). Republican Senator Elder Vogel (SD-47) argued that striking the criteria from the amendment itself made the establishment of the commission less controversial, preserving reform long-term by ensuring it would not be subject to any legal challenges that could arise in response to the more contentious criteria (Senate Privileges and Elections Committee 2020, 12:23:45). However, Democratic Senator Jennifer Boysko (SD-33) argued against such reasoning on the grounds that it was more important to make it "very apparent without separating anything out that... we expect as legislators [extensive protections

for language and racial minorities]” (Senate Privileges and Elections Committee 2020, 1:28:34). After moving through the relevant committees, it was then voted on by the entire Senate, passing with 38 votes in favor and 2 against (Virginia’s Legislative Information System 2020).

SJ 18 then moved to the House’s Privileges and Elections Committee for evaluation, where patron Senator Barker presented the bill and could then be questioned by the delegates on the committee. The three main topics discussed were the commission’s voting rules, voting rights protections for BIPOC citizens, and partisan involvement. First, there were concerns that the voting rules requiring that legislative redistricting plans receive affirmative votes from at least six of the eight legislative members, including three of the four commissioners belonging to the body it would govern, would provide the opportunity for the two Republicans or the two Democrats in each chamber to jointly block a map from moving forward with the hope of achieving better results with SCOVA (House Privileges and Elections Committee 2020, 6:45:20). Although Senator Barker tried to ease these concerns by saying that “a broader context” of compromise and collaboration would prevent such manipulations, and that such supermajorities were necessary to ensure balanced and fair results, both Democratic Delegate Marcus Simon (HD-53) and Democratic Delegate Mark Levine (HD-45) expressed these concerns (House Privileges and Elections Committee 2020, 6:46:52).

Second, further concerns relating to the protection of the political rights of communities of color arose, although it was related more to the VRA rather than the decision to not include the criteria in the amendment itself, as it had become clear that the criteria’s placement would not be changed. Delegate Price specifically critiqued that the specific language of the VRA was not itself included in the amendment, and the phrasing of “as amended” suggested that if the federal government relaxed the protections of the VRA, they would consequently be lessened at the state

level (House Privileges and Elections Committee 2020, 6:52:00). Senator Barker stated that the amendment was meant to be more of a broad framework and that accompanying legislation would provide more specifics that would absolutely secure such protections, but given the failure of Congress to update the standards of the VRA and its severe weakening from modern SCOTUS rulings, this decision was still highly concerning to many legislators (House Privileges and Elections Committee 2020, 6:55:05).

Third, the failure to fully remove legislators from and disavow partisan influences in the redistricting process were heavily scrutinized. Democratic Delegate Paul Krizek (HD-44) specifically questioned the fact that gerrymandering was not explicitly addressed in the amendment, and Senator Barker remarked that leaving such language and references to the criteria bill and accompanying legislation would ensure flexibility and avoid litigation specifically involving the amendment itself (House Privileges and Elections Committee 2020, 7:06:06). Delegate Krizek also questioned the hybrid structure of the commission due to its inclusion of both citizen and legislator members. Senator Barker responded that “people [at the Assembly] were much more comfortable if they were at the table and could protect their interests” and that this element had largely contributed to the legislation making it as far as it had (House Privileges and Elections Committee 2020, 7:08:25). Although these comments reveal the need for compromise in order to get those with the power to enact reform to do so when they are the ones that would lose the most authority from such an action, it also points to the failure of Virginia’s redistricting reform to fully realize the ideals of removing political self-interest and providing fairer representation for citizens. After the initial questioning stage, citizens and interest groups were given the opportunity to briefly share their thoughts on the legislation and express support or disapproval. Members of the League of Women Voters of Virginia,

OneVirginia2021, the Virginia Municipal League, and the League of Women Voters expressed their support; to contrast, Herndon Reston Indivisible and Fairfax Democrats expressed disapproval, arguing that it did not adequately remove legislators or politics from redistricting and that future adjustment of the reform as a constitutional amendment would be extremely difficult (House Privileges and Elections Committee 2020, 7:21:00).

