

# PRACTICAL OBSERVATIONS ON POLITICS AND THE CONSTITUTION

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## ABSTRACT

*Brenna Findley, legal counsel to Iowa Governor Terry E. Branstad, offers her insight into the country's political dysfunction based on personal observations made through her experience within both the state and federal governments. In her Essay, Findley describes how her experiences in state politics and as former chief of staff for a U.S. congressman have shown her that perhaps state governments do not face the same obstacles that exist at the federal level. Rather, Findley suggests that state governments—especially Iowa's—maintain less polarization, in part due to state constitution parameters that enhance efficiency and due to state elected officials' ability to harness a camaraderie that promotes compromise and functionality.*

## TABLE OF CONTENTS

I. Introduction .....	1086
II. Transparency Is Essential to Democracy .....	1087
III. Clear Information .....	1090
IV. Undemocratic Congressional Districts .....	1093
V. Problem Solving on Time .....	1099
VI. Budget Targets .....	1102
VII. Budget Principles Matter .....	1104
VIII. Role of Relationships and Culture in Decisionmaking .....	1106
IX. Conclusion .....	1108

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1. I want to share credit with all of the people with whom and for whom I work, but my mistakes are my own. I am thankful for the opportunity to serve Iowa at both the federal and state levels. The statements made in this essay do not necessarily reflect the views of those I serve, including the Governor and Lieutenant Governor.

## I. INTRODUCTION

Our state and federal constitutions contain abstract principles for practical application. In my role as counsel to the Governor of Iowa, I work with abstract constitutional concepts and apply them to specific problems and questions. This means I have the opportunity to practice constitutional law on a daily basis. In this Essay, I offer some practical observations relating to both the federal and state levels of government. I identify practical lessons states have learned that the federal government would do well to heed.

I am thankful for the opportunity to serve as counsel to Governor Terry E. Branstad. I work to interpret our laws and the Iowa constitution faithfully as I advise the head of Iowa's executive branch. Through experience, I have learned more about our state constitution. Iowa's constitution is longer, more detailed, and more specific than the federal Constitution. For example, there is a constitutional provision on the length of leases for agricultural land.<sup>2</sup> There are fewer cases interpreting Iowa's constitutional provisions than there are cases interpreting the federal Constitution. Often, there are no Iowa cases on point for a particular issue.

Despite their differences, the Iowa and United States constitutions share a similarity that is important to this Essay. Neither of the constitutions was designed in itself to solve problems quickly or effectively. Instead, they divide power between the branches.<sup>3</sup> They give each branch tools to slow down or stop the progress of other branches.<sup>4</sup> The federal Constitution establishes a limited set of enumerated powers, with the remaining powers reserved to the people and the states.<sup>5</sup> The Iowa constitution, meanwhile, recognizes the fundamental sovereignty of the people: "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it."<sup>6</sup>

Many Americans are dissatisfied with the federal government. Many

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2. IOWA CONST. art. I, § 24 (stating that no agriculture land lease can be longer than twenty years).

3. U.S. CONST. art. I, § 1; *id.* art. II, § 1; *id.* art. III, § 1; IOWA CONST. art. III, § 1.

4. *See, e.g.*, U.S. CONST. art. I, § 7 (establishing executive veto power over legislative enactments); IOWA CONST. art. III, § 16 (establishing the same).

5. U.S. CONST. amend. X.

6. IOWA CONST. art. I, § 2.

believe that Congress is incapable and the problems in Washington, D.C., are intractable. I submit, however, that most Americans do not believe our political system and Constitution are irreparably broken. Americans may have lost faith in the Beltway crowd in Washington, D.C., but limited expectations for the federal government's ability to solve our daily problems may have been shared by our Founding Fathers. A structural analysis of the U.S. Constitution reveals a federal government designed to avoid concentrated power, not to solve problems quickly. Federal government dysfunction can be lessened if the federal government returns decisionmaking power to the lowest level of government possible and learns from the states.

Justice Brandeis described the states as "laboratories of democracy" in his dissenting opinion in *New State Ice Co. v. Liebmann*.<sup>7</sup> These laboratories work best when we return decisions to the lowest level possible so that people have clear and transparent information and access. I believe the federal government can learn from the experiences of the states in this regard. The states are not perfect laboratories, but they are better than the federal government at "getting it right" and serving as a functional democracy.<sup>8</sup> We should expect that Congress will continue to fail if it continues to try to force "one size fits all" solutions on the laboratories of democracy—the states.

The federal political system suffers from several problems including a lack of transparency, indecipherable information, complexity, and distance from the people it serves. Congress particularly suffers due to distance from the people they represent, procrastination, lack of understanding about how much money is available to spend, disregard for budgeting principles, undemocratic congressional districts, and relationship malfunction. The federal government can learn several lessons from the way Iowa addresses these problems.

## II. TRANSPARENCY IS ESSENTIAL TO DEMOCRACY

Only an informed public can perform its role in the constitutional

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7. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

8. See, e.g., *Iowa Legislature Adjourns Landmark 2013 Session*, DUBUQUE TELEGRAPH-HERALD (May 23, 2013), [http://www.thonline.com/news/iowa-illinois-wisconsin/article\\_036ee512-c3c6-11e2-9949-001a4bcf6878.html](http://www.thonline.com/news/iowa-illinois-wisconsin/article_036ee512-c3c6-11e2-9949-001a4bcf6878.html) ("Basking in successful compromise deals on [several important issues], Iowa lawmakers hailed the just-adjourned 2013 legislative session as the most successful in recent memory.").

framework: holding government accountable. Transparency of government functions and processes is essential. A lack of transparency makes it difficult for citizens to hold their government accountable. Transparency makes government information easier to access. Most of the time, voters rely on the media and political parties to provide them information about their government.<sup>9</sup>

The federal government suffers from a lack of transparency.<sup>10</sup> Effective transparency requires a mechanism that facilitates citizen and media access to information within a reasonable amount of time. The information needs to be in an understandable form and received in a timely manner. Those who seek the information need to know how to request information and the process for receiving information. The government providing information needs to serve the citizen as a “customer” rather than treating them as a hostile opposing party.

