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How to Maintain One-Party Control: A Case Study of the Political Strategies Used by New Hampshire Republicans

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**How to Maintain One-Party Control:
A Case Study of the Political Strategies Used by New Hampshire Republicans**

An Honors Thesis

Presented to

The Faculty of the Department of Politics

Bates College

In partial fulfillment of the requirements for the
Degree of Bachelor of Arts

By

Mikayla Clara Foster

Lewiston, Maine

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Abstract

This thesis is a case study of the strategies used by political parties to maintain one-party control at the state level. The New Hampshire House of Representatives, an unusually large chamber with 400 members, is studied. The Republican Party was able to maintain control of the House for almost 80 years, even when two-party competition arose in the state in the 1990s and Democrats were winning seats at the top of the ticket. To explain how they were able to maintain control, this thesis examines the use of redistricting, flatorial districts, and ballot design to highlight the political strategies used by the party. An analysis of both the intended and unanticipated consequences of institutional design as well as the interplay and sequencing of the strategies explain how Republicans manipulated electoral institutions and translated votes into seats in order to protect a party's majority in the legislature.

Introduction

In 1984 Representative Evelyn King ran for reelection for the New Hampshire House of Representatives, but lost by 791 votes (N.H. Dept. of State 1985, 416). She was a Democratic incumbent representing Manchester Wards 8 and 9, along with five other Democrats and one Republican representative (N.H. Dept. of State 1983, 268). As a result of the House redrawing the district maps for the 1984 election, her district no longer existed. The legislators drew Wards 8 and 9 as their own individual districts with three representatives each. In addition, a new type of district, called a floterial district, was used to cover Wards 7, 8, and 9. Representative King decided to run for representative of the floterial district and lost to the Republican candidate.

The Republican Party had a majority in the New Hampshire House for about 60 years leading up to the 1984 election, and it was unlikely that the Democrats would be able to gain a majority. The 1984 election was a presidential election year and a landslide for Republicans in the state. In addition to 1984 being a wave election, the institutions and electoral systems and political makeup of the state at this time made it difficult for a Democrat to win office. The Republicans recently redistricted the state and included floterial districts for the first time. The ballot at the time included a straight-ticket option, and was in the party column form with the Republican Party listed first. Although New Hampshire was a decidedly Republican state in 1984, the state would soon experience a political shift and the institutions and electoral systems would become strategies used by the Republican Party to maintain their majority in the House.

By 2012 the once guaranteed Republican state shifted to a “purple state.” Beginning in the 1990s, the Democrats started to win seats at the top of the ticket, and in 2006 the Democrats gained a majority in the House for the first time in 80 years. While in the majority, the Democrats changed the design of the ballot so that it no longer had a straight-ticket option or the

Republican Party listed first. After this change, the Republicans took back the majority in 2010 and redistricted the House districts. Manchester Wards 7, 8, and 9 were drawn as their own districts and as part of floterial districts. Manchester Ward 7 is now in a floterial district with Wards 4, 5, and 6. Manchester Wards 8 and 9 are in a floterial district with Litchfield, a decidedly Republican town. In the 2012 election, the state's political makeup, district map, and ballot are significantly different than in 1984.

Although the political environment for Democrats in New Hampshire in 2012 was better than 1984, Representative King would not have been guaranteed a win. If Representative King ran in the 2012 election in the floterial district made up of Manchester Wards 4, 5, 6, and 7, she would have likely won the election because two out of the three representatives who won were Democrats. If Representative King ran in the floterial district made up of Manchester Wards 8 and 9 and Litchfield, she would have likely lost. The two representatives that won that floterial district were both Republicans ("State Representative-2012 General Election"). Despite the fact that the Democrats won a majority in the House after the 2012 election, some of the strategies the Republicans had implemented in the 2012 redistricting bill to maintain their majority in the House were successful, such as the floterial district combining Manchester Wards 8 and 9 with Litchfield. Even though the Democrats had attempted to eliminate the strategies the Republican Party was using to maintain party control in the House, such as ballot design, the Republicans still managed to translate some votes into seats for their party in a Democratic wave election.

The political environment for a Democratic candidate running for the New Hampshire House of Representatives changed from 1984 to 2012, because of the rise of two-party competition in the state and the increased use of strategies by the Republican Party to maintain their majority in the House. New Hampshire Republicans were able to maintain a majority in the

House for about 80 years, but in the past four legislative sessions the Democrats have held the majority for three. As noted above, New Hampshire Democratic candidates started winning seats at the top of the ticket in the 1990s. The Republicans, however, were able to maintain party control in the House. This thesis will explain what strategies allowed the Republicans to maintain party control, including redistricting, the use of flatorial districts and at-large districts, and ballot design, while there was a rise of two-party competition in the state. The following chapters will analyze each strategy individually, but will also point to how that strategy individually could not guarantee a Republican majority. Thus, this thesis seeks to highlight how sequencing of multiple strategies allows a political party to maintain control of a state legislature while there is two-party competition in the state. The New Hampshire House provides an example of how politicians use multiple strategies to translate votes into seats.

The structure of my thesis consists of a chapter outlining the relevant literature on the strategies used to maintain party control, three chapters dedicated to analyzing the strategies in relation to the New Hampshire House and a final chapter explaining the sequencing of the strategies. Chapter one serves the purpose of further explaining my research question and outlining the relevant literature on the strategies. I begin the chapter with an explanation of the research question and the chosen case study. Then I explain that the framework of this thesis will be guided by the work of Eric Schickler and Paul Pierson. While Schickler focuses on the motivation of political actors, Pierson suggests a focus beyond the actors. Pierson's focus is on sequencing and unanticipated consequences of institutional design, and thus ties together the chapters on each individual strategy. In this chapter I also introduce the fact that there was a shift in political alignment in New Hampshire in the 1990s, resulting in the rise of two-party competition in the state. The following chapters explain how the Republican Party was able to

maintain control of the House as there was a rise in two-party competition. Lastly, this chapter outlines the relevant literature on the strategies and institutions that will be discussed in relation to my case study in the following chapters.

The second chapter looks at the strategies Republicans used when redistricting the state. I begin the chapter in 1964 and end with the 2012 redistricting plan. A key transition in redistricting in New Hampshire began with the 1964 United States Supreme Court ruling in *Reynolds v. Sims*. As a result of the principle that came out of the ruling, “one-person, one-vote,” the state legislature changed their redistricting process. The legislature was now required to redistrict every 10 years after the federal census to account for the changes in the state population. I then trace through redistricting in the state, including the years 1982, 1992, 2002, 2004, and 2012. The redistricting bills in these years highlight the introduction of new mechanisms and gerrymandering techniques used by the Republican representatives. Additionally, the bills explain changes to the redistricting process as a result of election results, the rise of two-party competition, and Court rulings. Lastly, I explain how often these bills produced unanticipated consequences.

Floterial districts are introduced as a mechanism for redistricting in the second chapter, and then further explained and analyzed in the third chapter. A floterial district is a district that “floats” over multiple existing single-member or multi-member districts that individually do not have a large enough population to receive an additional representative. This chapter will explain how this district was introduced to the New Hampshire redistricting process and how over time it became a mechanism for gerrymandering. A floterial district allows the party in control of the legislature to strategically group voters to help translate votes into seats. This chapter is closely connected with the previous chapter, because it discusses how politicians strategically group

voters to translate votes into seats. Similar to the previous chapter, this chapter traces the implementation of this mechanism and how floterial districts became a strategy for Republicans to maintain control of the House in later redistricting bills.

The fourth chapter differs from the previous two chapters by shifting from a discussion of how politicians strategically group voters to how they cue voters in the voting booth through ballot design. In this chapter I discuss the implementation and changes to the features of the ballot that helped translate votes into seats for the Republican Party. From 1897 to 2007 the New Hampshire ballot included a straight-ticket option. This chapter explains how this voting method benefitted the Republican Party, and why the party fought to keep this voting method on the ballot. While straight-ticket voting was still on the ballot, the ballot format alternated between party columns and office blocs. Until after a New Hampshire Court Case ruling, the Republican Party strategically designed the ballot so that their candidates would be listed first in both formats. As a result of their candidates appearing first on the ballot, their party was subject to the primacy effect. In this chapter I discuss how ballot design was another strategy used by the Republican Party to translate votes into seats, and how the Democratic Party was able to successfully eliminate some of these strategies.

In each of the chapters discussing the strategies used by politicians to translate votes into seats I tell a story of sequencing. For example, in the second chapter I explain how the Republicans increased their use of redistricting as a strategy in response to the rise of two-party competition. In the third chapter, I explain how after their introduction, floterial districts later became a method to assist the legislature in gerrymandering. I explain, in the fourth chapter, how the legislature designed the ballot to include straight-ticket voting and other features that assisted the Republican Party in maintaining control of the House.

The concluding chapter of this thesis will explain how the strategies analyzed in this thesis are not separate tools used by politicians, but rather are used collectively. For example, since the legislature is able to redistrict only once every 10 years, the legislature has found other strategies to use to help translate votes into seats for their party in the elections that happen during the 10 years. Thus, the strategies analyzed in this thesis are used collectively to help the legislature achieve their goal of maintaining one-party control. The explanation of the sequencing of these strategies relates back to Pierson's argument introduced in the first chapter as part of the framework for my thesis. Additionally, the sequencing of the strategies helps answer the question of how the Republican Party was able to maintain control of the New Hampshire House while Democrats were winning seats at the top of the ticket. In general, this thesis will explain how a political party can maintain one-party control of a state legislature in a state that has two-party competition.

Chapter One: Framing the Question

Erik Engstrom writes in “Stacking the States, Stacking the House,” “[B]ecause electoral institutions can determine the political balance of power within a legislature, prudent politicians actively try to shape the rules that turn votes into seats” (2006, 419). In other words, politicians manipulate institutions to influence the partisan composition of their legislature at the state and federal level. This thesis will focus on the strategies of politicians at the state level, specifically by state legislatures, to maintain one-party control. The institutions that will be examined include redistricting, the selective use of floterial districts and at-large districts as alternative to single-member districts, and ballot design. While scholarly literature discusses the political effects of all of these institutions individually, it fails to recognize the relationship among them. This thesis will analyze the interplay among institutions that have been designed and used to translate votes into seats as politicians try to maintain one-party control at the state level, as well as the interplay among these institutions in relation to the rise of two-party competition.

This thesis will analyze the strategies used by politicians to translate votes into seats through a case study of the New Hampshire House of Representatives. The analysis of legislative history and testimony on bills will explain the motivations and goals of the politicians designing the institutions. The years of institutional implementation will be examined individually, as well as in context of the events leading up to the implementation and in relation to preexisting institutions. In addition, an explanation of the interplay of the political strategies will highlight how the Republican Party was able to maintain one-party control in the state legislature as there was an increase in two-party competition in New Hampshire.

This state legislature was chosen because of its significantly large lower house, which provides the majority party with more opportunities to manipulate the translation of votes into

seats. The New Hampshire House of Representatives currently has 400 members, and is the largest representative body in the United States (Dublin 2007, 119). The first legislative body in New Hampshire was set up in 1776, and then was named the “General Court” in 1784 (Dublin 2007, 119; Anderson 1981, 65, 101). At first, the size of the legislature varied election to election, as the number of House members increased relative to the state population. Since the legislature felt it was important to keep the constituents close to their representatives, they would increase the number of representatives as the state population increased. By 1942 voters elected 443 representatives to the House (Anderson 1981, 216). The fluctuations in the size of the House came to an end when the 1943 constitutional convention amended the state constitution to limit the House membership to between 375 and 400 members. Since 1966, the New Hampshire House has been districted to have exactly 400 members (Dublin 2007, 123). With a 400-member House, New Hampshire has “more democratic representation than any other legislative body” (Anderson 1981, 355). Currently, each New Hampshire House member represents about 3,295 constituents. If the United States Congress were to have the same proportion of representation, there would need to be about 94,565 members. Having such a large representative body has allowed the New Hampshire House to have the “unique feature of...most of its voters know[ing] their legislator personally or live within a mile with easy access to their lawmaker” (Anderson 1981, 355). Additionally, the large representative body both assists and inhibits politicians from strategically translating votes into seats in the state, which will be discussed in the following chapters.

For years, New Hampshire was known as a decidedly Republican state, because the state typically voted for the Republican presidential candidate. From 1860 to present-day, six Democratic candidates have won in the state, including: Woodrow Wilson, Franklin Roosevelt,

Lyndon Johnson, Bill Clinton, John Kerry and Barack Obama. As the state has voted for the Democratic presidential candidates five out of the last six elections, the state has turned “purple.” Although New Hampshire is surrounded by all “blue” states, which are states that have habitually voted for Democratic presidents, New Hampshire is now known as a swing state, meaning that it could vote either for a Republican or Democratic candidate.

New Hampshire has also shifted its political alignment in the state elections from Republicans to Democrats at the top of ticket. Recently the state has consistently elected Democratic governors. New Hampshire typically had Republican governors, and since 1857 the Democrats held the governor’s office for only 21 out of 125 years (N.H. Dept. of State 2009, 90-91). Since 1996, on the other hand, Democrats have won eight out of nine gubernatorial elections. With the recent 2012 election, New Hampshire has elected another Democratic governor for a two-year term. Despite the state electing Democrats at the top of the ticket, the state is still considered a swing state because it has been a battleground state for both political parties in the presidential elections.

Even with a shift in political alignment in the state, the Republican Party has maintained a majority in the lower house of the state legislature. Since 1857, the Republican Party has maintained control of the New Hampshire House of Representatives, with the exception of 1871, 1874, 1922, 2006, 2008, and 2012 (Dublin 2007, 121-3). The fact that the Republican Party was able to maintain control in the House while Democrats simultaneously won seats at the top of the ticket is significant. This thesis will explain how the Republican Party successfully used strategies to maintain party control in the House while Democrats won other offices in the state.

State Legislatures Translating Votes into Seats

State legislatures have the ability to manipulate electoral systems to affect the translation of votes into seats, such as through the process of redistricting the state, using flotal districts or at-large districts, and implementing straight-ticket voting. Taagepera and Shugart argue that “The methods by which votes are translated into seats are often simply divided into two categories: those which apply to single-member districts and those which apply to multimember districts” (1989, 20). While at-large districts are a form of multi-member districts, flotal districts are slightly more complicated because they create a district that “floats” over single-member and multi-member districts. Politicians can strategically use a combination of these districts to group voters and control what candidates will end up in office, and, as a result, the partisan composition of the legislature.

Tufte suggests, “Arrangements for translating votes into legislative seats almost always work to benefit the party winning the largest share of the votes” (1973, 540). Therefore, the party in control will use strategies, such as gerrymandering, to ensure that they will win more votes and thus more seats in the legislature. Tufte argues that the translation of votes to seats is affected by the existing composition of the legislature and the party advantage (1973, 542). In other words, the partisan bias of the translation of votes into seats is dependent upon which party has majority in the state legislature and how many votes a party needs in order to win a majority. Since “electoral rules can make or break a party” (Taagepera and Shugart 1989, 2), political parties seek to manipulate the electoral system and institutions, to control the translation of votes into seats.

Cox discusses electoral systems in relation to voting and defines electoral systems as “a set of laws and party rules that regulate electoral competition between and within parties” (1997, 38). Electoral laws in the system can determine how votes will translate into seats. Cox writes,

If political actors care mostly about winning seats in the current election, then the influence of electoral institutions on their goals is direct. If, in addition, actors’ expectations about each other’s vote shares are precise and consensual, then a well-structured coordination game emerges in which the prospects for successful coordination are good. (1997, 8)

Cox’s idea is that the short-term goals of politicians are accessible when there is a general consensus among the actors, such as when there is a majority in the state legislature. In addition, Cox suggests that actors are able to win seats through the manipulation of the electoral systems, such as through ballot design. Thus, party competition and consensus among actors of the same party allows for strategic actions that will translate votes into seats. Successful manipulation of electoral laws allows a political party to maintain a majority, which is important because then that political party can decide the policy agendas. It also allows the majority party to prevent the repealing of their strategic laws by the minority party. The manipulation of electoral laws and the strategic arrangement of voters will be discussed in the following chapters as strategies used by the Republican Party to translate votes into seats and maintain one-party control of the New Hampshire House.

Theoretical Framework

The theoretical framework used to analyze the strategies of institutional design will be guided by the work of Paul Pierson and Eric Schickler. Pierson suggests a move away from institutional choice to institutional development by providing an explanation of sequencing leading up to and the unanticipated consequences of institutional change (2004, 104). Schickler, on the other hand, focuses on the interplay of competing coalitions in institutional change,

described as disjointed pluralism. Pierson suggests that Schickler's "disjointed pluralism" draws "heavily" on actor-centered functionalism, because he focuses on the goals and motivations of each actor in institutional change (Pierson 2004, 109). In contrast to Schickler, Pierson's discussion of institutional development critiques "actor-centered functionalism," which is when actors, such as politicians, design an institution to benefit their interests (Pierson 2004, 105).

Schickler further examines how the interplay of coalitions often is so competitive that institutional change is a "battleground" rather than a stable process of change and "coherent solutions" (2001, 18). He suggests that the actual institutional change is dependent upon the importance of the change to the coalition presenting it. For example, Schickler writes, "Rohde argues that party government depends on the degree of majority party unity on the agenda items confronting Congress, and on the level of polarization between the majority and minority parties" (2001, 10). Schickler uses Rohde's argument to suggest that if there is strong polarization in the legislature, and the institutional change is not as important to the majority party as other policy issues, it will likely not occur. However, in the case of redistricting, which is an institution that results in the translation of votes into seats, there is often great unity among the majority party when presenting their plan. Lastly, Schickler suggests that "reelection interests" and "members' party-based interests" motivate institutional design (2001, 5). These interests and actor motivations will be highlighted throughout this thesis in the discussion of the design of institutions used in the translation of votes into seats.

Pierson, on the other hand, suggests that to fully understand institutional development there should be an understanding beyond just the motivations of the actors. To support this claim, Pierson lays out the limitations of only understanding institutional design in relation to the actors, including:

1. Institutions have multiple effects
 2. Institutional designers may not act instrumentally
 3. Institutional designers may have short time horizons
 4. Institutional effects may be unanticipated
 5. Institutional continuity and environmental change
 6. The problem of actor discontinuity
- (2004, 108-122)

The first limitation—“institutions have multiple effects”—looks at Schickler’s idea of disjointed pluralism, which is the idea that there are competing coalitions with different expectations of the institutional change. For example, in a state legislature there will be competing interests between the majority and minority party or the majority party and incumbents, in the process of proposing institutional change. The second limitation discusses how actors may propose an institutional change because they “believe it to be appropriate,” and as Pierson suggests, when an institutional change occurs may affect the type of change that is proposed (Pierson 2004, 110). Pierson argues that the unanticipated effects of institutional change are the most significant limitations, because actors cannot anticipate all the consequences of institutional change. By focusing on the motivations of actors, these effects are overlooked. Therefore, Pierson suggests that “the significance of unintended consequences needs to be incorporated into the ways we think about institutional origins and change, *even if we cannot develop theories that can identify the kinds of mistakes that are likely to occur*” (2004, 117-118). Another limitation is that over time the political environment is likely to change, which will alter the functioning of institutions, such as the shift in political alignment in New Hampshire. Lastly, Pierson argues that an actor may inherit an institution that they did not design and will have to deal with the implications of this institution (2004, 119-120). These limitations challenge the assumption that institutional effects will always align with the desires of the designers. As a result, this thesis will analyze institutions

not just in relation to the motivations of the actors and the moment of implementation, but also over the period of time of institutional development.

With these limitations in mind, Pierson argues that a study of political institutions needs to be observed over time, in relation to the motivations of the actors and with respect to already existing political institutions. Pierson discusses the idea of path dependency, which looks at the sequencing of events. Pierson writes that it is important to “extend beyond the focus on the ‘moves’ of the ‘actors’ in the legislatures to a broader discussion of the temporal orders in which historical alternatives present themselves, and the ways in which this forecloses certain possibilities while enhancing the prospects of others” (2004, 64). In other words, Pierson suggests that to fully understand the institutional change one must look at the development of the institution over a significant period of time.

In order to understand how politicians are able to maintain control at the state level, especially in cases of two-party competition, the following chapters will trace through strategies politicians use in institutional design. Each chapter will individually analyze the institutions and describe the strategies the Republican Party implemented to maintain a majority, which draws on the work of Schickler. Through legislative history, bill attempts, testimony, court cases and constitutional amendments, the goals and motivations of the political parties will be analyzed. However as Pierson suggests, the chapters will also analyze beyond the “‘moves’ of the ‘actors’” by looking at the unanticipated consequences of the institutions. Furthermore, Pierson’s work will guide the conclusion of this thesis, which will explain the sequencing and combination of all of the strategies used by politicians in their effort to maintain one-party control in the state legislature.

Before analyzing each strategy in relation to the case study, the institutions need to be explained in relation to the current literature. The remaining part of this chapter will summarize the relevant literature on redistricting, flotal districts and at-large districts, and ballot design. As mentioned earlier, the literature fails to explain the interplay between the institutions, and thus this thesis will serve that purpose.

Redistricting

The New Hampshire state legislature uses redistricting as a strategy to maintain one-party control through the translation of votes into seats. This strategy will help explain the relationship between the party in control of redistricting, incumbents, and voters as the Republican Party maintains control in the New Hampshire House of Representatives. Redistricting is the process of redrawing district maps to evenly distribute the population across districts. McDonald defines redistricting as “conducted by the states through a patchwork of state laws and constitutional provisions, overlaid with federal guidelines that apply to drawing all electoral districts” (2004, 375). Much of the literature discusses court cases related to redistricting and the effects of redistricting on partisan bias and incumbency advantage.

Most of the federal guidelines for redistricting have come from court-ordered mandates, especially as a result of the rulings from *Baker v. Carr* (1962), which declared legislative apportionment questions “justiciable,” and *Reynolds v. Sims* (1964), which called for equal representation and the “one person, one vote principle.” Prior to the court-ordered mandates, political parties mainly used redistricting as a mechanism to gain party control, and incumbents used it as a way of securing their seats. This manipulation of district lines is known as gerrymandering. Erikson describes the “optimum gerrymander for a party” as “the spreading of the opposition party supporters as thinly as possible across many districts where they cannot

obtain a majority” (1972, 1237). Gerrymandering received its name after Massachusetts Governor Elbridge Gerry drew a “salamander-shaped” district in 1812 (Taagepera and Shugart 1989, 16). Even after the court-ordered mandates, political parties have continued to gerrymander in an attempt to affect the translation of votes into seats, but now have to observe the equal population mandates in the process of redistricting.

Tufte writes that, “control of districting by one political party can mean [...] the difference between majority and minority status in a state legislature—often remarkably independent of voters’ preferences” (1973, 553). However, among the literature there is not a general consensus on whether partisan redistricting and gerrymandering has any effect on party control and incumbency advantage. Nevertheless, most of the literature does agree that if there is an effect it is present at the state level compared to the federal level. McDonald states, “The more districts in a legislative body, the greater the ability to group voters strategically. Thus, partisan gerrymandering can be more potent in state legislative than in congressional districting” (2004, 374). Therefore, examining redistricting of the New Hampshire House will present a greater explanation of redistricting as an institution and its involvement in maintaining one-party control at the state level.

The Trade-off between Parties and Incumbents

When a state’s legislature redistricts, such as New Hampshire’s, there is often a trade-off between the goals of the party in the majority and the goals of the incumbents. This means that it is difficult for the party in majority to gain seats while simultaneously securing all of the incumbents’ seats. The literature that accepts the opinion that redistricting has an effect on partisan advantage concludes that a partisan bias will be observed in the direction of the party controlling the process (Campagna and Grofman 1990; McDonald 2004; Gelman and King

1994). However, “the redistricting goals of a political party and its incumbents can be at odds” (McDonald 2004, 374). Cain, for example, maintains that in a partisan gerrymander the noncontrolling party, the minority party, will be adversely affected compared to the party controlling the redistricting. In addition, Cain finds that incumbents in the noncontrolling party will be better off than the party as a whole. Nevertheless, incumbents in the minority are not necessarily safe because the partisan plan may either parcel the incumbents’ district or attempt to displace minority party incumbents. In other words, the redistricting plan may alter the incumbent’s district to make it more difficult for them to win, by either intentionally adding voters of the opposing party or by adding so many new voters to the district that the incumbent’s name recognition is reduced. Moreover, a district may be drawn that pits the incumbent of the minority party against an incumbent of the majority party, so as to try to displace the minority party incumbent and secure a seat for the majority party (Cain 1985).

On the other hand, in a bipartisan gerrymander Cain argues that neither party gains an advantage, rather the outcome is incumbent protection (Cain 1985, 321). Incumbents in the majority party, however, are not necessarily safe. In fact, “incumbents are often forced to give up votes (hence electoral safety) in order to increase the number of legislative seats their party is likely to capture” (Gelman and King 1994, 541). Therefore, in the process of redistricting, partisan bias usually takes precedence over protecting incumbents. It is clear that redistricting is a mechanism used by parties to manipulate votes and consequently manipulate the composition of a legislative body.

Checks on the State Legislature

There are several checks on the state legislature and party that is in control of the redistricting process, including the threat of court action and voters who can choose to not reelect

their representative if they are unhappy with their actions. In many states, including New Hampshire, if the state legislature cannot pass a redistricting plan then the court will be responsible for redistricting. With the potential for court action, McDonald suggests that a compromise between the parties on the redistricting plan is likely to occur, in order to avoid the plan being sent to the court. Court action, however, may also deter the state legislature from making a compromise. Courts may either create their own plan, or choose a plan proposed by a political party or an outside group. If the party of the judges involved in the court action is known, members of the state legislature may avoid making a bipartisan compromise because they know that their party will be benefitted by the decisions made by the court (McDonald 2004, 380). In addition to the threat of court action either preventing or encouraging a compromise among the state legislature, there is also the check of the voters influencing the redistricting plans. Since the legislative branch is an elected branch, constituents closely watch the actions of their representatives. If the voters are unhappy with the redistricting plan proposed by their legislators, they can decide to not reelect the representative. Because representatives are trying to manipulate the outcomes of votes in districts, representatives take into consideration how constituents will vote.

Redistricting in New Hampshire

In order to keep representation between districts equal, New Hampshire is required, as are all other states are, to redistrict every ten years after the federal census is issued. In New Hampshire, the state legislature is responsible for redrawing the districts, as it states in the New Hampshire constitution:

There shall be in the legislature of this state a House of Representatives, biennially elected and founded on principles of equality, and representation therein shall be as equal as circumstances will admit. The whole number of

representatives to be chosen from the towns, wards, places, and representative districts thereof established hereunder, shall be not less than three hundred seventy-five or more than four hundred. As soon as possible after the convening of the next regular session of the legislature, and at the session in 1971, and every ten years thereafter, the legislature shall make an apportionment of representatives according to the last general census of the inhabitants of the state taken by authority of the United States or of this state. In making such apportionment, no town, ward or place shall be divided nor the boundaries thereof altered. (N.H. Const. Pt. II, Art. 9)

As a result of amendments to the constitution, the New Hampshire House is responsible for redistricting after the census comes out, to account for changes in the population. This task, however, is not simple because the legislature must limit the number of representatives to 400 and make certain that there is the smallest possible deviation between the districts.¹

There have been several amendments to the New Hampshire constitution over the years dealing with equal representation, House and Senate districts, and the redistricting process in general. When the constitution was first written, a town was granted one representative for every 150 persons (N.H. Const. Pt. II, Art. 10). However, in 1877, the constitution was amended to increase the number of people to 600, as the population of New Hampshire increased. In addition, in 1877 the formula for figuring out the number of representatives changed from being based on the number of taxpayers to population (Anderson 1981, 154). Leading up to the 1877 amendment, small towns continuously elected representatives, even without having the required number of people to be granted a representative. For example, 26 unqualified towns had their own representatives in 1874 (Anderson 1981, 155). Even after the 1877 amendment, unqualified towns continued to elect representatives and thus drastically increased the size of the House, to at one point as many as 443 members. This constant fluctuation in the size of the House led to the

¹ The deviation measures the extent to which a district population differs from the ideal population. The ideal population in New Hampshire is measured by dividing the state population by 400—the number of representatives in the House. The range of deviation, also referred to as the statewide deviation, is calculated by adding the largest positive deviation to the largest negative population in the state (*Representative Peter Burling* 2002).

1942 amendment limiting the number of members in the House to between 375 and 400. In 1942, the constitution was also amended to delete the population requirement of 600 people for one representative. Therefore between 1942 and 1964, there was no population requirement for receiving representation. The redistricting process during this time, however, was not open to the range of manipulation seen in later redistricting years, because it followed the tradition of town lines making up the districts. Additionally, towns with smaller populations were often delegated part-time representation. During this time, it is clear that geography took precedence over equal representation. Article 11 currently requires that the 400 members of the House be evenly distributed across the state in accordance with the latest census (N.H. Const. Pt. II, Art. 11).

The majority of the amendments to the constitution about districting dealt with issues of representation for small towns. New Hampshire has many towns with the populations not exceeding double digits, especially in Coos County. For example, Dixville, known as the first-in-the-nation to vote in the Presidential primary, has a population of twelve people according to the 2010 Census (N.H. Office of Energy and Planning 2010). Over the years, the constitution has called for different methods of representation for small towns. With the creation of the constitution, small towns could be grouped together to meet the 150-person requirement for one representative. Then with the 1877 amendment, small towns could together form a district to meet the 600-person requirement. In 1889, an amendment to Article 11 stated “that towns of less than 600 should be represented a proportional amount of time” (N.H. Const. Pt. II, Art. 11). Then in 1942, an amendment called for small towns to be represented at least once every ten years (N.H. Const. Pt. II, Art. 11). Therefore, the House of Representatives gave small towns part-time representation by deciding which years a town could elect a representative. However, in 1964 part-time representation was ended with an amendment to Article 9 “providing for equal

representation” and an amendment to Article 11 permitting “small towns to be districted for one or more representatives” (N.H. Const. Pt. II, Art. 9, 11). Both of the 1964 amendments were a result of the Supreme Court decisions in *Baker v. Carr* (1962) and *Reynolds v. Sims* (1964).

Supreme Court Rulings Related to Redistricting

Prior to the 1962 and 1964 Supreme Court rulings for *Baker v. Carr* and *Reynolds v. Sims*, reapportionment and redistricting was long “overdue in some states” (Dixon 1964, 210). The *Baker* decision began the series of five “*Reapportionment Decisions*” (Dixon 1964, 211). In 1946, prior to *Baker*, the Supreme Court heard *Colegrove v. Green*, which was about the constitutionality of the legislative districts drawn by the Illinois legislature. The Supreme Court ruled in *Colegrove* that the question about legislative apportionment “was a nonjusticiable ‘political question’, inappropriate for the judiciary to address at all” (Brest and Levinson 1992, 1073). However, in 1962 the court agreed to hear a case about “malapportionment” in the Tennessee legislature, titled *Baker v. Carr*. Malapportionment is when districts in the same state do not have an equal ratio of the number of representatives per the number of voters (Taagepera and Shugart 1989, 14). This inequality could come about because voters could move between districts, but in this case the malapportionment was a result of the plan drawn by the state legislature. The Supreme Court decision found that the Tennessee legislature districting plan did violate the Equal Protection Clause, but that the Court did not have the right to overrule it. Rather, the Supreme Court made the significant decision that questions about “the fairness of drawing state legislative districts were ‘justiciable’” (Brest et al. 2006, 1155).

Out of the five redistricting cases that followed *Baker*, the most well-known and influential ruling came from *Reynolds v. Sims* in 1964. In the majority opinion, Chief Justice Warren wrote,

State legislatures are, historically, the fountainhead of representative government in this country. ... But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the processes of his State's legislative bodies. ... Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. (Brest and Levinson 1992, 1079-80)

From *Reynolds* emerged the “one-person, one-vote” standard that each voter’s vote is equal to that of the other voters in the state. Prior to *Baker* and *Reynolds* many states had highly malapportioned districts. During the nineteenth century, redistricting was not regulated. For example, “some states frequently redrew the maps, often as a direct result of change in partisan control of state legislatures” (Carson, Engstrom, and Roberts 2006, 283). On the other hand, some states would wait years before deciding to redistrict. As a result, the districts would become highly malapportioned.

New Hampshire was among the states that were highly malapportioned prior to the Supreme Court Case decisions, because of the tradition that town lines make up the districts and the use of part-time representation. In 1955, before *Baker* and *Reynolds*, the state was highly malapportioned with only 37.4 percent of the population electing the majority of seats (Hamilton 1964, 9). In addition, New Hampshire had the “highest value of votes in the smallest districts prior to 1900,” meaning that voters were well represented across the state, including in the smaller districts (Hacker 1963, 23). But in subsequent years leading up to *Baker*, the votes of the New Hampshire citizens who lived in urban areas became unfairly disproportionate, and more heavily weighted, than those citizens who lived in the smaller towns (Hacker 1963, 23). Some have argued that New Hampshire, along with Wisconsin, was the only state that “approximated the one-person, one-vote standard in both chambers” prior to the Supreme Court decisions (Ansolahehere, Gerber, and Snyder 2002, 767). Evidently this is not the case, considering that

leading up to 1964 the New Hampshire legislature designated part-time representation to the smaller towns. As a result, the people who lived in the smaller towns were not as well represented by House representatives as the voters who lived in the larger towns and received full-time representation.

After the 1964 *Reynolds* ruling, New Hampshire passed a redistricting plan for the House of Representatives. At this time, the House avoided dividing or merging towns, and as a result used part-time representation, which caused malapportionment.

Before the *Reynolds* ruling, in New Hampshire geography took precedence over creating districts that were equal in population. However, after the *Reynolds* decision, the state legislature redistricted the House and ended part-time representation. While the district lines were no longer limited to town lines, the constitution required for towns combined into a district to be contiguous. The *Reynolds* ruling addresses the fact that malapportionment was present in many states as a result of history, economics, group interests and geography taking priority over equal representation. In the majority opinion, Chief Justice Warren wrote,

But neither history alone, nor economic or other sorts of [377 U.S. 533, 580] group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing. (*Reynolds* 1964, 31)

Therefore, while the *Reynolds* decision is ambiguous about the constitutionality of the geography of redistricting, it does make it clear that equal representation takes precedence over tradition. It

is significant that the Court briefly notes geography, because it had not done so in the past. As a result of the “one-person, one-vote” standard coming out of the *Reynolds* decision, New Hampshire amended its constitution in 1964 to state that apportionment shall be “founded on principles of equality, and representation therein shall be as equal as circumstances will admit” (N.H. Const. Pt. II, Art. 9).

Redistricting Commissions

Instead of having their state legislature redistrict, some states create a commission to draw the map. About 21 states currently use a commission for state legislative redistricting (“Redistricting Commissions: Legislative Plans” 2008). The appointment process and the role of the commissions vary from state to state. For example, several states have a commission as a backup plan if the legislative process “breaks down, [such] as under divided government” (McDonald 2004, 382). In these states, the commission is used as an extra step before the redistricting process would be passed off to the courts. The other common form of commissions has sole redistricting authority. Another way the commissions differ is in the number of members and who the members are. For example, some commissions are either appointed by or composed of members of the state legislature and “statewide party officials,” but this does not avoid the partisan bias problems that occur when a state legislature redistricts (McDonald 2004, 382).

In other states the commission may be made up of an equal number of partisan members, and will likely bring about a bipartisan plan. Some states that have an equal number of partisan members require that the commission’s plan be approved by a two-thirds vote in the state legislature and then by the governor (McDonald 2004, 383). Lastly, many states have created guidelines and limitations for redistricting commissions to try to avoid partisan politics. These states avoid partisan redistricting plans and gerrymandering by setting strict guidelines, which

are not found in states that have their legislatures redistrict. Although New Hampshire's constitution states that the state legislature is responsible for redistricting, there have been several attempts to pass legislation creating a redistricting commission. Thus far, these attempts have been unsuccessful.

Conclusion

Whether a state legislature or a partisan redistricting commission is responsible for redistricting, literature shows that the results of partisan redistricting have only a short-term effect. Gelman and King come to the conclusion that over the long-term, the effects of partisan redistricting are minimized. Gelman and King observe partisan bias, which they define as “the degree to which an electoral system unfairly favors one political party in the translation of statewide (or nationwide) votes into the partisan division of the legislature” (1994, 543). They conclude that redistricting plans create “fairer electoral systems than if there had been no redistricting,” but originally do produce a slight bias in the direction of the party controlling the process (Gelman and King 1994, 553). Similarly, Basehart and Comer argue that partisan redistricting can have an effect, but that when “parties succeed in producing redistricting gains, the gains are not permanent but dissipate generally after two or three elections” (1991, 75). Therefore, over time the partisan bias of redistricting is minimized. Another reason the effects of redistricting could be minimized would be because of “large state or national shifts in voting patterns” (Gelman and King 1994, 543). As will be shown in this thesis, the New Hampshire House Republicans were able to gain seats in the election following the passing of their redistricting plans; however, as there was a rise in two-party competition and wave elections, the effects of redistricting were minimized.