The amendment ultimately made it through committee with 13 votes in favor and 8 against (Virginia's Legislative Information System 2020). It was then considered on the House floor, where two substitutes were proposed. Delegate Simon proposed a substitute to incorporate the criteria into the text of the Constitution as a final effort to better secure fair representation for BIPOC citizens. Despite having the support of the Virginia Legislative Black Caucus, it failed to pass, 53 votes against and 47 in favor (Virginia's Legislative Information System 2020).

Democratic Delegate Don Scott Jr. 's (HD-80) proposed allocating more commissioners to the House and less to the Senate to be more proportional, but it failed to pass with 54 votes against and 46 in favor (Virginia's Legislative Information System 2020). Before the final vote, a statement from Democratic Delegate Jeffrey Bourne (HD-71) foreshadowed what was to come: "We hear that it's nonpartisan, independent redistricting. Well, I think clearly the text of amendment says it's not. We have legislators on there" (Regular Session of the House Chamber, 4:57:40). Both SJ 18, proposing the constitutional changes, and SB 236, outlining the specific language of the referendum, passed, after which Virginia voters would ultimately vote in favor of establishing the VRC (Virginia's Legislative Information System 2020).

The VRC Crashes and Burns

As the VRC set out to create its first districting scheme based on the 2020 census, it immediately became apparent that partisan considerations and conflict had not been removed

from the process as much as anticipated—or, at the very least, hoped. Rather than having a neutral, tie-breaking committee chair, there were two co-chairs, one Democrat and one Republican, despite the fact that there was only supposed to be one chair (Moomaw 2021, “VA Redistricting Commission Implodes...”). One of the earliest actions that set the tone for the rest of the process was the hiring two separate teams of Republican and Democratic consultants after disagreement along party lines over which entity to hire and members deadlocked on hiring nonpartisan data specialists from the University of Richmond (Moomaw 2021, “In Divided Vote...”). Members also could not agree on a single outside counsel, and voted to hire both Republican and Democratic affiliated lawyers rather than nonpartisan ones (Moomaw 2021, “In Divided Vote...”). The input provided from lawyers in particular has a large impact on the decisions any IRC makes, as lawyers exert significant influence over what such a body prioritizes and what specific decisions it makes through their interpretations of the requirements of various relevant laws (Moomaw 2021, “‘We’re Sort of Stuck?’...”). These moves both also had a large symbolic impact, as it made the promises legislators and advocacy groups had made about reform depoliticizing the process seem hollow.

One, if not the greatest, point of contention was the degree of influence and role that racial demographics would have within the context of the other criteria and redistricting task as a whole. There was an “unclear line between having enough minority voters to make a district ‘perform’ on their behalf without veering into racial packing” (Moomaw 2021, “‘We’re Sort of Stuck?’...”). These uncertainties became more divisive, and more so along party lines, as the partisan lawyers began offering different legal advice on how binding and impactful considerations related to race were as included in the various relevant pieces of legislation they were required to abide by. The Democratic lawyers advised commissioners that race was “a more

central consideration” and it was the legal obligation of members to draw districts securing and amplifying the voting power of communities of color as much as possible without violating the other rules (Moomaw 2021, “‘We’re Sort of Stuck’...”). They also stressed that the law required active efforts to create opportunity districts for people of color to elect BIPOC representatives (Moomaw 2021, “‘We’re Sort of Stuck’...”). To contrast, the Republican lawyers advised that the VRA required the establishment of “majority-Black districts,” but otherwise there was no obligation to do more than meet this compliance standard (Moomaw 2021, “‘We’re Sort of Stuck’...”). Given the deeply ideological and consequential nature of these different views, this disagreement largely prevented the construction of maps to be brought forward for public hearings.