Federal “watchdogs,” such as nonprofits promoting accountability, the news media searching for stories, and political operatives conducting opposition research all utilize the federal Freedom of Information Act (FOIA).<sup>11</sup> These requests are frequently the subject of federal litigation as requesters petition the courts to order the release of public information.<sup>12</sup> Delays and stalling tactics are common and redactions are time consuming.<sup>13</sup> Average citizens, and even many media outlets, do not have the resources to pursue federal information requests.

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9. See, e.g., J. M. Balkin, *How Mass Media Simulate Political Transparency*, 3 CULTURAL VALUES 393 (1999), available at <http://www.yale.edu/lawweb/jbalkin/articles/media01.htm> (“[M]ass media can make the political system more ‘transparent’ in . . . three respects: [it] can help people understand the operations of government, participate in political decisions, and hold government officials accountable.”).

10. See, e.g., Dana Milbank, Op-Ed., *In the House, a Deck Stacked for Republicans*, WASH. POST (Jan. 4, 2013), [http://articles.washingtonpost.com/2013-01-04/opinions/36209343\\_1\\_popular-vote-democrats-republicans](http://articles.washingtonpost.com/2013-01-04/opinions/36209343_1_popular-vote-democrats-republicans) (“Only three or four other times in the past century has a party lost the popular vote but won control of the House. But computer-aided gerrymandering is helping to make such undemocratic results the norm . . .”).

11. 5 U.S.C. § 552 (2006).

12. See, e.g., Herrick v. Garvey, 298 F.3d 1184, 1188–89 (10th Cir. 2002); Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice, No. 11-754(GK), 2013 WL 2549680, at \*1 (D.D.C. June 12, 2013); Wetzel v. U.S. Dep’t of Veterans Affairs, No. 12-1341 (JDB), 2013 WL 2537720, at \*1 (D.D.C. June 11, 2013).

13. See, e.g., Comptel v. FCC, No. 06-1718 (RCL), 2013 WL 2171793, at \*11 (D.D.C. May 20, 2013) (addressing one party’s argument that their opponent had “violated the FOIA by engaging in unreasonable delays” when they had 3,200 pages of potentially responsive documents to examine and, where appropriate, to redact).

On the state level, Iowa has the Open Records Act.<sup>14</sup> It is not perfect, but it works surprisingly well. Although most of those requesting information are members of the media, political opposition researchers, and those considering potential litigation, the procedures are simple enough that a citizen can request information and get it.<sup>15</sup> For example, requests received by the governor's office routinely receive resolution within twenty days.<sup>16</sup> If a citizen requests all of the applications for those who applied to be appointed as state auditor, the information would be available quickly and at minimal cost for copies.<sup>17</sup> Providing information quickly and efficiently demystifies government.<sup>18</sup> Many people are surprised by the information they receive. Often those requesting information are surprised when they expect to receive a "smoking gun," but instead, the documents show an alternative explanation for what occurred and why.

Transparency guards against an arbitrary and capricious element in bureaucratic decisionmaking. Even when the public cannot afford lawyers to sue and engage in document discovery, the bureaucracy is on notice that a simple information request will reveal a department's daily work.<sup>19</sup> I believe transparency serves as a check against poor decisionmaking and behavior that is not worthy of the call of public service. Each time poor decisions, processes, or behaviors are brought to light, it serves as a reminder of the importance of good work in the service of the public. No state worker wants to see their own embarrassing e-mails on the front page of the local newspaper.<sup>20</sup>

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14. See IOWA CODE ch. 22 (2011).

15. See generally IOWA CODE § 22.3 (detailing the process).

16. See, e.g., OPEN RECORDS INFORMATION PROVIDED BY THE OFFICE OF THE GOVERNOR IN MAY 2013 (2013), available at <https://governor.iowa.gov/wp-content/uploads/2011/10/May-2013-open-records.pdf>.

17. See *id.*

18. See Editorial, *Frisco Found a Way to Demystify Government, So Why Can't Washington?*, DALL. MORNING NEWS (Mar. 31, 2011), <http://www.dallasnews.com/opinion/editorials/20110331-editorial-frisco-found-a-way-to-demystify-government-so-why-cant-washington.ece> ("The best check on government waste and abuse is a government whose actions are open to public scrutiny.").

19. See OPEN RECORDS INFORMATION PROVIDED BY THE OFFICE OF THE GOVERNOR IN MAY 2013, *supra* note 16 (reflecting a response to a request that included seemingly menial tasks like e-mail correspondence and calendar notices).

20. See, e.g., Mary Stegmeir, *Nancy Sebring's Emails Released*, DES MOINES REG. (June 2, 2012), <http://www.desmoinesregister.com/article/20120602/NEWS02/107120016/Nancy-Sebring-s-emails-released> (describing a former school superintendent's e-mails that were "obtained . . . through open records requests" and

Embracing transparency has several benefits for the political system as well as office holders. The bureaucracy is more accountable when it knows that its processes and dealings may see the light of day. Transparency is a valuable good that both parties can embrace.<sup>21</sup> There is nothing inherently Republican or Democratic about transparency. Negative and positive news stories relate to both parties. When independent voters go to the polls I believe they see pro-transparency leaders in a positive light.

Of course, public information laws have to be reasonable so that public entities can comply. The necessary exceptions to information required to be made available to the public include areas such as draft documents, legal privilege, public safety, and trade secrets.<sup>22</sup> In order for transparency to function effectively these exceptions must be in place, or the effect of transparency is crippling rather than liberating. For example, if no legal privilege existed for material prepared to defend or prosecute a potential lawsuit, opposing counsel could get the entire legal file.<sup>23</sup> This would be an incentive for necessary documents not to be created.

### III. CLEAR INFORMATION

A political system requires not only transparency, but an understandable process so that citizens can comprehend the information they receive.