Floterial Districts and At-Large Districts

In addition to redistricting in general, state legislatures use mechanisms to redistrict in order to control the translation of votes into seats. These mechanisms include single-member, multi-member, floterial, and at-large districts. New Hampshire's state legislature uses a combination of these types of districts to redistrict. A single-member district is a district that has one representative, while a multi-member district and at-large district allows voters to elect multiple representatives. A floterial district is a district drawn over multiple existing districts which independently would not be entitled to another representative, but together can receive an additional representative. For example in the 2012 redistricting plan, Manchester Wards 8 and 9 were combined into a floterial district with Litchfield. Individually, Manchester Ward 8, Manchester Ward 9, and Litchfield are multimember districts that individually each have two representatives. The floterial district allows the voters in the two Manchester Wards and Litchfield to elect two additional representatives. The literature on all of these types of districts questions the consequences of using one type of district over the other. In addition, two main concerns present in the literature are about the effect of these districts on partisan representation and if the districts align with the "one-person, one vote" standard.

Floterial Districts

Floterial districts are a redistricting mechanism that is not as easily understood and not as widely used compared to single-member, multi-member, and at-large districts. While Hamilton states that the *Reynolds* decision "casually, endorsed both multi-member districts and floterials," he also notes that the "application of the equal representation doctrine to floterial districts is a conundrum" (1967, 332). While floterial districts have the potential to allow for gerrymandering, they often confuse the redistricting process by making it difficult to maintain equal

representation, as required by the *Reynolds* decision. Some of the literature even questions whether the equal representation requirement is upheld when floterial districts are used, because representatives of floterial districts have more constituents than those representing a single-member district.

In addition, computing the deviation in representation between floterial districts and the other districts is complicated. Moncrief describes how multi-member districts are considered to have equal representation to single-member districts because a simple ratio of representatives to population can be used. For example, if a single-member district has 1,000 constituents and a three-member district has 3,000 constituents, then these two districts are considered to have equal representation (Moncrief 1989, 254). However, a simple ratio of representatives to population cannot be used for floterial districts. The *Reynolds* decision addresses the process of computing deviation by stating, “Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable” (Moncrief 1989, 257).

In recent state court cases on floterial districts, including the New Hampshire case *Boyer v. Gardner* (1982), states have used and accepted the aggregate method to compute deviation (Moncrief 1989, 258). The aggregate method uses a ratio of the representatives to total population in the floterial district (Moncrief 1989, 257). The New Hampshire Supreme Court reversed its decision on using the aggregate method for floterial districts in *Representative Peter Burling v. Gene Chandler* (2002). The Court stated that the aggregate method is an appropriate means of calculation deviation for only multi-member districts, but not floterial districts because “it masks substantial deviation from the one person/one vote principle” (*Representative Peter Burling* 2002, 9). Despite the deviation problems that may arise with floterial districts, Moncrief

does not suggest that states should avoid using floterial districts. Rather he suggests, “floterial districts may provide a reasonable solution to the problem of accommodating the requirements of both the federal and state constitutions” (Moncrief 1989, 261).

In recent years, the New Hampshire state legislature has added floterial districts to their redistricting process. After a constitutional amendment in 2006, floterial districts were added to Article 9 of the state constitution. In 2002, prior to the constitutional amendment, the New Hampshire state legislature used floterial districts in their redistricting plan. Shortly thereafter, the New Hampshire Supreme Court heard a case questioning if the new plan using floterial districts violated the “one-person, one-vote” standard. The New Hampshire Supreme Court argued that floterial districts did in fact lead to “voting right inequities” (*Representative Peter Burling* 2002, 6). The Court calculated the range of deviation between districts and found that the floterial districts created an unacceptably high deviation. Therefore, the New Hampshire Supreme Court proposed a new redistricting map without the use of floterial districts. The New Hampshire Supreme Court concluded that using the floterial districts in the redistricting plan caused an unacceptably large deviation between districts and thus were an “unsound redistricting device” (*Representative Peter Burling* 2002, 12). The New Hampshire Court’s ruling aligns with that of the literature on floterial districts, which is that floterial districts are confusing and complicated. This thesis will look at this institution and how it is used in the translation of votes into seats as the Republican Party in New Hampshire attempts to maintain party control.

At-large Districts

At-large districts, similar to floterial districts, group voters together in a way that will influence the outcome of the election and the party composition of the legislature. An at-large district allocates several representatives to a town. Since several representatives are apportioned

per at-large district, the literature discusses multi-member and at-large districts interchangeably. The literature on multi-member districts, and Courts hearing cases about multi-member districts, question whether they allow for equal representation and if they have any influence on partisan control. In *Reynolds* the Supreme Court did not directly give an opinion on whether multi-member districts are constitutional. Hamilton, however, argues that the Supreme Court ruling for *Reynolds* does suggest that there are legitimate reasons for using multi-member districts. These include “[preserving] the integrity of political subdivisions, [utilizing] natural or historical boundaries, and [achieving] ‘some flexibility’” (Hamilton 1967, 334). In addition, the *Reynolds* decision states that equal representation does not necessarily require the use of only single-member districts, but this is rather ambiguous. In *Fortson v. Dorsey* (1965), the petitioners claimed that voters in multi-member districts did not have the same capability of electing their representatives as the voters in single-member districts (Grofman 1981, 877). The Supreme Court further clarified their view of multi-member districts in this case, by stating that multi-member districts are acceptable as long as the “‘overriding requirement’ is ‘substantial equality of population’” (Hamilton 1967, 334). Therefore, multi-member districts are considered to be constitutional by the Supreme Court and thus do not violate the “one-person, one-vote” standard. New Hampshire uses a combination of multi-member districts and single-member districts, which according to the Supreme Court is an acceptable method of redistricting to achieve equal representation.

The other literature on multi-member and at-large districts questions whether these districts encourage partisan results, considering that multi-member districts “were created or maintained for the purpose of illegal discrimination against racial or linguistic minorities” (Niemi, Hill, and Grofman 1985, 441). In addition, historically at-large districts were drawn to

prevent the election of Republicans and African Americans in the South (Bushman and Stanley 1971). Grofman acknowledges, as other scholars have, that although at-large districts are not always adopted with the goal to weaken the minority votes, there have been “instances where cities have changed to at-large systems as tactics to dilute Black political influence” (Grofman 1990, 882). Bushman and Stanley highlight how in the mid-1960s when the Republican Party and African Americans gained political power in the south, at-large districts “diminished their potential for electing Senators from their racial or political group” (1971, 665). While at-large districts are not used to strategically group based on race, they have been used to group voters based on political party.

Niemi, Hill, and Grofman question how often minority party candidates can be elected in multi-member districts. Interestingly they find that New Hampshire in 1980, along with several other states, had more minority party representation in multi-member districts than in single-member districts (1985, 448). However, Niemi, Hill, and Grofman fail to recognize that the majority of House representatives in New Hampshire are elected from and represent multi-member districts. Therefore, there is a greater chance of minority party candidates winning in multi-member districts than single-member districts. Additionally, in 1980 only a total of 160 members of the minority party were elected from the multi-member and single-member districts out of the total 400 members.

In another test, Niemi, Hill, and Grofman compare the percentage of minority party representation in the chamber that uses only single-member districts to the chamber that uses single-member and multi-member districts in 1966, 1972, and 1980. Their results show that in New Hampshire the minority party was able to receive more representation in the chamber that only uses single-member districts, which is the State Senate (Niemi, Hill, and Grofman 1985,

450). They, however, do not accurately depict the fact that the State Senate in New Hampshire is significantly smaller than the House of Representatives, and consequently there are fewer districts drawn for the State Senate. As McDonald argues, it is easier to gerrymander and strategically group voters when there are more legislative districts (2004, 374), such as in the New Hampshire House of Representatives. Thus, their tests do not consider New Hampshire's unique state legislature, with the State Senate having only 24 members compared to the 400-member House of Representatives. In general, Niemi, Hill, and Grofman conclude that multi-member districts do not over represent or under represent the minority party (1985, 453), but recognize that there are outliers in their tests. New Hampshire could be considered an outlier, and as a result their conclusions may not apply to New Hampshire multi-member districts. Therefore, the following chapters will explain instances of the Republicans in the New Hampshire House translating votes into seats by creating districts that underrepresent the minority party.

An example of an at-large seat in New Hampshire is the town of Salem. The New Hampshire state legislature has consistently districted the town as an at-large district with nine representatives. The New Hampshire constitution allows towns, such as Salem, to decide to divide their town into two or more representative districts (N.H. Const. Pt. II, Art. 11-a). For example, Nashua is divided into nine wards, with each ward having three representatives. Salem, however, has chosen not to divide their town into wards because of political reasons. Salem is largely a Republican town, and if the town were to redistrict into wards, Democratic voters may be districted into the same ward. This would potentially allow for Democratic candidates to win. Without wards, every Salem voter will vote for nine representatives. Since the voters in Salem generally align with the Republican Party, it is most likely that the Republican candidates will

receive the majority of votes. As Durfee discusses, at-large seats typically have more candidates on the ballot, which makes it “impossible for the electorate to acquaint itself with the qualification and records of so many men” (1945, 1101). Therefore, voters will likely vote a straight party ticket, resulting in one party receiving the majority of the seats. While this institution is not unique to New Hampshire, at-large districts have assisted the state legislature in grouping voters so that the translation of votes into seats leads to one-party control.

Conclusion

Floterial districts are similar to at-large districts because they allow politicians to strategically group voters. These districts, as the literature suggests, help politicians gerrymander and can potentially assist legislatures in creating plans that follow both federal and state constitutional requirements. This thesis will explain how floterial districts are specifically used by New Hampshire politicians. Additionally, this thesis will explain how the use of floterials changed because of court rulings and their effect on assisting the Republican Party in maintaining control in the House.

Ballot Design

In addition to the manipulation of the electoral systems through redistricting, floterial districts, and at-large districts, Taagepera and Shugart argue that the manipulation of ballots can also affect the electoral system in the translation of votes into seats (1989, 19). Politicians create electoral laws manipulating “how citizens vote and how these votes are counted; what the district structure of the polity will be; and how counted votes are translated into seats” (Cox 1997, 38). Therefore, the redistricting of voters takes into consideration which political party a citizen will cast their vote for, but it does not influence how a constituent will vote. Thus, when designing

the ballot a politician will consider: if the constituent is voting for the candidate or the party, how many votes a constituent will cast, and what “seat-relevant votes” the constituent may be casting (Cox 1997, 40-41). Politicians will often provide the voter with cues to influence the voter’s decisions, such as party labels. Therefore, ballot design, such as straight-ticket voting, is a strategy used by politicians to affect the electoral system in the translation of votes into seats.

History of the Australian Ballot

In the early 1890’s most states adopted the Australian ballot, and since then states have made alterations to the format of their ballots (Rusk 1970, 1220). Prior to the Australian ballot, each party was responsible for preparing their own ballot, referred to as a party strip ticket. The tickets had only the candidates of their party and were specifically made to be distinguished from the other party’s tickets. A voter was only able to pick one ticket and publicly place it in the voting box, thus making voting during this time not private. With the implementation of the Australian ballot came the secret ballot. Since the state government was now responsible for preparing the ballot, they made every ballot identical and included all of the candidates from both parties. Each state was then able to individually format their ballots, but the general layout was of the Australian ballot form. In general, states either adopted the “Massachusetts office bloc” or the “Indiana party column.” Massachusetts’ ballot was divided into blocs based on office, which was seen as a nonpartisan method. The Indiana ballot was formatted into columns based on political parties, which was essentially a combination of the party strip tickets used prior to the Australian ballot (Rusk 1970, 1221). An important difference between the party strip tickets and the Australian ballots was that the Australian ballots made it easier to vote split ticket, meaning voters could vote for candidates of different political parties (Rusk 1970, 1222). However, the Indiana ballot version of the Australian ballot was so similar to the party strip

tickets that originally voters did not take advantage of the split ticket opportunity because of habitual voting. Jerrold Rusk concludes in his study of the Australian ballot that “ticket-splitting is significantly higher under the less partisan arrangement of the office bloc form than under the party column type” (1970, 1231).

A 1964 *New York Times* article claims that ticket splitting has grown so much over the years that 20 states, including New Hampshire, decided to implement straight-ticket voting (Loftus 1964). New Hampshire did not originally use the party columns version or straight-ticket version of the Australian ballot. Thus, there were more split ticket votes in the second election after the implementation of the Australian ballot than before (Rusk 1970, 1231). Rusk argues that straight-ticket voting is similar to the party column format, in that it encourages voters to vote along party lines. In addition, he concludes that the straight-ticket and emblem version used on the party column ballots decreases split ticket voting even more (Rusk 1970, 1235). New Hampshire used a straight-ticket ballot with an emblem for many years, until this type of ballot was repealed in 2007. Since state legislatures have the ability to alter the format of their election ballots, decreasing split ticket voting is a method used to maintain party control from the top of the ticket to the bottom.

Straight-Ticket Voting

While other states have straight-ticket voting, New Hampshire’s straight-ticket ballot, which was eliminated in 2007, differed from the other states (Niemi and Herrnson 2003, 321). There is no official name for the type of ballot New Hampshire uses, but Niemi and Herrnson refer to it as the “straight ticket with exception” (2003, 321). The instructions on the New Hampshire ballot read:

Make a cross (X) in the square opposite the political party of your choice if you wish to vote for all candidates running in that party. [I]f you vote a straight ticket, but wish to vote for one or more individual candidates, you may do so, and your vote for an individual candidate will override the straight party vote for that office. (Niemi and Herrnson 2003, 321-2)

Niemi and Herrnson described the instructions as, “while logically correct, the instruction is devilishly complicated” (2003, 322). Where these directions and process become confusing is with the multi-member districts in the lower house of the state legislature. “If one voted, say, a straight Democratic ticket but then chose one Republican in a three-person district for state representative, it would not be clear which two of the three Democratic candidates one wished to vote for” (Niemi and Herrnson 2003, 322). In addition, straight-ticket voting allows for the lower offices, such as County Treasurer, County Attorney, Sherriff and County Commissioner, who are all elected in New Hampshire, to receive more votes than they would without straight-ticket voting. This is because by checking the straight-ticket box, these lower offices receive a vote even if the voter may not intend to elect this candidate. In addition, these lower offices, including the House of Representatives, will often receive a vote during Presidential election years when there is the “coattails effect.” The “coattails effect” is the idea that in presidential election years non-consistent voters will vote for not only the presidential candidate, but also for the lower office candidates of the same party. Thus, straight-ticket voting helps ensure that lower offices will receive votes.

Using straight-ticket voting ballots can help guarantee that voters will elect more representatives from the same party. There is extensive literature on how voters use “shortcuts” to inform their votes, such as party cues (Bartels 1996; Kam 2005). For example, Popkin refers to these short cuts as “low-information rationality, or gut reasoning” (Kam 2005, 164; Bartels 1996, 197). Kam argues that voters may vote for a particular party because that party’s policies

“resonate” with that voter’s values (Kam 2005, 165); however, this does not necessarily mean that the candidate in that party has the same values as the voter. Kam’s results find that “The less politically aware can arrive at convergence between party identification and issue opinions by toeing the party line—if they know what the party line is” (Kam 2005, 177). Yet, voters will still choose to vote for the candidate in the party they most align with because they see it as an informed decision. On the other hand, Bartels finds that although uninformed voters use cues, such as political parties, to assist their votes, this does not necessarily mean that their vote is fully informed (Bartels 1996). While voters may vote along party lines, such as checking the straight-ticket box, their vote is not necessarily fully informed and thus points to how straight-ticket options can be used to manipulate votes. Therefore, while Kam and Bartels find reasons for why not all voters will blindly vote along party lines, enough uninformed voters will choose to use party cues to make their decision. Straight-ticket voting encourages voters to use party cues, because the ballot includes a box that makes it simple for voters to vote along party lines.

Ballot Structure

In addition to party cues, the ordering of the party columns or candidate’s names on the ballots can also serve as voting cues. Studies have shown that “primacy effects” occur with voters and the structure of a ballot. A “primacy effect” is when there is a bias “towards selecting the first object considered in a set” (Miller and Krosnick 1998, 293). Thus, when a candidate’s name is listed first, possibly because of alphabetical order, they are more likely to be selected by an uninformed voter. In their study, Miller and Krosnick found that in cases when the voter is less knowledgeable about politics and when it is not a highly publicized race, that the order of candidates’ names on the ballot may influence the voter (Miller and Krosnick 1998). In cases of a ballot that uses the party column format, there is primacy effects for the candidates of the party

listed first. Since studies have shown that there are “primacy effects” in relation to ballot structure, it is significant who designs the ballot and how it is designed.

Conclusion

The literature on ballots suggests that the structure of the ballot can significantly influence how a voter will cast their vote, especially uninformed voters. In New Hampshire, the Republican Party strategically designed the ballot to include the straight-ticket option as well as mechanisms that would guarantee that Republican candidates would be listed first. This thesis will explain how ballot design is used as another strategy for politicians to translate votes into seats.

Conclusion

Politicians collectively use institutions like redistricting, flatorial districts, at-large districts, and ballot design in the translation of votes into seats. This thesis will analyze these institutions individually and consider the interplay among them. In addition, this thesis will explain how the translation of votes into seats allows for one-party control in a state legislature in a state that is shifting “colors.” Paul Pierson and Eric Schickler provide the framework for the analysis of these institutions. Schickler argues that, “For each change, the key questions are who sought the change, what interest or interests were pursued through the change, how was the change adopted, and what its implications were for congressional operations and outcomes” (Schickler 2001, 19). These questions will help frame the analysis of each institution through legislative history, bills and testimony. In addition, the outcomes of the institutions designed and their influence on later institutional development will be questioned and examined. As Pierson suggests, one must look beyond the “‘moves’ of the actors’,” and therefore this thesis will

explain how the sequencing of all of the political manipulations of the institutions has allowed the Republican Party in New Hampshire to maintain control of the House of Representatives for so long.

The next chapter will analyze redistricting as a strategy used by the Republicans in the New Hampshire state legislature. The analysis will discuss redistricting in New Hampshire prior to and after, the Supreme Court rulings in *Baker v. Carr* and *Reynolds v. Sims*. These years have been specifically chosen to show how the state altered its redistricting process after the “one-person, one-vote” standard. The other years analyzed will be 1982, 1992, 2002, 2004, and 2012, because significant legislation was passed in all of these years. Tracing through the history of redistricting in New Hampshire will help uncover how this institution was manipulated by the state legislature in the translation of votes into seats.

Chapter Two: Redistricting

New Hampshire representatives use strategies when redistricting to turn votes into seats. This chapter will highlight these strategies, especially as they become more apparent with the rise of two-party competition. Analysis of legislation and testimony of representatives will provide an explanation of the increase in manipulation of redistricting over the years. The following discussed bills highlight significant years for change and the political strategies used in the New Hampshire House. This chapter focuses on redistricting of the New Hampshire House, because in comparison to the State Senate there are more districts to draw, which allows for more gerrymandering. Additionally, the House has had a more consistent Republican majority compared to the Senate. Compared to the House, the majority has fluctuated between parties more in the Senate, as shown in Figure 2.1. Although the Senate has never stopped or amended any House district map proposals, testimony by Senate members on the House plans provides insight into the process. The history of the House legislation will seek to answer which political party was responsible for the change in redistricting and what the goals and results were of achieving the change (Schickler 2001, 19). The specific years chosen, including 1960, 1965, 1982, 1992, 2002, 2004 and 2012, will outline the changes in redistricting and explain an increase in political strategies as the Republican Party felt it was more difficult to maintain control of the House as the state began to turn “purple.” Furthermore, this chapter will explain how previous years of change influenced the institutional design later, and how there were unanticipated consequences.

The following legislation was chosen to provide a better understanding of redistricting as an institution and how it is involved in the translation of votes into seats.² A turning point for the institution in New Hampshire occurred after the 1964 Supreme Court decision in *Reynolds v. Sims*, which required equal representation for voters across a state. A comparison of the 1961 plan to the 1965 plan, created in response to *Reynolds*, highlights the transformation of the institution in New Hampshire. In 1982, flotal districts were used for the first time, and are an example of how mechanisms are used to assist political parties in redistricting. In later legislation flotal districts were used by the Republican Party to gerrymander. As the New Hampshire Democrats became more competitive in state elections through the 1990s, the Republican Party began to propose more partisan plans in an effort to secure their majority in the House. In 1992 and 2002, the Republican Party attempted to displace minority party incumbents by either altering their district or placing them in a district with a Republican incumbent. However, in 2002 the gerrymandering efforts were stopped by the Democratic governor's veto, and as a result the New Hampshire Supreme Court in *Representative Burling v. Gene Chandler, Speaker of the House* (2002) was responsible for drawing the map. Lastly, the 2012 district map was the most partisan bill, which is made evident by the Democratic governor's failed veto and the successful push by the Republican Party to quickly override the Democratic governor's veto.

As the Democratic Party recognized that redistricting legislation was becoming more partisan over the years, they tried to counteract the partisan efforts of the majority party. Therefore, the Democratic Party started proposing redistricting commissions as they gained strength as a party in the 1990s. These bills were proposed by only Democratic House members and only in the years that they were in the minority. This chapter will analyze legislation of

² The New Hampshire constitution requires redistricting plans to be completed prior to the candidate filing period in June. So, all of the redistricting bills discussed in this chapter were in effect for the general election that same year.

redistricting maps and redistricting commissions to explain when and why certain redistricting mechanisms were implemented, how the rise of two-party competition affected the Republican Party's strategy, the involvement of the Courts in the process, the clear partisan divide between plans, and how in some years there were instances of unanticipated consequences.

Constraints on Redistricting in New Hampshire

New Hampshire's state legislature is responsible for drawing the district maps every ten years; however, there are constraints on the process. These constraints, including federal, statutory, and state constitutional requirements, shape the redistricting process in the state. The state legislature has found that some of these constraints assist gerrymandering, while others inhibit it. The most difficult requirement for the legislature is to balance the federal requirements and the state constitution.

The New Hampshire state constitution gives the state legislature the power to redistrict the state. In Article 9, it states that the legislature may not divide towns, wards, or unincorporated places when drawing the map (N.H. Const. Pt. II, Art. 9). If towns are contiguous, the constitution allows the legislature to combine them into a multi-member district (N.H. Const. Pt. II, Art. 11). The legislature, however, will not cross county lines when drawing the districts, which is only a statutory requirement. In New Hampshire the County Convention members are the state representatives, pursuant to RSA 24:1 (N.H. Rev. Stat. Ann. §24:1). The responsibilities of the County Convention are to "raise county taxes, make appropriations, and authorize the purchase or sale of county real estate" (*Richard E. Boyer* 1982, 5). Although it has been suggested that changing this statutory requirement would make the redistricting process easier, there have been no efforts to change this. Additionally, it has been suggested that this structural requirement allows for more gerrymandering. Therefore, the state representatives are constrained

by state requirements to not divide towns, wards, or unincorporated places and not crossing county lines. Additionally, the state representatives have to keep in mind the federal requirements to keep a low statewide deviation and abide by the “one-person, one-vote” principle.

In respect to statewide deviation, New Hampshire representatives have looked to the federal government for this requirement. The United States Supreme Court rulings have concluded that the state legislature is responsible for providing a justification for higher deviations (N.H. House. Special Committee on Reapportionment 1982a). The first time the Supreme Court indicated the proper amount of deviation for redistricting was in 1973 in *Mahan v. Howell*, in which the Court heard a case about the Virginia state legislature plan. While the maximum deviation was 16.4 percent, the Court upheld the Virginia plan because the state drew the legislative districts based on existing city and county political boundaries. In *Reynolds* the Court ruled that,

So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature. (Epstein 2013, 760)

Therefore, since Virginia’s district maps respect city and county lines, the Court ruled that this is a rational state policy. Even though the Court approved Virginia’s plan, they did suggest that the deviation “may well approach tolerable limits” (*Mahan* 1973, 6).

In addition to the *Mahan* ruling, New Hampshire has looked to two other Supreme Court cases for guidance. The Court also heard *Gaffney v. Cummings* in the same year as *Mahan*, and ruled that “there will be deviations that are sufficiently large to establish the prima facie case of violation, but which will be sustained by the courts if shown to be justifiable by the states” (N.H.

House. Special Committee on Reapportionment 1982a). In *White v. Regester*, the Court cautioned that “very likely, larger differences between districts would not be tolerable without justification” (N.H. House. Special Committee on Reapportionment 1982a). The New Hampshire House, in 1982, used these three Supreme Court decisions as a guide to their statewide deviation requirements. The legislature agreed that their deviation should not exceed 16.4 percent, and if it was high then they should have a justification for why this was the case.

After the New Hampshire 1982 redistricting plan, the Supreme Court issued their ruling for *Brown v. Thomson* (1983), which further defined the deviation requirements for legislative districts. The Supreme Court reviewed a Wyoming House of Representatives district, and in the decision clarified that previous Court rulings have “established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations” (*Brown et al.* 1983, 9). In later redistricting plans, the New Hampshire state legislature has been advised to keep their statewide deviation under ten percent. However, the House has drawn several plans that exceeded ten percent, including the previous 1982 plan, and the 1992 and 2002 maps. In 1992, a representative stated “Ideally the courts say that you [should] be no more than 10%. We historically have been higher and will be high again this year” (N.H. House. Constitutional and Statutory Revision 1992, 2). Part of the reason the redistricting plan was sent to the Court in 2002 was because of its high statewide deviation, and as a result the House took care to keep the deviation below ten percent in the 2012 plan.

Another constraint on redistricting in New Hampshire is that the state is subject to preclearance under Section 5 of the Voting Rights Act (U.S. Dept. of Justice. “Section 5 of the Voting Rights Act”). The Voting Rights Act was enacted in 1965 to “eliminate discriminatory election practices” (U.S. Dept. of Justice. “The Voting Rights Act of 1965”). Section 2, including

the amendments, prohibits voting practices and procedures “that discriminate on the basis of race, color or membership in a language minority group” (U.S. Dept. of Justice. “The Voting Rights Act of 1965”). Section 5 of the act requires covered jurisdictions to receive preclearance from the United States District Court or the Attorney General before making any change with respect to voting, including redistricting. A “covered jurisdiction” is a state, or part of a state, that has a “‘test or device’ restricting the opportunity to register or vote,” less than 50 percent of people of voting age registered to vote, or less than 50 percent of registered voters voted in the most recent presidential election (U.S. Dept. of Justice “Section 5 of the Voting Rights Act.”). In 1970, ten New Hampshire towns, including Rindge, Millsfield, Pinkhams Grant, Stewartstown, Stratford, Benton, Antrim, Boscawen, Newington, and Unity, became “covered jurisdictions” under the act.

New Hampshire’s ten towns became covered jurisdictions in 1970 because at the time the federal government was concerned about voter suppression, and the state had a literacy test and less than 50 percent of the registered voters voted in the 1968 presidential election in the towns (Haddin 2012). A literacy test was implemented in the state in 1902, when many other states were also implementing similar tests because of the high level of illiterate citizens (Tucker 2009, 7). By 1970, several cities and towns in the state were no longer using the literacy test, but it had not been repealed from the state laws. In fact, in the *Nashua Telegraph* in 1962, an article stated,

In all of the hullabaloo about the use by some Southern states of literacy tests to bar Negroes from voting, it has been generally forgotten that a lot of Northern states, too, have such tests, although they seldom are used. We would say that few New Hampshire residents know that New Hampshire has some form of a literacy test to determine the qualification of a voter in this state. (“N.H. Vote Test”)

The newspaper article further suggests that the literacy test was rarely used in the state, but had not been repealed or amended. The law was not repealed until 1976, after the ten towns became

covered jurisdictions, when the State Senate put forth a bill to repeal the literacy test. Senator Monier urged the passage of the law and said,

We have it still on the books that we do have literacy tests and obviously everyone is well aware that the Supreme Court has overruled this [...] I might add that there is a House Concurrent Resolution coming forth also that would ask the Secretary of State to notify the town clerks. There seem to be some persons in the state that are charged with the responsibility of voting that haven't recognized yet that we don't have literacy tests. This removes from the books an archaic statute which is already outdated. (N.H. General Court 1976, 112)

The Senate bill and House concurrent resolution both passed, and the use of literacy tests in the state ended. However, since 1970 the ten towns in New Hampshire have continued to be covered jurisdictions, and thus any change to New Hampshire electoral laws has to receive preclearance by either the United States Department of Justice or the United States Attorney General.

The Voting Rights Act has a bailout provision, which allows a covered jurisdiction to terminate their coverage under the act. In order to end its coverage, the jurisdiction must have eliminated the voting procedures that originally qualified them to be covered under the act. Additionally, there are several requirements the jurisdiction must prove they have met or not infringed over the past ten years, including that they have not had a literacy test or device, all of the changes have been reviewed, none of the changes have been objected to by the District Court or Attorney General, none of the changes have been subject to a lawsuit, and the changes have not violated the Constitution, federal, state, or local laws with respect to voting discrimination (U.S. Dept. of Justice. "Section 4 of the Voting Rights Act"). After the 2012 redistricting plan was cleared, the state of New Hampshire filed for a "bailout," which means that the state would be exempt from the preclearance process in the future. In the petitioner briefs in *New Hampshire v. Eric Holder*, the state of New Hampshire argues that the ten towns have met all of the bailout requirements for the past ten years (Complaint, *The State of New Hampshire v. Eric Holder*

2012). On March 1, the United States District Court approved New Hampshire's bailout (Wickham 2013).

These constraints shape the redistricting process in New Hampshire and should be kept in mind for the bills discussed in this chapter. The limitations on the redistricting process in the state began after a Supreme Court ruling in 1964. Starting with the 1965 redistricting plan the state legislature has had to be cognizant of state and federal requirements. The difficult balance between the state constitution and the federal requirements were apparent in the 2012 redistricting plan, especially after a 2006 state constitutional amendment. The changes to the state and federal laws on redistricting, in addition to the politics of the state, shaped the way the Republican Party used redistricting as a strategy over the years.

1961 and 1965 Redistricting Plans: Influence of “one-person, one-vote” standard

The Supreme Court rulings in *Baker v. Carr* (1962) and *Reynolds v. Sims* (1964) mark a significant change in the redistricting of state legislative districts across the country, including in New Hampshire. Prior to 1964, the year that the state amended the state constitution to require equal representation, the legislative districts in New Hampshire were highly malapportioned. A significant factor adding to the malapportionment was the use of part-time representation, which was added as an amendment to the state constitution in 1942. The amendment required that small towns received representation at least once every ten years. The statute in 1961, the last year part-time representation was used, stated

The following named towns, according to the census of 1960, having less than the number of inhabitants necessary to entitle such towns to one representative and having a right under the constitution to elect a representative such proportional part of the time. (N.H. Rev. Stat. Ann. §275)

For example, in 1961 the state legislature decided that the town of Madbury was allowed to elect and send a representative to the state house in 1962, 1968 and 1970, while the town of Bridgewater could send a representative only in 1964 (N.H. Rev. Stat. Ann. §275). The state legislature determined which years the small towns could send a representative based on the practice that the smallest towns could elect and send a representative once during the decade, while the larger towns could elect and send a representative four out of the five legislative sessions in the decade. While at this time the House did look to the census to determine the required number of people per town to receive representation, this did not guarantee equal representation across the state. Thus, it has been suggested that during this time representation in the House was based on a “one-town, one-vote” standard, not the “one-person, one-vote” standard (*Representative Peter Burling* 2002, 4).

The use of part-time representation illustrates how the state legislature used geography as the basis for districting. The single changing factor for redistricting was the required population size for representation, based on the results of the census. At this time, the district lines were the town lines, and redistricting was simply the process of deciding how many representatives each town could have and which towns would receive part-time representation. In 1964, the decision in *Reynolds* resulted in the “one-person, one-vote” principle, suggesting that equal representation had to take precedence over geography. This provided a shift in the redistricting process in the state, from traditional geography based maps to prioritizing equal representation.

1965 Redistricting Plan

After the Supreme Court ruling came out with the “one-person, one-vote” standard, the New Hampshire House of Representatives passed a redistricting plan in 1965, House Bill (HB) 712. This bill repealed the part-time representation of small towns and combined those small

towns to form districts. HB 712 was a significant change from the traditional process of basing the map on geography, to now combining and dividing towns into wards to create equal representation across the state. Now that the state legislature had the power to draw district lines, they had the opportunity to gerrymander, especially in later redistricting legislation. When HB 712 was brought to the House floor, there were no partisan floor debates (Gardner 1993, 169) and the bill was passed. HB 712 was then sent to the State Senate and passed. Republican Senator English presented the legislation to the Senate floor and said, “The House has done a heroic job in bringing about this re-apportionment” (N.H. General Court 1965a, 940). Democratic Senator Martel suggested that the Senate should not change any redistricting efforts by the House, because “The House does as it concerns itself—that is their business” (N.H. General Court 1965a, 940). Although there are no roll call votes for the House or Senate, or testimony from the House, the Senate testimony points to there not being a partisan divide on redistricting at this time. Rather, it seems that the main goal of the General Court was to create a plan that would abide with the recent Supreme Court rulings.

Without roll call votes or recorded House testimony, conclusions about the institution during this time can be drawn from the existing political composition of the state government during the drafting of the legislation and the results of the election after the passing of the bill. When HB 712 was proposed, the state government was divided politically, with a Democratic governor and the Republican Party having a majority in both legislative chambers. In the 1966 election, directly following the passing of the redistricting plan, the Republican Party gained 30 seats in the House (Dublin 2007, 123), while a Democratic governor and United States senator were elected (N.H. Dept. of State 1967, 438). The fact that the Republican Party gained seats in the House of Representatives and Democrats won at the top of the ticket, suggests that

gerrymandering could have occurred. While a main goal of the legislature was to draw a constitutional district map, because the 1961 plan did not satisfying the “one-person, one-vote” standard, it is quite possible that the House of Representatives saw this mandatory redistricting as an opportunity to gerrymander.

In more recent legislation that displays clear gerrymandering efforts, there is often pushback from the minority party, but this did not happen in 1965. There might not have been much pushback from the Democratic Party because they may have seen HB 712 as mandatory legislation, and were concerned that it would have reflected poorly on the party to oppose the bill. The Democratic governor may have also decided to sign the bill for the same reasons, fearing that vetoing the legislation would have hurt his reelection. On the other hand, it is possible that the Democratic Party recognized that as the minority party, with only 183 Democratic members compared to 215 Republican members (Dublin 2007, 123), they had little influence on the legislative agenda. For example, it would not have been possible for the Democratic Party to convince enough Republican members to vote against the bill. Additionally, the Democratic Party may have known that with or without gerrymandering the political makeup of the state at the time was such that the Democratic Party would, no matter what, stay in the minority.

Without any obvious pushback from the Democratic representatives and Democratic governor against the redistricting bill, there is no apparent answer as to whether the purpose of the bill was only to create a district map with equal representation or if the bill had partisan motives. New Hampshire Secretary of State William Gardner suggested that “there was little controversy” and “no partisan floor debates” during the drafting and voting of the 1965 plan (Gardner 1993, 169). However, the fact that the Republican Party gained 30 seats in the House, while a Democratic governor and United States senator were both elected, cannot be ignored.

Conclusion

The *Reynolds* decision changed the redistricting process in New Hampshire. Prior to the Supreme Court ruling the state was not as cognizant of the “one-person, one-vote” principle that emerged from *Reynolds*. For example, the state had previously used part-time representation, which certainly did not allow for equal representation. After the *Reynolds* ruling the state changed its method of redistricting to make certain there was equal representation for the voters. Additionally, having the ability to draw district lines opened up the opportunity to gerrymander in later years. As a result, redistricting has become more complex over the years, as the goals and motivations of the political parties have deviated, and new mechanisms for redistricting have been introduced.

1982 Redistricting Plan: The Introduction of Floterial Districts

In contrast to HB 712 in 1965, the political parties were more divided on the 1982 redistricting plan. The majority and minority parties came out of the committee both agreeing that HB 2 “Ought to Pass with Amendment,” but the parties proposed different amendments. The minority party, the Democrats, claimed that their amendment changed the map so that it kept the traditional, “small district representative government” (N.H. General Court 1982, 54). They also argued that their plan lowered the statewide deviation to 13.13 percent, while the majority party plan had a deviation of 13.74 percent. The majority party, on the other hand, argued that their map put aside the desires of the incumbents and the political leaders in order to create the fairest plan and one that complied with the “one-person, one-vote” standard (N.H. General Court 1982, 54). The majority party amendment was adopted, and the bill was passed by the House.

In the Senate, the bill was discussed as a partisan bill and sloppy legislation, but nevertheless the bill passed in the Senate. While the Senate Reapportionment Committee

unanimously recommended that the bill “Ought to Pass,” several senators testified on the Senate floor in opposition to the bill. Democratic Senator Preston read a letter from the speaker of the House stating, “The Majority Report deserves our united Republican support. Throughout both the regular and special session, the overwhelmingly consistent support to the Majority Committee position has been the key factor in the Republican leadership role in state government” (N.H. General Court 1982a, 178-9). Senator Preston, although not openly testifying in favor or in opposition to the bill, argued that the redistricting plan is already “predetermined” by the people in the leadership. In other words, Senator Preston was suggesting that the Republican Party clearly controlled the redistricting plan, as evident from the letter and the bill that was passed through the House. Several other senators argued that the number of representatives in their districts was unfairly decreased and so they would vote in opposition to the bill. Although the Democrats found HB 2 to be Republican controlled and several Republican senators threatened to vote in opposition, the bill still passed the Senate fourteen to nine.