Similarly, rather than working together cohesively to construct a map, both Democratic and Republican consultants offered separate proposals, establishing a dynamic where it became about finding a way to merge the separate maps instead of jointly constructing one (Moomaw 2021, “VA Redistricting Commission Implodes...”). It was no longer a single bipartisan body, but two separate Democratic and Republican groups working against each other to further their own party interests. Given the inability of commissioners to compromise or reach some type of common ground to build on going forward, tensions boiled over during a meeting on October 8th. In a final, desperate attempt to push forward a plan, Democratic commissioners proposed a compromise of beginning to create a final plan by starting with a Republican-drawn House and Democratic-drawn Senate map (Moomaw 2021, “VA Redistricting Commission Implodes...”). Republican members rejected this offer, and in exasperation, many Democrats simply walked out of the meeting (Moomaw 2021, “VA Redistricting Commission Implodes...”). The Democratic co-chair, Greta Harris, stated that “if the commission would work in 2031, it shouldn’t have any

legislators on it and all members should have to take a history class to understand why Black commissioners felt so strongly about protecting minority voting power” (Moomaw 2021, “VA Redistricting Commission Implodes...”).

After it became clear that the VRC would not be able to draw maps for Assembly districts by the deadlines necessary to use them in the 2021 election, it shifted its focus to constructing congressional districts in the hopes of at least accomplishing part of its assigned task. However, these negotiations, too, reached an unbreakable partisan stalemate on October 20th. Democratic members advocated for a plan with five Democratic-leaning, four Republican-leaning, and two competitive districts, and Republican ones fixated on a map with five Democratic-leaning, five Republican-leaning, and one competitive district (Galuszka 2021). When it became apparent that the VRC would not be able to construct any districts at any level, the procedures put in place to redirect the task to SCOVA in § 30-399 of the code of Virginia were set in motion, which concerned many Democrats because it is a more conservative-leaning body.

Per the amendment, seven days after the VRC failed to meet the deadlines for proposing maps to the Assembly for consideration, legislative leaders in both chambers submitted lists of at least three nominees for Special Master, as the Court was required to appoint one from each party by majority vote. However, SCOVA’s involvement did not mark the end of partisan conflict surrounding Virginia’s latest round of redistricting, as the requirement that special masters be qualified and not have any conflicts of interest became central to the proceedings (The Supreme Court of Virginia 2021, “Rules and Procedures...”). The Democrat Majority Leader of the Senate, Senator Saslaw, delivered a letter to the court arguing that the three Republican nominees should be removed from candidacy (The Supreme Court of Virginia 2021, *In re...*). As a result,

two of their proposed special masters were disqualified for conflicts of interest. In response, Republican Senate Minority Leader, Senator Thomas Norment (SD-3), and Republican Delegate Todd Gilbert (HD-15) wrote on behalf of the Senate and House Republican Caucuses requesting that all three Democratic nominees be disqualified for conflicts of interest, to which Democrats submitted a reply in defense (The Supreme Court of Virginia 2021, *In re...*). The Court ultimately disqualified one Democratic nominee for expressing concerns about working with the Special Master from the other party (The Supreme Court of Virginia 2021, *In re...*). Ultimately, the Court selected Bernard Grofman and Sean Trende as Special Masters, who were tasked with producing a redistricting map for all three redistricting areas within 30 days of the Redistricting Appointment Order (OneVirginia2021 2021).

Analyzing Virginia's Redistricting Reform

The complexity and technicalities surrounding the political process that resulted in Virginia adopting redistricting reform and the results of the VRC's first attempt to draw districts reveal numerous insights on which structural design elements best realize the potential normative concepts of an IRC. They also lend themselves to certain suggestions on how to most effectively achieve the most desirable political results, a goal inextricably interconnected with upholding moral concepts tied to democracy because identifying certain outcomes as "good" and others as "bad" inherently reflects the application of value judgements connected to such principles. Having discussed how IRCs as a whole better reflect moral and political considerations and then presented a tangible example of a recently created IRC, I will utilize the example of Virginia's redistricting reform to more concretely demonstrate how specifically an IRC must be designed in order to achieve its ideal goals. Such design elements are as follows: a bipartisan IRC with solely

citizen commissioners, a tie-breaking mechanism and productive voting rules to govern internal processes, and deeply and clearly incorporated criteria.