Even while serving as chief of staff to a member of Congress, I found it difficult to access information relating to the federal government. The directory of congressional liaisons—the go-to people who refer congressional offices to an information source—is currently thirty-nine pages long.<sup>24</sup> The average taxpayer is not aware of such a resource, and even if he or she is, calls would not be returned because the directory warns that the phone numbers and contacts are only for use by congressional offices.<sup>25</sup> I recall many instances of persistent messages to agencies while

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were in several instances “explicitly sexual in nature”).

21. See *City of Riverdale v. Diercks*, 806 N.W.2d 643, 645 (Iowa 2011) (“[S]hining the light of day on the actions of our public officials deters misconduct that thrives in darkness.”).

22. See *IOWA CODE* § 22.7 (2011).

23. See *id.* § 22.7(4).

24. See *AUDREY CELESTE CRANE-HIRSCH, CONG. RESEARCH SERV., CONGRESSIONAL LIAISON OFFICES OF SELECTED FEDERAL AGENCIES* (2013), available at <http://www.fas.org/sgp/crs/misc/98-446.pdf>.

25. *Id.*

working my way through the bureaucracy to get answers and information. The bureaucracy was so large that it was difficult to know where to find information or how to understand it in context. At times, the congressional liaisons for agencies served as obfuscators rather than as information sleuths.

In contrast, at the state and local level it is easier to find information or the person with expertise on an issue. Face-to-face interaction is not only possible, but common. I have found that when government is physically closer to the people it serves, citizens receive better customer service. For example, when an Iowan has a question about his or her property tax assessment, the assessor's office is nearby, in the county seat. If calls are not returned, a citizen may come to ask the question in person. If a county elected official is rude or unresponsive, he or she will not be reelected.

If an Iowan has a question for a government worker in Washington, D.C., it is considerably more difficult for them to interact successfully. It is cost prohibited for the average citizen who cannot afford a lobbyist or the cost of personal face-to-face interaction. The bureaucracy is inordinately more complicated and dehumanized. When I interact with my local government, I am a real person with a face. They understand that the likelihood of repeat interaction is high. When I interact with the federal government, I am just another piece of paper in a stack of papers. It is unlikely the federal worker will ever interact with me again.

Congress suffers from distance from the people they serve. In Iowa, the average member of Congress has 761,589 people in his or her district.<sup>26</sup> By contrast, a state senator represents approximately 60,927 people, and a state representative represents approximately 30,464 people.<sup>27</sup> Campaigns can be expensive.<sup>28</sup> In practical terms, this means that to communicate with

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26. See Memorandum on First Redistricting Plan from Glen Dickinson, Dir. & Ed Cool, Senior Legal Counsel, Iowa Legislative Servs. Agency, to Sec'y of the Iowa Senate, Chief Clerk of the Iowa House of Representatives & Members of the Iowa Gen. Assembly 3 (Mar. 31, 2011) [hereinafter First Redistricting Plan], available at [https://www.legis.iowa.gov/DOCS/Resources/Redist/2011/2011-03-31/Plan1\\_Report.pdf](https://www.legis.iowa.gov/DOCS/Resources/Redist/2011/2011-03-31/Plan1_Report.pdf).

27. See *id.*

28. See *Campaign Finance Historical Trends: Total Amounts of Contributions, Expenditures, and In-Kinds for 2012*, IOWA ETHICS & CAMPAIGN DISCLOSURE BOARD, [http://www.state.ia.us/ethics/viewreports/trends/total\\_contributions\\_expenditures/total\\_contributions\\_expenditures2012.htm](http://www.state.ia.us/ethics/viewreports/trends/total_contributions_expenditures/total_contributions_expenditures2012.htm) (last updated June 27, 2013); *2014 House and Senate Campaign Finance*, FED. ELECTION COMMISSION,

constituents, members of Congress must purchase television ads to be reelected. It is not possible for a candidate to interact personally with 761,589 people by walking door-to-door or attending events. Television is a powerful and effective way to communicate in campaigns. The disadvantages of television advertising are that it is expensive and one-sided. The expense requires candidates, political action committees (PACs), and parties to spend a great deal of time raising money.<sup>29</sup> Candidates who run the ads are able to disseminate a message, but not receive a message from the voters. Instead, they pay pollsters to extrapolate feedback from a sample. In contrast, a hard-working state legislator can go door-to-door to deliver a message and hear from constituents. This personal interaction helps them to develop a message and serve the district. As candidates go door-to-door, the message is honed and is one that is responsive to the needs of the local district.

Although campaign time is prime time for candidate-voter interaction, state legislators continue to interact with the people they serve throughout the year. They live in the same communities. For federal races, television ads stop after an election is held. But, for state lawmakers, interaction with the public continues beyond an election. Routinely, constituents will ask questions or provide feedback at the grocery store, gas pump, or community meetings.

The distance between the federal government and the people they serve is a threat to our constitutional democracy when the federal government tries to do too much. Only when decisions are made at the lowest level possible does the constitutional structure operate at its best. It is logically impossible for the federal government to interact meaningfully with the people they serve. Many elected members of Congress return to their home districts most weekends, but federal employees in Washington, D.C., do not. Most constituents cannot afford repeated plane tickets to Washington, D.C., to make their voices heard. Only issues that must be decided at the federal level and that are within the constitutional purview of the federal government should be decided at that level. Otherwise, decisions should default to the lowest level possible—where the people have the best access to their government. The more local the government, the more likely it is that the government will listen to its constituents.

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[http://www.fec.gov/disclosurehs/hsnational.do?cf=hs\\_elec](http://www.fec.gov/disclosurehs/hsnational.do?cf=hs_elec) (last visited July 1, 2013).

29. *See id.* (click “Who’s Buying Ads?” tab).