Floterial Districts

HB 2 is a significant piece of legislation in the history of redistricting in New Hampshire, because it was the first plan to use floterial districts. A floterial district is a district drawn over multiple preexisting districts, in order to provide an additional representative to the towns that alone do not meet the population requirement to receive another representative. An example of a floterial district in HB 2 consisted of the towns of Wear, New Boston, Francestown, and Bennington. The town of Wear had a population of 3,232 and was given one representative, while the New Boston, Francestown, and Bennington district had a population of 3,648 and was also allotted one representative. In the 1982 plan the ideal population to receive one representative was 2,300 people, and so these districts individually were just under the

population requirement to receive two representatives.³ The floterial district drawn over these two districts was drawn to help correct the “fractional underrepresentation” for the two districts individually (*Richard E. Boyer* 1982, 2). How floterial districts are used and their impact on the redistricting process will be discussed in greater detail in the next chapter.

Both the minority and majority parties in 1982 agreed that floterials were necessary to help decrease the state deviation in HB 2. However, the use of floterial districts in HB 2 did turn off some representatives. For example, Democratic Representative Hendrick went on record in opposition to the bill because he opposed a floterial that combined Litchfield and Merrimack. While Representative Hendrick argued that the floterial district did not accurately comply with the “one-person, one-vote” principle, there were obvious underlying partisan concerns in his opposition (N.H. General Court 1982, 66). Prior to the 1982 changes, Litchfield and Merrimack were combined as one district and apportioned five representatives. Representative Hendrick was the only Democratic representative in the district (N.H. Dept. of State 1981, 335). HB 2 apportioned one representative to Litchfield, six representatives to Merrimack, and one representative to the floterial district. In the 1982 election, Representative Hendrick was reelected in the Litchfield district, but the other six representatives in Merrimack and the floterial district were all Republicans (N.H. Dept. of State 1983, 265-266). Therefore, the floterial district helped the Republican Party gain a seat.

Floterial districts were introduced in 1982 as a way of lowering the statewide deviation. Since the legislators were having a difficult time allocating representatives to the smaller cities without creating high levels of statewide deviation, the speaker of the House introduced floterial districts as a solution to lower the deviation. Drawing the lines for the small towns most likely

³ The ideal population is the population requirement for a town to receive one representative. The ideal population is figured out by dividing the state population by 400, which is the number of House Representatives.

became an issue in 1982 because of a significant increase in the state population. Compared to previous census years, the 1980 federal census showed the largest percentage increase in population in 30 years, of 24.8 percentage points. Additionally, there was a significant increase in population in the rural areas in the state, of 36.9 percentage points in ten years (U.S. Census Bureau 1981). This percentage increase helps explain why floterial districts may have been implemented because as Moncrief quotes,

in theory, they [floterial districts] are a way of achieving greater arithmetic equality in situations where there are political subdivisions of varying sizes whose populations do not neatly accord with the representation ratio, while at the same time preserving the integrity of the boundaries of traditional political subdivisions (Duncombe and Stewart 1985; Dixon 1968, 461). (Moncrief 1989, 253)

In other words, Moncrief suggests that floterials are used by representatives because they believe floterials will help fix the deviation problem between the various sized districts in the state. In practice, floterial districts should help equalize the deviation between rural areas, where the population is more spread out, compared to concentrated, urban areas. Thus, the New Hampshire state legislature pursued floterial districts as a way of creating equal representation across the state.

Floterial districts are not unique to New Hampshire, and in fact the speaker of the House learned about this type of district from Virginia. Other states that have experimented with floterial districts include Oregon, Mississippi, New Jersey, Georgia, and Wyoming (Moncrief 1989, 252-3). Floterial districts were also used by the Tennessee legislature and were addressed in *Baker v. Carr*. The concurring and dissenting opinions in *Baker* both suggest that floterial districts often confuse the calculation of the state deviation. In fact in *Boyer v. Gardner* (1982), a New Hampshire District Court case, the question of how to properly calculate floterial districts in the state deviation was addressed, and will be explored in more detail in the next chapter.

Partisan Divide

Considering that the 1982 redistricting plan displayed a greater partisan divide than the previous two plans, in 1965 and 1972, the Democratic Party was “severely critical” of their Democratic governor when he did not veto the bill (Gardner 1993, 170). Governor Gallen signed the House redistricting plan after making “an agreement with the speaker to further review certain districts” (Gardner 1993, 170). The speaker of the House claimed to review the bill, but no changes were made. In contrast, the governor vetoed the Senate redistricting bill, most likely because he knew that the Senate, with ten Democrats and fourteen Republicans, would be unable to receive the necessary two-thirds vote to override his veto and be forced to renegotiate a new plan. As a result of the governor not vetoing the House bill, the Democratic House members did not support the governor in his reelection, and consequently he was defeated in the 1982 election. In an effort to make up for not vetoing the House bill, Governor Gallen vetoed all of the House’s city district plans. The Republican Party did not have a two-thirds majority in the House, and as a result was unable to override the governor’s vetoes. When a Republican governor took office the next year, the Republicans were able to pass their city districting plans.

After the city districts plans were approved by the new governor, the full 1982 redistricting plan finally went into effect for the 1984 election. The Republican Party gained 58 seats in the House after the 1984 election, which points to potential gerrymandering in HB 2. However, the increase in the Republican majority cannot be attributed strictly to gerrymandering. As the secretary of state, William Gardner, notes, “the population changes” in the state, “the national trend with President Reagan’s popularity,” and “coattails from the New Hampshire straight-ticket ballot” could have all equally influenced the outcome of the 1984 election (Gardner 1993, 171). Even if the increase in Republican House members cannot be attributed to

HB 2, the 1982 bill is significant because it is the first redistricting plan to include the use of floterial districts, which later become an important strategy used by the Republican Party to maintain their majority.

Conclusion

The 1982 redistricting plan points to the start of partisan division on the redistricting process in the state, although this division becomes much more apparent in later legislation. As the election results presented in Figure 2.1 and Figures 2.3 through 2.8 suggest, the Democratic Party was not as competitive in the state during the passing of HB 2 compared to the 1990s. Even so, HB 2 starts the political party division on House redistricting plans. The use of floterials in HB 2 introduces this mechanism to the redistricting process, and with the rise of two-party competition and increased use of the district, they become a significant source of debate between the political parties.

The Rise of Two-Party Competition

In the 1990s, New Hampshire experienced a shift in its political party alignment. Historically, New Hampshire was considered a Republican state. Leading up to the 2000 presidential election, several events influenced the political shift in the state from being considered a decidedly Republican state to a swing state. A *New York Times* article in September 2000, stated that

New Hampshire could fall either way [...] Historically, the state has been a good bet for Republican presidential candidates, until Mr. Clinton was victorious here twice. The governor, Jeanne Shaheen, is a Democrat in her second term, and made Mr. Gore's short list of possible running mates. Still, 37 percent of registered voters are Republicans, compared with 27 percent who are Democrats. (Flaherty 2000)

In the press coverage leading up to the 2000 election, several other articles referred to New Hampshire as a swing state. While New Hampshire was traditionally only in the spotlight for presidential primaries, the attention continued to be on the state through the general election in 2000. Another *New York Times* article stated that the reason New Hampshire did not receive much attention in past general elections was because,

There was no suspense about the results. The Republican candidate carried the state in every election but one from 1948 until 1988, winning by 29 percentage points in 1980, 38 points in 1984 and 26 points in 1988 [...] Since then, however, population shifts have helped make New Hampshire one of the nation's presidential battlegrounds. (Cohen 2012)

Both of the presidential candidates in 2000 campaigned in the state up until the day of the general election, hoping to win the state that had appeared to change from a guaranteed Republican win. The state began its shift as it voted for the Democratic candidate, President Bill Clinton, in the previous two presidential elections in 1992 and 1996. Additionally, Democratic Governor Jeanne Shaheen was elected in 1996 as President Clinton won New Hampshire for his second term. Governor Shaheen was then reelected in 1998, and was running for her third term in the 2000 election.

The 2000 election results provide further evidence that New Hampshire transitioned from a strong Republican state to a swing state. In 2000 Governor Shaheen was reelected, while Republican President George W. Bush received only 7,211 more votes than Vice President Al Gore. President Bush won by significantly fewer votes than previous Republican presidential candidates had in New Hampshire (N.H. Dept. of State 2001, 350). In the following three presidential elections, New Hampshire went “blue” in all of them, which further clarifies the political party shift in the state. With Democrats winning at the top of the ticket, the Democratic Party displayed their growing strength as a party in the state.

The comparison between the increase in registered independent voters, top of the ticket election results, and the New Hampshire House partisan composition provides an additional explanation of the political shift in the state in the 1990s. Figure 2.2 presents the breakdown of registered Republicans, Democrats, and Independents in New Hampshire from 1984 to 2012.⁴ This graph shows that starting in the late 1990s registered Independent voters began to outnumber registered Republicans and Democrats. Previously, registered Republican voters greatly outnumbered registered Democratic and Independent voters. Although New Hampshire has always had a large number of registered Independent voters, these voters typically voted for the Republican candidates. Additionally, despite the large number of registered Independent voters, no third party candidate has ever gained enough mobilization to win a top of the ticket seat in the state, further clarifying that these voters were not in fact truly Independents.

Although there was an increase in the number of registered Independent voters, who had habitually leaned Republican, the rise of the Democratic Party competitiveness in the state occurred simultaneously. Figure 2.3 shows how Democratic presidential candidates began receiving more votes starting in 1992, when President Bill Clinton won New Hampshire. After 1992, Democrats won the presidential elections in 1996, 2004, 2008 and 2012. Although the Republican presidential candidate, President George W. Bush, won in 2000, he only won by a slim margin. The Democratic Party continued to show its strength through the gubernatorial races, as the Democrats held the office consistently from 1996 through 2002, and 2004 through 2012, shown in Figure 2.4. The United States Senate election results, in Figure 2.5, illustrate how the Republican Party began to win by fewer seats in the 1990s, with the Democratic Party finally winning the Senate seat in 2008 for the first time since 1972. Accordingly Figures 2.3, 2.4, and

⁴ Figure 2.2 provides the breakdown of the political parties of registered voters only back to 1984, because the state did not report these figures before this year.

2.8 show how the Democratic Party gained more votes in these offices over the years, illustrating the increase in Democratic Party strength in the state and thus the growing competitiveness between the two political parties.

The Democratic Party, however, did not display as much competitiveness in the offices that were subject to redistricting, such as in the United States Congress and New Hampshire House of Representatives elections, until much later. Figures 2.6 and 2.7 are of the two Congressional Districts in the state, and illustrate how the Republican Party consistently won these seats until 2006, when the Democrats began winning the office. Figure 2.8 shows the partisan composition of the New Hampshire House of Representatives, and how the Republican Party maintained control even as the Democratic Party began to display strength as a party. The Republican Party was able to maintain control of the House of Representatives through strategies, such as redistricting, discussed in this chapter, and flotalerial districts and ballot design, discussed in the next two chapters. In 2006, despite the Republican Party's strategic gerrymandering, the Democratic Party gained a majority for the first time since 1922 (Dublin 2007, 122). With the Democratic Party winning control of the House of Representative and offices at the top of the ticket in 2006, it became evident that there was officially a two-party competition in the state.

The shift in political alignment in New Hampshire in the 1990s can be partially attributed to the state's changing demographics. In a 2008 study of voter registration patterns in the state, Johnson, Scala, and Smith concluded that the state has one of the most mobile voting populations in the country. The two factors that contributed most to the shaping of the electorate were migration and life-cycle changes. Considering that less than 45 percent of New Hampshire citizens are born in the state, migration contributes to a significant portion of the state population. Those who migrate to the state are generally from the Boston metropolitan area, and settle in the

southern region of the state. Additionally, Johnson, Scala, and Smith discuss how death rates thin the voter pool, but citizens turning 18 replace the deceased. Thus, in the 2008 election young voters and migrants made up about one-third of the potential new voters. Johnson, Scala, and Smith concluded that these new voters typically identify with the Democratic Party, and therefore these new voters had potential to influence election results. The young voters that do register to vote, however, generally register as Independents, which could possibly explain the increase in registered Independents in the 1990s as shown in Figure 2.2 (Johnson, Scala, and Smith 2008).

Although the 1990s can be pointed to as “New Hampshire’s shift from a reliably Republican state to a Democratic-tilting bellwether,” this shift occurred slowly over time and by county (Scala 2011, 1). A study by Dante Scala concludes that there was “slow-motion realignment” in the counties in New Hampshire, because of significant population growth in the state and because of the “changes in the national Republican Party itself” (Scala 2011). For example, in the 1960s the Republican Party dominated five counties in the state, and after a significant population growth in the 1970s and 1980s the Republicans could count on only two counties in 1980. As some counties shifted away from Republican to Democratic tilting, other counties remained Republican. Overall, New Hampshire became less of a decidedly Republican state over the years.

Beginning with President Clinton winning the state in 1992, Democrats displayed their growing strength as a party in the state throughout the 1990s.⁵ In the 2000s, Democrats

⁵ It has been suggested that Ross Perot, the Independent candidate for president in 1992, cost President George H. Bush the presidency. President Clinton won New Hampshire and the Electoral College in 1992. A study of the 1992 election and the effect of Perot on the election found that nationally Perot voters “were *more* likely to be Bush voters than was the rest of the voting population” (Alvarez 1995, 737). The study was based on national election results. While nationally Clinton received 46 percent, Bush received 34 percent and Perot received 20 percent of the votes, in New Hampshire Clinton received 39.23 percent, Bush 38 percent, and Perot 22.77 percent of the votes. Thus, the difference between Clinton and Bush in New Hampshire, compared to the country, was much closer. As a result of

continued to win seats at the top of the ticket and took control of the House in 2006, even as Republicans attempted to maintain control of their majority. Changing demographics in the state influenced the change in voter registration and election results in the 1990s. Between 1998 and 2008, Johnson, Scala, and Smith concluded that there was a 30 percent increase in Democratic Party voter registration, while Republican voter registrations remained rather constant. Additionally, they compared the voter registration in the counties in 1998 to 2008. The graph, Figure 2.9, illustrates that the number of registered Democratic voters increased in every county between 1998 and 2008. Therefore, migration to the state, young voters, and a “slow-motion realignment” of counties in the state influenced the rise of two-party competition in the state (Johnson, Scala, and Smith 2008). As a result of Democrats winning seats at the top of the ticket, the Republicans began to feel that their majority in the House was being threatened, and started implementing strategies to help maintain their party control.

1992 & 2002 Redistricting Plans: Responding to the Rise of Democratic Party Competition

In 1992 and 2002 the partisan divide on redistricting continued, but it became even more divided over the ten years. The 1992 and 2002 bills came at the start of the increase in Democratic Party strength and in the midst of the rise of two-party competition in the state, as discussed earlier. From committee minutes, testimony and roll call votes, it is evident that both of these bills were Republican proposals. Since the Republicans recognized the rising competition from the minority party, they used techniques to manipulate the redistricting process

the difference in the breakdown of the votes nationally compared to New Hampshire, the conclusions of the study may not be directly applied to the state. So although the study concluded that 50.5 percent of the Perot votes would have voted for Clinton, while 49.5 percent of the Perot votes would have voted for Bush, this distribution of Perot votes cannot be applied to New Hampshire. In New Hampshire, Bush would have needed to received 52.7 percent of Perot votes to win by one vote over Clinton (N.H. Dept. of State 1993, 356). It is quite possible that Bush could have received this many Perot votes. Even though it is possible that the presence of Perot on the ballot assisted Clinton in his win in New Hampshire, it is significant that voters chose not to overwhelmingly vote for a Republican candidate, as they had traditionally. In addition to the President’s race, Democrats started winning the governor’s office in the 1990s in the state. Thus, the 1992 election can still be seen as part of the shift of political alignment in the state.

to secure their majority in the House. These techniques included the use of flatorial districts and attempts to displace minority party incumbents.

1992 Redistricting Plan

The 1992 redistricting bill, HB 591, was sponsored by a Republican House representative and Republican state senator. The Republican control over this bill continued as House floor amendments proposed by Republican representatives were mostly adopted, while on the other hand amendments proposed by Democratic representatives failed to be adopted (N.H. General Court 1992). In the 1992 House Redistricting Committee, there was a partisan debate over the map. Democratic Representative Chambers argued against the plan. She felt that this bill moved toward larger districts “and [was] leaning on flatorial districts to try to equalize the representative districts,” which she believed was unacceptable because the New Hampshire legislature prides “itself on being close to the people” (N.H. House. Constitutional and Statutory Revisions 1992, 2). Taagepera and Shugart suggest that using a variety of small and large districts is a tactic to try to gain more seats. They write, “In the regions where your party is strong try to have as small districts as the law allows [...] In regions where your party is weaker and could fail to earn one seat out of three, try to have larger districts” (Taagepera and Shugart 1989, 16-17). Therefore, Representative Chambers pointed to the large districts as a gerrymandering tactic by the Republican Party in an effort to translate votes into Republican seats. In contrast to Representative Chambers, Republican Representative Shackett testified that he felt the “overriding philosophy to be one-person, one-vote” and that there was no partisan attachment to the bill (N.H. House. Constitutional and Statutory Revisions 1992, 6).

Furthermore, Representative Chambers argued that there were better plans with lower deviation proposed than the high deviation of 14.37 percent in HB 591. In fact, HB 591

increased the statewide deviation from 13.74 percent in the 1982 plan. Republican Representative Cowhoven, the chairman of the committee, mentioned that the high deviation was a concern, especially since the courts advised that the deviation should not exceed ten percent. However, even with a Republican representative expressing this concern, the bill was still passed with no amendments to decrease the deviation. With the Republican Party controlling the legislative and executive branch, the bill was able to be passed even with the high deviation and clear partisan motives.

The 1992 election was the first time that registered Democratic voters outnumbered Independent voters, as seen in Figure 2.2. This only lasted for two elections, and since 1998 the Independent voter registration has outnumbered registered Democrats and Republicans. The House partisan composition shifted in 1992, with the Republicans losing 11 seats even though they were responsible for the 1992 redistricting plan. This seat loss was minor, because the Republican Party still had a strong majority in the House. In addition, in the next election the party managed to win back those seats plus some. However, looking at the partisan composition of the House in Figure 2.8 it appears that the Republican Party lost seats in the 1992 and 1996 presidential elections years. This could likely be the result of more Democrats coming out to vote for these elections, considering that President Clinton won both times in New Hampshire.

HB 591 provides an example of how partisan redistricting cannot guarantee complete control over the translation of votes into seats. In 1992 there was a presidential election and a big win for Democrats in the state, which is even evident in the 11 seat loss in the House for the Republicans. As mentioned in the first chapter, redistricting is not immune to national trends or wave elections. Nevertheless, the redistricting plan must have had some influence on the outcome of the partisan composition of the House because the Republican Party maintained

control of the House all through the two presidential elections, in which the state went “blue,” and through the Democratic Party winning the governor’s seat 1996 through 2000.

2002 Redistricting Plan

Similar to the 1992 plan, the Republicans and Democrats had opposing views of the 2002 plan. For example, Republican Representative Bragdon for the committee majority states that “The average deviation, per district is well under the goal of 10%” (N.H. General Court 2002, 292). On the other hand, Democratic Representative Clemons argued for the minority party that there were several cases of unacceptable deviation. For example, she claimed that the “districts in this plan range in population from a high of 86,605 to a low of 2,946” and that “only 15 members will be elected from districts that fall within the constitutionally acceptable range of 3,089” (N.H. General Court 2002, 292). In addition, Representative Clemons further explained that this plan was unacceptable because this was the first time in history that “this Legislature had the technical capacity and expertise to draw 400 single-member districts” (N.H. General Court 2002, 292). Representative Clemons suggested that the Republican Party chose not to draw 400-single member districts because this would not allow for the gerrymandering that the Republican Party accomplished in this plan.

Displacement of Incumbents

Another similarity between the 1992 and 2002 redistricting plan is the technique of pitting incumbents against each other in order to displace the minority party legislators and further gain majority party seats. As Cain discusses, in an effort to secure their seats the majority party will often pit incumbents from the minority party against majority party members, or change a minority party incumbent’s districts to make it more difficult for reelection (1985). The

fact that the 1992 plan would force two incumbents to run against each other was briefly mentioned in committee. Prior to 1992, Hinsdale and Winchester together made up a district in Cheshire County, with three apportioned representatives. When HB 591 was drafted, the three elected representatives from this district were all Democrats from Winchester. The 1992 map, however, changed Cheshire County so that Winchester and Hinsdale were individual districts, each with one representative. In addition, Winchester and Hinsdale were combined with Chesterfield to create a floterial district, with one representative. This new plan meant that only two of the three incumbents could be elected in the Winchester district or the floterial district. The outcome of the 1992 election was that one of the incumbents was reelected in the Winchester district, while the other two incumbents ran in the floterial district and both lost to a Republican candidate (N.H. Dept. of State 1991, 256; N.H. Dept. of State 1993, 400).

HB 591 displaced two Democratic incumbents by altering their districts, so as to make it more difficult for the representatives to be reelected. Republican representatives may have chosen to combine Winchester with Chesterfield and Hinsdale because they were considered more Republican towns. In fact, Chesterfield and Hinsdale both had more registered Republican voters than Winchester in 1990 (N.H. Dept. of State 1991, 287). This suggests that a Republican would be more likely to win in the floterial district and the Hinsdale district. Consequently, in the 1992 election the Republican Party gained a seat in Cheshire County as a product of gerrymandering.

Similar to the 1992 redistricting plan, the designers of the 2002 plan, HB 420, used the method of intentionally displacing the minority incumbents. For example, HB 420 changed the district of the House Democratic Minority Leader, by placing her hometown in two overlapping floterial districts. As a result, her constituents were now split into two districts and combined

with new voters. Thus, this plan made it so the House Democratic Minority Leader had less name recognition in either district. In northern New Hampshire, two towns were combined to form a two-representative district, despite the fact that the towns alone had the population requirement to have their own representatives. As a result, a Democratic incumbent would be forced to run against a Republican incumbent (N.H. General Court 2002, 870-871). These cases of incumbents pitted against each other in the 2002 plan are examples of strategies used by political parties to gain seats in their legislative body. The Democratic governor at the time, Governor Jean Shaheen, vetoed HB 420 because of these instances of incumbents pitted against each other, the misuse of floterial districts and the large range of deviation.

Involvement of the Courts in the 2002 Redistricting Plan

Since the governor's veto of HB 420 was unable to be overturned by the required two-thirds vote in the House, the New Hampshire state legislature failed to pass a redistricting plan in 2002. Consequently, the role of drawing the district lines was passed on to the New Hampshire Supreme Court. In *Burling*, petitioners filed for "original jurisdiction requesting the Court to declare the existing representative districts unconstitutional and to impose a deadline for the legislature to enact a valid reapportionment plan for the house" (*Representative Peter Burling* 2002, 2). After accepting jurisdiction, the Court decided that because the General Court had already recessed and the candidate filing period was soon, it would have to be responsible for drawing the map. The Court's plan apportioned 400 representatives over 88 districts and did not use any floterial districts. The range of deviation in the Court's plan was 9.26 percent, which was significantly lower than the deviation in HB 420 and below the ten percent requirement set by the United States Supreme Court. Part of the reason the deviation was lower was because the Court attempted to use single-member districts over multi-member districts whenever possible.

When multi-member districts were used, the Court assigned “as few representatives as possible because of its concern that large multi-member districts may tend to dilute the voting strength of racial or political elements of the voting population” (*Representative Peter Burling* 2002, 12). Unlike the state legislature bill, the Court “did not consider the impact upon either political parties or incumbency” (*Representative Peter Burling* 2002, 13), and therefore the Court felt it had produced the fairest plan. *Burling* will be discussed in the next chapter, because the Court made important rulings on flatorial districts in this case.

HB 420 stands apart from previous redistricting plans, because it was the first time that a governor had vetoed a House redistricting plan. Governor Shaheen’s veto in 2002 can be attributed to the increase in the Democratic Party strength and party competition in the state. Despite the fact that there was a Democratic governor for the 1965 and 1982 redistricting plan, the 2002 Democratic governor was the first to resist the House Republican redistricting efforts. As discussed earlier, the 1965 plan was not seen as partisan, while in contrast the 1982 plan was. The governor did not veto the 1982 plan because he made an agreement with the speaker of the House to review the bill. However, signing the bill turned out to be a politically fatal decision, because the governor lost the support of his party and was not reelected. In contrast, Governor Shaheen vetoed HB 420, citing the reason as the use of Republican strategies in the plan. After a decade of the Democratic Party displaying their strength as a party, the Republican Party began to use more gerrymandering techniques in HB 420, including the increased use of flatorial districts, the displacement of incumbents, and accepting a higher statewide deviation than previous legislation.

2004 Redistricting Plan: Replacing the Court Plan

The House, however, was not satisfied with the Court's 2002 plan because they believed that it did not create enough districts. In 2004, the House of Representatives replaced the Court's plan with a bill that increased the number of House districts from 88 to 103. The majority report from the House committee stated that "more districts and smaller districts [...] provide better access to the representatives by the citizens" (N.H. General Court 2004, 292). When the House plan was proposed on the Senate floor, several senators were concerned about the timing of the redistricting plan. Some senators questioned whether the House districts could be redrawn more than once during the decade. In addition, senators were concerned with how this piece of legislation altered the range of deviation. Democratic Senator D'Allessandro stated,

The court made its finding based on the lowest possible deviation. The lowest possible deviation meant that people were being represented in the best fashion because of the lowest possible deviation. The deviations created by this bill are greater in almost every context. (N.H. General Court 2004a, 521)

As senators had suggested in previous legislation, such as with the 1965 plan, Senator Kenney advised the Senate not to alter the bill. He said, "there was kind of a gentlemen, ladies agreement that we wouldn't really tamper with redistricting in the way that they felt it should be put in place, out of respect to that body" (N.H. General Court 2004a, 519). Despite the concerns of some of the senators, the Senate heeded to Senator Kenney's testimony and passed the bill without any amendments.

The 2004 redistricting plan was well-timed, partisan legislation, meant to further maintain Republican control in the House. As evident from the Democrats winning seats at the top of the ticket in the 1990s, there was obvious two-party competition in the state. When the Republican House members in 2002 proposed a visibly gerrymandered plan, their attempt was stopped by the Democratic governor. This was the first time a House plan had been vetoed by a

governor and further emphasized the rise of Democratic Party competitiveness in the state. The 2002 election was a landslide for the Republican Party across the country, and this held true for the New Hampshire state elections. With a newly elected Republican governor and an increase in majority in the House, the Republican Party saw this as an opportunity to pass legislation that would benefit their party. Although New Hampshire had previously passed mid-decade plans, the past legislation only altered ward lines. This mid-decade overhaul redistricting plan redrew the whole map. The purpose of the bill was to increase the number of districts from the Court's plan, which as McDonald argues, makes it easier to strategically group voters and thus control the translation of votes into seats (2004).

The Republican Party lost seats in the House between 2002 and 2004, even after the Republican House members intentionally drew a map that would benefit their party. As Gelman and King observe in their study, there is generally an increase in legislative seats in the direction of the party in control of drawing the map in the election year following the passing of redistricting legislation (Gelman and King 1994). Following the 1965, 1972, and 1982 plans, the Republican Party gained seats in the House of Representatives, despite the fact that the 1965 and 1972 plans have been said to not be partisan. After the 1992 plan, the Republican Party lost a few seats, but was still able to maintain control. Individually, redistricting as an institution can only affect the translation of votes into seats to a certain extent. It is not immune to trends in national politics, wave elections or the influence of other institutions. Therefore, although the Republican Party lost seats after the 2004 plan, it was not because their gerrymandering efforts necessarily failed. The 2002 House Republican majority was a result of a national GOP landslide, while the 2004 election was a good year for Democrats in New Hampshire. In 2006 the Democratic Party,

for the first time in almost 80 years gained a majority in the House, which was only two years after a Republican redistricting plan had been implemented.

2008 Court Case: Mid-Decade Redistricting

In 2008, the Supreme Court of New Hampshire ruled in *Town of Canaan v. Secretary of State* on the constitutionality of mid-decade redistricting. Prior to the 2006 election, the Republican majority in the House proposed a constitutional amendment that would require towns with the ideal population to receive their own representative. Additionally, the amendment would make the use of floterial districts constitutional. The 2006 amendment will be discussed in further detail in the next chapter on floterial districts. After the passing of the 2006 amendment, several legislators felt that the House districts should be redrawn. They argued that the current House districts were unconstitutional, especially because they did not meet the 2006 amendment, which required every town that met the ideal population to have their own representative. This would have been the second time the House was redistricting in the decade, and the Court ruled that the legislature is able to redistrict only once during the decade.

In 2002, the House and Senate redistricting plans were both vetoed by the governor and sent to the Court's for review. Similar to the House, the Senate redrew the district map to replace the Court plan in 2004. The Court reviewed the Senate's replacement of the Court's 2002 plan in *Below II*, and upheld the 2004 Senate plan. The Court ruled that "once the legislature has fulfilled its constitutional obligation to reapportion based upon the decennial census figures, it has no constitutional authority to make another apportionment until after the next federal census" (*Town of Canaan* 2008, 2). The Court used *Below II* as precedent for their ruling in the *Town of Canaan*.

The *Town of Canaan* ruling is significant because it prohibited the current and future representatives from redistricting more than once during the decade. Having the ability to redistrict more than once would have provided another strategy for maintaining party control. In fact, allowing the legislature to redistrict more than once would have potentially led to the legislature redistricting whenever there was new party majority in the House. This Court ruling is a result of the 2002 governor's veto, the 2002 Court redistricting plan, the 2004 House plan, and the 2006 amendment. Additionally, this Court ruling has restricted future legislatures from passing mid-decade redistricting plans.

Conclusion

A common theme for the 1992, 2002 and 2004 redistricting plans was that they presented unanticipated consequences. The Republican Party was responsible for creating the district maps, and intended the districts to assist their party in maintaining a majority. After the passing of the 1992 plan the Republicans lost seats in the House. On the other hand, the 2002 redistricting bill was never passed and the Court's had to step in. Even though the Republicans did not approve of the Court plan, they gained seats in the House in the next election. In 2004, the Republican Party put forth a plan to replace the Court plan, but then lost their majority in the House two elections later. Even though the redistricting plans were guided by Republican motives, the plans did not always produce the effects the party expected. These unanticipated consequences can be attributed to the fact that Republican Party strategies for redistricting are not immune to changes in national and state politics.

Redistricting Commissions: Response to Republican Controlled Redistricting Plans

Democratic House members began proposing legislation to create nonpartisan redistricting commissions as a way of taking the redistricting process out of the legislature. As a result of their growing strength as a party through the 1990s, but their constant minority in the House, the Democrats partially contributed their minority to Republican gerrymandering. New Hampshire was not the first state to have proposals to take the redistricting process out of the state legislature. In fact, 21 states currently use commissions that are either primarily responsible for the process, advise the legislature on how to draw the plan, or are implemented only if the legislature fails to pass a plan (“Redistricting Commissions: Legislative Plans”). The appointment process varies between states, with some states requiring that the members are not public employees or elected officials, and in contrast other states require the members to be elected officials. The states that do not allow appointments of elected officials are attempting to “insulate the process” of drawing the districts from politics (McDonald 2004; Cullen and Davis 2012). The Democratic representatives proposing legislation in New Hampshire looked to the redistricting commissions in other states as examples.

Democrats were responsible for proposing the creation of nonpartisan commissions in New Hampshire. Their proposals would intentionally distribute the appointment process across representatives of both political parties and would require that the appointed members were not elected officials or party leaders. This appointment process resembles Alaska’s, which authorizes the governor to appoint two members, and the president of the Senate, the speaker of the House, and the chief justice of the Supreme Court to all appoint one member. In some of the other states the House majority and minority leaders were responsible for appointing the members (“Redistricting Commissions: Legislative Plans”).

Democratic representatives only proposed commissions when the party felt threatened by Republican gerrymandering and after learning about them from other states. Two of New Hampshire's neighboring states, Vermont and Maine, both use advisory commissions. Vermont was one of the first states to implement commissions, and did so in 1965 after the *Reynolds* decision (V.T. Stat. Ann. §1904). On the other hand Maine waited until 1993 (M.E. Rev. Stat. Ann. §1206). Maine's state legislature is similar to New Hampshire's, because it is a citizens' legislature. In addition, Vermont and Maine both require that the members of the panel are not members of the legislature, therefore attempting to avoid politics from controlling the process. With examples of commissions from neighboring states, it is likely that the Democratic representatives used them as guidance for drafting legislation. Although Vermont has had commissions since 1965, New Hampshire did not start proposing them until much later. The Democrats began proposing commissions when they believed Republican gerrymandering was one of the strategies restricting their party from gaining seats in the House, especially because their party was winning offices that were not subject to redistricting. Therefore, Democratic representatives began to propose commissions as a way to counteract the actions of the majority party. With the Republican Party having the majority in the House, these proposals were never passed. Strategically the Republican Party would not want to hand over the redistricting process to a nonpartisan commission, because this would not allow the representatives to use the strategy to control the translation of votes into seats.

1998 Redistricting Commission Proposal: The First Attempt

The first redistricting commission was proposed in 1998. In comparison to the following proposals, this bill was not as specific as to who would be responsible for appointing the members. Democratic Representative Cushing, a sponsor of the bill, argued that the minority

party and incumbents felt that the majority party's goal was only to secure their party's majority and that a commission would provide a fairer plan than any legislator (N.H. House. Election Law 1998a). The majority report suggested that the bill was "inexpedient to legislate" (ITL), as it did with all of the later proposals.⁶ The majority wrote, "The commission would be an unnecessary bureaucratic layer which might inhibit the legislature in the execution of its charge to redistrict decennially" (N.H. House. Election Law 1998). This bill was proposed one session before the House of Representatives would be responsible for redistricting the state again. Therefore, the Democratic Party recognized their growing strength as a party and did not want the gerrymandering efforts of the Republican Party to reverse their progress.

Redistricting Commission Proposals in the 2000s

After the Republican Party tried to pass the highly partisan redistricting plan in 2002, the Democratic Party presented the House with several different redistricting commission proposals. Immediately following the 2002 redistricting plan that was sent to the Court, Democratic Representative Weed and Representative Burling proposed HB 202. Compared to the previous proposal, this bill laid out more specifically who would make up the independent commission and who was responsible for the appointments. The members were to be New Hampshire citizens, with two members appointed by the governor, and one member appointed by the chief justice of the New Hampshire Supreme Court, speaker of the House, minority leader in the House, president of the Senate, and minority leader of the Senate. Representative Burling

⁶ According to the "New Hampshire General Court Legislative Handbook," any proposed bill will be sent to the appropriate committee. The committee will then give their recommendation of "Ought to Pass," "Ought to Pass with Amendment," "Re-refer to Committee," "Retain in Committee," "Inexpedient to Legislate," and "Refer to Interim Study." A bill cannot be "killed in committee" in New Hampshire. After the committee gives their recommendation, the bill is put into the House or Senate calendar and voted on by the appropriate chamber. If the chamber adopts the committee's recommendation of Inexpedient to Legislate, the bill will then be essentially "killed." Thus, although the bill proposing a redistricting commission in 1998 was given the recommendation of Inexpedient to Legislate, the bill still had to be brought to the House floor to be voted on by the entire chamber. ("New Hampshire General Court Legislative Handbook")

testified about the importance of the legislation by stating that “the property of redistricting is that of the citizens of New Hampshire [and] that it belongs to neither the Democratic or Republican Party” (N.H. House. Election Law 2003). The majority report, recommended that HB 202 was ITL and argued that the present legislature should not control the redistricting process of future state legislatures by not allowing them this right. The minority report, in contrast, believed that this bill would “remove the rancorous partisanship evident following the last decennial census,” and would create a plan that is not drawn for any particular party or incumbent (N.H. House. Election Law 2003).

After HB 202 failed, Representative Weed and Representative Burling proposed another bill to take redistricting out of the state legislature. HB 1269 created an advisory commission, appointed by the House majority leader and House minority leader, which would be responsible for drawing the map and presenting it to the House. The House would have the ability to adopt the plan, alter the plan and then adopt it, or ask them to reconsider the plan. The majority report claimed that the citizen members were not knowledgeable enough to be given the responsibility to redistrict the state. The majority report recognized that HB 1269 was proposed in response to the highly partisan redistricting plan of 2002, but argued that the committee had learned from its previous mistakes and that it was a lesson for all future legislatures to learn from (N.H. House. Election Law 2004). However, the minority report again claimed that an advisory commission would take the partisanship out of the redistricting process (N.H. House. Election Law 2004a).

In 2004, the Republican House members passed a mid-decade plan to replace the court-drafted plan, and in response Democratic House members again proposed a commission. The 2005 bill, HB 49, would give the responsibility to the House and Senate to appoint independent citizens. Similar to the arguments on the previous bills, the majority report argued that

redistricting should stay the responsibility of the legislature, while the minority report argued that a commission would create a fairer plan (N.H. House. Election Law 2005, 2005a).

Representative Vaillancourt, a Republican, argued that since New Hampshire has a 400 member legislative body there was no need for a commission. He argued that 400 members going back to their constituents for advice on the redistricting process would be more valuable than creating a smaller group of people responsible for the process (N.H. House. Election Law 2005b).

Although the Democrats proposed this bill in response to the 2004 redistricting plan, the next election was a good year for the Democratic Party. The Democrats gained enough seats to have a majority in the House in 2006 and as a result the proposals for commissions temporarily stopped.