Having the composition of an IRC be entirely citizens with an even divide along party affiliation ensures that legislators and the negative influences they in particular can have on the process are effectively removed. One of the most integral aims of establishing an IRC is to end the ability of lawmakers to choose the citizens they are beholden to that is facilitated by the status quo system, as this dynamic undermines the entitlement citizens have to appropriate consideration and having meaningful, consequential authority over their representatives. Narrowing the number of legislators directly involved in drawing districts and attempting to counteract their more strategic behaviors by incorporating some citizen members does not prevent the ability of political actors to allocate voters among different districts to manipulate their ability to issue binding guidance in collective decision making in the way that an all-citizen commission does. For the VRC, as Democratic Senator Creigh Deeds (SD-25) remarked, the fact that “the process comes back to the General Assembly for approval” once a scheme makes it through the Commission is more than enough involvement of the legislature in the process (Regular Session of the House Chamber 2019, 1:37:30). The power dynamics of such a hybrid commission like the VRC also designate legislators as the more prestigious, powerful individuals, creating a pressure to default to their judgment and “follow their lead” of political strategizing in a way that undermines the ability of the commission to pursue more worthwhile goals that realize principles that would be freely and eagerly adopted under conditions of equal power—mainly, equality, free choice, and popular sovereignty. Similarly, because it would be nearly impossible to have a truly nonpartisan commission, a bipartisan one predictably and

efficiently controls the degree of partisan strategy, bringing it to a tolerable level by requiring compromises that are more likely to secure the regulative interest of democratic citizens.

The presence of a tie-breaking mechanism and productive voting rules better regulate the internal dynamics and actions of an IRC so that productive and desirable results can actually be achieved, and most effectively. A tie-breaking chairperson appointed by the rest of the commission, rather than having two partisan co-chairs as was the case with the VRC, “offer[s] combatants a procedural mechanism that approximates a ‘fair fight’” (Kubin 1996-1997, 839). It encourages both sides to engage in the process and negotiate in good faith, collaborating to best reflect the will and achieve the interests of the citizenry rather than playing games of strategy without “moderates to help steer decision-makers through difficult issues” (Chelsey 2021). Additionally, setting too high of a voting threshold for adopting measures and moving forward allows greater opportunities for collusion among party and political interest lines to actively block actions and exacerbate gridlock, as was the case with Virginia’s amendment requiring six of eight citizen and legislator members to vote in favor of a map, including three of the four commissioners appointed from the chamber the map pertained to. Targeting these design aspects in the construction of an IRC both clears the way for valuable goals to be pursued and achieved, as well as better fosters the type of citizen deliberation that should be in a political society, and specifically serve as the foundation for political institutions and processes.

Finally, clearly incorporated criteria must be a foundational part of any redistricting reform that establishes an IRC, as such guidance plays an important role in preventing violation of the principle of respect for the equal political status of citizens. Criteria is necessary to prevent gerrymandering, both racial and partisan, because it practically constricts the ability of commissioners to act on political motivations as well as symbolically demonstrates an

unshakable commitment to preserving the voting rights of all individuals and groups in society. Preventing gerrymandering is a necessary safeguard against violations of equal political status by preventing a tyranny of the majority. For racial gerrymandering specifically, the systematic distortion of communities of colors' voting power allows for their specific interests to be disregarded, as they are not proportionately represented in or able to influence legislative decision-making. Relatedly, such systemic disregard for the voting rights of BIPOC citizens degrades their status that they are morally entitled to under a democracy, as failing to correct and allowing for such unequal treatment conveys that the government views them as having a lesser status. This idea ties into why the Legislative Black Caucus and many Democratic legislators heavily critiqued separating the criteria from the text of the amendment itself, as doing so sent a message that protecting the political rights of BIPOC citizens is not seen as an imperative duty of the state. On top of being a necessary preventative measure, incorporating criteria into structural reform changes itself directly encourages the pursuit of important political goals that align with the overarching normative ideals associated with democratic government.

Conclusion

After the fate of Virginia's entire electoral structure was subjected to such grueling conflict and intense scrutiny, a relative equilibrium—or, as much stability as one could hope for given the surrounding circumstances—was eventually achieved. SCOVA officially approved the redistricting scheme created by the Special Masters on December 28th, 2021 that will be implemented in the state's next election cycle (OneVirginia2021 2021). The Virginia Public Access Project conducted an in-depth analysis of the SCOVA districting scheme, which compared each of the House, Senate, and U.S. House maps to the 13 corresponding maps that

were in play throughout the process—those created and considered by the Commission, SCOVA’s initial draft, and the 2019 Court-imposed plan.