#### IV. UNDEMOCRATIC CONGRESSIONAL DISTRICTS

Gerrymandering, motivated by protection of the incumbent members of the party in power, distorts the democratic process.<sup>30</sup> An ideal redistricting process disadvantages each party and the leadership districts of each party, equally.<sup>31</sup> The parties are inconvenienced when they have to endure incumbent versus incumbent primaries. The incumbents must move and establish new ties to their districts. With districts based on population, not the best interests of the ruling party, the voters are the net winners. Districts based on population, not the preferences of ruling party incumbents, cause more legislative and congressional districts to be competitive.<sup>32</sup> In Iowa, even a popular incumbent state senator or representative in a relatively safe district will need to take care to mind the borders of his or her new district every ten years when redistricting occurs.<sup>33</sup>

Iowa's redistricting process serves as a model for the nation.<sup>34</sup> Iowa's law specifically prohibits taking into account the addresses of incumbent legislators or members of Congress.<sup>35</sup> The enacted map for the 2012 election had four congressional districts,<sup>36</sup> with two incumbents in two districts, one incumbent in one district and no incumbent in the remaining

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30. See *Vieth v. Jubelirer*, 541 U.S. 267, 329–30 (2004) (Stevens, J., dissenting).

31. See Noah Litton, Note, *The Road to Better Redistricting: Empirical Analysis and State-Based Reforms to Counter Partisan Gerrymandering*, 73 OHIO ST. L.J. 839, 877–78 (2012) (“[S]tates that transition to a nonpartisan redistricting procedure are more likely to engender elections that . . . treat both political parties fairly . . .”).

32. Larry Alexander & Saikrishna B. Prakash, *Tempest in an Empty Teapot: Why the Constitution Does Not Regulate Gerrymandering*, 50 WM. & MARY L. REV. 1, 41 (2008) (describing a state with its population divided equally between political parties as “the most compelling situation for competitive districts”).

33. See IOWA CODE § 42.4(1) (2011) (“Legislative and congressional districts shall be established on the basis of population.”).

34. See, e.g., Litton, *supra* note 31, at 870 (“[Several factors] suggest the Iowa model is a . . . vehicle for redistricting reform.”).

35. IOWA CODE § 42.4(5)(a).

36. IOWA LEGISLATIVE SERVS. AGENCY, IOWA CONGRESSIONAL DISTRICTS (2012), [https://www.legis.iowa.gov/DOCS/Resources/Redist/2011/2011-03-31/Congress-Statewide8x11\\_color.pdf](https://www.legis.iowa.gov/DOCS/Resources/Redist/2011/2011-03-31/Congress-Statewide8x11_color.pdf). Iowa lost a congressional seat in 2012 and went from five to four members of Congress. Tom Beaumont, *Iowa Loses U.S. House Seat in Shift from Midwest, Northeast to South*, DES MOINES REG.: IOWA POL. (Dec. 21, 2010), <http://blogs.desmoinesregister.com/dmr/index.php/2010/12/21/iowa-loses-u-s-house-seat-with-shift-from-midwest-northeast-to-south>.

district. Congressmen Steve King's and Tom Latham's homes were drawn into Iowa's new fourth district.<sup>37</sup> Congressmen Bruce Braley's and Dave Loebsack's homes were drawn into Iowa's new first district.<sup>38</sup> The second district had no incumbent members of Congress, while Congressman Leonard Boswell was an incumbent in the third district.<sup>39</sup> Congressman Latham, one of the powerful House Appropriations Subcommittee chairs, moved from his home in Ames to the third district to run against incumbent Congressman Boswell.<sup>40</sup> Congressman Loebsack moved from his home in Mount Vernon to the second district.<sup>41</sup> The state district map<sup>42</sup> also pitted legislative incumbent against incumbent, often of the same party.<sup>43</sup> There were twenty-seven house districts with more than one incumbent and fourteen districts with no incumbent representative.<sup>44</sup> On the senate side, fourteen senators found themselves in a district with another senator, with no incumbent senator in seven districts.<sup>45</sup>

The Iowa redistricting process is based on both statutory and constitutional provisions. Iowa law provides objective criteria that must be used in redistricting.<sup>46</sup> It specifies the information and considerations that

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37. William Petroski, *U.S. Rep. Latham Will Move to Iowa's 3rd District, Challenge Boswell in 2012*, DES MOINES REG.: IOWA POL. (Apr. 15, 2011), <http://blogs.desmoinesregister.com/dmr/index.php/2011/04/15/latham-will-move-to-iowas-3rd-congressional-district-challenge-boswell> (noting the potential faceoff against fellow Republican Steve King as the reason for the move).

38. See Allie Wright, *Branstad Signs Redistricting Bill*, DAILY IOWAN (Apr. 20, 2011), <http://www.dailyiowan.com/2011/04/20/Metro/22963.html>.

39. Nathan L. Gonzales, *New Iowa Map Pits Incumbents Against Each Other*, ROLL CALL (Mar. 31, 2011), [http://www.rollcall.com/news/new\\_iowa\\_map\\_pits\\_incumbents\\_against\\_each\\_other-204503-1.html](http://www.rollcall.com/news/new_iowa_map_pits_incumbents_against_each_other-204503-1.html).

40. Petroski, *supra* note 37.

41. *With Redistricting, Rep. Loebsack Buys New Home in Iowa City*, KCRG (July 6, 2011), <http://www.kcrg.com/news/local/With-Redistricting-Rep-Loebsack-Buys-New-Home-in-Iowa-City-125079389.html>.

42. IOWA LEGISLATIVE SERVS. AGENCY, IOWA HOUSE DISTRICTS (2012), available at [https://www.legis.iowa.gov/DOCS/DistrictMaps/2013/House/HouseStateWide8x11\\_color.pdf](https://www.legis.iowa.gov/DOCS/DistrictMaps/2013/House/HouseStateWide8x11_color.pdf); IOWA LEGISLATIVE SERVS. AGENCY, IOWA SENATE DISTRICTS (2012), available at [https://www.legis.iowa.gov/DOCS/DistrictMaps/2013/Senate/SenateStatewide8x11\\_color.pdf](https://www.legis.iowa.gov/DOCS/DistrictMaps/2013/Senate/SenateStatewide8x11_color.pdf).