2011 Redistricting Commission Proposal

Although there had been a break from the proposals, during the years that the Democratic Party had control of the House from 2006 through 2009, the proposals started up again in 2011. The Republican Party gained enough seats in the 2010 election to take back control of the House. In 2011, HB 224 proposed the creation of a redistricting commission that resembled the previous bills. The members would be citizens appointed in the same manner as HB 202 from 2002. The majority and minority report arguments also resembled the arguments from the previous legislation. However, this time the majority argued that while other states have similar commissions there is no proof that it actually takes the partisanship out of the process.

Additionally, there was concern that there was no proof that the governor would not pick people from his own party and he had the ability to appoint two members to the commission, while the other representatives could only appoint one. Thus, there was concern that a partisan commission would be formed. Since the governor was a Democrat, the Republicans were concerned that a Democratic-leaning commission would be created, and that the commission would create a map

that benefited the Democratic Party. HB 224 was not passed, similar to all the other proposals to create a commission (N.H. House. Special Committee on Redistricting 2011).

Timing of Redistricting Commission Proposals

All of the redistricting proposals were sponsored by Democratic representatives, but none of the proposals came at the time when the party had a majority. While the Republican Party strategically passed a mid-decade redistricting plan in 2004, when they had a majority in the House and held the governor's office, the Democratic Party on the other hand did not take advantage of having a Democratic governor and the majority in both chambers. It is possible that the Democratic Party had other policies higher up on their agenda than creating a redistricting commission. For example, as will be discussed in the fourth chapter, when Democrats had their majority they were able to eliminate some of the other Republican Party strategies. Another possibility for why they did not propose redistricting commissions may have been because they may have hoped that they would continue to hold the majority in 2010, and then have the opportunity to redistrict for the first time in New Hampshire history. However, the Democratic Party lost their majority in 2010 as the rise of the Tea Party created a national GOP landslide. Consequently, the Democratic Party lost their opportunity to pass a redistricting commission, considering that the Republican Party had consistently opposed the creation of such a commission in the past. It is possible that after a year of debates with the Republican Party over the 2012 map and with the Democrats winning back the House for the 2013 session, that creating a commission will be a top priority for the party.

2012 Redistricting Plan

In response to two sessions of Democratic control in the House, Republicans took advantage of the redistricting process in 2012 by trying to guarantee that the Democrats would not be able to gain the majority again. The political party composition of the House during the drafting of this bill was 288 Republican members and 102 Democratic members (“State Representative-2012 General Election”). The Democratic Party had control of the House for two sessions prior to the significant Republican Party majority in 2010. The rise of the Tea Party helped right wing Conservatives gain seats across the country in 2010, including in New Hampshire. This Republican Party majority is significant because this was the first time a political party had a veto proof majority during a redistricting year, which meant that even if the Democratic governor chose to veto the bill the Republicans would be able to easily receive the two-thirds needed to override the veto.

This redistricting bill was different than previous legislation because of the recent 2006 amendment and because the legislature did not want to fail to pass legislation and have the Court take over, like what happened in 2002. In 2002, the Court took over the redistricting process and created a map that did not use floterial districts. The Court ruled that floterial districts are an “unsound redistricting device” (*Representative Peter Burling* 2002, 12). As a result, the Republicans proposed a constitutional amendment that would make floterial districts constitutional. The constitutional amendment was passed by the voters 240,767 to 100,688, and floterials were reintroduced to the redistricting process (N.H. Dept. of State 2007, 335).⁷ The 2006 amendment also required legislatures to give towns their own representatives if their population matched the ideal population. Since this amendment was passed by New Hampshire

⁷ In New Hampshire, a constitutional amendment must be passed by New Hampshire citizens, so they are placed on the general election ballots.

citizens in 2006, it was expected that the legislature would abide by this amendment in their 2012 redistricting plan. However, as will be discussed, the legislature did not follow the 2006 amendment.

Even though the House had a veto proof Republican majority, Democratic Governor John Lynch vetoed the 2012 House plan. He wrote in his veto message,

Based on the 2010 census, there are 152 towns and wards in New Hampshire that qualify for their own representative. HB 592 denies a total of 62 New Hampshire towns and wards their own seats in the House. [...] This is completely contrary to what the citizens of New Hampshire called for in the state constitutional amendment adopted in 2006. Another significant flaw with the House-approved redistricting plan is that it unnecessarily breaks-up cities and wards. [...] One of the unique advantages to living in New Hampshire is the ability of citizens to encounter his or her state representative in their daily activities [...] HB 592 undermines that very special quality of life in New Hampshire. (N.H. House Record 2012, 43-4)

In his veto message, Governor Lynch made note of the fact that the legislature did not follow the 2006 amendment, which clearly the citizens of New Hampshire had voted for. However, the House and the Senate were both able to provide the two-thirds vote needed to override the governor's veto. Thus, this was the second House redistricting plan to become law without the governor's signature; the other was when the Court created the plan in 2002.

As the Republican Party felt threatened by the increase in competition by the Democratic Party, they pushed the vote on the governor's veto quickly through the House to assure an override. The Republican majority leader and speaker of the House presented the question on the governor's veto prior to the veto message being printed in the House Calendar. The traditional practice of the House was to wait to ask the question after the message was printed in the calendar, in order to allow time for each of the 400 representatives to read and discuss the message with their caucus. However, the speaker of the House, Representative O'Brien, decided to push forward with the question and ignore the procedural rules (N.H. House Record 2012, 44-

45). Several times Democratic House members asked for a recess so that they could hold a Democratic caucus, but Representative O'Brien refused the request. The vote on the question of "notwithstanding the governor's veto of HB 592, shall HB 592 become law?", was 246 voting in the affirmative and 112 voting in the negative (N.H. House Record 2012, 45). As a result, the governor's veto was overridden in the House, and later overridden by the Senate.

After the vote in the House, several representatives filed "protests" to express their disapproval of the House vote, and especially the disregard of the House procedural rules (N.H. House Record 2012, 48-9). In the roll call, most of the votes in the negative were Democrats, however nineteen republicans also voted in the negative (N.H. House Record 2012, 45-8). The majority of the Republicans voting in the negative were representatives from Manchester, who disapproved of HB 592 because of the floterial district combining two Manchester wards with Litchfield. The fact that some Republican members disapproved of their own party's bill provides evidence of how HB 592 was highly Republican leaning. The drafters knew that they would still be able to obtain the necessary two-thirds to override a potential governor's veto, even without the nineteen Republican votes.

Constitutionality of HB 592

Shortly after the governor's veto was overridden by the General Court, several cities in New Hampshire brought suit against the secretary of state about the constitutionality of HB 592, in *City of Manchester v. Secretary of State* (2012). Part of the Court's decision discussed the 2006 amendment to the New Hampshire constitution. The 2006 amendment, made floterial districts constitutional by stating, "Excess population may be combined with other contiguous districts to allow for additional at-large or floterial representatives" (Smarling 2011). In addition, the 2006 amendment required the state legislature to give a small town their own representative

if their population matched the ideal population. One of the main arguments by the petitioners was that HB 592 did not abide by the 2006 constitutional amendment. The Court, however, upheld the 2012 redistricting plan.

The petitioners attempted to prove that the plan was unconstitutional, but the Court was unconvinced by the petitioner's argument. One of the main concerns of the petitioners was a flotalerial district that combined Manchester Wards 8 and 9 with Litchfield. The petitioners argued that Manchester does not share a "community of interest with Litchfield" (*City of Manchester* 2012, 16). In response, the Court argued that the New Hampshire constitution does not mention that "communities of interest" must be taken into consideration when drafting a redistricting plan. Another part of the petitioner's argument was that the plan violates the state constitution because there are districts that were drawn that "'breaks up' certain cities, towns, and wards" (*City of Manchester* 2012, 15). However, the Court did not find any towns or wards that were broken up by the redistricting plan. Therefore, the New Hampshire Supreme Court upheld the 2012 redistricting plan, because the petitioners were unable to prove that the plan violates the state constitution.

Although the petitioners recognized that the plan does follow the federal requirements, they also suggested that the legislature unnecessarily adhered to the ten percent requirement, when they could have given more small towns their own representative. The Republicans in the House were advised by lawyers to follow the federal requirements first, and then accommodate as many of the state requirements as possible. If the representatives had given all of the small towns that met the ideal population their own representative, which was required by the 2006 amendment, then their deviation would have well exceeded the ten percent requirement. The Court ruled that the petitioners failed to prove that the legislature "lacked a rational or legitimate

basis for adhering to the 10% rule” (*City of Manchester* 2012, 10). Thus, the final redistricting plan had a deviation of 9.9 percent, and 204 legislative districts made up of 91 single-town districts, 70 multi-town districts, and 43 floterial districts.

The Implications of HB 592 on the 2012 Election Results

HB 592 went into effect for the 2012 general election, but it did not have the expected effects the Republican Party was hoping for. Looking at Figures 2.4, 2.6, 2.7, and 2.8, it is obvious that 2012 was a good year for Democrats in New Hampshire. Most importantly, the Democratic Party was able to regain control of the House, despite the hard fought efforts of the Republican Party to pass their redistricting plan. Looking at the House election results, Republican candidates won both seats in the highly debated floterial district combining Manchester Wards 8 and 9 with Litchfield, which suggests that some of the strategies used by the Republican Party in the redistricting plan were effective (“State Representative-2012 General Election”). Although the Democratic Party won the majority overall, the fact that Republicans won the floterial district combining Manchester Wards 8 and 9 with Litchfield provides evidence that HB 592 included gerrymandering and had partisan motives. It is possible that HB 592 could have helped the Republican Party maintain control of the House if it had not been a wave election or a presidential election year.

The results of the 2012 election allowed the Democrats to gain back a majority in the House, win the governor’s office and the two United States Congressional seats. A *Washington Post* article suggests that a major reason why the Republicans lost their majority was because of the party’s focus on social issues. During the past two years the Republicans attempted to repeal same-sex marriage, tighten abortion restrictions, and exempt certain religious institutions from contraceptive insurance coverage requirements (Sullivan 2012). Since New Hampshire has a

relatively small population and large 424 member legislature, the majority of constituents know what is happening in the legislature. Thus, when voters are unhappy with their representatives they react by voting them out of office. In addition, the 2012 election was likely subject to a coattails effect because of the highly publicized gubernatorial and presidential races. The Democrats winning seats at the top of the ticket likely supported Democrats winning office at the bottom of the ticket.

The Democrats winning at the top of the ticket did not have the same effect on the State Senate, as it did in the House, because the Republicans were able to maintain a majority in the Senate. Similar to the House, the Senate was redistricted in 2012. It has been suggested that the Senate was able to gerrymander more effectively than the House. One of the reasons the Senate may have been more effective is that with fewer districts to draw it is easier to keep the statewide deviation lower. While fewer districts do not allow for as much gerrymandering, the Senate, unlike the House, did not have to worry as much about keeping the deviation under ten percent. Even though the Republicans did maintain a majority in the Senate, the majority was narrowed after the 2012 election.

The results of the 2012 election provide evidence that redistricting is not immune to wave elections. While redistricting has been an effective strategy for the Republicans to maintain party control in the state legislature, it was not effective in 2012. Despite the efforts of the Republicans to create a plan that strategically grouped voters, while abiding by the federal requirements and most of the state requirements, the Democrats managed to gain a majority. Thus, the 2012 plan further explains that redistricting alone as a strategy is not enough to help a political party maintain control of a legislative body, especially in the case of two-party competition in a state.

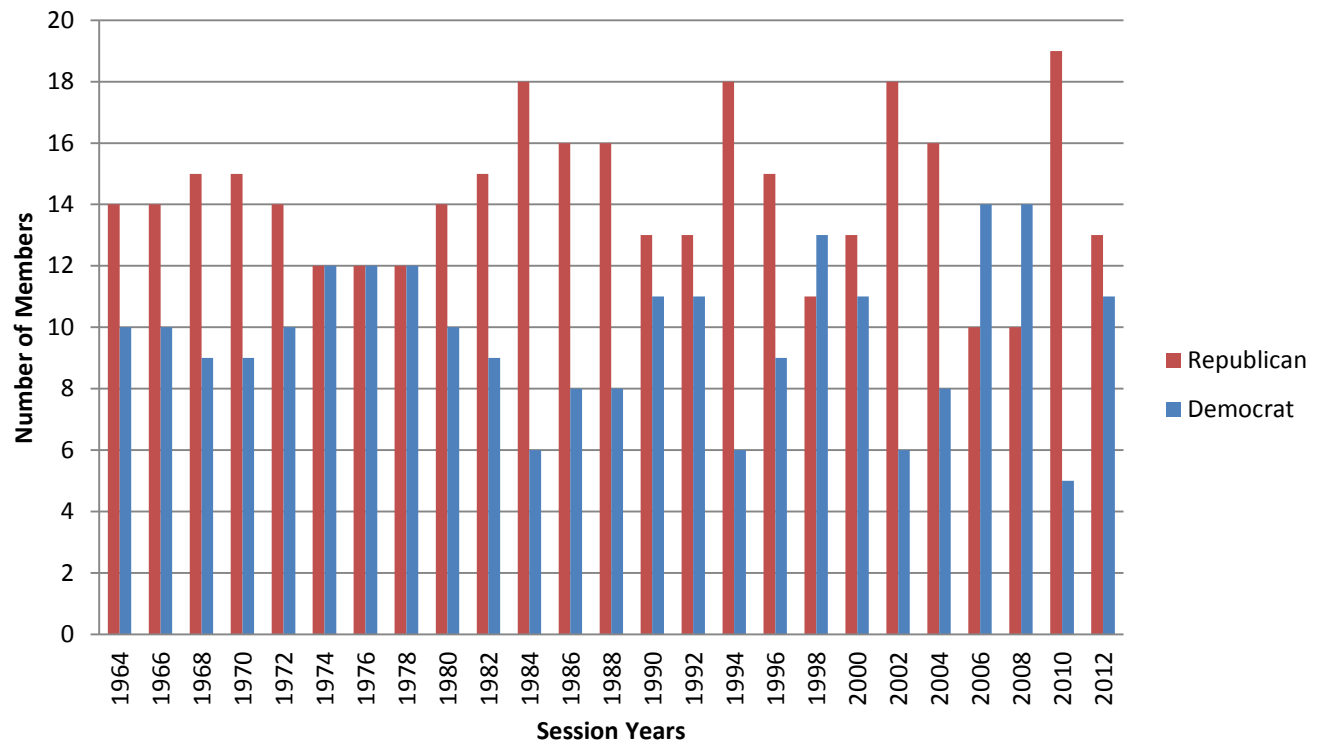
Conclusion

Over time, redistricting has been shaped by political events at the state and national level and by the representatives designing the institution. After the 1962 and 1964 Supreme Court rulings, redistricting in New Hampshire shifted to abide by the requirement of equal representation. Therefore, districts were implemented to ensure equal representation, but consequently would allow for gerrymandering in later years. As the voting behaviors of New Hampshire citizens changed, in relation to the changing demographics, the Republican Party was no longer guaranteed their majority in the House. As the Democratic Party showed their strength as a party in the 1990s, the Republican Party secured their majority in the House by manipulating the redistricting process. Consequently, House Democrats attempted to stop the gerrymandering efforts of the Republicans by proposing to create redistricting commissions that would take redistricting out of the legislature. With the rise of two-party competition in the state, it became clear that the Republican Party could no longer strictly depend on strategically grouping voters to control the translation of votes into seats, and thus they sought other strategies to help maintain their control.

Starting in 1982, the House maps began to include flotal districts, which is a method that has been used by states dating back to before the *Baker* decision. The next chapter will analyze the effects of this redistricting method on the translation of votes into seats in the New Hampshire House. The flotal districts used in the 1982, 1992, 2002, and 2012 plans will be further discussed to illustrate the way the districts were implemented and what the goals of the representatives were when drawing these districts. In relation to the question of flotal districts and equal representation, addressed in *Baker* as well as the New Hampshire Court cases, *Boyer v. Gardner*, *Burling v. Chandler*, and *City of Manchester v. Secretary of State*, the discussion of

how to properly calculate the statewide deviation when using floterials will be discussed. Calculating the deviation is often confusing because in addition to floterial districts, single-member, multi-member and at-large districts are also used to draw the map. Since at-large districts are similar to floterials and are also used in New Hampshire, the history of these districts in the state will help explain the use of floterial districts and the connection between the two districts. Therefore, the use of floterial districts, in conjunction with single-member, multi-member, and at-large districts, will explain how the state legislature has the ability to manipulate the electoral system to affect the translation of votes into seats, in addition to the strategies used by the Republicans outlined in this chapter.

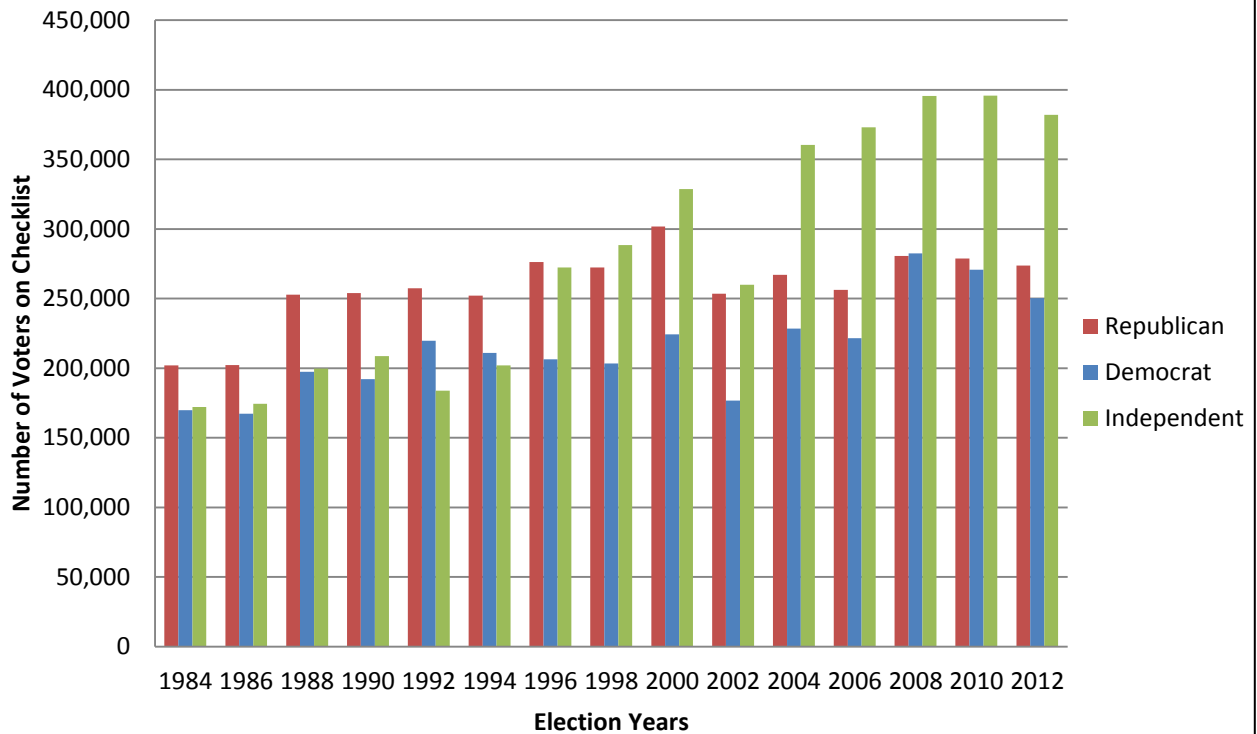
Figure 2.1: State Senate Members



Note: This graph shows the partisan composition of the New Hampshire State Senate from the 1965 legislative session through 2013.

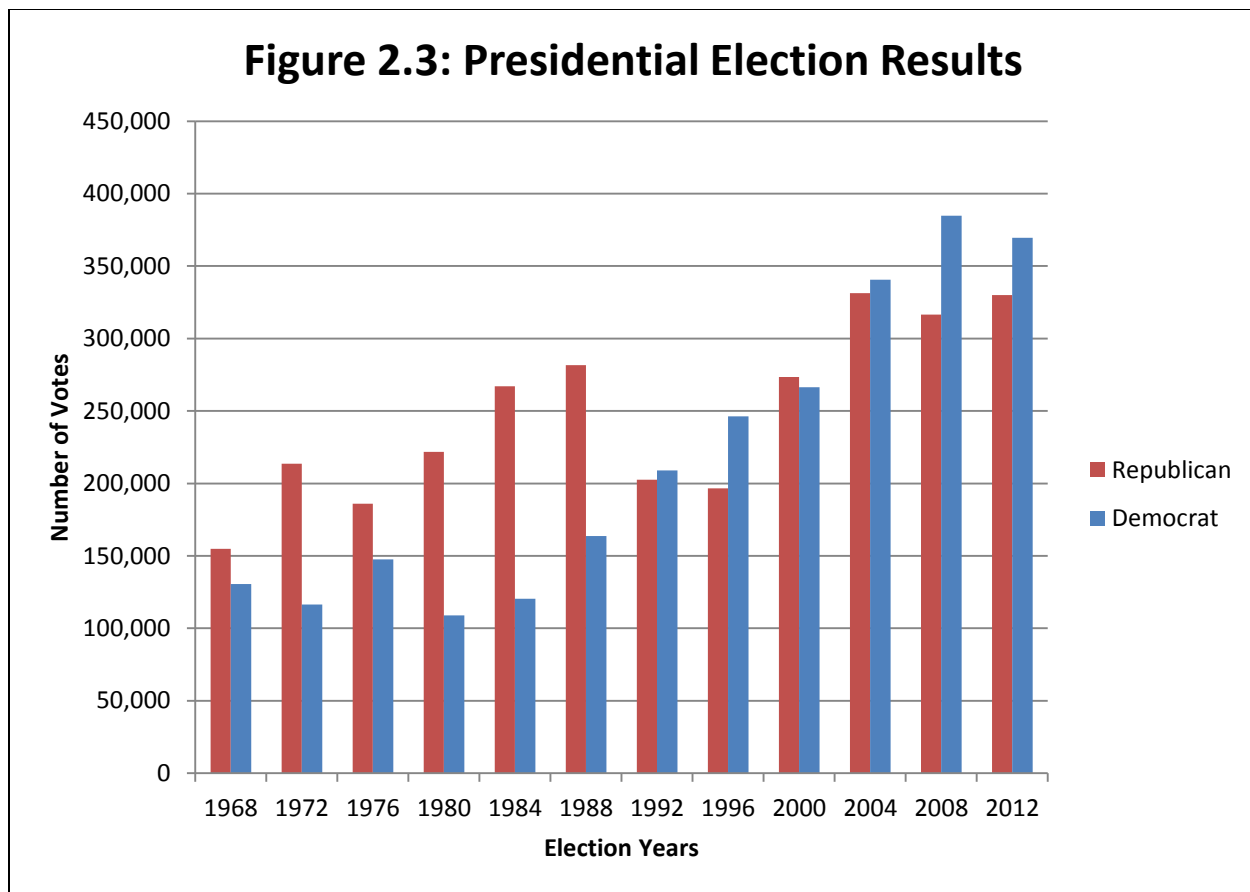
Sources: Dublin 2007, 123; “State Representative-2010 General Election”; “State Representative-2012 General Election”

Figure 2.2: Number of Republicans, Democrats and Independents on the Voter Checklist



Note: This graph shows the breakdown between the political parties of registered voters in New Hampshire.

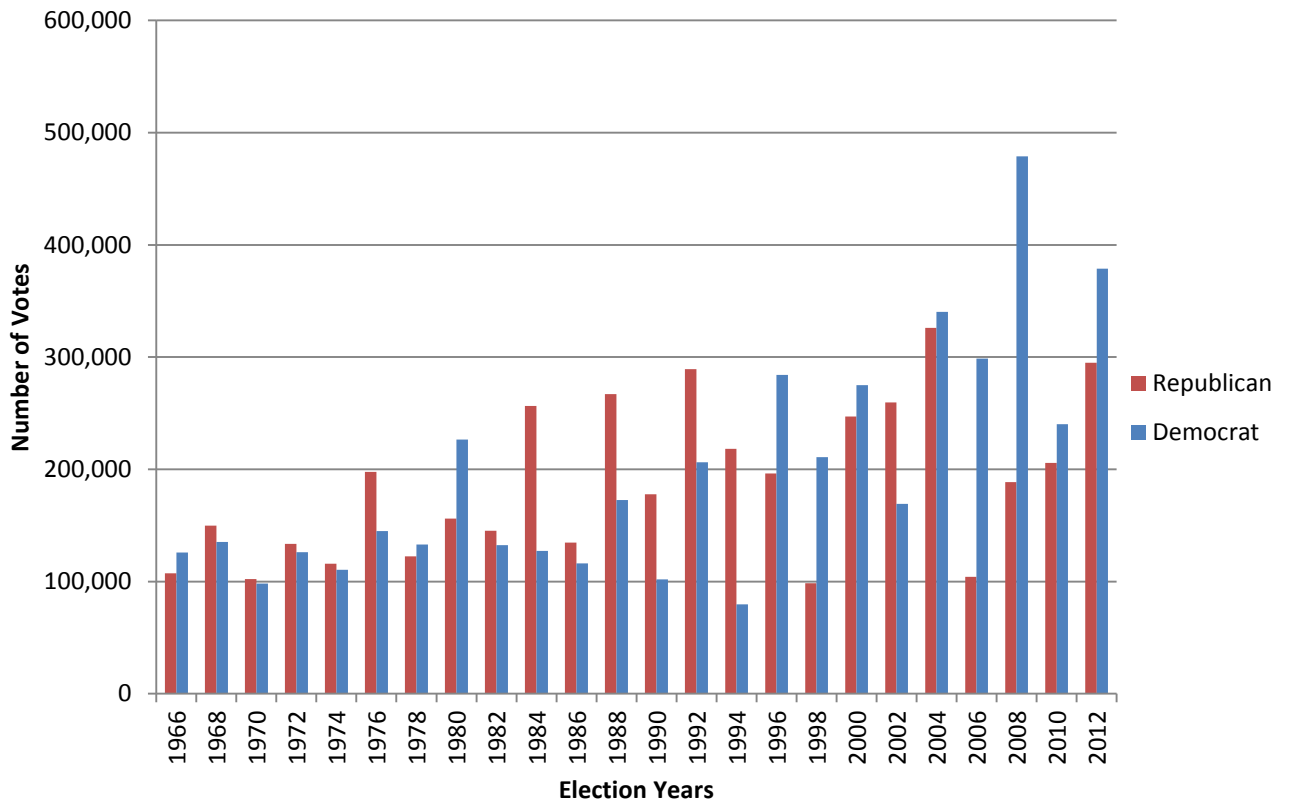
Sources: N.H. Department of State 1985-2009; “State Representative-2010 General Election”; “State Representative-2012 General Election”



Note: This graph shows the election results of the presidential elections in New Hampshire from 1968 through 2012.

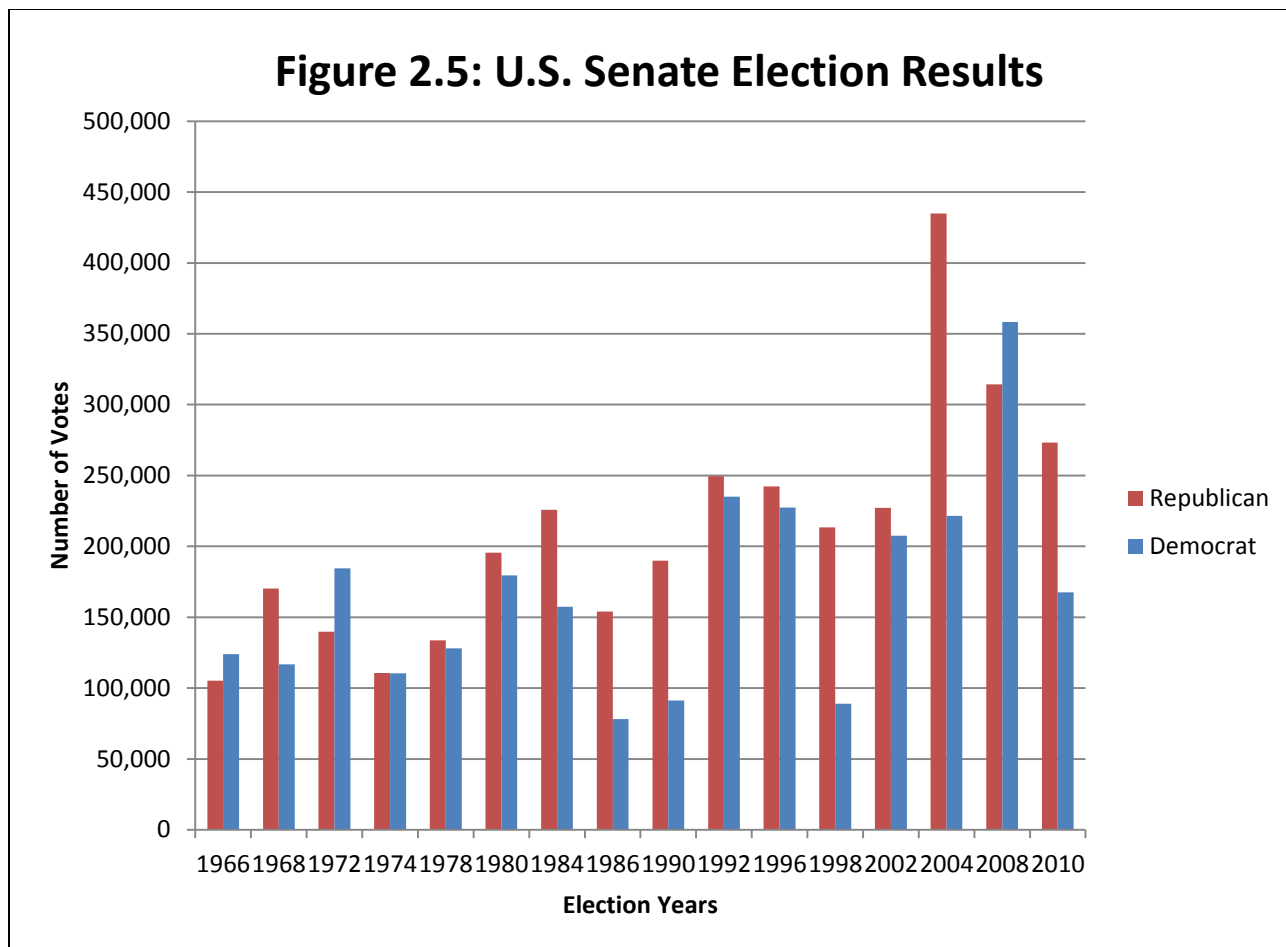
Sources: N.H. Department of State 1967-2009; “State Representative-2010 General Election”; “State Representative-2012 General Election”

Figure 2.4: Gubernatorial Election Results



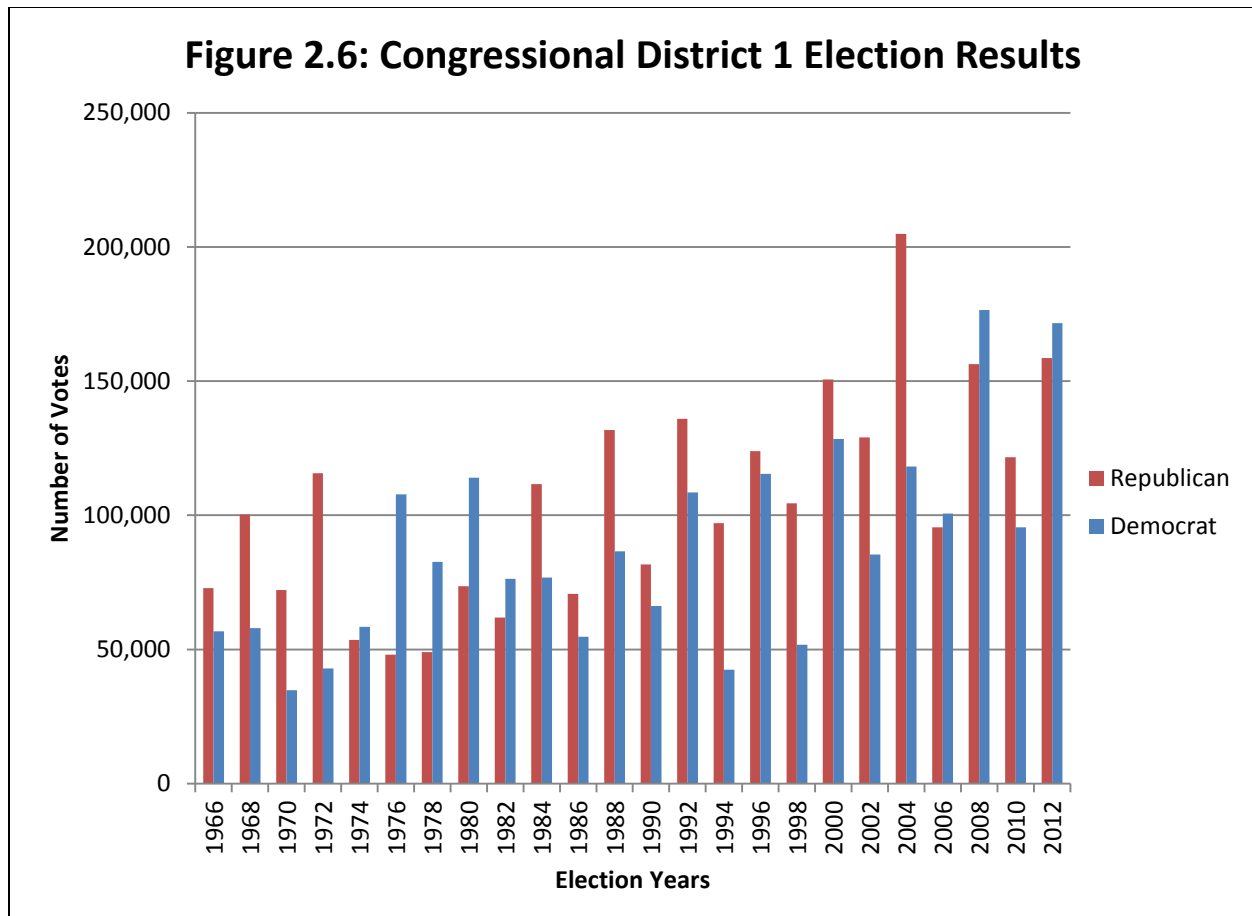
Note: This graph shows the election results of the gubernatorial elections in New Hampshire from 1966 through 2012.

Sources: N.H. Department of State 1967-2009; “State Representative-2010 General Election”; “State Representative-2012 General Election”



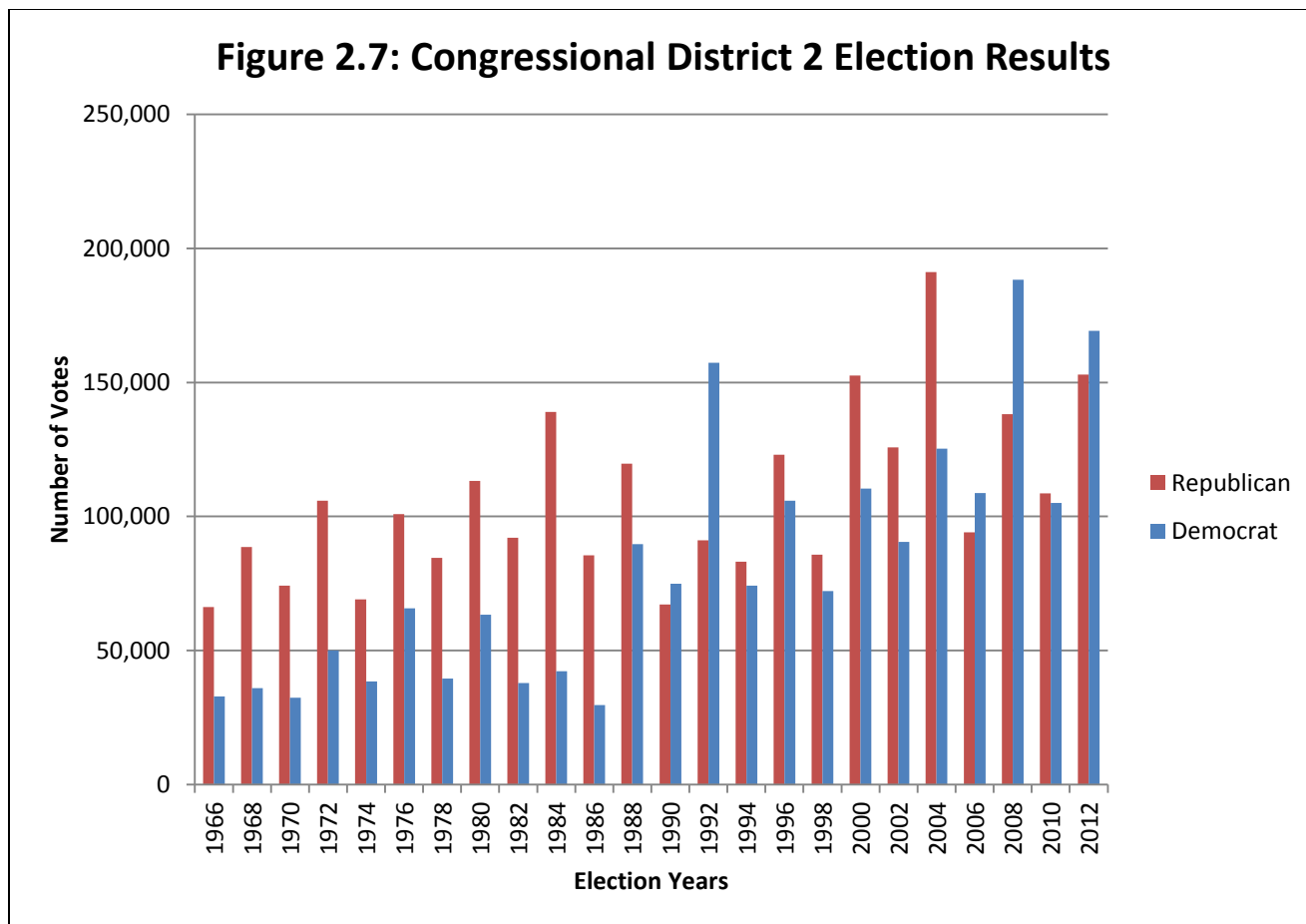
Note: This graph shows the election results of the U.S. Senate elections in New Hampshire from 1966 through 2012.