The U.S. House map established four strong Democrat districts, two competitive districts, two leaning Republican districts, and three strong Republican districts, compared to the provided statistics of previous districts which were three strong Democrat, one lean Democrat, one competitive, three lean Republican, and three strong Republican districts (The Virginia Public Access Project 2021). For the Senate, strong Democrat districts decreased from 15 to 12, lean Democrat increased from three to seven, competitive decreased from five to three, lean Republican increased from four to five, and strong Republican stayed the same (The Virginia Public Access Project 2021). For the House, strong Democrat districts increased from 29 to 34, lean Democrat decreased from 13 to 11, competitive decreased from 14 to eight, lean Republican increased from 12 to 18, and strong Republican decreased from 32 to 29 (The Virginia Public Access Project 2021). In the U.S. House maps, there were two incumbent pairings, one district housing two Republican incumbents and another one incumbent from each major party (The Virginia Public Access Project 2021). At the state level, the Senate maps initially paired incumbents in nine districts, two pairing Republicans, three pairing Democrats, and four pairing those from different parties, two of which paired two Republicans and one Democrat in a single district (The Virginia Public Access Project 2021). For the House, 21 incumbents were originally paired, 10 pairing Republicans, 8 pairing Democrats, and three pairing those from different parties, with one district pairing three Democrats and one pairing two Republicans with one Democrat (The Virginia Public Access Project 2021).

VPAP’s analysis also included a ranking system for SCOVA’s scheme and compared it to different maps considered by the VRC, SCOVA’s initial draft, and the 2019 Court-imposed plan,

scoring them all on a scale with one being the highest score and 13 the lowest. The U.S. House map adopted by SCOVA was scored one for Black majority districts (tie), nine for compactness, ten for Minority-Majority districts, one for opportunity districts, three for keeping localities whole, one for more competitive districts (tie), and one for disregarding incumbent interests (tie), the first two categories being the only official criteria required by the Redistricting Commission (The Virginia Public Access Project 2021). The Senate map ranked eight for Black majority districts (tie), seven for compactness, one for Minority-Majority districts, seven for opportunity districts (tie), seven for keeping localities whole, six for more competitive districts (tie), and one for disregarding incumbent interests (tie), while the House map ranked 12 for Black majority districts (tie), 11 for compactness, one for Minority-Majority districts (tie), six for opportunity districts (tie), ten for keeping localities whole, three for more competitive districts (tie), and two for disregarding incumbent interests (The Virginia Public Access Project 2021).

For the state's first redistricting cycle under its newly enacted reform, although a conclusion was ultimately reached and an end result produced, with the maps themselves arguably being an improvement compared to past ones, the reform effort clearly left much to be desired. It unfortunately realized many of the concerns different legislators and interest groups voiced during the legislative process that produced and then passed the amendment. As Delegate Lindsey put it before the final vote in 2020, "This bill is going to create a situation... where factions of politicians are going to continue to be political, all in the name of democracy, all while being able to engage in the protection of self-interest" (Regular Session of the House Chamber 2020, 4:50:38). Instead of further empowering the people by better incorporating their will and interests into a process crucial to ensuring the integrity of elections and voting rights, redistricting authority moved from one small group of elites, the Assembly, to another, SCOVA.

However, not all hope is lost. There is still plenty of room for improvement, and these problems and failures have paved a clear path for adjusting and strengthening redistricting reform through the lessons they have provided. Importantly, though, these discussions of reform must not solely focus on what we do not want as they have overwhelmingly done in the past, which is undoubtedly the status quo redistricting process filled with rampant self interest and partisanship. Instead, public discourse in this area must merge political philosophy and political science in order to fully understand all of the layers of the issue and how to effectively navigate the complexities of designing redistricting reform. These deliberations must start taking as their central focus what we *ought* to want, and, more importantly, what we as democratic citizens are *morally entitled* to, see manifested in our governing institutions.

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