43. See Rod Boshart, *Redistricting Plan Impacts Numerous Iowa House, Senate Districts*, GAZETTE (Mar. 31, 2011), <http://thegazette.com/2011/03/31/redistricting-plan-impacts-numerous-iowa-house-senate-districts/>.

44. *Id.*

45. *Id.*

46. See IOWA CODE § 42.4 (2011).

are prohibited.<sup>47</sup> The statute requires districts to have minimal statistical variation and appropriate geographic compactness and contiguity.<sup>48</sup> Existing boundaries are taken into account to the maximum extent possible.<sup>49</sup> For example, if a city or county must be divided into more than one district, Iowa law requires that it be divided into as few districts as possible.<sup>50</sup> Each legislative house or senate district must not exceed the population of any other house or senate district by more than five percent.<sup>51</sup> Each senate district contains two house districts.<sup>52</sup> Congressional districts may not split any one of Iowa's ninety-nine counties.<sup>53</sup> Iowa law specifically prohibits taking into account political party, incumbent residence, or voter race.<sup>54</sup> Past election results are not allowed to be considered.<sup>55</sup> The numbers utilized are census population numbers, not party registration data or election results.<sup>56</sup>

After a census, legislation describing a new map is drafted by the Legislative Services Agency (LSA).<sup>57</sup> It is required to be introduced by April 1 of each year ending in one.<sup>58</sup> Typically the LSA public website contains the census data that can be used to draw a map.<sup>59</sup> Citizens can experiment with the data and draw districts.<sup>60</sup> The Temporary Redistricting Advisory Commission (TRAC) is appointed.<sup>61</sup> The majority and minority leaders of the house and senate each appoint one member.<sup>62</sup> Those four

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47. *Id.* § 42.4(5).

48. *Id.* § 42.4(3)–(4).

49. *Id.* § 42.4(2).

50. *Id.*

51. *Id.* § 42.4(1)(a).

52. *Id.* § 41.2.

53. IOWA CONST. art. III, § 37.

54. IOWA CODE § 42.4(5).

55. IOWA CODE § 42.4(5)(c).

56. *Id.* § 42.2(2).

57. *Id.* § 42.3(1)(a).

58. *Id.*

59. See *About Redistricting*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/Resources/Redist/about.aspx> (last visited June 15, 2013) (providing a link to the State Data Center of Iowa).

60. See, e.g., Craig Johnson & James E. Wilkerson, *Census 2010: Redistricting*, DES MOINES REG., <http://data.desmoinesregister.com/dmr/iowa-census/redistricting-game/> (last visited July 1, 2013) (inviting readers to try their hand at redrawing congressional districts).

61. IOWA CODE § 42.5.

62. *Id.* §§ 42.1(4), .5(1)(a).

members elect a fifth member who serves as the chair.<sup>63</sup> TRAC has two duties: to provide advice to the LSA on redistricting matters where there is “no clearly applicable guideline,” and to hold hearings on the first proposed map.<sup>64</sup> Given the detailed nature of the redistricting requirements in Iowa law, TRAC focuses on public hearings.<sup>65</sup> This focus brings transparency to the process and increases public awareness of Iowa’s redistricting process.<sup>66</sup>

The legislature considers the redistricting legislation under a procedure that does not allow any amendment, except to correct errors.<sup>67</sup> If the plan is not approved, the LSA submits a new plan within thirty-five days.<sup>68</sup> If the second plan is not approved, the LSA provides a third plan.<sup>69</sup> If the third plan is not enacted by September 1 and passed into law by September 15, the Iowa Supreme Court must eventually provide a plan.<sup>70</sup> To date, no general assembly has ceded this responsibility to the courts, and no court has drawn the redistricting map; the closest it has come was in 1981, when the legislature approved the third map.<sup>71</sup> In 2001, the second map was enacted.<sup>72</sup> In 1991, the first map became law.<sup>73</sup>

The process moved quickly for the redistricting after the 2010 census. On April 12, 2011, the plan was introduced in legislation.<sup>74</sup> By April 19,

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63. *Id.* § 42.5(1)(b).

64. *Id.* §§ 42.6(1), (3).

65. *See id.* § 42.6(3)(a).

66. *See Iowa Redistricting—2011*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/Resources/Redist/redistricting.aspx> (last visited August 26, 2013) (providing links to both written comments TRAC received and audio files from the public hearings).

67. IOWA CODE § 42.3(1)(a).

68. *Id.* § 42.3(2).

69. *Id.* § 42.3(3).

70. *See* Boshart, *supra* note 43. There is no statutory mandate for state supreme court review, but the U.S. Supreme Court has stated judicial intervention is appropriate when the legislature cannot agree on a plan. *Grove v. Emison*, 507 U.S. 25, 34 (1993); *see also* Brandon L. Boese, Note, *The Controversy of Redistricting in Minnesota*, 39 WM. MITCHELL L. REV. 1333, 1349 & n.112 (2013).

71. *Iowa Redistricting—1981 Third Plan*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/Resources/Redist/redistricting.aspx?planYear=1981> (last visited July 1, 2013).

72. *Iowa Redistricting—2001 Second Plan*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/Resources/Redist/redistricting.aspx?planYear=2001> (last visited July 1, 2013).

73. *Iowa Redistricting—1991*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/Resources/Redist/redistricting.aspx?planYear=1991> (last visited July 1, 2013).

74. *Bill History for HF 682*, IOWA LEGISLATURE, <http://coolice.legis.iowa>

2011, it had passed both chambers and was signed by the governor.<sup>75</sup> The 2012 elections resulted in an evenly divided Iowa congressional delegation.<sup>76</sup>

The 2011 redistricting process illustrates how well the process works in Iowa. On February 10, 2011, the date the official population data was received from the U.S. Census Bureau, it was made public.<sup>77</sup> The LSA released the timeline for redistricting and described the process on their website.<sup>78</sup> On February 17, 2011, the TRAC met, elected their fifth member, and worked to plan public hearings.<sup>79</sup> The plan was released by LSA on March 31, 2011, at 8:15 a.m.; up until that point it was secret.<sup>80</sup> LSA's website contained the district maps and legal descriptions as well as statistical data.<sup>81</sup> TRAC held public hearings April 4–7 at various locations around the state to receive public comment.<sup>82</sup> On April 14, 2011, the Iowa house passed the redistricting legislation by a vote of 90–7.<sup>83</sup> On the same day, the senate passed it by a vote of 48–1.<sup>84</sup> It was enrolled and delivered to the Governor on April 18, 2011.<sup>85</sup> The Governor signed it on April 19, 2011.<sup>86</sup>

A common myth relating to Iowa's redistricting process is that the legislature hands over its power to an appointed commission, TRAC, who

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.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&vas=HF&key=0757C&GA=84 (last visited July 1, 2013) [hereinafter *Bill History*].