Sources: N.H. Department of State 1967, 1969, 1972, 1975, 1979, 1981, 1985, 1987, 1991, 1993, 1999, 2003, 2005; “State Representative-2010 General Election”; “State Representative-2012 General Election”



Note: This graph shows the election results of Congressional District 1 in New Hampshire from 1966 through 2012.

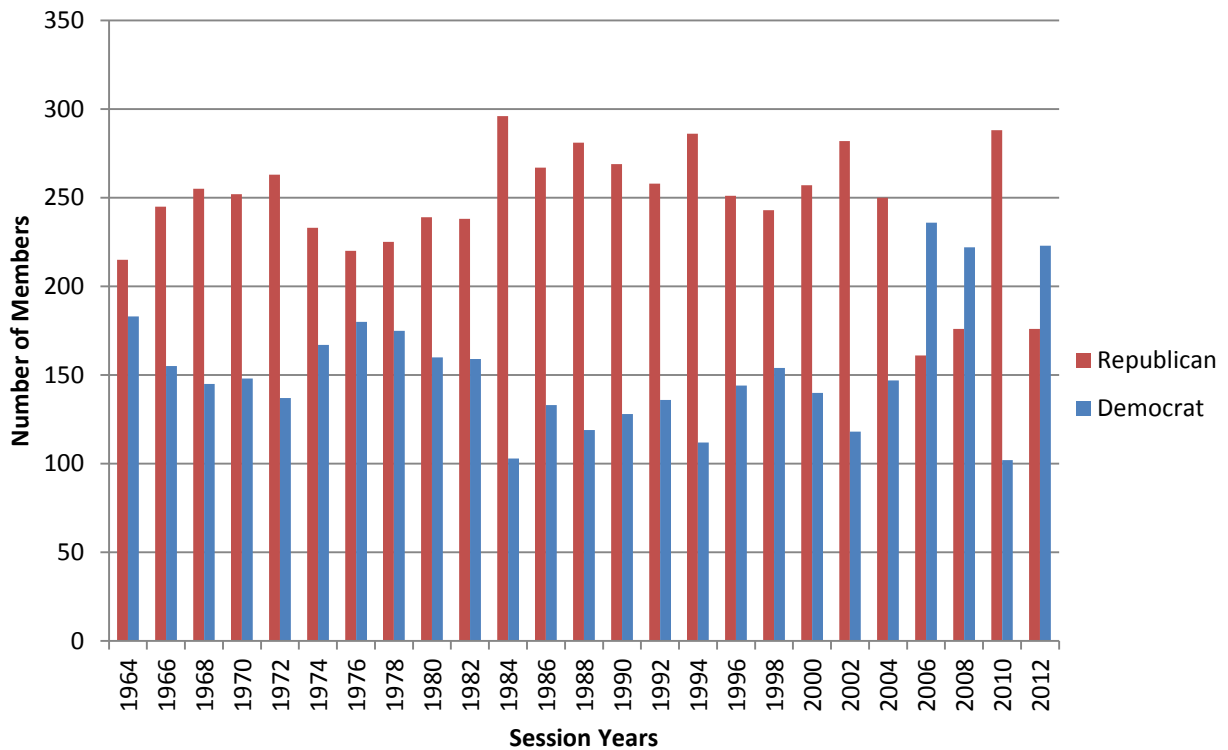
Sources: N.H. Department of State 1967-2008; “State Representative-2010 General Election”; “State Representative-2012 General Election”



Note: This graph shows the election results of Congressional District 2 in New Hampshire from 1966 through 2012.

Sources: N.H. Department of State 1967-2009; “State Representative-2010 General Election”; “State Representative-2012 General Election”

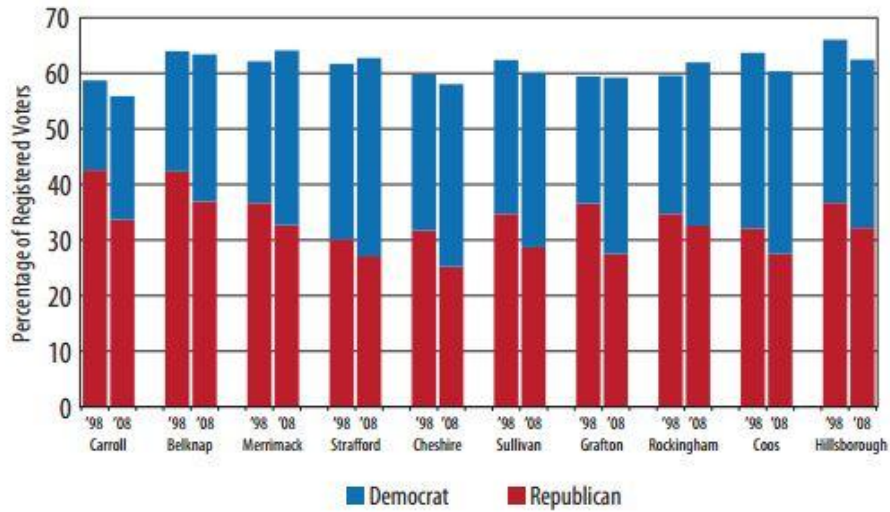
Figure 2.8: House Partisan Composition



Note: This graph shows the partisan composition of the New Hampshire House of Representatives from the 1965 legislative session through 2013.

Sources: Dublin 2007, 123; “State Representative-2010 General Election”; “State Representative-2012 General Election”

Figure 2.9



*Analysis: Dante Scala, University of New Hampshire
Source: New Hampshire Secretary of State*

Note: This graph shows the percentage of Republican versus Democratic registered voters by county for 1998 and 2008.

Source: Johnson, Scala, and Smith 2008

Chapter Three: Floterial Districts

In the previous chapter floterials were introduced as a mechanism for redistricting. This chapter will explain in more detail how these districts are a strategy used by politicians to help translate votes into seats. A floterial district, as defined by Black's Law Dictionary and the definition used by the New Hampshire state legislature, is

a legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitles the entire area to another seat in the particular legislative body being apportioned. (N.H. House. Special Committee on Reapportionment 1981a)

See Figure 3.1 for an example of floterial district in Carroll County from the 1992 redistricting map. The purpose of this chapter is to further explain the application of floterial districts, how this institution has changed over the years of use in New Hampshire, and the consequences of these changes. While this type of district was first introduced in New Hampshire for the 1982 redistricting plan, they had been previously used in other states. With a rise in two-party competition in New Hampshire, floterials became increasingly used to assist in partisan gerrymandering. This chapter will look at the goals of the actors in support of using floterial districts, but it will also seek to explain how the goals of the actors changed in response to the rise of two-party competition. Beyond the actors, this chapter will examine the unanticipated consequences of the districts and the changes in the institution as a result of constitutional amendments and court rulings. In addition, this chapter will explain the timing of the institutional changes to floterials.

Before the use of Floterial Districts

Floterial districts are similar to at-large districts in their grouping of voters and how the candidate is elected at-large. New Hampshire still uses at-large districts, in addition to single-member, multi-member and floterial districts, to redistrict. Prior to the Supreme Court rulings in *Baker v. Carr* and *Reynolds v. Sims*, the state was separated into only at-large districts. In 1965, the New Hampshire state legislature made significant changes to the redistricting process to abide by the Supreme Court ruling. For example, the House combined small towns to create multi-member districts, when previously these towns had only received part-time representation. Leading up to the introduction of floterial districts, the state used a combination of single-member, multi-member, and at-large districts to come as close as possible to the “one-person, one-vote” standard. After floterial districts were introduced in 1981 to the process, the use of this district continued to change through the 1990s and into the 2000s.

In 1965, when the New Hampshire House of Representatives had to redistrict the state in response to the Supreme Court ruling in *Reynolds v. Sims*, the new plan used at-large districts. For example, the town of Salem was drawn as an at-large district with six representatives, and for the most part has been kept as an at-large district since. Considering that prior to 1965 each individual town made up its own district, the maps essentially consisted of only at-large districts. Thus, it is not surprising that the New Hampshire representatives continued with this tradition by drawing at-large districts wherever possible in the 1965 plan. The House of Representatives had to redraw the map in 1965 because their 1960 plan did not observe the Supreme Courts’ “one-person, one-vote” principle. Since the 1960 plan consisted of all at-large districts and some districts had only part-time representation, the new House plan was unable to be drawn in the same manner. As a result, the House of Representatives, for the first time, used a combination of

single-member, multi-member, and at-large districts. By using at-large districts, the House was continuing with their tradition of drawing districts synonymous to town lines. As discussed in the first chapter, at-large districts were used in other states to group voters in ways that would make it difficult for certain candidates to be elected, because of their race or political party. This argument has been made against the use of floterials.

At-large districts have caused similar concerns to that of floterial districts, in that they allow for politicians to strategically group voters. A representative on the House floor stated “a town like Salem with 10 at-large representatives it results in domination by one party, and I don’t like that whether it’s Democrat or Republican” (N.H. House 1982, 31). In fact, when floterial districts were first introduced in the state in 1982 they were referenced as “1 rep (at-large)” in the bill (N.H. House. Special Committee on Reapportionment 1982). This is interesting, because at-large districts have never been differentiated in a redistricting plan. Additionally, it points to how the legislature recognized the similarity between floterial and at-large districts. After the 1982 bill, the plans stopped distinguishing floterial districts as “at-large,” which is most likely because these districts began to serve the legislature a different purpose than the typical at-large district. During the drawing of the 1992 redistricting plan a representative asked what the difference was between an at-large district and a floterial district and another representative responded that an “at-large district [... has] two or more towns that elect two or three representative where a floterial will have either at-large or single district and it will sit on top of that” (N.H. House. Constitutional and Statutory Revision 1992, 16).

Although at-large districts are similar to floterial districts, a constituent from New Ipswich testified at a public hearing on the 1992 redistricting plan about how floterials allow for unequal representation. He said,

When you have an at-large district electing two or three seats the voting strength of everybody in those towns is mathematically equal. However, if you have two towns that each elect a rep and together elect a third, and we find that one of these towns has twice as many people as the others, you will find that one town is more under-represented than the other [...] I think the committee has committed a grave error in choosing to look at groups of towns served by floterial districts rather than groups of towns served by the individual districts within those floterial districts. (N.H. House. Constitutional and Statutory Revision 1992, 8-9)

This constituent was skeptical of floterial districts and how the legislators would be able to guarantee that voters have equal voting powers when they are in a floterial district compared to an at-large district. These concerns were highlighted in the *Boyer v. Gardner* court case that came after the introduction of floterial districts to the state in 1982. While floterial districts share similarities to at-large districts, such as the fact that the representatives are elected at-large and both types of districts can be used to strategically group voters, they are inherently different in their application and how they are used by legislatures. For example, floterial districts were originally implemented to help decrease the statewide deviation. Floterials were a significant transition in New Hampshire redistricting, where traditionally towns individually made up districts to drawing districts that would “float” over several towns.

Introduction of Floterial Districts in 1982

While the Democratic Party has recently started to argue that floterial districts have assisted with gerrymandering, the history of the implementation of floterials in New Hampshire suggests that gerrymandering was not their original purpose. The 1982 redistricting plan, HB 2, appears to be a partisan bill because the majority and minority parties each brought a different version of the bill to the House floor. Additionally, the Democratic representatives were outraged with the Democratic governor for signing the bill, and thus did not support his reelection. Part of the reason for the partisan divide on the bill could have been because of the use of floterial

districts. When the Republican House speaker proposed the use of floterials, the House Democratic leader immediately responded by declaring the party's opposition to them. While Speaker John Tucker proposed floterial districts as a "solution to some of the large and unpopular districts," it is difficult to tell if the Republican Party had alternative goals (N.H. House. Special Committee on Reapportionment 1981b). However, when reviewing the committee minutes it seems that the goal of floterial districts was to help the representatives draw smaller districts and simultaneously keep a lower statewide deviation.

The Reapportionment Committee spent several months in 1981 into 1982 working on drawing a map. Several of the debates focused on the issue of maintaining a statewide deviation under 16.4 percent, abiding by the "one-person, one-vote" principle, and drawing small districts. In a 1971 Supreme Court case, *Mahan v. Howell*, the Court approved a Virginia plan that had a statewide deviation of 16.4 percent. In response to the *Mahan* ruling, the New Hampshire House in 1982 was encouraged by legal counsel to keep the state deviation under this percentage. Prior to the introduction of floterial districts the plan had a statewide deviation of 17.5 percent. With a deviation this high, there was the possibility that the plan would be challenged in the Courts and in this event the state would need to justify the high deviation with a "rational state policy." The chairman recognized that the plan had some "unpopular decisions," but that he felt that their "numbers [were] justifiable" because they took into consideration the 400-members with "comparatively small constituencies, plus the fact that the committee did not want to cross county lines" (Chase 1982). This plan was not the final bill brought to the House floor, because soon thereafter floterial districts were introduced and allowed for a plan to be drawn that decreased the deviation.

As mentioned in the previous chapter, New Hampshire experienced a significant increase in population in the rural areas of the state between 1970 and 1980. Because of the increase in population in the rural areas, the representatives from the rural towns advocated for their own representation before the Reapportionment Committee. Even though some of their town's populations were slightly under the required population to receive their own representative, the representatives argued that their towns were often combined with others that did not share the same community interests. For example, a representative argued that Litchfield should be made a single-town district because although it had been combined with Merrimack for the past ten years, the two towns had significantly different community interests. The representative stated that while Litchfield is "the largest farming community in N.H.," Merrimack is "highly industrialized" (N.H. House. Special Committee on Reapportionment 1981c, 3). Prior to the introduction of floterial districts, several of the proposed plans created large, multi-member districts that combined several towns that individually did not meet the population requirements. However, there was little support for these plans because the districts were large and the plan had a high deviation. On December 1, 1981, floterial districts were proposed to the committee as a technique to allow them to draw a map with smaller districts and a lower deviation.

Speaker John Tucker proposed the use of floterial districts in 1981 to the committee as a solution "to some of the large and unpopular districts." In his memo he proposed the use of floterial districts for only three districts, including Bedford-Litchfield, Hudson-Pelham, and Windham-Londonderry, which suggests that the floterials were actually introduced as a means to solve the deviation problem (N.H. House. Special Committee on Reapportionment 1981b). Since floterial districts were new to the House, a legislative research office staff person, Mrs. Janet Monahan, explained to the representatives the proper application of floterials. While floterial

districts were new to the New Hampshire House, they had been used by other states and so the legislative research office looked to other states for guidance on the proper application and methods of calculating deviations of the districts. They gathered information about floterials from Virginia's 1971 and 1981 reapportionment plans. Mrs. Janet Monahan explained that they "could be used only when a town or group of towns has a minimum of 2,300 population [the ideal population to receive one representative in 1982] plus a surplus" (N.H. House. Special Committee on Reapportionment 1981). For example, a floterial district cannot combine a town that has a population slightly over 2,300 and its own representative, with a town that has less than 2,300 people and no individual representative. In the memorandum sent to the Reapportionment Committee analyzing floterial districts, the legislative research office wrote,

In the case of New Hampshire, floterial districts might help to reduce some of the problems created by large multi-member districts. Where New Hampshire has traditionally had a citizen legislature and historically (up to [the] 1960's) every town had its own representative, the use of floterial districts may be the answer to insure representation from the smaller town(s) in a large multi-member district. (N.H. House. Special Committee on Reapportionment 1981a).

After the explanation of the proper application of floterials, they were accepted by the committee on a voice vote and from there the representatives saw opportunities to "assure smaller towns representation" by using the district to draw the map (N.H. House. Special Committee on Reapportionment 1981).

Floterial districts allowed the legislature to draw as many "regular districts," such as single-member and multi-member districts, as possible, and then fix the deviation by using floterials. In 1982 the ideal population per representative was 2,300, and there were many towns that had just slightly over this population but not large enough to receive a second representative. So, the representatives covered these districts with floterials to provide the towns with more

representation. An example of this was the floterial district drawn over Weare and New Boston, Francestown, and Bennington. The town of Weare had a population of 3,232 and was given one representative. The district of New Boston, Francestown, and Bennington (New Boston) had a population of 3,648 and was allotted one representative. The floterial district over these two districts helped correct for the “fractional underrepresentation” for the two districts individually, because these districts individually were just under the amount needed to receive two representatives (*Richard E. Boyer* 1982, 2).

The minority and majority party both brought redistricting plans to the House floor. Representing the minority plan, Representative Hildreth encouraged the House to vote for this plan because it had a lower deviation compared to the majority plan and because it attempted to keep the smallest districts possible. Representative Hildreth testified,

I don't think it is a partisan plan, [...it is] a better plan because the numbers are different, are smaller than the majority report, but more importantly, I believe and I did most of the work on this plan, that our plan, wherever possible, puts a Representative in the smallest unit possible. If a town can have one representative and perhaps be part of a floterial district, we have given it that one representative because that's what New Hampshire's tradition is, and that's what's important, and the reason that we have a 400-member House. (N.H. House 1982, 3)

The minority plan had a deviation of 13.13 percent, compared to the majority's plan of 13.74 percent deviation. Despite the fact that the Democratic Party came out in opposition to floterial districts when they were first introduced, they used them in their plan. One of the reasons that the Democrats used floterials, despite their opposition to them, could have been because floterial districts did in fact allow for a lower statewide deviation. If the minority presented a plan without floterial districts their plan would have had a greater deviation and therefore would not have been as attractive.

When the chairman of the committee presented the majority report to the House floor he discussed his initial reservations to floterial districts. He discussed how a representative elected to this district would have more constituents and would be “farther away from the people you represent” (N.H. House 1982, 21). Even so, he explained that it was necessary to use floterials to draw this map and to get a lower statewide deviation (N.H. House 1982, 21). Floterials, however, were not the only available method for minimizing the statewide deviation. As discussed in the second chapter, the legislature was restricted from using other methods because of the federal and state redistricting requirements, such as not crossing town boundaries. The chairman warned that floterials “should not be used any more than absolutely necessary” (N.H. House 1982, 21), and argued that the minority report used floterial districts “far beyond the necessity” (N.H. House 1982, 30). The majority plan was adopted, and thus floterial districts were used to elect the state representatives for the first time in the 1982 election.

Conclusion

Floterial districts in the 1982 plan were not used as a strategy to translate votes into seats to the extent that they were used in later redistricting plans. In 1982, the representatives had difficulty creating a plan that kept the statewide deviation below sixteen percent. Floterials were introduced to the legislature as a solution for the high statewide deviation problem, and so their initial purpose was to provide a mechanism that would allow the representatives to create a map with smaller districts and a lower statewide deviation. In the 1982 plan, far fewer floterial districts were used than the amount used in later redistricting plans. The 1982 plan had only 17 floterials, while in comparison the 1992 plan had 32. Therefore, it is unlikely that floterial districts were used as a mechanism to gerrymander in 1982.

As discussed in the previous chapter, the 1982 plan points to the start of a partisan divide on redistricting plans in the state. Although there could have been gerrymandering in the plan, the secretary of state noted that the increase in Republican House seats after the 1984 election could have been attributed to the changes in the population in the state, “national trend with President Reagan’s popularity,” or “coattails from the New Hampshire straight-ticket ballot” (Gardner 1993, 171). If there was gerrymandering in the 1982 plan, it was not as obvious or deliberate as exists in later plans. Additionally, the floterial districts were likely not the source of the gerrymander, but rather a mechanism to cover up the deviation caused by the gerrymandered districts. In later years, floterials are a clear mechanism used by representatives to gerrymander.

Even though the Democrats and Republicans both used floterial districts in their redistricting plans, there was not a general consensus by the New Hampshire citizens on the use of floterial districts. In fact, several concerned citizens brought suit against the state over concern that floterial districts created inequality between voters. The representatives had done their research on floterial districts, and even looked to other states for guidance for the proper application and calculation of deviation of floterials. Despite their efforts to properly use floterial districts, keep the statewide deviation within the proper range, and to give smaller towns their own representation, a suit was filed questioning the constitutionality of HB 2.

***Boyer v. Gardner* (1982) and Calculating Floterial Districts**

New Hampshire voters brought suit against the New Hampshire secretary of state in *Boyer v. Gardner*, because they argued that their rights as voters were not equal to the other voters in the state as a result of the “discriminatory apportionment of seats in the House of Representatives” in HB 2 (Richard E. Boyer 1982, 1). The plaintiffs claimed that the use of 17 floterial districts in HB 2 resulted in unconstitutional deviations, and that the House had used an

incorrect method of calculation. Additionally, the plaintiffs argued that HB 2 was unconstitutional because the deviations were too high and could not be justified. The District Court ruled that the redistricting plan did not “violate any of the rights to vote [...] pursuant to the provisions of the Constitution of the United States” (*Richard E. Boyer* 1982, 2). The ruling in *Boyer* is significant because the Court addressed the appropriate use of floterials and the proper method of calculation of the deviation, which provided guidance for the legislature for future redistricting plans.

Calculating Floterial Districts

In *Boyer*, the Court addressed two methods of calculating floterial districts, the aggregate method and the component method. The plaintiffs claimed that the aggregate method underestimates the deviations of floterial districts. The aggregate method compares the population of the floterial district to the ideal population. On the other hand, the component method calculates the deviation based on the “‘share’ of the floterial representative” to the percentage of the total floterial population (*Richard E. Boyer* 1982, 3). For HB 2, the aggregate method yielded a 13.74 percent deviation, while the component method yielded a 70 percent deviation.⁸

⁸ Using the Weare and New Boston floterial district from the 1982 redistricting plan, the following explains how to calculate the deviation of the district using the aggregate method compared to the component method.

Aggregate Method:

1. Calculate the difference between the total population of a floterial district and the ideal population multiplied by the number of representatives

$$6,880 - (2,300 \times 3) = -20$$

2. Divide the answer by the ideal population multiplied by the number of representatives

$$-20 \div (2,300 \times 3) = -.28\%$$

(*Richard E. Boyer* 1982, 3)

Although the component method computes a higher deviation and has been argued to provide a truer calculation of the deviation, the Court ruled that the aggregate method is a sufficient method for calculation. The Court argued that while the component method calculates “‘shares’ of floterial representatives assigned to each regular district [...], fractions of a floterial representative are never actually given to each component district” (*Richard E. Boyer* 1982, 3). Thus, the Court found the component method was unnecessary.

Ruling of the Court

The New Hampshire Court found that the component method was unnecessary because the aggregate method “sufficiently reveals any defects in apportionment that may exist” (*Richard*

The aggregate method calculated that the floterial district had a small deviation of only -.28%. When the component method is used, a higher deviation is calculated.

Component Method:

1. Calculate the “share” of each individual district in the floterial district. Divide the individual district’s population by the floterial district’s population
Weare: $3,232 \div 6,880 = 47\%$
New Boston: $3,648 \div 6,880 = 53\%$
2. Calculate the “adjusted seats” by adding the “share” to the number of representatives of each individual district
Weare: $0.47 + 1 = 1.47$
New Boston: $0.53 + 1 = 1.53$
3. Calculate the component population per representative by dividing each district’s population by the adjusted seats
Weare: $3,232 \div 1.47 = 2,198$
New Boston: $3,648 \div 1.53 = 2,384$
4. Calculate the percentage deviation from 2,300 (the ideal population)
Weare: $(2,198 - 2,300) \div 2,300 = -4.4\%$
New Boston: $(2,384 - 2,300) \div 2,300 = 3.7\%$
(*Richard E. Boyer* 1982, 3)

The component method calculates a greater deviation. The Court ruled in *Boyer* that the aggregate method is a sufficient method for calculating deviation.

E. Boyer 1982, 4). The plaintiffs argued that other courts have used the component method before, such as the Texas District Court in *Kilgarlin v. Martin*, which found a Texas reapportionment plan unconstitutional. The United States Supreme Court, however, reversed this ruling, but avoided answering what method should be used to calculate the deviation (*Richard E. Boyer* 1982, 3). In *Mahan v. Howell*, the Supreme Court again ignored the question of what type of method should be used, and stated that it “decline[d] to enter this imbroglio of mathematical manipulation” (*Richard E. Boyer* 1982, 3). The New Hampshire District Court recognized the Supreme Court’s reluctance to address this issue, and made its ruling that the aggregate method was sufficient based on the grounds that the Supreme Court had traditionally used the aggregate method. Furthermore, the District Court argued that the component method should only be used in instances of “invidious or other otherwise impermissible discrimination in the drawing up of floterial districts” (*Richard E. Boyer* 1982, 4). The District Court did not see any instances of obvious discrimination, and therefore, the aggregate method was sufficient.

The other part of the plaintiffs claim was that the overall deviation was unconstitutional, but the Court was not convinced by this argument. The court looked to the *Reynolds* ruling, which stated that a district can deviate from the “ideal” deviation as long as it was “based on legitimate considerations incident to the effectuation of a rational state policy” (*Richard E. Boyer* 1982, 4). In this case the Court found that the secretary of state provided several legitimate justifications, such as that the state legislature followed the state policies of maintaining county, city, and town boundaries. As described in the previous chapter, the state representatives also make up the County Convention, pursuant to RSA 24:1, so House districts cannot cross county lines. The state constitution requires that towns and wards that make up a district to be contiguous and for the legislature to observe existing ward boundaries. The Court found that

maintaining county lines, as well as the other state policies, limited the possibilities of maps that could be drawn. The legislature also “attempted to group towns of like size” when drawing districts (*Richard E. Boyer* 1982, 5). While the Court found these policies to be limiting to the legislature, they believed that they were all legitimate policies. Furthermore, since the Court did not find any proof that the bill was the “product of bad faith or invidious design,” and that the policies were “rational state policies,” they found that the bill was constitutional.

Conclusion

Boyer v. Gardner was the first test of the constitutionality and appropriate use of floterial districts in the state. The ruling of this case did not dismiss floterial districts as unconstitutional, and in fact the Court said that “It must be borne in mind that the floterial district is a concept devised to equalize representation while preserving political boundaries” (*Richard E. Boyer* 1982, 4). Additionally, the Court declared that the aggregate method was a sufficient method for calculating the deviation of a floterial district. This case is important because it allowed for the continued use of floterial districts in later plans, as seen in the 1992 and 2002 plan. It also clarified the proper way for measuring the deviation of floterial districts, which was then challenged and overruled in a later case. The continued use of floterial districts in the 1992 and 2002 redistricting plans led to the Court reviewing the constitutionality of floterials again in a 2002 case.

Use of Floterial Districts in the 1992 Redistricting Plan

In the previous chapter, the 1992 redistricting plan was discussed as the first map with a clear partisan divide among the parties. Part of this partisan divide would have likely had to do with the increase in the use of floterial districts. The 1992 plan increased the number of floterial

districts and the statewide deviation from the 1982 plan. The 1982 plan used 17 floterial districts and had a statewide deviation of 13.74 percent. In contrast, the 1992 plan had 32 floterial districts and a statewide deviation of 14.37 percent (N.H. House. Constitutional and Statutory Revision 1992, 2). The 1992 plan also included larger floterial districts. One of the floterial districts was “2/3 the size of the Senate seat.” Representative Cowenhoven explained that the large floterial districts allowed for lower deviation, and claimed that “without the floterials our deviation would have been near 20” (N.H. House. Constitutional and Statutory Revision 1992, 3). Thus, similar to the 1982 plan, floterials were partially used as a way to decrease the statewide deviation.

The legislature could have found it difficult to district the smaller rural towns, considering that there was still an increase in rural population in the state from 1980 to 1990. In 1980, the state saw its largest increase in state population in the last 30 years, of 24.8 percent (U.S. Census Bureau 1981). The state population still increased a significant amount, 20.5 percent, from 1980 to 1990. The rural parts of the state saw only a 23.5 percent increase, compared to the 36.9 percent increase from 1970 to 1980 (U.S. Census Bureau 1990). This increase in rural population over the past 20 years could likely account for the increase in the use of floterials in the state. Although there was an increase in rural population, if the legislature properly used floterial districts, it would be expected that there would not be an increase in deviation. However, the increase in deviation points to potential gerrymandering.

It is difficult to see the influence floterial districts had on gerrymandering efforts in the 1992 plan, because the Republican Party lost seats in the House after the 1992 election. The 1992 election was an important year for Democrats in the state. This election was the start of the growing strength of the Democratic Party in the state, especially with President Clinton winning

the state. In the off-year election, the Republicans were able to gain all of their seats back plus some. While it is difficult to point to the partisan composition of the House as proof that the increased use in floterial district assisted the Republican Party in gerrymandering, there is other evidence that the use of floterials were partisan efforts. For example, Democrats testified that their proposals were not accepted because they were created by a Democratic representative. Representative Chambers said, “There were plans proposed for better deviations however they were defeated on a partisan vote because the sponsor was a member of the Democratic Party” (N.H. House. Constitutional and Statutory Revision 1992, 2). By “better deviations,” Representative Chambers meant that the Democratic Party proposed plans that had a lower statewide deviation, which meant that the map more closely followed the “one-man, one-vote” principle outlined by the Supreme Court in *Reynolds*. Since the maps were proposed by Democrats, they did not include the Republican Party gerrymandering strategies, and thus were not adopted. In a New Hampshire Court case in 2002, it becomes even more evident that floterials were in fact not being used to help lower the statewide deviation, as they were in 1982. Additionally, the Court case points out instances of unconstitutional use of floterial districts in the 1992 plan, which will be discussed later.

Use of Floterial Districts in the 2002 Plan

In the 2002 plan, the House continued to increase the number of floterial districts used to draw the map; however, this plan was never implemented. Representative Bragdon, representing the majority of the committee, stated that

Floterials were used when necessary, and while there are more of them, the average number of residents within a floterial decreased from the 1992 levels. Additionally, these floterials reduced the overall deviation to under what it would have been had we not used a floterial. The average deviation, per district is well under the goal of 10%. (N.H. General Court 2002, 292)

The Democratic Party countered this statement by calling attention to instances of excessive use of floterials and the high “range of deviation” across districts. For example, Representative Clemons claimed that “more than 75 percent of the members of this House will be elected from multi-member or floterial districts” and that “only 15 members will be elected from districts that fall within the constitutionally acceptable range of 3,089” (N.H. General Court 2002, 292). Similar to the explanation in 1992, the representatives in support of the 2002 redistricting plan argued that there was an increase in floterial districts because the population in the rural areas increased. Representative Stritch suggested that the population in the “Small towns in rural areas grew by 18 to 20%,” and that a floterial district allows for the “additional number of people in each district [an] additional representative” (N.H. General Court 2002, 305-306).

Democratic Governor Shaheen vetoed the 2002 plan, and the House was unable to get the two-thirds majority needed to override the veto. In Governor Shaheen’s veto message she explained that she felt “HB 420 creates unnecessary floterial districts. In others, House Bill 420 fails to create floterial districts where they clearly are warranted” (N.H. General Court 2002, 870). For example, Governor Shaheen points to the fact that a floterial district was not used to fix the underrepresentation of Claremont or Laconia, when it does use floterials for a similar situation in Hollis and Raymond. The majority explained that if they were to put Claremont or Laconia into a floterial they would have “dominate[d] surrounding smaller towns in a floterial district,” but Governor Shaheen was unconvinced by this argument. She points out in her veto message several instances where the House drew floterial districts that combined large towns with “much smaller neighbors” (N.H. General Court 2002, 871). In addition, Governor Shaheen points out that the plan includes an overlapping floterial district, despite the fact that there “were better alternatives” and that “the Republican leadership of the House Redistricting Committee on

more than one occasion questioned the constitutionality of overlapping floterial districts” (N.H. General Court 2002, 871). Since the House was unable to override the veto and the state constitution requires the House to redraw a new map every ten years before the candidate filing period in June, the responsibility of redistricting fell to the Courts.

Representative Burling v. Gene Chandler, Speaker of the House (2002)

After the governor vetoed the 2002 redistricting plan and the House was unable to override the veto, eleven representatives filed for “original jurisdiction” with the Court. The petitioners asked the court to “declare the existing representative districts unconstitutional and to impose a deadline for the legislature to enact a valid reapportionment plan” (*Representative Peter Burling* 2002, 2). The Court declared that the 1992 redistricting plan was no longer constitutional, because of the change in the state’s population and the fact that the plan had an unconstitutional statewide deviation when it was implemented. Since the 1992 plan was ruled unconstitutional and the legislature failed to create a new plan, the Court decided that they were now responsible for drawing the map. While the Court was reluctant to get involved in a legislative task, they explained that it is their role as the judiciary to “insure the electorate equal protection of the laws” (*Representative Peter Burling* 2002, 2).

The Court’s redistricting plan apportioned 400 representatives into 88 districts and, according to the Court, “restore[d] as nearly equal weight as possible” to the voters (*Representative Peter Burling* 2002, 2). The map consisted of five single-member districts and 83 multi-member districts. The Court explained that by using as few multi-member districts as possible it was able to keep a lower deviation. The deviation for the court plan was 9.26 percent, which is under the ten percent deviation suggested as the maximum acceptable deviation by the Supreme Court in the *Brown v. Thomson* ruling. In fact, the Court argued that “Floterials, as

constructed in New Hampshire, have led to unusual results and voting inequities”

(*Representative Peter Burling* 2002, 6). After looking at how floterial districts were used in the 1992 and 2002 plan, and reviewing the question of the proper method to calculate the deviation of the districts, the Court rejected “floterials as an unsound redistricting device” (*Representative Peter Burling* 2002, 12).

In an attempt to still keep the redistricting process in the legislature, the Court had representatives from both political parties propose plans. However, the Court did not accept any of these plans, with their main reason being that all of the plans included floterial districts. The Court argued that the plans relied on the floterials to decrease the statewide deviation and that they used the aggregate method, which is not the proper method to calculate the deviation of floterials. The Court explained that “the aggregate method is appropriate for multi-member districts, but is not appropriate for the floterials [...] because it masks substantial deviation from the one person/one vote principle” (*Representative Peter Burling* 2002, 9). Although the Court did not approve of using the aggregate method to calculate the deviation of floterials, it did not accept the component method either. In fact, the Court explained that even when floterials are calculated using the component method their deviations are still unacceptably high. Thus, the ruling in *Burling* prevented the legislature from using floterials in future redistricting plans.

While the Court could have simply made the map for the House districts, the Court decided to give its opinion on the constitutional and statutory restraints on redistricting, the best types of districts to use, the maximum allowed range of deviation, and, most importantly, the constitutionality of floterials. The Court used the 1992 redistricting plan as an example of what the legislature did incorrectly. First, the Court calculated that the 1992 plan had a statewide deviation of 49.7 percent, not 13.74. The Court got this number by using the proper method of

calculating deviations of different types of districts. In addition, although it was surprisingly not mentioned in the committee minutes or House floor debate in 1992, the Court pointed out that the map included floterial districts that were not properly drawn. For example, the 1992 plan had three floterials in Carroll County that all included towns that were only part of the floterial. In District 10 in Carroll County, a floterial district included Moultonborough, Sandwich, Tamworth and Tuftonboro, but only the town of Moultonborough had its own district. As a result, the voters in Moultonborough had three representatives, while the other towns only received one at-large representation from the floterial district. The voters in Moultonborough were given more representation than the voters in Sandwich, Tamworth and Tuftonboro. Thus, District 10 did not comply with the definition and proper application of a floterial, as described earlier in the chapter. A floterial district is supposed to be made up of single-member or multi-member districts, and not individual towns that are not part of a non-floterial district. Therefore, the Court explained that the 1992 plan was not a good starting place for the Court's plan, especially because the House did not properly use floterial districts in the plan.

The ruling in *Burling* is significant because the floterial districts are classified as “unsound.” The Court comes to this decision based on the fact that floterials cause high levels of deviation, when the proper method for calculating deviation, the component method, is used. Interestingly, the Court never mentions that floterials dilute the voting strength of a voter, or could be used to gerrymander based on race. These arguments have been used in the past to suggest that at-large districts are “unsound” redistricting techniques, and as discussed earlier in this chapter, there are similarities between at-large districts and floterials. However, the Court does mention that multi-member districts may “tend to dilute the voting strength of racial or political elements of the voting population” (*Representative Peter Burling* 2002, 12). The Court

did not discuss how floterials could be used to dilute voting strength or group voters based on race because in the 1982 case, *Boyer*, the Court approved the use of floterials. The main goal of the Court in *Burling* was to justify and legitimize the Court's redistricting plan, not to answer a question of the constitutionality of the use of floterials. So the Court suggested that floterials were an "unsound redistricting device" as an explanation for why they did not include them in their plan. Although the obvious arguments to make against the use of floterial districts would be that they dilute the voting strength of voters and that they can be used to group voters based on race, similar to the arguments made in the past against at-large districts, these were never discussed in the New Hampshire Court cases.

Conclusion

The 2002 redistricting plan followed suit of the 1992 plan by increasing the number of floterial districts. The Democratic Party became skeptical of the Republican Party's increased use of floterials, as evident from the governor's veto, the fact that Democrats did not help override the governor's veto and that a Democratic representative was the main petitioner in *Burling*. As was discussed in *Burling*, the Republicans created a plan in 1992 that used many improper forms of floterials, but the Democrats never brought suit against the 1992 plan. By the time that the 2002 plan was created, the Democrats had experienced almost a decade of increasing party strength. The Republicans clearly did not anticipate that their redistricting plan in 2002 was not going to pass; otherwise they might have worked with the Democratic Party more to create a bipartisan plan. Furthermore, the Republicans may have predicted that if the plan was sent to the Courts that the Court would uphold the bill, especially because in *Boyer* the Court approved the use of floterial districts in the 1982 plan.

As discussed in the previous chapter, the House was not satisfied with the 2002 Court drawn map, especially because of the large districts, and consequently redrew the districts in 2004. The 2004 plan did not use any floterial districts, because the Court ruled in *Burling* that floterial districts were an unsound mechanism. Floterials were reintroduced into the redistricting process in 2012 after a constitutional amendment in 2006. The Court ruling in *Burling* lead to the Republican Party pushing forward a constitutional amendment in 2006 to allow the use of floterials.

2006 Amendment

In 2006 floterials were reintroduced to the redistricting process through a constitutional amendment, CARC 41. In New Hampshire the voters must vote on a constitutional amendment, so CARC 41 was put on the 2006 election ballot. The amendment read as:

Are you in favor of amending the second part of the Constitution by amending article 11 to read as follows:

[Art.] 11-b [Representative Districts; Standards for Apportionment.] When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats the town or wards hall have its own district of one or more representative seats. The apportionment shall not deny any other town or ward membership in one non-flotarial representative district. When any town, ward, or unincorporated place has fewer than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the district, the boundaries of towns, wards, and unincorporated places shall be preserved and contiguous. The excess number of inhabitants of a district may be added to the excess number of inhabitants of other districts to form at-large or flotarial districts conforming to acceptable deviations. The legislature shall form the representative districts at the regular session following every decennial federal census. (N.H. Dept. of State 2007, 335)

New Hampshire voters voted for the constitutional amendment, with 240,767 voters in favor of the amendment and 100,688 in opposition. The amendment requires the House to give small towns their own representative if their population matches the ideal population. If a district has excess population, but not enough to receive a second representative, the amendment allows the House to use floteria districts. Among the legislators debating CARC 41 there was uncertainty if the Court in *Burling* ruled that floteria districts were unconstitutional or unsound. The passing of CARC 41 by the voters, however, would allow floteria districts to be used in future redistricting plans.

The Republican Party, along with the secretary of state, was in favor of CARC 41, and centered their argument on the fact that this amendment would encourage and require the House to district the state so that representatives would be kept close to their constituents. For example, Representative Kurk argued that CARC 41 would “restore a several hundred year tradition of having one Representative for one town,” referencing how redistricting occurred in the state prior to the 1965 plan. He also said, “New Hampshire has an important tradition of keeping their representative close to the people” (N.H. Senate. Internal Affairs 2006, 4). Another Republican representative made note of the “illegal floteria districts” used in 1992, and argued that CARC 41 did not “encourage or allow for those illegal floteria districts to exist” (N.H. Senate. Internal Affairs 2006). It is interesting that this representative made note of the mistakes the House had made in the past when using floteria. In 1992, a representative claimed “it was the opinion of the committee that it was better to give individual representation to a community where possible and then create a floteria district with the over-population” (N.H. House. Constitutional and Statutory Revisions 1992, 3). However, there is evidence that the 1992 plan had several instances of improper use of floteria and several towns that had the population to receive their own

representative were not given one. Thus, the Democrats were concerned that CARC 41 would produce the same problems that were found in the 1992 plan.

In general, the Democrats were opposed to CARC 41, because it would reintroduce the use of floterials. Senator Burling, the petitioner in *Burling*, testified in opposition to CARC 41 because he opposes the use of floterials. Senator Burling argued that the Court ruled in *Burling* that the “floterial is a de facto violation of the concept of one person/one vote and that it is impossible to design a constitutional redistricting plan which uses floterials” (N.H. Senate. Internal Affairs 2006, 8). He went on to explain that one of the issues the House faces when redistricting is the non-constitutional requirement to remain within county lines, which then pressures the House to rely on floterials. Without the statutory requirement for House representatives to also serve as the county council members, Senator Burling argued that floterials would not need to be used (N.H. Senate. Internal Affairs 2006, 8).

Conclusion

The 2006 amendment was needed after the Courts declared floterial districts an unsound redistricting technique. Although the House had become more reliant on floterials to help lower the statewide deviation, they were also becoming a technique to gerrymander. The Republican Party strategically put forward this constitutional amendment. If the amendment were to pass, it would allow for floterials to be used in the upcoming redistricting. The question was put on the ballot for a non-presidential election year. Out of the four past presidential elections, the state went blue in three of them. If it were a presidential election year, the Democratic Party may have been able to bring more voters out to the polls and could have educated voters to vote “no” on the constitutional amendment question. Another possibility would have been for the constitutional amendment question to be overshadowed by the presidential election. Lastly, the

Republican Party waited four years after the 2002 Court decision, which allowed time for people to forget about the 2002 redistricting debacle and court ruling. Thus, the 2006 amendment was a product of the Court's ruling in *Burling* and the strategic planning of the Republican Party to potentially have the opportunity to use floterials in the next redistricting year.

Use of Floterial Districts in 2012 Plan

After the 2006 amendment passed floterial districts were reintroduced to the redistricting process. This was the first time the House was using floterials since the failed House plan in 2002. With the 2002 plan still in the minds of the legislatures, they sought legal counsel for the 2012 redistricting map. The lawyers suggested that the House plan's statewide deviation should be under ten percent and that the guiding principle should be "one-person, one-vote," in order to ensure constitutionality. However, it was essentially impossible for the legislature to draw a map that would give every small town that had a large enough population to receive a representative their own representation, while following the other redistricting requirements, such as the state constitution requirements and keeping the statewide deviation below ten percent. The lawyers advised the representatives that the federal mandates of "one-person, one-vote" and keeping the deviation below ten percent should be met before the state requirements. The final 2012 redistricting plan had a statewide deviation of 9.9 percent, and used the aggregate method for single-member and multi-member districts, while the component method was used for floterials (Brief for the Intervenor 2012). Since the House made certain that the deviation would be under ten percent, they were not able to comply with the 2006 amendment in every situation, as Governor Lynch pointed out in his veto message. Thus, petitioners filed suit against the secretary of state on the grounds that the 2012 redistricting plan violates the 2006 constitutional amendment.

One of the floterial districts that the Democratic Party was especially concerned with was the district that combined Manchester Wards 8 and 9 with Litchfield. As discussed in the previous chapter, arguments were made that the Manchester wards do not share a “community of interest with Litchfield” (*City of Manchester* 2012, 16). Furthermore, the Democratic Party saw this floterial districts as obvious gerrymandering. In the previous plan, Litchfield was in a multi-member district with Hudson and Pelham and was represented by all Republican representatives. In the 2010 election results, Litchfield voters voted in greater numbers for the Republican candidates than the Democratic candidates (“State Representative-2010 General Election”). On the other hand Manchester Wards 8 and 9 were their own districts with three representatives each. Manchester Ward 8 was represented by two Republicans and one Democrat. Manchester Ward 9 was represented by one Republican and two Democrats (“State Representative-2010 General Election”). By making a floterial district with Manchester Wards 8 and 9 and Litchfield, the Republicans were attempting to guarantee two Republican seats in the House, because these wards and town tended to lean Republican. In the 2012 election, two Republican candidates won the floterial district (“State Representative-2012 General Election”). This is evidence that the Republicans used floterials in the 2012 plan as a strategy to translate votes into seats. Since cities, towns, and the Democrats did not approve of the redistricting plan, for reasons similar to the floterial district combining Manchester Wards 8 and 9 with Litchfield, they brought suit against the secretary of state prior to the 2012 election.

City of Manchester v. Secretary of State

In *City of Manchester*, the Court was asked if the plan violates the 2006 constitutional amendment, Article 11, Part II, because it:

- 1) fails to provide approximately sixty-two towns, wards, and places with their own representatives
 - 2) divides certain cities, towns and wards
 - 3) devises multi-member districts comprised of towns, wards, and places that are not contiguous
- (*City of Manchester* 2012, 4)

In addition, the Court was asked if the plan violated the “community of interest” of towns covered by floterial districts. In the Court’s opinion, they recognize that the legislature had to choose between either adhering “to the 10% rule and give fewer towns, wards, and places their own districts or exceed the 10% rule” (*City of Manchester* 2012, 12). While petitioners made arguments about how the House incorrectly calculated the floterial district deviations, even though the component methods were used, and in fact the deviations were much higher than the House admitted, the Court was not convinced. For example, the City of Concord argued that Concord Ward 5 should not be in a floterial district with the Town of Hopkinton, because the relative deviation was 20 percent. However, the Court claimed that this did not provide enough of a reason for them to be convinced that the legislature did not have rational basis for combining the ward with the town (*City of Manchester* 2012, 13). Overall, the Court argued that the petitioners failed to meet the burden of proof to prove that the plan was unconstitutional.

Similar to the previous court cases discussed in this chapter, the Court did not discuss floterial districts in relation to vote dilution or racial gerrymandering. In the *City of Manchester* ruling, the Court addressed that both vote dilution and racial gerrymandering are discussed in “equal protection claim” cases, and that the petitioners did not “allege an equal protection violation” (*City of Manchester* 2012, 6). Instead, the petitioners claimed that the plan violated “other state constitutional mandates,” especially CARC 41 (*City of Manchester* 2012, 6). As a result, the New Hampshire Court has yet to discuss floterial districts as a mechanism that diluted voter strength or as a way to strategically group voters based on race.

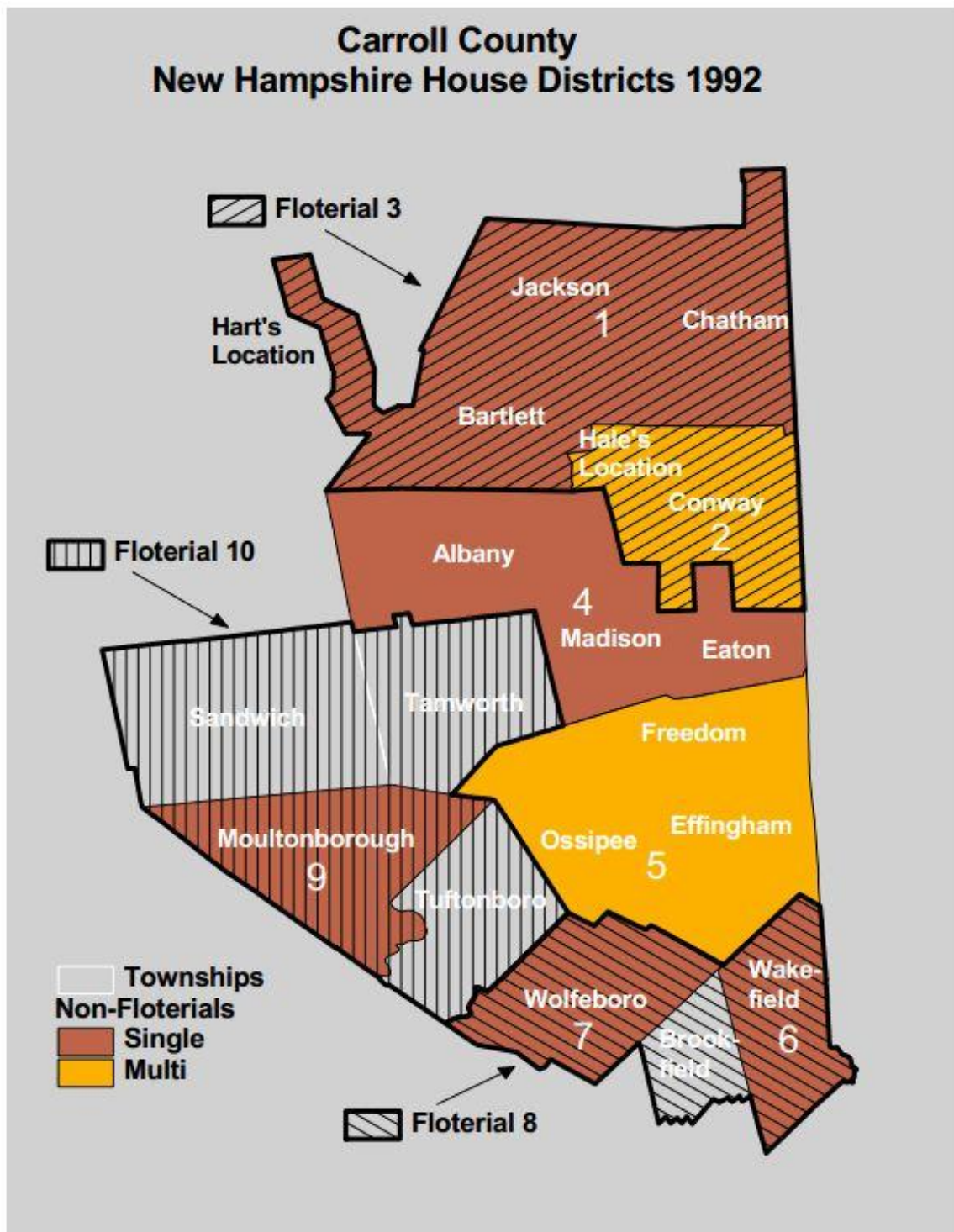
Conclusion

This chapter, similar to the previous chapter, highlighted a strategy used by the Republican Party to translate votes into seats. Additionally, this chapter showed how this strategy was increasingly used over the years. Floterial districts were introduced in the state in 1982, but by 2012 had a different purpose. In response to the increasing strength of the Democratic Party in the state, floterial districts became a mechanism used by the Republican Party to gerrymander. In 2002, the New Hampshire District Court ruled floterial districts as an “unsound redistricting technique.” This Court ruling led to the passing of a constitutional amendment four years later, which made floterial districts constitutional. In the most recent plan, floterial districts were used to draw the district maps. Although the Republican Party did not maintain control of the House after the 2012 election, some of these floterial districts were successful in translating votes into seats for the Republican Party, such as the Manchester Wards 8 and 9 and Litchfield district. Similar to the previous chapter on redistricting, this strategy is not immune to wave elections, such as the 2012 election. It will be interesting to see if the floterial districts strategically drawn by the Republican Party in 2012 continue to translate votes into Republican seats over the next ten years. It is likely that as voters move between districts, and if the trend of wave elections continues in the state, that these floterial districts will become less of a guaranteed Republican seat.

As mentioned by the secretary of state in 1982, several other factors could have contributed to the 1984 election results, such as “coattails from the New Hampshire straight-ticket ballot” (Gardner 1993, 171). The next chapter will discuss another strategy used by the Republican Party in the state over the years. New Hampshire has changed its ballot design several times over the years, and many of these changes were strategies to help translate votes

into seats from within the voting booth. This chapter and the previous chapter discussed strategies of the Republican Party to strategically group voters to translate votes into seats. The next chapter will discuss how simultaneously the Republican Party strategically changed the design of the ballot as another strategy to translate votes into seats. The following chapter will discuss these changes to the ballot design, such as straight-ticket voting, party column order, and the order of candidates' names, and the effects of these changes.

Figure 3.1: Floterial Districts in Carroll County



Note: This is a map of the 1992 legislative districts in Carroll County. This map shows the three floterial districts in the county.

Source: *Representative Peter Burling v. Gene Chandler, Speaker of the House*. 2012. No. 2002-0210. The Supreme Court of New Hampshire. "Appendix A: Carroll County N.H. Districts 1992."
http://www.courts.state.nh.us/supreme/opinions/2002/0207/hse1992_car.pdf (accessed September 13, 2012).

Chapter 4: Ballot Design

As seen in the previous chapters, politicians will strategically redistrict and use floterials districts to translate votes into seats. This chapter will explain how politicians influence uninformed voters in the voting booth as another strategy to translate votes into seats. Since some constituents view voting as their civic duty, they will still vote in an election even if they lack sufficient information. In other instances, some voters may choose to abstain from voting for a certain race because they lack information about the candidates (Miller and Krosnick 1998). The voters who still turn up to the polls, even if they lack information, will look for voting cues. Thus, with this trend in mind, politicians strategically design ballots to assist their party in winning votes. The features of the ballot that politicians use as strategies include the straight-ticket voting option, the office bloc form versus party column form, and the ordering of party columns and candidates' names on the ballot.

Currently, New Hampshire uses a party column ballot that is designed by the secretary of state and distributed to the town clerks. The secretary of state is responsible, pursuant to RSA 656:5, for creating “generic column rotation plans,” which means that the position of the party columns should be rotated so that each party will appear first on the ballot an equal number of times. Figure 4.1 and 4.2 are two examples of the rotating party column ballots from the 2012 election. The Republican Party is listed in the first column for Manchester Ward 7 and the Democratic Party is listed in the first column for Manchester Ward 8. The party columns are rotated similarly across all wards and districts throughout the state. The law also requires that if there are two or more candidates running for the same office, then the names should be randomized. The candidates are listed in alphabetical order, and then by using a system of random numbers the secretary of state lists the candidates in that order. The statute provides an

in-depth explanation of the system the secretary of state should use to order the candidates. The statute states,

I. Whenever there are 2 or more candidates for the same office whose names will appear together within the same column or list on a ballot, the position of such names shall be determined according to this section.

II. Immediately following the close of the period during which a person may accept the nomination of a party committee pursuant to RSA 655:32, the secretary of state or designee shall conduct a public random selection of a whole number from one to the total number of candidates for each possible list length where a group of candidates for the same office may appear in the same list in state or local elections during the next 2 years. For example, for a possible list of 3 candidates, the number one, 2, or 3 shall be randomly selected. The seed number for each possible list length shall remain in effect for the 2 years until the next random selection of seed numbers.

III. To determine the order of names on each ballot, the candidates for each office in the same list shall be temporarily listed alphabetically by surnames and the positions in such list shall be temporarily numbered in ascending order. The candidate whose position in the initial temporary list equals the seed number selected under paragraph II for the appropriate list length shall appear first on the ballot. The order of candidates after the candidate in the first position shall follow alphabetically by surname with "a" following "z."
(N.H. Rev. Stat. Ann. §656:6)

The New Hampshire ballot was not always structured with randomized party columns and candidates' names. In fact, the randomization of the current ballot is a result of a New Hampshire Court case, which will be discussed towards the end of this chapter, and was specifically designed so that it did not preference any particular political party or candidate.

The design of the ballot in New Hampshire has taken many different forms over the years. In 1891, the state adopted the Australian ballot form with office blocs and since then the state has alternated between the office bloc form and the party column form (Ludington 1911, 46). In the past, the party column form listed first the political party that received that most amount of votes in the previous general election. There have also been changes to how candidates' names have been ordered on the ballot. The Republican Party attempted to control the voter's choice by listing their party first in the party column and office bloc forms. Throughout the changes in the

structure of the ballot, the straight-ticket option was consistently on the ballot from 1897 through 2007. The Democratic Party began to propose bills to eliminate straight-ticket voting as they started to see the straight-ticket option as an advantage for the Republican Party. This chapter will look at the timing of the changes in the ballot structure, and what the results of these changes were.

The purpose of this chapter is to explain how politicians use ballot design as another strategy to translate votes into seats. This chapter will analyze how the changes to the ballot structure were a result of the motivations of political parties, and additionally were dependent upon court cases, changes other states were making, and the result of the ballot designs on the translation of votes into seats. The chapter will first explain the history of the elimination of straight-ticket voting in the state, and then a history of the changes to the ballot structure. The chapter will end with an explanation of how straight-ticket voting and ballot structure were strategies used together to help translate votes into seats for the Republican Party.

Eliminating Straight-Ticket Voting

The New Hampshire ballot included a straight-ticket voting option for about 110 years, until it was repealed by the Democratic majority legislature in 2007. A straight-ticket option allows a voter to mark a box to vote for all of the candidates of that political party. On the New Hampshire ballot, the straight-ticket option includes party emblems, so that the voter can easily recognize the parties. When it was first implemented in New Hampshire, many states also included this option on their ballots. The original purpose of the straight-ticket option was to assist illiterate voters, because they only needed to recognize the party emblem. In the 1990s states began to remove the option from their ballots. When New Hampshire repealed straight-

ticket voting in 2007 only seventeen other states still used this voting method (Lambert 2008), and currently only fifteen states still offer straight-ticket voting (“Straight-Ticket Voting” 2012).

The proposals to eliminate the straight-ticket option from the ballot in New Hampshire began in 1965, but became more frequent by the 1990s (Lambert 2008). Figure 4.3 is a timeline of the proposed bills to eliminate straight-ticket voting. A bill to eliminate straight-ticket voting was proposed almost every session from 1965, the first year a bill was proposed, until 2007, when the voting method was repealed. In 1965, HB 5 “to do away with voting by a straight ticket,” had few supporters. While only Democrats in the House supported the bill, several Democrats joined the Republicans in opposition to the bill. After minimal floor debate on the bill, it was then struck down by a voice vote (N.H. General Court 1965, 103). In the 1990s, there was always a request for a roll call for votes on the bills proposed to eliminate straight-ticket voting. However, HB 5 was decided by a voice vote, which suggests that there was a clear majority in opposition to the bill.⁹ Compared to the 1990s there was not a clear partisan divide on the issue at this time.

After 1965 until 1989 the bills proposed were either to eliminate the voting method or change the structure of the ballot. However, beginning in 1989 the same bill, relative to “eliminating straight-ticket voting on the ballot,” was proposed each year until its passage. There was a break in proposed bills between 1989 and 1993, most likely because the legislature was focused on redistricting the state during this time. After the 1992 election, when President Clinton won the state, the Democrats started to see their party gain strength and saw this

⁹ According to the “New Hampshire General Court Legislative Handbook,” any proposed bill will be sent to the appropriate committee. The committee will then give their recommendation of “Ought to Pass,” “Ought to Pass with Amendment,” “Re-refer to Committee,” “Retain in Committee,” “Inexpedient to Legislate,” and “Refer to Interim Study.” A bill cannot be “killed in committee” in New Hampshire. After the committee gives their recommendation, the bill is put into the House or Senate calendar and voted on by the appropriate chamber. If the chamber adopts the committee’s recommendation of Inexpedient to Legislate, the bill will then be essentially “killed.” In 1965, HB 5, even though it did not have much support, was still presented to the House floor because a bill cannot be “killed in committee” in New Hampshire. (“New Hampshire General Court Legislative Handbook”)

continue through the 1990s. As a result of the Democrats gaining strength as a party, eliminating straight-ticket voting became a main focus for the party, because they began to see this voting method as assisting the Republican Party in maintaining control in the legislature. The arguments in support of and against eliminating straight-ticket voting in the 1990s, and leading up to the 2007 law, increasingly had the clear partisan divide that was missing in 1965. This partisan divide was the result of the rise of two-party competition in the state, which caused the Democrats to see straight-ticket voting as a threat and the Republicans to want to hold onto the voting method.

In addition to bills attempting to eliminate straight-ticket voting, there have been changes to the instructions on the ballot about how to vote a straight-ticket. The legislature made changes to the instructions on the ballot to simplify the process for voters. As will be discussed shortly, those in support of repealing the straight-ticket option argue that the voter is often confused by the ballot, especially because in New Hampshire the voter can choose the straight-ticket option and also vote a split ticket. In 1942, an amendment required that the ballot instructions guide the voter to cross out the name of the candidate on the party selected for the straight-ticket, in order to vote for a candidate from the opposite party (Smarling 1997, 1). Then in 1986, an amendment changed the instructions to simplify the process and specify how voters should vote for candidates in multi-member districts. The 1986 amendment clarified that “if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted for that office” (Smarling 1997, 3).

Between the 1942 and 1986 amendment, there were changes to the redistricting process in the state, as mentioned in the previous chapters, and thus more multi-member districts were

being drawn. As a result, voting for members of the other party and also using the straight-ticket option became more confusing for the multi-member district House races. Then in 1994 an amendment gave the secretary of state the power to write the directions for straight-ticket voting on the ballot (Smarling 1997, 4). These amendments to the instructions for straight-ticket voting were implemented in response to the changes in the number of candidates on the ballot for each office and how voters would want to vote. These changes were also implemented in an effort to eliminate the argument made by the Democratic Party that the voting method confused voters.

Proposals to Eliminate Straight-Ticket Voting

During the 1990s there were several attempts to repeal straight-ticket voting by the Democrats in the House and the Senate. In fact between 1989 and 2007, as few as eighteen bills were proposed to repeal the voting method or change the instructions on the ballot. Over the years, the arguments for and against the voting method stayed relatively consistent. The main arguments by the Democrats, who supported the repeal of straight-ticket voting, were that it confused the voter, confused the people counting the ballots, deterred voters from reading the full list of candidates and did not encourage voters to vote for the constitutional amendment questions that were at the end of the ballot. They also argued that it only benefitted the political party that was subject to the coattails effect in big election years, which had traditionally been the Republican Party. On the other side of the argument were the Republicans, who argued that the straight-ticket option was a tradition, and that by eliminating the voting option they were limiting the voter's right to choose. While the Republicans never admitted so in testimony, it is clear that they recognized the straight-ticket voting method as a strategy to maintain party control. Most of the arguments for or against straight-ticket voting focused on how the ballot affected the voters, however there were underlying partisan motives by both political parties.

While there was a consistent divide along party lines in the 1990s on the issue of eliminating the straight-ticket option, the arguments for or against the elimination of the voting method did not start out as overtly partisan. The main argument in 1989 by those in support of eliminating the voting method, which were the Democrats, was that the “system gives more weight to less thoughtful vote[s],” and so they felt people were voting for candidates that they would not necessarily have voted for if they read the entire list (N.H. House. Constitutional and Statutory Revision 1989). In 1994, when both the House and Senate Democrats proposed legislation, they repeated their argument about how the straight-ticket option does not encourage voters to think about the individual candidates. Since the Democrats sponsored legislation in both the House and Senate, it suggests that passing legislation to repeal straight-ticket voting had become part of their policy platform. Another argument made in 1994 was that eliminating the straight-ticket option would take confusion out of the voting process and out of the ballot counting process (N.H. House. Constitutional and Statutory Revision 1994). In cases of multi-member districts, the Ballot Law Commission and secretary of state have had to use their discretion in determining the intent of the voter, especially in instances when a voter chose the straight-ticket option and also voted for a candidate of the opposite party. Most of the arguments at this time centered on the rights of the voters, ensuring that the voting process was simple and how voters should be encouraged to consider each candidate individually.

In 1995, Democrats continued to argue that straight-ticket voting was confusing for the voter, but they also began to make a clearer argument about how the voting method affected political parties. The 1995 bill, HB 632, would have also repealed the laws that allowed the incumbent party to be listed first on the ballot, and prohibited a candidate from “being the nominee of more than one party.” Although the main goal of the bill was to eliminate the

straight-ticket voting method, the other two parts of the bill highlighted the fact that the Democrats saw the current ballot structure as assisting the Republicans in maintaining party control. In testimony before the committee on HB 632, there were several editorials and newspaper articles describing how the straight-ticket option should be repealed because it made the recounts exceedingly difficult in the 1994 election (N.H. House. Constitutional and Statutory Revision 1995). The minority report for the committee stated that the Ballot Law Commission supported the repeal of straight-ticket voting, and most likely because of the difficult recount repeals from the 1994 election (N.H. House. Constitutional and Statutory Revision 1995a). Even with the Ballot Law Commission supporting HB 632, it was not passed. Republicans, who had the majority in the House, did not support the bill, especially because the Democrats had attempted to eliminate parts of the ballot that assisted the Republican Party in getting votes.

Another bill was proposed in 1997, and this time the Democrats argued that straight-ticket voting “causes a disadvantage to political parties, especially where there is a coattail effort” (N.H. House. Election Law 1997). This argument, similar to the arguments made about previous bills, suggested that the straight-ticket option does not encourage voters to look at all the candidates on the ballot. A voter may just check the straight-ticket box because they want the candidates at the top of the ticket from that party to be elected, and thus even though the voter does not intentionally choose to vote for the candidates at the bottom of the ticket from that party they still receive votes. The Democrats consistently argued that the voters would not even think about or look at the candidates at the bottom of the ticket, such as the House representatives. On the other side of the debate, the Republicans argued that straight-ticket voting is an option that should not be taken away from the voters (N.H. House. Election Law 1997).

Straight-ticket voting was originally implemented to assist voters who were illiterate, because the option allowed voters to recognize their party emblem and make a check next to the emblem. In the 1990s, illiterate voters were not as much of a concern in New Hampshire, and Democrats argued that this voting method was now unnecessary. The Democrats saw straight-ticket voting as confusing and benefitting one particular political party over the other. They argued that voters should be reading the name of all of the candidates on the ballot, because there may be a candidate of the opposite party more qualified for the position. Or in some cases, a voter may know someone on the ballot that they would like to elect. With a 400 member House of Representatives in a small state it is likely that voters may personally know the candidate. Thus, while the Republicans argued that straight-ticket voting has traditionally been on the ballot and should not be repealed, the Democrats saw it as an unnecessary and a confusing addition to the ballot.

As the Democrats were gaining strength as a party in the state, they began to see straight-ticket voting as hindering their party from gaining a majority, and thus their arguments became more focused on political parties. In 2001, the minority opinion from the House committee explained that the issue of straight-ticket voting had clearly been a divided partisan issue over the years, but suggested that the parties should try to move past that fact for the benefit of the state. The minority party used the recent elimination of straight-ticket voting in Illinois as an example of Republicans eliminating the straight-ticket voting method. The minority opinion stated,

Votes in this House in the past have broken down almost entirely along party lines, Republicans opposing elimination due in large part to the perception that since there are more registered republicans statewide, Republicans benefit. Perceptions can be wrong. Illinois Republicans pushed to ban straight ticket voting since they believed elimination would help them in the Chicago area. When straight ticket voting was finally eliminated in the state, however, Republicans were hurt because Democrats did better downstate and still help[ed] in Cook County. Let's

put parties aside this year and do what is most likely to produce election of the most qualified, most committee candidates. (N.H. House. Election Law 2001)

The minority opinion provides several important points about New Hampshire politics at the time and about straight-ticket voting. First, the minority party recognized that Republicans wanted to keep this voting method because they believed it benefitted their party. Interestingly, at this time the number of Independent registered voters in New Hampshire exceeded the number of registered Republican and Democratic voters. Although there were more registered Independent voters, it is possible that these voters identified more with the Republican Party and thus would check the Republican straight-ticket box. The Democrats over the years argued that the straight-ticket box was often misleading, and voters would choose the option because they thought the ballot was asking them to identify their political party. So either the majority of voters in New Hampshire were truly Republicans and meant to vote a Republican straight-ticket, or they were being misled by the ballot. Either way, the Republicans wanted to keep this option on the ballot to help them maintain their majority.

The minority report also addressed how another state recently repealed straight-ticket voting and what the consequences were. Republicans in Illinois sponsored legislation to eliminate the straight-ticket option from the ballot, and it passed in 1997 (“Straight-Ticket Voting” 2012). It is common, as shown in the previous chapters with redistricting, for state legislatures to look to other states for guidance. The minority party used Illinois as an example to highlight the fact that even though a political party may think that straight-ticket voting may be hurting or benefiting them, it might not be the case. It is also significant that the minority committee report mentions that it was Republicans in Illinois asking to repeal the voting method, which suggests that favoring straight-ticket voting was not a national Republican policy platform.

Straight-ticket voting is a strategy used by both political parties, and often the political party that has a majority will favor the voting method.

From the arguments made over the years about repealing straight-ticket voting it is evident that it has consistently been a partisan issue. The Democrats began to clearly express how the voting method was hurting their party as they gained strength as a party in the 1990s. Additionally, the Democrats began to express how straight-ticket voting was a confusing process for the voters. Democrats continued to use this argument after a 2003 Court Case, which addressed straight-ticket voting, determining the intent of the voter, and the confusing nature of the straight-ticket option.

Appeal of Peter McDonough

In 2003, the New Hampshire court case, *Appeal of Peter McDonough*, addressed the main arguments for and against straight-ticket voting, including how to determine the intent of the voter and whether voters truly understand the ballot instructions. The petitioner, Peter McDonough, a candidate in the 2002 election for Hillsborough County Attorney, asked the Court to address the constitutionality of straight-ticket voting laws in the state. At the time, the state used an office bloc form ballot with a straight-ticket option. Candidates would be grouped by their political party and then listed alphabetically. The political party that received the largest number of votes in the previous general election would be listed first within the office bloc. Thus, McDonough, who was the incumbent, was listed second under the County Attorney office because he was a Democrat (see Figure 4.4). McDonough lost the election to the Republican candidate by only 226 votes. After requesting a recount, the margin between the candidates was reduced to 126 votes. McDonough then appealed to the Ballot Law Commission (BLC), and they

upheld the recount by the secretary of state. McDonough then appealed the BLC's decision to the Supreme Court of New Hampshire (*Appeal of Peter McDonough* 2003).

New Hampshire has a BLC that is responsible for ensuring that the state election laws are carried out. RSA 665 creates a five member commission. The speaker of the House and the Senate president each appoint two members, but must choose one from each major political party. The governor makes the last appointment. Although the commission is set up to be nonpartisan, since the governor makes the fifth appointment, there will always be a majority for the political party of the governor. In addition, since the governor's appointment lasts four years, while the other appointments are only two-year terms, that member has the most power in the commission. The secretary of state, who is responsible for designing the ballot, is the clerk of the BLC, but does not have any voting power (N.H. Rev. Stat. Ann. §665:1). William Gardner has been New Hampshire's secretary of state since 1976. The secretary of state is appointed by the House and Senate, and then reappointed every two years. The position, similar to the BLC, is a nonpartisan position. Evidence that this position is in fact nonpartisan is the fact that Secretary Gardner was a Democratic House representative when he was appointed to the position by the Republican majority House and Senate in 1976. The fact that Secretary Gardner has had his position for 36 years, and that the Republicans have had the majority in the House for most of his term, suggests that he must be acting in a nonpartisan manner. Thus, neither party is really able to control the election process through the secretary of state's office or the BLC.

One of the most important roles of the BLC is to determine results of recount appeals (N.H. Rev. Stat. Ann. §665:8). McDonough asked the BLC to review challenged ballots where voters:

- 1) filled in the appropriate mark to vote a straight ticket Republican ballot
 - 2) made appropriate marks to vote for individual candidates, either Republican or Democrat
 - 3) did not make any mark for candidates in the county attorney race
- (*Appeal of Peter McDonough* 2003, 5)

McDonough challenged these three types of ballots to highlight the difference in the intent of the voters. He argued that “the challenged ballots with individual votes for some offices, but a ‘skipped vote’ for the county attorney’s office, rebutted the presumption that the voter intended to vote a straight ticket in that race” (*Appeal of Peter McDonough* 2003, 5). The secretary of state, responsible for administering the recount, explained that they attempted to determine the intent of the voter. The secretary of state used the rule that if the voter marked the straight-ticket option and voted for some of the individual offices, the straight-ticket mark would apply to the skipped races. The BLC upheld the secretary of state’s rule for McDonough’s appeal.

Most of McDonough’s arguments in this case dealt with the confusion of the voter and how the BLC was determining the intent of the voter. The petitioner argued that the instructions on the ballot, especially with the addition of the clarifying instructions for the voter to vote for all the candidates in a multi-member district, often confused the voter. He argued that this confusion would result in recounts where the secretary of state or BLC would have to determine the intent of the ballot. The petitioner brought forward examples of when a voter would mark a straight-ticket vote, then individually mark the first five races and leave the rest of the seven races blank. He argued that the BLC incorrectly counted the straight-ticket vote for the races that were not individually marked. Although the Court upheld the BLC’s ruling, they did caution that if a voter “skipped races on the ballot [this] could be considered strong evidence that the voter intended to abstain from the skipped races” (*Appeal of Peter McDonough* 2003, 8). For example, if a voter voted a straight-ticket and then marked individual candidates for the straight-ticket party eleven

out of the twelve races, the BLC should consider that the voter intentionally meant to abstain from that twelfth race. Nevertheless, the Court said that the BLC's "uniform rule of ballot interpretation" is appropriate because "it seeks to give effect to all of the markings on a ballot" (*Appeal of Peter McDonough* 2003, 10).

Many of the arguments brought forth by McDonough highlighted the same arguments the Democrats had been arguing for years, such as how the instructions for straight-ticket voting are confusing for the voter and that determining the intent of the voter is complicated. Even though the Court was unconvinced by McDonough's arguments and upheld the BLC's ruling, Democrats continued to argue that voters were easily confused by the straight-ticket option. This court ruling led to increased discussion about how voters were not using or understanding straight-ticket voting properly. For example, the Democrats pointed to evidence of voters clearly thinking the straight-ticket box was asking with which party they aligned or were registered. During recounts, Democrats had seen evidence of a voter marking a Republican straight-ticket, individually voting for candidates at the top of the ticket, and then skipping the races at the bottom of the ballot. In some cases, these voters would even vote a split ticket at the top of the ticket. Therefore, the Democrats were frustrated that the straight-ticket vote would still count for the bottom races that the voter had skipped over. More often than not, the Republican straight-ticket box would be marked and the lower offices that were skipped over went to the Republicans, and thus helped the party maintain control in the state legislature. In fact, this argument was used by the Democrats to pass Senate Bill (SB) 36 in 2007, which repealed the straight-ticket voting method.