75. *Id.*

76. *Official Results—General Election—November 6, 2012*, Iowa Secretary of St., <http://electionresults.sos.iowa.gov/resultsSW.aspx?type=CON&map=CTY> (last visited Aug. 26, 2013).

77. First Redistricting Plan, *supra* note 26, at 3.

78. LEGISLATIVE SERVS. AGENCY, RELEASE OF PL 94-171 POPULATION DATA (2011), available at <http://www.legis.iowa.gov/DOCS/Resources/Redist/Updates/02-10-2011 - Release of Census Data.pdf>.

79. LEGISLATIVE SERVS. AGENCY, TEMPORARY REDISTRICTING ADVISORY COMMISSION, (2011), available at <http://www.legis.iowa.gov/DOCS/Resources/Redist/Updates/02-18-2011 - TRAC Chairperson.pdf>.

80. See First Redistricting Plan, *supra* note 26.

81. *See id.* at 6–24.

82. See James Q. Lynch, *State Redistricting Plan Meets Resistance*, THE GAZETTE (Apr. 4, 2011), <http://thegazette.com/2011/04/04/state-redistricting-plan-meets-resistance> (recapping comments made at the first hearing, and previewing the rest).

83. *Bill History*, *supra* note 74.

84. *Id.*

85. *Id.*

86. *Id.*

“does the right thing” without politics.<sup>87</sup> This is inaccurate and misses the point. The legislature maintains its authority over the entire process.<sup>88</sup> It is accountable for the process. The key ingredient is the objective criteria that are utilized to draw a map.<sup>89</sup> These criteria bind decisionmakers in advance to a process based on compactness, geographic contiguity, respect for political subdivisions, and minimal statistical variation.<sup>90</sup>

Even though Iowa legislators agree to the rules for redistricting in advance, redistricting in Iowa is still a political process. There is no quieter day at the capitol during session than the day the map comes out. Each legislator quickly checks his or her district to see if they are pitted against any other incumbents. Prognosticators try to predict who will move and who will stay. Retirements are announced in the coming weeks.<sup>91</sup> Number crunchers try to model which party will be advantaged. Rumors abound.

The Iowa process is not permanent. The Iowa legislature could revert to a gerrymandering process with the passage of simple legislation. At this point, they will not. Iowans are proud of their process and how it works. When signing the legislation, the governor said:

I do think that we can have some pride in the fact that Iowa has a system for reapportionment that is fair and really gives the people an opportunity to choose their congressmen and their representatives and senators in a competitive system that isn't designed to skew it in favor of one party or the other . . . .

. . . .

Iowa voters are very independent. This is a very competitive

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87. See, e.g., Lauren Fox, *Iowa Hosting Four Fierce Congressional Races Thanks to Redistricting*, U.S. NEWS & WORLD REP. (July 5, 2012), <http://www.usnews.com/news/articles/2012/07/05/iowa-hosting-four-fierce-congressional-races-thanks-to-redistricting-2> (“In Iowa, the battle has been taken out of legislators’ hands . . . .”).

88. See IOWA CODE § 42.3 (2011) (mandating that the legislature ultimately vote on the commission’s plan).

89. *Id.* § 42.4.

90. *Id.*

91. See Elaine S. Povich, *Iowa Redistricting Makes for Interesting Side Step*, GOVERNING: POL. (Feb. 10, 2012), <http://www.governing.com/blogs/politics/Iowa-Redistricting-Makes-For-Interesting-Side-Step.html> (“Because of the redistricting, five Iowa lawmakers resigned this week, rather than face election against a fellow lawmaker.”).

state and people tend to vote for the individual, and so the quality of the candidate . . . and how hard they are willing to work is what I figure usually decides elections.<sup>92</sup>

In contrast, states that allow gerrymandering make it difficult for the U.S. House of Representatives to achieve maximum democratic representation of the people it serves.<sup>93</sup> Manipulation of districts leads to candidate polarization.<sup>94</sup> The party in charge draws safe districts for their members.<sup>95</sup> Voters are denied the benefit of incumbents running against each other in primaries and general elections. Gerrymandered districts protect incumbents and hurt voters who would benefit from competition between candidates for their vote.<sup>96</sup>

#### V. PROBLEM SOLVING ON TIME

Procrastination is endemic to political bodies.<sup>97</sup> Often problems are not solved until the last minute.<sup>98</sup> When faced with a deadline, the necessity

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92. O. Kay Henderson, *Iowa's Redistricting Plan Now Law*, RADIO IOWA (Apr. 19, 2011), <http://www.radioiowa.com/2011/04/19/iowas-redistricting-plan-now-law/> (internal quotation marks omitted).

93. Richard Briffault, *Defining the Constitutional Question in Partisan Gerrymandering*, 14 CORNELL J.L. & PUB. POL'Y 397, 400 (2005) ("Legislative districting that manipulates district boundaries for the primary purpose of securing . . . the power of a specific political party violates the constitutional norm of popular sovereignty.").

94. See generally Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 CALIF. L. REV. 273, 308 (2011) (summarizing "[t]he theory as to how gerrymandering can increase polarization"). Professor Pildes himself is not "convinced [gerrymandering] is a significant cause of increased polarization." *Id.* Nonetheless, the theory is attractive despite academic disagreement over its validity. See Christopher S. Elmendorf & David Schleicher, *Districting for a Low-Information Electorate*, 121 YALE L.J. 1846, 1877 n.100 (2012) (listing studies on the topic that have reached varying conclusions).