2007 Legislation Eliminating Straight-Ticket Voting

In 2007, the Democratic Party, who had a majority in both chambers and held the governor's office, was finally able to repeal straight-ticket voting. After the 2006 election, when the Democrats gained a majority in the House for the first time in 80 years, the Republicans questioned the Democrats as to why they would want to repeal the voting method that clearly assisted them in gaining a majority. The Democrats responded that they still felt the voting method was confusing for the voters, and that with the elimination of the voting method the intent of the voter would be much clearer. Since eliminating the voting method was part of their policy platform for over a decade, they saw their majority as an opportunity to finally repeal straight-ticket voting.

Even though the bill had been a Democratic effort, several Republicans in the Senate testified in favor of the bill. The Senate had ten Republicans and fourteen Democrats; however, the final vote in favor of SB 36 to eliminate straight-ticket voting was eighteen to six, with four Republicans supporting the bill. Senator Barnes, a Republican, testified that he felt straight-ticket voting deterred and confused voters from voting for the individual candidate. He said, "they are intelligent enough to read that ballot and pick the candidates of their choice and not voting for the party, but voting for the individual. And that's what voting is all about: it's not party; it's the individual who's running for office" (N.H. General Court 2007, 50). This was the first time a Republican had openly testified in favor of eliminating straight-ticket voting. While some Republicans wanted to keep the voting method because it had helped them keep their majority in the past, other Republicans may have wanted to eliminate the voting method that helped the Democrats maintain a majority for the first time in 80 years.

The Democrats, especially Senator Burling who had also sponsored previous bills to repeal straight-ticket voting, continued to argue that the voting method confused the voters. Senator Burling said, “We seek now to eliminate one of the major institutions of confusion in the ballot, the straight-ticket circle which is then followed by people who vote down the ballot, clearly indicating that they don’t understand what the circle’s about” (N.H. General Court 2007, 48). Senator Foster agreed with Senator Burling that the voter was often confused by the ballot, and provided further testimony about how the straight-ticket voting option was the source of this confusion. He testified on the Senate floor,

[T]hey’ll fill out the straight ticket, and I think they do it ‘cause they think they’re being asked what their party is. Then they go through and they fill out, let’s say 90 percent of the ballot. And what happened in my recount, not infrequently—I think happened in County Attorney McDonough’s recount, you may recall that one—is people skipped over that office entirely and went on to fill the rest of the ballot out. But because they filled out the top, the vote went one way or the other. And I don’t know what the intent of that voter was. I don’t think anybody can know what the intent of the voter is in that instance. But because of the way that the straight ticket works, one person got the vote or the other. You don’t think that’s evidence of confusion with the system? (N.H. General Court 2007, 54)

While the Democrats arguments may have persuaded some Republicans to repeal straight-ticket voting, the Republicans may have also decided to support the bill because they realized that the strategy was not assisting their party in maintaining a majority as it had in the past. Either way, the Democrats would have been able to pass SB 36 because they had gained a majority in both chambers after the 2006 election.

The effects of SB 36 are yet to be determined. Following the passage of SB 36, there have only been wave elections in the state. The 2008 and 2012 elections were both presidential election years, and the 2010 election was an important election for Republicans nationwide. The first election that followed the elimination of straight-ticket voting from the ballot, the 2008 general election, was a landslide election for the Democrats. The Democrats won seats up and

down the ticket. In fact, this was the first time in the state that the Democrats won the presidency, both United States Senate seats, both United States House of Representative seats, the governor's office, and both chambers in the state legislature. While the Democrats maintained a majority in both chambers, they did lose some seats in the House. It is unclear whether Democrats would have been able to keep their majority if it had not been a presidential election year or a landslide election for the Democrats and the straight-ticket option was still on the ballot.

Since the elimination of the voting method, there have been drastic shifts between the party majority in the House, which may be evidence that voters are reading the ballot instead of just checking the straight-ticket box. The Democrats had argued that straight-ticket voting had more of an effect on the offices at the bottom of the ticket, but since the repeal of the voting method there have been only wave elections. Therefore, it is difficult to determine if the elimination of the voting method has encouraged voters to read candidates at the bottom of the ticket, or if the wave elections are encouraging voters to vote for candidates up and down the ticket. The effects of SB 36 will have to wait to be determined until there is not a wave election in the state.

Conclusion

The fact that a bill repealing straight-ticket voting was unable to be passed in New Hampshire until Democrats had a majority in both chambers and held the governor's office is evidence that the Republican Party wanted to keep the voting method on the ballot. The Republican Party likely wanted to keep straight-ticket voting because it helped their candidates win seats at the bottom of the ticket. Despite the fact that the election results after the passing of SB 36 cannot be attributed to the repeal of the voting method, especially because there have been wave elections, the Republicans have put forth a bill in this 2013 session to bring back the voting

method (Smith 2013). Some of the arguments by the Republicans included that if people know that they want to vote for all of the candidates of one party they should have that choice, and that it would help decrease the lines at the polls and the amount of time that it would take to count the ballots. However, Democrats have argued that voters can still choose to elect only candidates from one party, and that in fact the time that it took to count ballots was actually increased by the confusion of the straight-ticket option. They also argued that the lines at the polls for the 2012 election could be attributed to the recent voter ID law, and not the elimination of straight-ticket voting (Smith 2013).

While it is difficult to determine the effects of the elimination of straight-ticket voting, there is evidence that it was a strategy benefitting the Republican Party. From recount elections it was evident that voters were unsure how to properly use the straight-ticket option. When voters were not voting for offices at the bottom of the ticket, such as the House of Representatives, the straight-ticket vote would count for these races. Considering that more Republicans were registered in the state in the past, the straight-ticket option aided the Republican Party in receiving more votes, because Republican voters would often fill out the straight-ticket box. However, the Democrats, even though straight-ticket voting may have helped them gain their majority in 2006, wanted to eliminate the voting method because they felt it was confusing for the voters and for those counting the ballots. Even though Republicans held onto this strategy for years, there were other parts of the ballot the party strategically designed to help translate votes into seats.

Ballot Structure

In addition to the straight-ticket voting option on the ballot, there have been other additions and changes to the ballot design. As mentioned earlier in this chapter, other aspects of

the ballot design have included changes between the party column and office bloc form and changes to the ordering of the candidates' names. Figure 4.5 is a timeline of the changes to the ballot structure. In 1891, New Hampshire implemented the Australian ballot in the office bloc form (see Figure 4.6). Six years later, the state added the straight-ticket option (see Figure 4.7 and Figure 4.8), which was kept until its elimination in 2007, and simultaneously changed to the party column form. In 1994, the ballot structure was changed to the office bloc form (see Figure 4.4), but then changed back to party columns only ten years later. Over the years, there were also changes to how the candidates' names were listed. These changes were in response to the rise of two-party competition in the state and Court rulings.

The combination of the straight-ticket option and party column form was kept until 1994, when the legislature changed the ballot to the office bloc form. The 1994 law required the candidates to be listed within their office by political party, and then listed alphabetically. The candidates of the party that received the largest number of votes in the previous general election were listed first, which was always the Republican Party. In the Senate Journal, the senators discussed that the ballot structure was changed to the office bloc form because the party column form often confused voters, and that the party column ballots were large and expensive. In addition, it is possible that the Republican Party started to sense the rise of two-party competition in the state, and as a senator described the office bloc form as an “incumbent protection act” (N.H. General Court 1994, 504). Since the incumbents, who were mostly Republicans, would be listed first, there was more of a chance that voters would elect that candidate, because of the primacy effect. The primacy effect, which will be discussed in the next section about the *Akins v. Secretary of State* case, is the theory that a voter is more likely to choose the first option listed on a ballot. For example, if the voter has the option of voting for ten representatives, and with the

office bloc form ten Republican candidates are listed first, an uninformed voter may be inclined to vote for the first ten candidates simply because they are listed first.

In 1994, the state needed to change the format of the ballot because the newly implemented voting machines could only read the office bloc form. With the previous party column ballots, the Republican Party was always listed in the first column and the party would not want to lose this advantage with the adoption of a new ballot structure. For that reason, it is likely that the Republican Party designed the ordering of the candidates so that their party would be listed first, as a way to ensure that their party still had an advantage in the voting booth.

In 2004, the ballot structure returned to the party column form. Through the 1990s the Democratic Party became competitive with the Republican Party. Even though the Democrats had not gained a majority in the House, it is likely that the Republicans were feeling threatened by the rise of two-party competition, especially as the Democrats were winning seats at the top of the ticket. With a Republican governor in office and a Republican majority in both chambers, HB 176 was passed in May 2004, but would not be implemented until January 1, 2005. This bill created party columns and had the political party that received the largest number of votes in the last general election listed in the first column. Sponsors of the bill argued that since the voting machines could now read the party column ballot, the state should return to this type of ballot. In addition, they argued that the party column form was easier for voters to read, especially when voting a straight-ticket (N.H. Senate. Internal Affairs 2004). However, it is likely that the Republicans also had partisan motives for changing back to this type of ballot, such as making sure that their party would be consistently listed first on the ballot. Even though the ballot design was a Republican effort, the Democrats were able to gain a majority in the House for the first time in 80 years when the ballot was implemented for the 2006 election. In a New Hampshire

Supreme Court Case, *Akins v. Secretary of State*, this ballot design was discussed and consequently amended in later legislative sessions.

When the Court was hearing *Akins v. Secretary of State*, the Democrats in the State Senate sponsored SB 204, which would require the party columns on the ballot to be rotated (N.H. Senate 2005). For the past ten years, the Democrats were listed after Republican candidates in the office bloc ballot, and before that the state used party column ballots with the Republican Party consistently listed first. In fact, the secretary of state testified in the *Akins* case that the Republican Party had always been listed first except for the 1966 election ballot, which was when the Democrats were listed first because they had received the majority of the votes in the 1964 election (*Ralph L. Akins* 2006, 3). With the Democrats winning seats at the top of the ticket since the 1990s, they argued that it was unfair for their party to always be listed second on the ballot. They also believed that the design of the ballot was hindering their chances of winning seats lower down the ticket. Because uninformed voters are likely to be influenced by the primacy effect, the Republican Party predicted that if a voter individually marked the candidates they would likely choose the Republican candidate because they were listed in the first column. Although SB 204 was not passed, the Court's ruling in *Akins* essentially called for a rotating columns ballot.

Akins v. Secretary of State

After the 2004 general election, several candidates, past representatives, and the New Hampshire Democratic Party brought suit against the secretary of state concerning the format of the state general election ballot. The petitioners argued that they were disadvantaged in the 2004 general election because of the format of the ballot, which at the time was in the office bloc form with candidates grouped by party and then listed alphabetically. Additionally, they argued that

the ballot structure advantaged the party listed first. In the meantime the legislature had changed RSA 656:5 so that the ballot would be in a party column form. The secretary of state had testified that the candidates' names would be listed in alphabetical order within the party columns. The party column ballot and office bloc ballot shared the feature that "the first candidate listed for any given office on the ballot is the candidate from the party that received the most total votes in the preceding general election," and so the Court addressed whether the new party column form and the alphabetizing of candidates' names imposed only "reasonable, nondiscriminatory restrictions" (*Ralph L. Akins* 2006, 6). In addition, the Court decided that RSA 656:5 and the "alphabetizing of candidates must comply with strict scrutiny to be constitutional" (*Ralph L. Akins* 2006, 7).

To aid their argument, the petitioner had several experts testify about how there can be a primacy effect "when choices are presented visually," such as on a ballot. In fact, in the petitioner's petition for declaratory judgment, they pointed to a study by Professor Jon Krosnick on primacy effect and the order of candidates' names. The study found that the advantage "conferred by primacy effects ranged from 1.41% to 6.32% and averaged 2.88%." This finding, the petitioners argued, was significant because "Numerous races run in New Hampshire are decided by lesser margins" (N.H. Senate. Internal Affairs 2005). The secretary of state testified that studies have shown that "the primacy effect can confer as much as a six to ten percent advantage upon candidates whose names appear on lists as long as twelve candidates," which the state of New Hampshire has especially for the House races (*Ralph L. Akins* 2006, 3).

While the state argued that their interest was in "creating a manageable ballot," the Court was not convinced that this was the only way to create the ballot, and thus found it was

unconstitutional under Article 11, Part I of the New Hampshire constitution. Article 11, Part I of the Constitution states,

All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile [...] The right to vote shall not be denied to any person because of the non-payment of any tax. Every inhabitant of the state, having the proper qualifications, has equal right to be elected into office.

The Court ruled that “the State has failed to demonstrate that arranging the ballot as required by RSA 656:5 and the practice of alphabetization are necessary to create a manageable ballot” (*Ralph L. Akins* 2006, 7). Additionally, the Court argued that the state in fact already used a ballot form that did not violate the Constitution, which was the primary ballot that rotated the candidates’ names. Lastly, the Court ruled that the current ballot “denies candidates of minority parties an equal opportunity to enjoy the advantages of the primacy effect, and thus, an equal right to be elected” (*Ralph L. Akins* 2006, 6). In other words, the Court was suggesting that there was no way to eliminate the primacy effect with the current ballot form.

In response to the *Akins* ruling, the state legislature amended the design of the ballot so that it did not favor any particular political party. In 2007, the Democratic controlled legislature eliminated the requirement that the party “which received the largest number of votes at the last preceding state general election would be listed first” in HB 480 (N.H. House 2007). However, HB 480 did not set any requirement about how the candidates should be listed. In 2010, the Democratic controlled legislature clarified that the secretary of state should rotate the columns so that each party should appear approximately an equal number of times “in the first, last, and each intermediate column position” in SB 157 (N.H. Senate 2010). The legislature outlined how the secretary of state should rotate the columns by using a generic column rotation plan across all

representative districts in the state, and provided an example. For example, the bill outlined that for the nine wards in Nashua the columns should be arranged as:

Nashua Ward 1	3	1	2
Nashua Ward 2	2	1	3
Nashua Ward 3	1	3	2
Nashua Ward 4	1	3	2
Nashua Ward 5	1	3	2
Nashua Ward 6	3	2	1
Nashua Ward 7	2	1	3
Nashua Ward 8	3	2	1
Nashua Ward 9	1	2	3

(N.H. Senate 2010)

The “1,” “2,” and “3” refer to the three major political parties in the state, the Republican Party, Democratic Party, and Libertarian Party. The secretary of state is required by the law to randomly pick which party will be number 1, 2 or 3. Additionally, SB 157, as mentioned earlier in this chapter, set out how the secretary of state should randomly arrange the candidates within the randomly arranged party columns. The combination of the 2007 and 2010 bills, which were both passed under a Democratic majority in both chambers, created the randomized ballot the state still uses today.

Conclusion

Over the years, the Republican Party designed the ballot as a strategy to maintain control in the House, but these strategies were eliminated with a shift in party control in the legislature. For about 110 years the Republicans had relied upon the straight-ticket voting option, especially in the 1990s with the rise of two-party competition. In addition to the straight-ticket option, the Republicans relied on the fact that their candidates would be listed first in the office bloc form, or their party would be listed first in the party column form. When voters did not choose the

straight-ticket option, or would both mark the straight-ticket option and individually vote for candidates, the Republican Party could rely upon the primacy effect to gain more votes. The current ballot, however, does not have the straight-ticket option and the secretary of state is required to randomize the party columns and the candidates' names, so that each political party and candidate has an equal opportunity to be subject to the primacy effect.

One strategy that has persisted throughout the changes to the ballot is the chance for a candidate to be listed in multiple party columns. If a candidate receives 35 write-in votes on the opposing party's primary ballot, the candidate will be listed in both the Republican Party and Democratic Party columns on the general election ballot (N.H. Rev. Stat. Ann. §659:88). When the straight-ticket option was on the ballot, candidates listed in both columns had the chance to receive a vote from both straight-ticket votes. The only change to this statute over the years has been the increase in the number of required write-in votes a candidate must receive, which most likely coincided with the increase in the total number of ballots cast in the state (N.H. Rev. Stat. Ann. §659:88). Even though the ballot does not include the straight-ticket option anymore, candidates listed in both columns can take advantage of the primacy effect by guaranteeing that they are listed in the first column, no matter how the party columns are randomized. This strategy has been equally used by the Republican and Democratic candidates over the years.

After the Republican Party lost their ballot design strategies, the party implemented a potentially, new strategy. Beginning in 2011, several states started to implement voter identification laws. Prior to the 2012 presidential election, voter identification laws had become a national Republican Party effort ("Voter Identification Requirements" 2012). In 2012, New Hampshire passed a voter identification law under the Republican majority in the state

legislature. A culmination of SB 289 and HB 1354 created a law that required voters to show identification at the polls to vote. Governor Lynch, a Democrat, vetoed SB 289, stating that,

The right to vote is a fundamental right that is guaranteed to all citizens of this State under the United States and New Hampshire Constitutions. Our election laws must be designed to encourage and facilitate voting by all eligible voters in New Hampshire. SB 289 requires a voter to present valid photo identification or execute an affidavit in order to vote in person in a municipal, state and federal election beginning with the primary election this September [...] I was prepared to support this form of photo identification because the bill's provisions would ensure that every eligible voter who went to the polls on Election Day was able to cast a ballot that would be counted. The legislature, however, adopted a more restrictive list of valid photo identifications that can be used in a municipal, state or federal election beginning September 1, 2013 [...] SB 289 would put into place a photo identification system that is far more restrictive than necessary. (N.H. House Record 2012a, 19)

In his veto message, Governor Lynch expressed that he did not approve of the fact that prior to September 1, 2013 seven types of identification would be accepted, but after that date only four types of identification would be accepted. For example, student identification would no longer be accepted as a proper form of identification. The governor's veto, however, was overridden by the legislature and the bill became law. If a voter did not have a proper form of identification they could sign an affidavit. The governor also mentioned in his veto message for SB 289 that the affidavit asked unnecessary questions, which were later removed in HB 1354. However, HB 1354 still kept the requirement that student identification would not be considered appropriate identification after September 1, 2013. Since New Hampshire is a covered jurisdiction under the Voting Rights Act, the laws needed to receive preclearance by the United States Department of Justice. Both of the laws were pre-cleared prior to the 2012 election (Connor, 2012).

The purpose of the voter identification law is to prevent voter fraud; however, as a Democratic senator mentioned there has been "no evidence of rampant voter fraud in New Hampshire" (Landrigan 2012). Two New Hampshire interest groups, The Civil Liberties Union of New Hampshire and League of Women Voters, opposed the bills because they felt that the

laws created an “unfair burden on the elderly, students and low-income residents, those most likely not to have an ID with them at the polls” (Landrigan 2012). The Democratic Party has made similar arguments to the interest groups, because the groups of voters that would be most affected by the law are typically Democratic voters. Thus, it is quite possible that the voter identification law was another Republican strategy to help them maintain party control, by discouraging voters without proper identification from going to the polls. The effects of the voter identification law have yet to be determined, because in the 2012 election if a voter did not have a proper form of identification they had to sign an affidavit and were permitted to vote in that election (“Voter ID Law—Laws of 2012, Chapter 289: Explanatory Document”). The Democrats, who currently have a majority in the House, have proposed a bill to stop the September 1st portion of the law, which restricts the types of acceptable identification, from going into effect (N.H. House 2013). Since the Republicans have a majority in the Senate, it is unlikely that this bill will be passed.

The Republican Party’s strategy of using ballot design to maintain one-party control is not separate from the strategies discussed in the previous chapters. In fact, the strategies of the changes to the ballot design, aligned with the changes to redistricting and use of floterial districts, allowed the Republican Party to consistently maintain control in the House for about 80 years. As discussed in the redistricting chapter, strategically grouping voters becomes less effective over the ten years. Thus, in the meantime, the Republicans could count on the ballot design to help gain them votes. The combination of straight-ticket voting and the grouping of candidates’ names on the ballot helped guarantee more votes for the Republican Party on election day.


An example of when the combination of these ballot structures is particularly effective is in at-large districts. The town of Derry, New Hampshire was an at-large district in 2006, when

the state still had straight-ticket voting and the ballot was in the party column form with the Republican Party listed first. In 2006, Derry was a decidedly Republican town, as evident by the 1,490 Republican straight-ticket ballots cast in the election, in contrast to the only 934 Democratic straight-ticket ballots cast (“State Representative-2006 General Election”). As discussed in this chapter, even if a voter skipped a race, their straight-ticket vote would be counted for that race. If a voter in Derry chose to skip the House race, their Republican straight-ticket mark would count for the eleven Republican candidates on the ballot. On the other hand, there were only four Democratic candidates on the ballot, so it was not possible for the Democrats to win the eleven seats even if there had been more Democratic straight-ticket ballots cast. In the 2006 election, nine out of the eleven representatives elected were Republicans. The 2006 election was a Democratic landslide, and the first year the Democrats gained a majority in the House in 80 years, so it is not surprising that a couple Democrats were able to win in a strong Republican district.

The combination of the at-large district and ballot structure helped the Republican Party translate votes into seats for their party. The way the ballot was structured in 2006, which had the Republican candidates listed in the first column, encouraged voters to choose the eleven candidates in the first column, or not vote at all and have their straight-ticket mark count for those candidates anyways. In 2004, the Republican controlled legislature allocated Derry eleven representatives, because Derry voters had previously only elected Republican representatives. Thus, the Republican Party hoped that this district, in combination with the ballot structure, would translate votes into eleven Republican seats. Even in a Democratic landslide, the Republican Party was able to win seats in the Republican at-large district.

The purpose of this chapter was to provide an explanation of another strategy used by the Republican Party that allowed them to maintain control, especially as the Democratic Party's growing strength in the 1990s began to threaten the Republicans' majority in the House. The Republicans had multiple strategies for the design of the ballot, including straight-ticket voting, and designing the ballot so that their party would be listed first. These strategies were used in conjunction with the other strategies discussed in the previous chapters, including redistricting and the use of floterial districts. The final chapter of this thesis will provide a better explanation of the sequencing of these strategies, which allowed the New Hampshire Republicans to maintain a majority in the House while there was a rise of two-party competition in the state.


Figure 4.1: Sample Ballot for Manchester Ward 7, 2012 General Election

ADVERSE OFFICIAL BALLOT FOR MANCHESTER – WARD 7 GENERAL ELECTION NOVEMBER 6, 2012  SECRETARY OF STATE		INSTRUCTIONS TO VOTERS 1. To Vote. Completely fill in the oval <input type="radio"/> to the right of your choice. For each office vote for not more than the number of candidates stated in the sentence: "Vote for not more than ____." If you vote for more than the stated number of candidates, your vote for that office will not be counted. 2. To Vote by Write-In. To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Completely fill in the oval <input type="radio"/> to the right of your choice.		
Offices	Republican Candidates	Libertarian and Other Candidates	Democratic Candidates	Write-in Candidates
For President and Vice-President of the United States Vote for not more than 1	Mitt Romney <input type="radio"/> Paul Ryan <input type="radio"/>	Libertarian Gary Johnson <input type="radio"/> James P. Gray <input type="radio"/> Constitution Virgil Goode <input type="radio"/> James Clymer <input type="radio"/>	Barack Obama <input type="radio"/> Joe Biden <input type="radio"/>	<input type="radio"/> President and Vice-President
For Governor Vote for not more than 1	Ovide Lamontagne <input type="radio"/>	Libertarian John J. Babiarez <input type="radio"/>	Maggie Hassan <input type="radio"/>	<input type="radio"/> Governor
For Representative in Congress Vote for not more than 1	Frank C. Guinta <input type="radio"/>	Libertarian Brendan Kelly <input type="radio"/>	Carol Shea-Porter <input type="radio"/>	<input type="radio"/> Rep. in Congress
For Executive Council Vote for not more than 1	Robert Burns <input type="radio"/>	Libertarian Kenneth E. Blevens <input type="radio"/>	Christopher Pappas <input type="radio"/>	<input type="radio"/> Executive Council
For State Senator Vote for not more than 1	J. Gail Barry <input type="radio"/>	Independent Arthur J. Beaudry <input type="radio"/>	Donna M. Soucy <input type="radio"/>	<input type="radio"/> State Senator
For State Representatives Hillsborough District 14 Vote for not more than 2	Ross Terrio <input type="radio"/> Brian D. Cole <input type="radio"/>		Carol Ann Williams <input type="radio"/> Patrick F. Garrity <input type="radio"/>	<input type="radio"/> State Representative <input type="radio"/> State Representative
For State Representatives Hillsborough District 43 Vote for not more than 3	Tim Prescott <input type="radio"/> Roy Shoultis <input type="radio"/> Kathleen F. Souza <input type="radio"/>		Jeremy S. Dobson <input type="radio"/> Eric Palangas <input type="radio"/> Ernesto A. Pinder <input type="radio"/>	<input type="radio"/> State Representative <input type="radio"/> State Representative <input type="radio"/> State Representative
For Sheriff Vote for not more than 1	James A. Hardy <input type="radio"/>		Bill Barry <input type="radio"/>	<input type="radio"/> Sheriff
For County Attorney Vote for not more than 1	Dennis Hogan <input type="radio"/>		Patricia M. LaFrance <input type="radio"/>	<input type="radio"/> County Attorney
For County Treasurer Vote for not more than 1	David G. Fredette <input type="radio"/>		Shannon Bernier <input type="radio"/>	<input type="radio"/> County Treasurer
For Register of Deeds Vote for not more than 1	Pamela D. Coughlin <input type="radio"/>		Louise Wright <input type="radio"/>	<input type="radio"/> Reg. of Deeds
For Register of Probate Vote for not more than 1	Joseph Kelly <input type="radio"/> Levasseur <input type="radio"/>		Graham V. Smith <input type="radio"/>	<input type="radio"/> Reg. of Probate
For County Commissioner Vote for not more than 1	Toni Pappas <input type="radio"/>		Max Darbouze <input type="radio"/>	<input type="radio"/> County Commissioner

Note: This is the current structure of the ballot in the state. The Republican Party is listed in the first column on this ballot, but for Manchester Ward 8 (see Figure 4.2), the Democratic Party is listed first.

Source: "Sample ACCUVOTE Ballots-2012 General Election." *New Hampshire Secretary of State*.
http://sos.nh.gov/Elections/Election_Information/2012_Elections/General_Election/Sample_ACCUVOTE_Ballots_-_2012_General_Election.aspx?id=27214 (accessed March 1, 2013).

Figure 4.2: Sample Ballot for Manchester Ward 8, 2012 General Election

ABSENTEE OFFICIAL BALLOT FOR MANCHESTER – WARD 8 GENERAL ELECTION NOVEMBER 6, 2012  <small>SECRETARY OF STATE</small>		INSTRUCTIONS TO VOTERS 1. To Vote. Completely fill in the oval <input type="radio"/> to the right of your choice. For each office vote for not more than the number of candidates stated in the sentence: "Vote for not more than ____." If you vote for more than the stated number of candidates, your vote for that office will not be counted. 2. To Vote by Write-In. To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Completely fill in the oval <input type="radio"/> to the right of your choice.		
Offices	Democratic Candidates	Libertarian and Other Candidates	Republican Candidates	Write-in Candidates
For President and Vice-President of the United States Vote for not more than 1	Barack Obama <input type="radio"/> Joe Biden <input type="radio"/>	Libertarian Gary Johnson <input type="radio"/> James P. Gray <input type="radio"/> Constitution Virgil Goode <input type="radio"/> James Clymer <input type="radio"/>	Mitt Romney <input type="radio"/> Paul Ryan <input type="radio"/>	<input type="radio"/> President and Vice-President
For Governor Vote for not more than 1	Maggie Hassan <input type="radio"/>	Libertarian John J. Babiaryz <input type="radio"/>	Ovide Lamontagne <input type="radio"/>	<input type="radio"/> Governor
For Representative in Congress Vote for not more than 1	Carol Shea-Porter <input type="radio"/>	Libertarian Brendan Kelly <input type="radio"/>	Frank C. Guinta <input type="radio"/>	<input type="radio"/> Rep. in Congress
For Executive Councilor Vote for not more than 1	Christopher Pappas <input type="radio"/>	Libertarian Kenneth E. Blevens <input type="radio"/>	Robert Burns <input type="radio"/>	<input type="radio"/> Executive Council
For State Senator Vote for not more than 1	Donna M. Soucy <input type="radio"/>	Independent Arthur J. Beaudry <input type="radio"/>	J. Gail Barry <input type="radio"/>	<input type="radio"/> State Senator
For State Representatives Hillsborough District 15 Vote for not more than 2	Thomas Katsiantonis <input type="radio"/> Ryan Curran <input type="radio"/>		Steve Vaillancourt <input type="radio"/> Mark L. Proulx <input type="radio"/>	<input type="radio"/> State Representative <input type="radio"/> State Representative
For State Representatives Hillsborough District 44 Vote for not more than 2	Jack Scheiner <input type="radio"/> Garry A. Haworth <input type="radio"/>		Andy Martel <input type="radio"/> George Lambert <input type="radio"/>	<input type="radio"/> State Representative <input type="radio"/> State Representative
For Sheriff Vote for not more than 1	Bill Barry <input type="radio"/>		James A. Hardy <input type="radio"/>	<input type="radio"/> Sheriff
For County Attorney Vote for not more than 1	Patricia M. LaFrance <input type="radio"/>		Dennis Hogan <input type="radio"/>	<input type="radio"/> County Attorney
For County Treasurer Vote for not more than 1	Shannon Bernier <input type="radio"/>		David G. Fredette <input type="radio"/>	<input type="radio"/> County Treasurer
For Register of Deeds Vote for not more than 1	Louise Wright <input type="radio"/>		Pamela D. Coughlin <input type="radio"/>	<input type="radio"/> Reg. of Deeds
For Register of Probate Vote for not more than 1	Graham V. Smith <input type="radio"/>		Joseph Kelly Levasseur <input type="radio"/>	<input type="radio"/> Reg. of Probate
For County Commissioner Vote for not more than 1	Max Darbouze <input type="radio"/>		Toni Pappas <input type="radio"/>	<input type="radio"/> County Commissioner

Note: This is the current structure of the ballot in the state. The Democratic Party is listed in the first column on this ballot, but for Manchester Ward 7 (see Figure 4.1), the Republican Party is listed first.

Source: "Sample ACCUVOTE Ballots-2012 General Election." *New Hampshire Secretary of State*.
http://sos.nh.gov/Elections/Election_Information/2012_Elections/General_Election/Sample_ACCUVOTE_Ballots_-_2012_General_Election.aspx?id=27213 (accessed March 1, 2013).

Figure 4.3: Timeline of Proposed Bills to Eliminate Straight-Ticket Voting

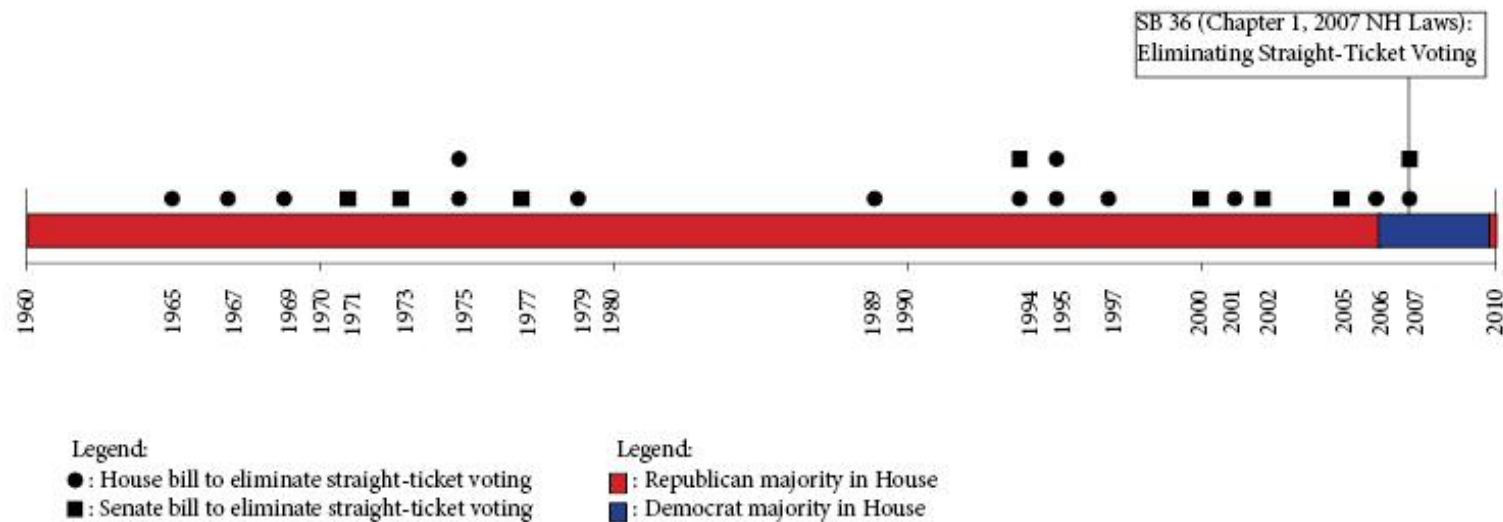


Figure 4.4: Sample Ballot for Manchester Ward 6, 2002 General Election

1. To vote, complete the oval ☐ opposite your choice, like this: ☒

2. To Vote a Straight Ticket
Complete the oval ☐ opposite the political party of your choice, like this: ☒ if you wish to vote for all candidates running in that party. If you vote a straight ticket, but wish to vote for one or more individual candidates, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted.

3. To Vote a Split Ticket
If you do not wish to vote for all candidates running in the same party, complete the oval ☐ opposite the names of the candidates for whom you wish to vote like this: ☒

4. To Vote by Write-in
If you wish to vote for candidates whose names are not printed on the ballot, write in the names on the blank lines for write-in votes and fill in the oval.

 **STRAIGHT TICKET**
REPUBLICAN
For all candidates of this party fill in the oval ☐

 **STRAIGHT TICKET**
DEMOCRATIC
For all candidates of this party fill in the oval ☐

For Governor
Vote for not more than ONE:

CRAIG BENSON ☐
MARK FERNALD ☐
JOHN J. BABIARZ ☐
WRITE-IN ☐

For United States Senator
Vote for not more than ONE:

JOHN E. SUNUNU ☐
JEANNE SHAHEEN ☐
KEN BLEVENS ☐
WRITE-IN ☐

For Representative in Congress
Vote for not more than ONE:

JEB BRADLEY ☐
MARTHA FULLER CLARK ☐
DAN BELFORTI ☐
WRITE-IN ☐

For Executive Councilor
Vote for not more than ONE:


RAYMOND J. WIECZOREK ☐
SHANNON O'BRIEN ☐
WRITE-IN ☐

For State Senator
Vote for not more than ONE:

ANDRE "ANDY" MARTEL ☐
DAVE GELINAS ☐

**OFFICIAL BALLOT FOR
MANCHESTER – WARD 6**

GENERAL ELECTION
November 5, 2002


William M. Lash
SECRETARY OF STATE

For State Representatives
Vote for not more than THREE(3):

WILLIAM INFANTINE ☐
BERNARD "BUD" LUEBKERT ☐
CHRIS SIEFKEN ☐
BENJAMIN C. BAROODY ☐
STEVE JOHNSON ☐
ROBERT E. MURPHY ☐
WRITE-IN ☐
WRITE-IN ☐
WRITE-IN ☐

For Sheriff
Vote for not more than ONE:

JAMES A. HARDY ☐
DAVID M. DIONNE ☐
WRITE-IN ☐

For County Attorney
Vote for not more than ONE:

JOHN COUGHLIN ☐
PETER McDONOUGH ☐
WRITE-IN ☐

For County Treasurer
Vote for not more than ONE:

DAVID G. FREDETTE ☐
JEROME S. DUVAL ☐
WRITE-IN ☐

For Register of Deeds
Vote for not more than ONE:

JUDITH A. MacDONALD ☐
WRITE-IN ☐

For Register of Probate
Vote for not more than ONE:

ROBERT R. RIVARD ☐
LEE LOMBARD ☐
WRITE-IN ☐

For County Commissioner
Vote for not more than ONE:

TONI PAPPAS ☐
LESLEE STEWART ☐
WRITE-IN ☐

**Question Relating to a
Constitutional Amendment
Proposed by
the 2002 General Court**

"Are you in favor of amending article 73-a of the second part of the constitution to read as follows: [Art.] 73-a. [Supreme Court Administration.] The chief justice of the supreme court shall be the administrative head of all the courts. The chief justice shall, with the concurrence of a majority of the supreme court justices, have the power by rule to regulate the security and administration of, and the practice, procedure, and rules of evidence in, all courts in the state. The rules so adopted shall have the force and effect of law. The general court may also regulate these matters by statute provided that the general court shall have no authority to abridge the necessary adjudicatory functions for which the courts were created. In the event of a conflict between a statute and a rule, the statute shall supersede the rule, if not contrary to the provisions of the constitution." (Passed by the N.H. House 290 Yes 48 No; Passed by State Senate 16 Yes 7 No) CACR 5

YES ☐
NO ☐

**Question Proposed pursuant to
Part II, Article 100 of the
New Hampshire Constitution**

"Shall there be a convention to amend or revise the constitution?"

YES ☐
NO ☐

**TURN OVER TO
CONTINUE VOTING**

Note: This is an example of the office bloc form of the ballot used from 1994 to 2004 in the state.