95. See J. Gerald Hebert & Marina K. Jenkins, *The Need for State Redistricting Reform to Rein in Partisan Gerrymandering*, 29 YALE L. & POL'Y REV. 543, 558 (2011).

96. See Franita Tolson, *Benign Partisanship*, 88 NOTRE DAME L. REV. 395, 403–04 (2012) ("[P]artisan gerrymandering is routinely lambasted . . . for imposing significant democratic harms on voters.").

97. See, e.g., George Skelton, *Give Credit to California Voters*, L.A. TIMES (June 12, 2013), <http://articles.latimes.com/2013/jun/12/local/la-me-cap-budget-2013-0613> ("For many years, the [California] Legislature routinely ignored its . . . deadline for budget passage and procrastinated long into summer . . .").

98. See, e.g., Editorial, *Will Last-Minute Compromise Save the State?*, DAILY WORLD (June 5, 2013), <http://www.daileworld.com/article/20130606/OPINION/>

of a solution causes both parties to come to the table and agree to an outcome that is often less than they would have liked, but more than nothing.<sup>99</sup> The hallmark of a good compromise is that no one is happy with it, but all are happy it is over. In politics, everyone takes credit after the fact for the deal that was struck.<sup>100</sup>

In my experience, both state and federal leaders fall victim to procrastination. However, at the state level, there are fewer options for avoiding difficult decisions and tough compromises. State legislative employment is part-time, not full-time.<sup>101</sup> In order to survive, lawmakers must return to their jobs or businesses. Members of Congress, however, are prohibited from holding outside employment for compensation.<sup>102</sup> For example, it violates the congressional ethics rules to practice law.<sup>103</sup> U.S. Senator and obstetrician Tom Coburn had to receive special dispensation to deliver babies at no charge.<sup>104</sup> In a Congress made up of people with no “real” job to which they can return, there is no incentive to solve problems by a certain date.

Iowa state legislators receive per diem expenses for only 110 or 100 days of a session.<sup>105</sup> After the 110th day, the lawmaker pays expenses personally. Iowa has a citizen legislature; if the legislature does not complete work on time, lawmakers pay for hotel rooms and meals out of their own pockets. The Iowa legislature starts in January and runs through April or May.<sup>106</sup> As the weather turns warm in April, farmer legislators look out the capitol windows at the greening grass and start to make plans

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306060012/Editorial-Will-last-minute-compromise-save-state- (“The [Louisiana] House and Senate . . . reached a compromise on the state’s \$25 billion budget bill less than 24 hours before the 2013 legislative session [was] scheduled to end . . .”).

99. See, e.g., *Iowa Legislature Adjourns Landmark 2013 Session*, *supra* note 8 (describing the middle ground reached “on perhaps the most contentious issue of the session”).

100. See, e.g., *id.*

101. See IOWA CODE § 2.10(1) (2011).

102. COMM. ON STANDARDS OF OFFICIAL CONDUCT, HOUSE ETHICS MANUAL 213–14 (2008).

103. *Id.* at 197–98.

104. See Jeffrey H. Birnbaum, *Ethics Panel Finds Conflict with Senator’s Job as Physician*, WASH. POST, Apr. 6, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A28320-2005Apr5.html>.

105. See IOWA CODE § 2.10(1) (providing that per diem expenses end on the 110th day of session in the first year of a General Assembly or 100th day of session in the second year).

106. *Id.* § 2.1.

to return home to put their crops in the ground. This brings a sense of urgency to the need to solve problems and wrap things up.

The Iowa legislature utilizes funnel dates to winnow legislation and impose deadlines. All legislation, except leadership, tax, and spending bills, are subject to the funnels.<sup>107</sup> For example, for the 110-day-long 2013 legislative session, if bills do not make it out of committee in the first house by Friday of the eighth week of session, they die.<sup>108</sup> During the tenth week of legislative session the senate only considers senate bills and unfinished business, while the house considers only house bills and unfinished business.<sup>109</sup> If house bills are not reported out of a senate committee by Friday of the twelfth week, they die, and if senate bills are not reported out of a house committee by Friday of the twelfth week, they die.<sup>110</sup> Beginning with the fourteenth week of session, only certain bills are eligible for consideration.<sup>111</sup> During this fourteenth week, the focus of both chambers shifts to adjournment. Lawmakers concentrate on what has to be done, and what has a chance to arrive on the governor's desk, namely appropriations, leadership bills, conference committee reports, and legislation that has passed both houses in different forms.<sup>112</sup> At the end of the sixteenth week in the 110-day session, the money runs out.<sup>113</sup>

The funnel deadlines provide a sense of urgency to the process. Deadlines allow legislators and legislative leadership to focus on the problems that need to be solved. For example, in 2012, the Iowa general

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107. *See generally* Joint Rules R. 20, H.R. Con. Res. 5, 85th Gen. Assemb. (Iowa 2013) (describing the mechanism colloquially known as the “funnel”).

108. *Id.* For the rules of each chamber and the Joint Rules, see IOWA CODE § 2.10; H.R. Con. Res. 12, 84th Gen. Assemb. (Iowa 2011); H.R. Res. 11, 84th Gen. Assemb. (Iowa 2011); S. Res. 2, 84th Gen. Assemb. (Iowa 2011).

109. Joint Rules R. 20.

110. *Id.*

111. *Id.* Only appropriations bills, ways and means bills, government oversight bills, legalizing acts, bills cosponsored by majority and minority leaders of one chamber, companion bills sponsored by senate and house majority leaders, conference committee reports, concurrent or simple resolutions, bills passed by both chambers in different forms, bills on the veto calendar, Administrative Rules Review Committee bills, committee bills related to delayed administrative rules, joint resolutions nullifying administrative rules, and unfinished business are eligible for consideration. LEGISLATIVE SERVS. AGENCY, 85TH GENERAL ASSEMBLY: 2013 IOWA LEGISLATIVE SESSION TIMETABLE (2012), available at <https://www.legis.iowa.gov/DOCS/Schedules/SessionTimetable.pdf>; *see also* IOWA CODE § 17A.8(9); Joint Rules R. 20, 23.