Source: "Sample Ballot." *Appeal of Peter McDonough (Ballot Law Commission)*. 2003. 149. N.H. 105. The Supreme Court of New Hampshire. <http://www.courts.state.nh.us/supreme/opinions/2003/ballot.pdf> (accessed March 1, 2013).

Figure 4.5: Timeline of Changes to Ballot Design

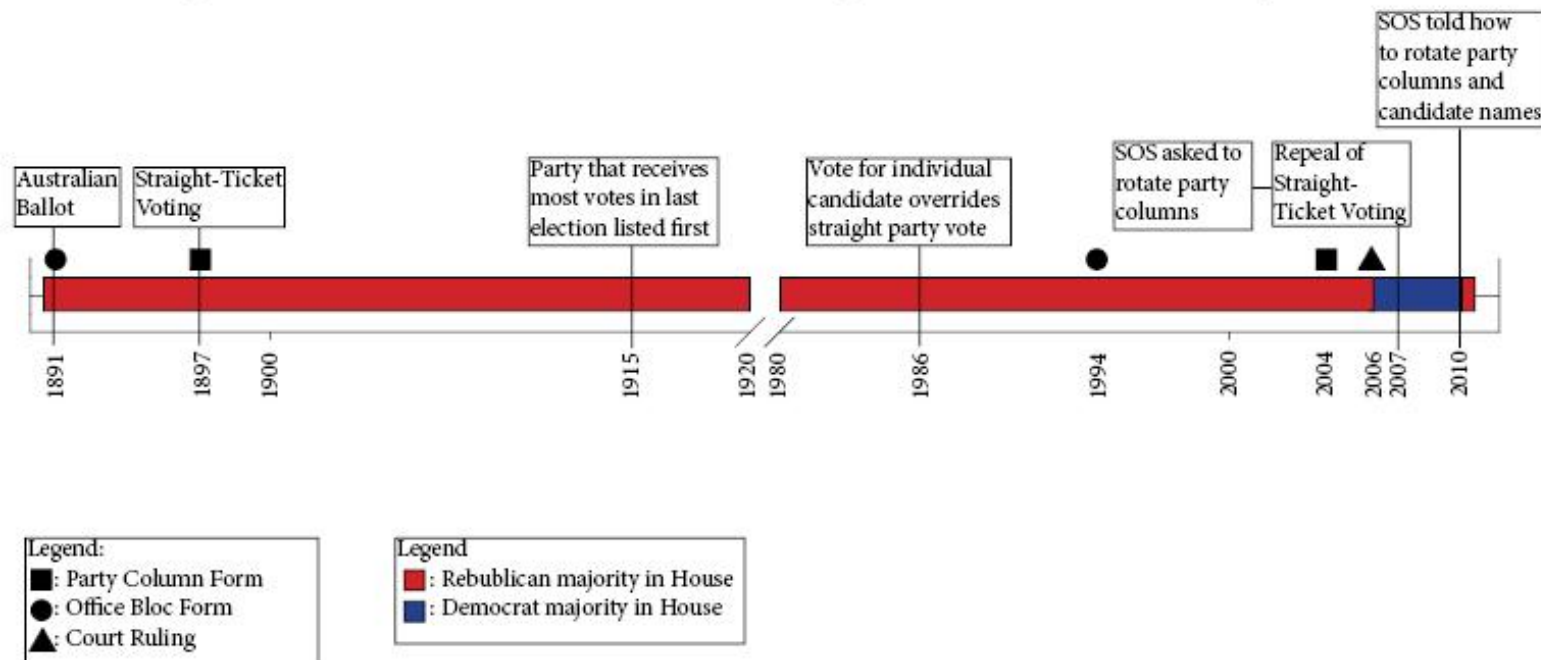


Figure 4.6: Sample Ballot for Manchester Ward 8, 1892 General Election

TO VOTE FOR FOUR ELECTORS MARK ONE CROSS **X** IN THE SQUARE AT THE RIGHT
TO VOTE FOR GOVERNOR OR OTHER CANDIDATE MARK A CROSS **X** IN THE SMALL SQUARE







ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES	Harrison and Reid Electors.		Vote for four with ONE		X
	AUGUSTUS A. WOOLSON, of Lisbon,	REPUBLICAN.			
	GEORGE W. ABBOTT, of Concord,	REPUBLICAN.			
	JOSEPH A. WALKER, of Portsmouth,	REPUBLICAN.			
	ABRAHAM P. OLZENDAM, of Manchester,	REPUBLICAN.			
	Cleveland and Stevenson Electors.		Vote for four with ONE		X
	MARCELLUS ELDREDGE, of Portsmouth,	DEMOCRAT.			
	JOHN M. MITCHELL, of Concord,	DEMOCRAT.			
	CYRUS SARGEANT, of Plymouth,	DEMOCRAT.			
	JOHN DOWST, of Manchester,	DEMOCRAT.			
	Weaver and Field Electors.		Vote for four with ONE		X
	GEORGE CARPENTER, of Swanzey,	PEOPLE'S.			
	REMLY S. SIDELINGER, of Gorham,	PEOPLE'S.			
	CHARLES FRED BLANCHARD, of Concord,	PEOPLE'S.			
	SUMNER F. CLAFLIN, of Manchester,	PEOPLE'S.			
	Bidwell and Cranfill Electors.		Vote for four with ONE		X
	LARKIN D. MASON, of Tamworth,	PROHIBITION.			
	FRANK J. BROWN, of Laconia,	PROHIBITION.			
	GEORGE W. BARNARD, of Claremont,	PROHIBITION.			
	EBENEZER FERREN, of Manchester,	PROHIBITION.			
	Vote for four with ONE				
	For Governor.				
			Vote for ONE.		
	EDGAR L. CARR, of Pittsfield,	PROHIBITION.			
	LUTHER F. MCKINNEY, of Manchester,	DEMOCRAT.			
WILLIAM O. NOYES, of Derry,	PEOPLE'S.				
JOHN B. SMITH, of Hillsborough,	REPUBLICAN.				
For Representative in Congress.		Vote for ONE.			
HENRY W. BLAIR, of Manchester,	REPUBLICAN.				
GEORGE D. DODGE, of Hampton Falls,	PROHIBITION.				
CHARLES F. STONE, of Laconia,	DEMOCRAT.				
JOSIAH A. WHITTIER, of Deerfield,	PEOPLE'S.				
For Councilor.		Vote for ONE.			
WILLIAM F. CHILDS, of Manchester,	PROHIBITION.				
ALPHEUS GAY, of Manchester,	DEMOCRAT.				
JOHN C. RAY, of Manchester,	REPUBLICAN.				
For Senator.		Vote for ONE.			
THOMAS F. GLANCY, of Manchester,	REPUBLICAN.				
FRED G. R. GORDON, of Manchester,	PEOPLE'S.				
LEONARD P. REYNOLDS, of Manchester,	DEMOCRAT.				
For Sheriff.		Vote for ONE.			
CLARK CAMPBELL, of Mont Vernon,	DEMOCRAT.				
WILBER G. COLCORD, of Manchester,	PROHIBITION.				
DANIEL F. HEALY, of Manchester,	REPUBLICAN.				
For County Solicitor.					
		Vote for ONE.			
GEORGE E. BALES, of Wilton,	DEMOCRAT.				
SILAS C. CLATUR, of Manchester,	PROHIBITION.				
JAMES P. TUTTLE, of New Boston,	REPUBLICAN.				
For County Treasurer.		Vote for ONE.			
CALVIN K. DAGGETT, of Nashua,	PROHIBITION.				
JOHN P. GOGGIN, of Nashua,	DEMOCRAT.				
EDWIN F. JONES, of Manchester,	REPUBLICAN.				
For Register of Deeds.		Vote for ONE.			
CHARLES W. HOBBS, of Pelham,	DEMOCRAT.				
DANA W. KING, of Nashua,	REPUBLICAN.				
ALBERT H. MARSHALL, of Nashua,	PROHIBITION.				
For Register of Probate.		Vote for ONE.			
CHARLES S. BUSSELL, of Nashua,	DEMOCRAT.				
ELBRIDGE J. COPP, of Nashua,	REPUBLICAN.				
JAMES C. HILDRETH, of Hollis,	PROHIBITION.				
For County Commissioners.		Vote for THREE.			
ANDREW J. BENNET, of Manchester,	DEMOCRAT.				
WEBSTER C. BROWN, of Nashua,	REPUBLICAN.				
JOHN F. CLOUGH, of Manchester,	REPUBLICAN.				
LEONARD B. DOW, of Milford,	DEMOCRAT.				
GEORGE H. HAZEN, of Weare,	PROHIBITION.				
FRANK H. HEALD, of Milford,	PROHIBITION.				
BENJAMIN G. HERRICK, of Lyndeborough,	REPUBLICAN.				
JOHN H. WALES, of Manchester,	PROHIBITION.				
NATHAN P. WEBSTER, of Hudson,	DEMOCRAT.				
For Representatives to General Court.		Vote for THREE.			
JOHN BRYSON,	DEMOCRAT.				
JOHN EATON,	DEMOCRAT.				
ROBERT D. W. MCKAY,	REPUBLICAN.				
VICTOR SANSOUCIE,	DEMOCRAT.				
WILLIAM WEBER,	REPUBLICAN.				
CLARENCE M. WOODBURY,	REPUBLICAN.				
For Mayor.		Vote for ONE.			
JOHN C. BICKFORD,	REPUBLICAN.				
EDGAR J. KNOWLTON,	DEMOCRAT.				
For Alderman.		Vote for ONE.			
EDWARD J. POWERS,	REPUBLICAN.				
CHRISTIAN L. WOLF,	DEMOCRAT.				

Manchester—Ward 8.

Note: This is an example of the ballot before straight-ticket voting was implemented in the state.

Source: New Hampshire. Department of State. *Division of Records Management and Archives*. "1892 Ballot, Manchester Ward 8."

Figure 4.7: Sample Ballot for Manchester Ward 8, 1898 General Election




  REPUBLICAN.	  DEMOCRATIC.	  PROHIBITION. <small>NOM. PAPERS.</small>	
For Governor, FRANK W. ROLLINS, Concord.	For Governor, CHARLES F. STONE, Laconia.	For Governor, AUGUSTUS G. STEVENS, Manchester.	<input type="checkbox"/> GAB
For Representative in Congress, CYRUS A. SULLOWAY, Manchester.	For Representative in Congress, EDGAR J. KNOWLTON, Manchester.	For Representative in Congress, ISAAC B. VAIL, Manchester.	
For Councillor, STEPHEN H. GALE, Exeter.	For Councillor, DENIS A. HOLLAND, Manchester.	For Councillor, MARSHALL C. BLANCHARD, Manchester.	
For Senator, JOSEPH QUIRYN, Manchester.	For Senator, JOSEPH P. CHATEL, Manchester.		
For Sheriff, NATHANIEL DOANE, Manchester.	For Sheriff, WALTER M. MORGAN, Manchester.	For Sheriff, WILLIAM MOORE, Peterborough.	
For County Solicitor, JAMES P. TUTTLE, New Boston.	For County Solicitor, BROOKS K. WEBBER, Hillsborough.	For County Solicitor, DAVID HEALD, Milford.	
For County Treasurer, FRANK C. LIVINGSTON, Manchester.	For County Treasurer, ANDREW J. LOCKE, Dering.	For County Treasurer, WILLIAM J. BLOOD, Hollis.	
For Register of Deeds, DANA W. KING, Nashua.	For Register of Deeds, JAMES B. CROWLEY, Nashua.		
For Register of Probate, ELBRIDGE J. COPP, Nashua.	For Register of Probate, FRANK E. RUSSELL, Greenfield.	For Register of Probate, JOHN H. WALES, Manchester.	
For County Commissioners, JOHN F. CLOUGH, Manchester.	For County Commissioners, ALBERT H. GEORGE, Goffstown.	For County Commissioners, ASA WOODS, Hancock.	
STILLMAN H. BAKER, Hillsborough.	CHARLES W. DODGE, Amherst.	GEORGE W. BODWELL, Nashua.	
WEBSTER C. BROWN, Nashua.	CHARLES S. NESMITH, Merrimack.	ARTHUR D. PRINCE, Manchester.	
For Representatives to General Court, GEORGE A. PUTNAM.	For Representatives to General Court, JOHN P. BARTLETT.		
GEORGE L. POWELL.	ROBERT E. MCKEAN.		
JAMES RIED.	CHARLES W. QUMBY.		
For Mayor, WILLIAM C. CLARKE.	For Mayor, CHARLES C. HAYES.		
For Alderman, GEORGE W. TAYLOR.	For Alderman, GILLIS STARK.		
For Common Council, WALTER B. MITCHELL.	For Common Council, GEORGE A. DURGIN.		
ANDREW NETSCH.	HERMAN LIEBING.		
ANDREW C. WALLACE.	JAMES E. McDONALD.		
For Assessor, EUGENE W. BRIGHAM.	For Assessor, CHARLES ABRAMS.		
For Overseer of the Poor, CHARLES S. MCKEAN.	For Overseer of the Poor, WILLIAM H. TASKER.		
For School Committee, LUTHER C. BALDWIN.	For School Committee, FRANK A. CADWELL.		
NED T. WALLACE.	JOSIAH G. DEARBORN.		
For Selectmen, WILLIAM R. BLAKELEY.	For Selectmen, GEORGE W. CHENEY.		
RICHARD P. GROSSMAN.	HORACE HOLBROOK.		
EDWIN L. TINKHAM.	ARTHUR A. LAMOUREAUX.		
For Ward Clerk, WILLIAM G. WHITE.	For Ward Clerk, BENJAMIN J. MACK.		
For Inspector of Check-List, CHARLES C. TINKHAM.	For Inspector of Check-List, ALFRED E. SCHMIEDEL.		
For Moderator, FRANK O. CLEMENT.	For Moderator, GEORGE W. FLINT.		

Note: This is an example of how the ballot was designed when straight-first implemented.

ticket voting was

Source: New Hampshire. Department of State. *Division of Records Management and Archives*. "1898 Ballot, Manchester Ward 8."

Figure 4.8: Sample Ballot for Manchester Ward 8, 1992 General Election

INSTRUCTIONS TO VOTERS																								
To Vote a Straight Ticket Make a cross (X) within the circle of the political party of your choice if you wish to vote for all candidates running in that party column. If you vote a straight ticket, but wish to vote for one or more individual candidates of a different party, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because your straight ticket vote will not be counted for that office.				 Straight ticket for all candidates of this party Make a cross (X) within this circle			 Straight ticket for all candidates of this party Make a cross (X) within this circle		 Straight ticket for all candidates of this party Make a cross (X) within this circle															
To Vote a Split Ticket If you do not wish to vote in any party circle, make crosses (X) in the square opposite the names of the candidates for whom you wish to vote.				REPUBLICAN			DEMOCRATIC			LIBERTARIAN														
To Vote by Write-In If you wish to vote for candidates whose names are not printed on the ballot, write in the names on the appropriate lines in the blank column at the right.													WRITE-IN VOTES											
For President and Vice President of the United States Vote for any ONE				GEORGE BUSH "DAN" QUAYLE <input type="checkbox"/>			"BILL" CLINTON "AL" GORE <input type="checkbox"/>			ANDRE MARROU NANCY LORD <input type="checkbox"/>			INDEPENDENT NOM. PAPERS ROSS PEROT JAMES STOCKDALE <input type="checkbox"/>			NEW ALLIANCE NOM. PAPERS LENORA B. FULANI MARIA ELIZABETH MUNOZ <input type="checkbox"/>			NATURAL LAW NOM. PAPERS JOHN HAGELIN VINTON TOMPKINS <input type="checkbox"/>			PRES. & V. PRES.		
For Governor Vote for any ONE				"STEVE" MERRILL <input type="checkbox"/>			DEBORAH ARNE ARNESEN <input type="checkbox"/>			MIRIAM F. LUCE <input type="checkbox"/>									GOV.					
For United States Senator Vote for any ONE				JUDD GREGG <input type="checkbox"/>			JOHN RAUH <input type="checkbox"/>			KATHERINE M. ALEXANDER <input type="checkbox"/>			INDEPENDENT NOM. PAPERS KENNETH E. BLEVENS, SR. <input type="checkbox"/>			INDEPENDENT NOM. PAPERS "LARRY" BRADY <input type="checkbox"/>			NATURAL LAW NOM. PAPERS DAVID HAIGHT <input type="checkbox"/>			U.S. SENATOR		
For Representative in Congress Vote for any ONE				"BILL" ZELIFF <input type="checkbox"/>			"BOB" PRESTON <input type="checkbox"/>			KNOX BICKFORD <input type="checkbox"/>			INDEPENDENT NOM. PAPERS RICHARD P. BOSA <input type="checkbox"/>						NATURAL LAW NOM. PAPERS LINDA SPITZFADEN <input type="checkbox"/>			REP. IN CONGRESS		
For Executive Council Vote for any ONE				EARL A. RINKER III <input type="checkbox"/>			SHANNON O'BRIEN <input type="checkbox"/>			CLARENCE G. BLEVENS <input type="checkbox"/>									EXEC. COUN.					
For State Senator Vote for any ONE				LAWRENCE CONSTANTINE <input type="checkbox"/>			JOHN A. KING <input type="checkbox"/>			JOHN FOLLANSBEE <input type="checkbox"/>									STATE SEN.					
				VALERIE COOK <input type="checkbox"/>			RAYMOND BUCKLEY <input type="checkbox"/>			CHRISTOPHER P. AGAN <input type="checkbox"/>									STATE REPS.					
For State Representatives Vote for any THREE				JACQUELYN DOMAINGUE <input type="checkbox"/>			RICHARD DUBOIS <input type="checkbox"/>			JEANNINE BERNIER <input type="checkbox"/>														
				FRANCES L. RILEY <input type="checkbox"/>			DIANE FLEMING <input type="checkbox"/>			DANIELLE DONOVAN <input type="checkbox"/>														
For Sheriff Vote for any ONE				WALTER A. MORSE <input type="checkbox"/>			MICHAEL J. WELSH <input type="checkbox"/>			WALTER A. MORSE <input type="checkbox"/>									SHERIFF					
For County Attorney Vote for any ONE				PETER McDONOUGH <input type="checkbox"/>			PETER McDONOUGH <input type="checkbox"/>			PETER McDONOUGH <input type="checkbox"/>									COUNTY ATTY.					
For County Treasurer Vote for any ONE				CHERYL A. BURNS <input type="checkbox"/>			"JOE" CRONIN SULLIVAN <input type="checkbox"/>												COUNTY TREAS.					
For Register of Deeds Vote for any ONE				JUDITH A. MacDONALD <input type="checkbox"/>			MARY M. OUELLETTE <input type="checkbox"/>												REG. OF DEEDS					
For Register of Probate Vote for any ONE				ROBERT R. RIVARD <input type="checkbox"/>			ROBERT R. RIVARD <input type="checkbox"/>												REG. OF PROB.					
For County Commissioner Vote for any ONE				TONI PAPPAS <input type="checkbox"/>			JOHN J. McDONOUGH <input type="checkbox"/>			"JIM" REVILLS <input type="checkbox"/>			INDEPENDENT NOM. PAPERS LLOYD G. BASINOW <input type="checkbox"/>						COUNTY COMM.					

Note: This is an example of the ballot in the party column form with the straight-ticket option. Compared to 1898, this ballot includes instructions for the voters on how to vote a straight-ticket. Note how President Clinton is listed in the second column, because he is a Democratic candidate, and he won New Hampshire in the 1992 election.

Source: New Hampshire. Department of State. *Division of Records Management and Archives*. "1992 Ballot, Manchester Ward 8."

Conclusion: The Sequencing of the Strategies

The previous chapters have outlined how Republicans in New Hampshire have strategically designed institutions to translate votes into seats. The purpose of this thesis was to explain how a party in control of a legislative body is able to maintain that control. Chapters two, three, and four of the thesis illustrate and analyze three strategies used by New Hampshire Republican politicians to maintain control of the New Hampshire House of Representatives. In each chapter, I have pointed to how the use of an individual strategy does not guarantee a majority for the Republican Party in the House. I make note of the fact that these strategies are not immune to wave elections, national trends in politics, or preexisting institutions. Additionally, I provide a story of sequencing within each strategy. This final chapter will help clarify how the chapters analyzing the individual strategies collectively explain how the Republicans were able to maintain one-party control.

As outlined in the first chapter, this thesis is based on the work of Schickler and Pierson. In chapters two, three, and four, I explain the motivation of the actors for strategically designing that particular institution, which is how Schickler focuses on institutional design. I also explain the sequencing of events and unanticipated consequences affecting the individual strategies, which looks beyond the motivations of the actors, as Pierson suggests. The overall goal of this thesis is to tell a story of how politicians use multiple strategies to translate votes into seats for their party. The sequencing of these strategies allowed the Republican Party to maintain control of the House even as Democrats won seats at the top of the ticket in New Hampshire.

The main argument of my thesis is that as the state shifted from “red” to “purple” the Republican Party was able to maintain control of the House by strategic manipulation of institutions. Starting in the 1990s the Democratic Party began winning seats at the top of the

ticket, but meanwhile the Republicans maintained a majority in the House. As the Republican Party began to be threatened by two-party competition, I have shown how the party increased its use of strategies to maintain their control in the House. I have also shown how the Democratic Party started to attempt to contest these strategies in the 1990s. For example, as the Democratic Party began to win seats at the top of the ticket, but not in the House, they saw redistricting as a strategy Republicans were using to maintain their majority. Thus, they attempted to take redistricting out of the legislature by proposing redistricting commissions. This would have stopped the Republican Party from using redistricting and flotal districts as strategies for maintaining their majority. Another way the Democrats pushed back was to eliminate the use of straight-ticket voting on the ballot. The Republican Party, however, fought to keep this voting method on the ballot because they found that it benefitted their party. The Democrats were finally able to gain a majority in the House in 2006 and used their majority to eliminate straight-ticket voting from the ballot.

This thesis has strictly focused on the New Hampshire House of Representatives. As I explained in the first chapter, the New Hampshire House consists of 400 members, and therefore allows for more gerrymandering when redistricting the House districts. I have also focused on the House over the other offices, because this chamber was more susceptible to the Republican Party's strategic manipulation of districting and ballot design than the other offices. As the Republican Party strategically drew the House district maps, implemented flotal districts, and designed the ballot to benefit their party, these strategies did not stop the Democrats from winning seats at the top of the ticket. Unlike the House races, statewide offices, such as the governor's office, are not elected from districts and thus are not subject to the strategic use of redistricting and flotal districts. For example, the governor's office and president's office are

both elected statewide, and beginning the 1990s the Democratic Party began winning these offices. On the other hand the United States House of Representatives is elected by districts, and in comparison to the offices elected statewide, the Democrats were not consistently winning this office in the 1990s. In fact, neither party has had a stronghold on this office, because the legislature can only divide the state into two districts and therefore are not able to as easily strategically group voters as they can for the state House districts. Since the New Hampshire House of Representatives is elected through districts, and politicians are able to strategically group voters through gerrymandering efforts and the use of flatorial districts, this office is especially responsive to this strategy.

In addition to strategically redistricting and using flatorial districts, the House Representatives are especially affected by the design of the ballot. The Republican controlled state legislature has strategically designed ballots to benefit its party. Although straight-ticket voting was implemented in 1897, the Republican Party fought to keep this voting method on the ballot because it helped their party gain seats, especially for the offices at the bottom of the ticket. As discussed in the fourth chapter, the secretary of state interprets the law such that if a voter checked the Republican straight-ticket box, but did not fill out the races at the bottom of the ticket, the straight-ticket vote would be counted for the Republican candidate for the skipped races. Since the candidates for the House of Representatives are listed towards the bottom of the ballot, this reading of the straight-ticket vote had an effect on this office. Additionally, the Republican Party passed legislation that provided that the party which received the largest amount of votes in the previous election was listed as the first column or listed first in the office blocs. Since New Hampshire was a decidedly Republican state, their party was listed first on the ballot. Thus, the Republican Party was subject to the primacy effect, because as studies have

shown, uninformed voters are more likely to choose the first option on the ballot. Since voters may be more uninformed about the House candidates, especially because some voters have the option of electing as many as 11 representatives, they will be more likely to either skip the race or vote for the candidates listed first. Designing the ballot so that it included a straight-ticket option and listed the Republican candidates first helped ensure that Republicans would receive more votes. Therefore, the primacy effect and the straight-ticket voting methods both had more of an effect on the House offices than the offices listed at the top of the ticket.

Sequencing of Strategies

The strategies implemented and used by the Republican Party to help maintain party control are not separate tools; they are strategically used together. Drawing the district maps and using floterial districts to strategically group voters can be completed only once every ten years, as confirmed in the *Town of Canaan* ruling. Since the Republicans have always had the majority in the House when it is time to redraw the maps, they have been able to control this process. For example, they were able to introduce floterial districts, and use this as a mechanism to gerrymander when they began to feel threatened by the rise of two-party competition in the state. As I have discussed, redistricting becomes less effective over the years, because even though Republicans may have originally strategically grouped voters, the voters move or the population shifts or grows during the ten years. Thus, Republicans use other strategies during this time to translate votes into seats, such as ballot design. In addition to straight-ticket voting, the Republicans also controlled their party being listed first on the ballot. Similar to how the Republicans had the majority for redistricting, they were able to control the design of the ballot. Once the Democrats gained a majority in the House, they were able to eliminate the features of the ballot that the Republicans were using as strategies to maintain party control.

Although the strategies used by the Republicans were not originally used collectively as a way to maintain party control, with the rise of two-party competition in the state the Republicans increased their use of these strategies. Figure 5.1 shows when the strategies were implemented, and how the Republicans began to use the strategies together as a way to secure their majority as Democrats began winning seats at the top of the ticket in the 1990s. The major events include the introduction of the institutions that are later used as strategies and the eventual elimination of these strategies, Court rulings that shape how the strategies can be used and that either benefitted the majority or minority party, and the Democratic Party gaining strength as a party in the state and gaining a majority in the House.

As can be seen from Figure 5.1, there is an interplay and sequencing of the strategies used by the Republican Party. In 1964, the United States Supreme Court came out with the “one-person, one-vote” principle in *Reynolds v. Sims* that changed the New Hampshire redistricting process. Originally the House districts were made up of individual towns and the smaller towns received only part-time representation. Starting in 1965, the New Hampshire state legislature became responsible for drawing district lines, and used a combination of single-member, multi-member, and at-large districts. Over time, redistricting turned into a strategy for the Republican Party to translate votes into seats, and therefore this ruling benefitted the majority party in the long run. In 1982, on the cusp of the rise of two-party competition, the Republicans in the House introduced flotal districts as a mechanism to assist with lowering statewide deviations. Later, this mechanism also became an important strategy for the Republicans.

As the Democrats began winning seats at the top of the ticket while remaining in the minority in the House, the Republicans started increasing their use of existing institutions as strategies to assist their party in controlling the legislature. In response, the Democrats attempted

to undo these strategies. For example, the Democrats proposed bills to create redistricting commissions and to eliminate straight-ticket voting from the ballot. These attempts by the Democrats emphasize the importance of the strategies to the Republicans' ability to maintain party control in the House.

After the House redrew the district map, the Republicans continued to hold a majority in the House even as Democratic President Clinton won the state in the 1992 election. Later in the 1990s, the Democrats won a majority in the State Senate and took hold of the governor's office, but the Republicans still kept their majority in the House. Since the effects of gerrymandering become lessened over the years, it is likely that the ballot design was helping the Republican Party maintain their majority as well. The 1992 redistricting plan included 32 floterial districts and had a high statewide deviation, suggesting that the floterial districts assisted the Republican Party in creating a gerrymandered plan. At this time the state still had the straight-ticket voting option, which was implemented in 1897, and the ballot was in the office bloc form with the Republican candidates listed first. So until the next redistricting plan, the Republicans could count on translating votes into seats from the booth, because of the confusion of the straight-ticket voting method and the primacy effect from their candidates being listed first on the ballot.

The Republican strategies continued into the 2000s, as the Democrats continued to gain strength as a party. In 2002 the Republicans attempted to pass a redistricting plan, but for the first time in New Hampshire history a Democratic governor vetoed the bill. The redistricting plan was then sent to the state Courts, for again the first time in state history. The Court drew the map for the 2002 election, but the Republican legislature and Republican governor replaced this plan for the 2004 election. Since the Court had ruled that floterial districts were an "unsound redistricting device," the 2002 Court plan and 2004 House plan did not include floterial districts.

Since the Republicans had been using flotal districts as a strategy for redistricting in the past, they wanted to be able to use this type of district again. In 2006, a constitutional amendment question on the ballot asked if the state legislature should be allowed to use flotal districts to redistrict. The voters passed the constitutional amendment in the 2006 election. In addition, in 2006 voters elected enough Democrats to give the party a majority in the House for the first time in 80 years.

The 2006 election was the first time the Republican strategies had failed, and the start of the elimination of some of their strategies. After the 2006 election, the Supreme Court of New Hampshire in *Akins v. Secretary of State*, a case about a County Attorney election recount, ruled that the legislature was not creating the most manageable ballot as possible. With the Democrats having a majority, they were able to change the design of the ballot so that the secretary of state had to create a rotated party column ballot. This made it so that the Republican Party was not the only party subject to the primacy effect. In the same year, the Democrats, who had been consistently proposing legislation to eliminate straight-ticket voting for years, were finally able to pass a bill repealing this voting method. After the Democrats kept their majority for a second session in 2010, they were able to further outline how the secretary of state should position the party columns and candidates on the ballot, so that every candidate and political party would be equally subjected to the primacy effect. Even with two of their strategies eliminated, the Republican Party was able to take back the House in 2012 and had the chance to redistrict the state. The Republicans worked hard to pass their plan, by overriding a governor's veto and defending the plan in Court, but their map did not help them maintain their majority. In the 2012 election, the Democrats were able to take back the House.

After the rise of two-party competition in the state, the Republican Party was able to maintain control of the House for more than a decade by using multiple strategies. Throughout the 1990s the House Republicans controlled the district map and ballot design, and used these strategies to translate votes into seats. In 2006, however, the Democrats were able to gain control of the House and eliminate some of the Republican strategies. But since the rise of two-party competition there have been wave elections and the House majority has alternated between political parties, despite the use of strategies. The Republicans strategically drew the district map for the 2012 election, such as drawing a flatorial district combining Manchester Wards 8 and 9 and Litchfield that produced two Republican representatives. However, the Democrats were still able to win enough seats to have a majority in the House. As discussed in the previous chapters, the Republican strategies are not immune to wave elections, and thus it is difficult to tell what the effects of using or eliminating the strategies are when there are wave elections. For example, since the elimination of straight-ticket voting every election has been a wave election, and as a result it is difficult to tell whether straight-ticket voting on the ballot would have helped the Republicans maintain control in the elections after its elimination.

With consistent wave elections and the House fluctuating between party majorities, both parties have been eliminating and adding strategies to maintain their majority. When the Democrats had a majority they eliminated some of the strategies they felt the Republicans were using to hold onto the House. After the Democrats eliminated some of the Republican's strategies, the Republicans took advantage of their veto proof majority and passed a 2012 redistricting bill that was strongly opposed to by the Democratic House members and governor. In addition, the Republican Party added a new strategy by passing a voter identification law, which the Democrats have argued targets their party's voters. Since the voter identification law

does not go into full effect until September 1, 2013, the implications of this law on party control of the House are yet to be determined. With the Democrats currently having a majority in the House, they have proposed legislation that would prevent the tighter regulations of the voter identification law from going into effect on September 1. Even though the Democrats have a majority in the House and hold the governor's office, the Republicans have a majority in the Senate and will likely not pass this law. Thus, if the Democrats attempt to eliminate or add any other strategies so they can maintain their control, it is likely that their efforts will be stopped by the Republican controlled Senate. If the trend of wave elections and voters alternating the majority in the House continues, it is possible that strategies may cease to have any effect on party control of the House.

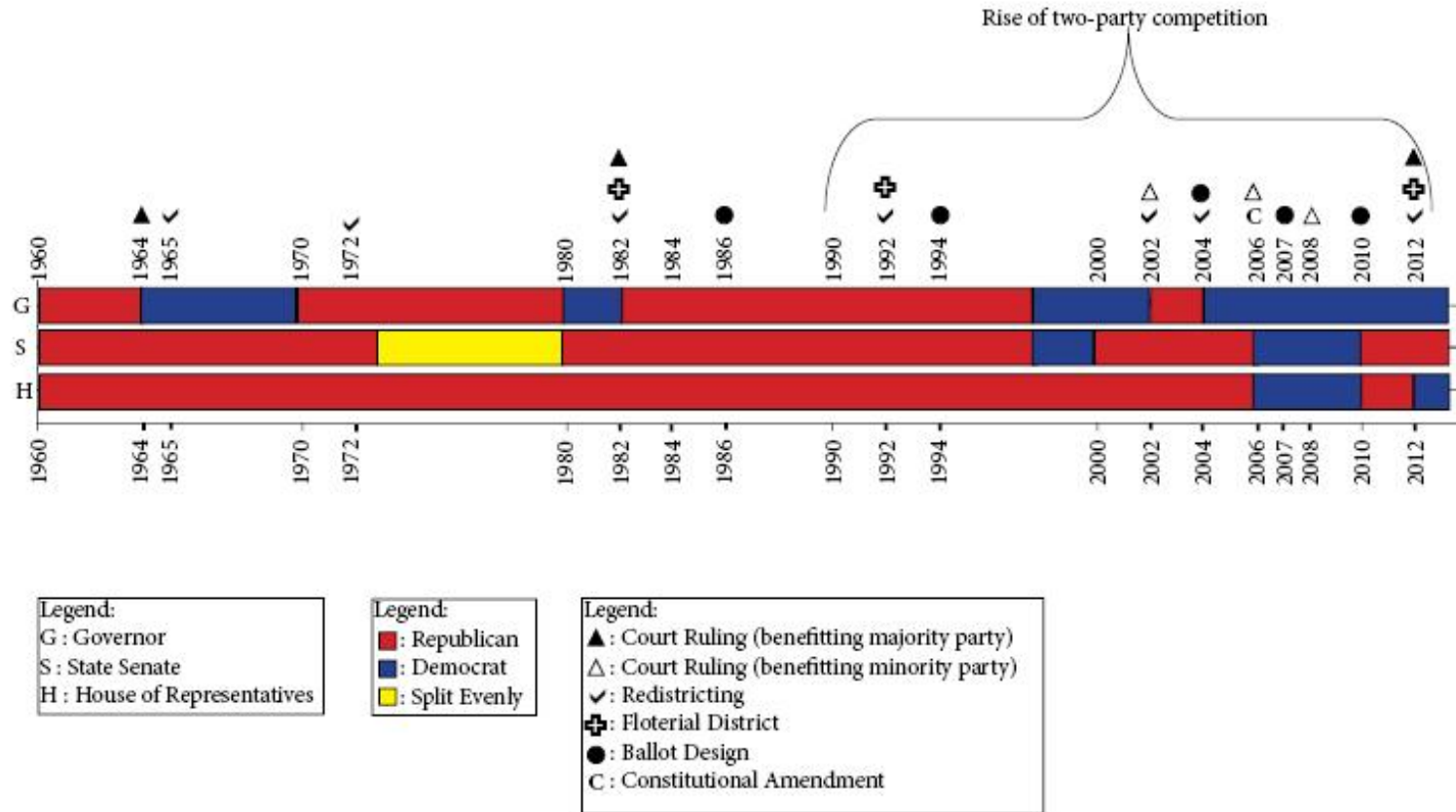
Conclusion

Although this thesis focuses on the use of strategies by Republicans to maintain party control of the New Hampshire House, it is merely an illustrative example of how the sequencing of multiple strategies allows a political party to maintain control of a state legislature while there is two-party competition in the state. As discussed earlier, the strategies analyzed in this thesis have a greater effect on the House compared to the other offices, and thus it is unlikely that the findings of this thesis can be extrapolated outside the state level. For example, it is unlikely that the Republican Party would have been able to use strategies quite as effectively to influence elections at the federal level. Additionally, the findings of this thesis apply to a state that has rising two-party competition and a state legislature with consistent one-party control. In New Hampshire, the Republicans increased their use of multiple strategies to maintain their party control. Without the rise of two-party competition in the state, and if the state had stayed "red," the Republicans would not have felt as though their majority was being threatened, and would

not have needed to use strategies to maintain their majority. Therefore, the threat of two-party competition encourages politicians to seek multiple strategies to maintain one-party control of a legislature.

The threat of two-party competition increased the use of strategies in New Hampshire, because the Republican Party was used to having a majority in the House and the ability to exercise agenda control. Having one-party control in a state legislature allows that political party to control the legislative agenda and electoral rules. As a result, both political parties will want to be in the majority. However, when one party has a majority they will work to set up rules that can ensure that they maintain control, and as a result make it more difficult for the minority party to gain a majority. In 2006, the Democrats were able to gain a majority in the New Hampshire House, and as a result were able to eliminate some of the Republican Party's strategies. The Democrats were able to gain control of the House because of the shift in the political makeup of the state and court rulings. This thesis has highlighted how politicians rely on the sequencing of multiple strategies to keep their majority in a legislature, which then allows for their party to control the legislative agenda. Furthermore, this thesis has shown how court rulings and changes in population and political alignment in a state can allow for a shift in majority control, which can result in changes to the strategies of the previous majority party and changes in the "rules of the game."

Figure 5.1: Sequencing of Strategies



Note: This is a timeline of the sequencing of the strategies used by the Republican Party to maintain control of the New Hampshire House as there was a rise in two-party competition in the state.

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