112. Joint Rules R. 20.

113. IOWA CODE § 2.10(1).

assembly proposed nearly 1,300 bills.<sup>114</sup> The deadlines focused lawmakers' attention on two types of legislation: bills that could pass both chambers and bills that were "must pass," such as appropriations.

The federal government has few deadlines that an act of Congress cannot delay. The debt ceiling, fiscal crisis, and fiscal years provide deadlines, but Congress can get around them with votes to increase the debt, sequestration gimmicks, and continuing resolutions.<sup>115</sup> The only hard and fast deadline for Congress is election day and the date the Constitution specifies for the new Congress to take the oath after election.<sup>116</sup> The lack of enforceable and meaningful deadlines means that Congress has every incentive to delay solutions.

## VI. BUDGET TARGETS

Even while the U.S. Congress reaches a budget impasse and faces shutdown, the Iowa legislature manages to agree to a budget target setting the overall amount of funds available for the entire state budget. Iowa has an overall target number that binds the house, senate, and governor.<sup>117</sup> The governor must use it when preparing the budget recommendation.<sup>118</sup> The legislature must use it when passing legislation.<sup>119</sup> In contrast, Congress has difficulty agreeing to something as basic as joint budget targets. The U.S. Senate passed an annual budget for fiscal year 2010 on April 29, 2009.<sup>120</sup> It

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114. See *Bill Disposition*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/BillTracking/billDisposition.aspx?chamber=H&ga=84> (Follow "House" or "Senate" hyperlink) (last visited July 1, 2013). In 2012, 378 Senate Files and Resolutions, 540 House Files and Resolutions, 205 Senate Study Bills, and 175 House Study Bills were introduced. *Id.*; see also *Legislation Archives*, IOWA LEGISLATURE, <http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm> (follow sidebar menu: "Legislation Archives" to "84th General Assembly" to "84th GA-Session 2" to "Introduced") (last visited July 1, 2013).

115. See, e.g., Suzy Khimm, *Here Are All the Budget Deadlines We're Facing in the Next 3 Months*, WASH. POST: WONKBLOG (Jan. 23, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/23/here-are-all-the-budget-deadlines-were-facing-in-the-next-3-months/> (providing a timeline of the budget battle, including when continuing resolutions and debt ceiling suspensions end).

116. See U.S. CONST. art. I, § 4.

117. IOWA CODE § 8.22A(3).

118. *Id.*

119. *Id.*

120. Press Release, Senate Budget Comm., Senate Gives Final Approval to FY 2010 Budget (Apr. 29, 2009), available at <http://www.budget.senate.gov/democratic/index.cfm/pressreleases---statements> (under "Browse by" select "April" "2009" and click "GO," then select the 4/29/09 press release).

took the Senate nearly four more years to pass another annual budget on March 23, 2013.<sup>121</sup> The federal House and Senate are supposed to pass a concurrent resolution with agreed-upon joint budget targets.<sup>122</sup> Congress has not agreed to a joint budget plan since 2009 when they agreed to joint targets for fiscal year 2010.<sup>123</sup> In the absence of an overall budget target, it is impossible to appropriate taxpayer money responsibly.

In Iowa, the overall budget target is set in a process specified in the Iowa Code.<sup>124</sup> The governor and legislature are required to use the estimates provided by the Revenue Estimating Conference (REC).<sup>125</sup> The REC is comprised of the governor or a designee (representing the executive branch), the director of the LSA or designee (representing the legislature), and a third person agreed upon by the other two members.<sup>126</sup> The governor's designee is currently David Roederer, the head of the state Department of Management,<sup>127</sup> which is similar to the federal Office of Management and Budget. The legislative representative is currently Holly Lyons, the director of the LSA's Fiscal Division, which is similar to the Congressional Budget Office.<sup>128</sup> The third member is currently David Underwood, the retired CFO and treasurer of AADG, Inc. of Mason City, Iowa.<sup>129</sup> The REC usually meets in October, December, and March or April.<sup>130</sup> The REC estimates are required to be used to set state budgeting and spending.<sup>131</sup> In December the REC sets the official estimate that will be used by the governor and general assembly for the budget process for the fiscal year starting on July 1 of the next year.<sup>132</sup> Legislative leaders use

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121. Press Release, Senate Budget Comm., Senate Passes Pro-Growth Budget Plan; Murray Calls for Continued Work Toward Balanced and Bipartisan Deal (Mar. 23, 2013), available at [http://www.budget.senate.gov/democratic/index.cfm/press\\_releases---statements](http://www.budget.senate.gov/democratic/index.cfm/press_releases---statements) (under "Browse by" select "March" "2013" and click "GO," then select the 3/23/13 press release).

122. Congressional Budget Act of 1974, 2 U.S.C. § 632 (2006).

123. See S. Con. Res. 13, 111th Cong., 123 Stat. 3506 (2009); H.R. Con. Res. 85, 111th Cong. (2009).

124. See IOWA CODE § 8.22A.

125. *Id.* § 8.22A(3).

126. *Id.* § 8.22A(1).

127. Revenue Estimating Conference, IOWA DEP'T MGMT., <http://www.dom.state.ia.us/state/REC/index.html> (last visited July 1, 2013).

128. *Id.*

129. *Id.*

130. *Id.*

131. IOWA CODE § 8.22A(3).

132. *Id.*

the REC estimate when they set targets for each of their appropriations subcommittee chairs.<sup>133</sup> The REC meets in March or April, as well.<sup>134</sup> If they agree to an estimate in the spring that is higher than the December estimate, the governor and legislature must still use the December estimate.<sup>135</sup> If they agree to a lower estimate than the December estimate, the legislature must use the lower estimate, not the December one.<sup>136</sup> In Iowa, revenue estimates actually matter.

An observer might argue that the Iowa budget system works only because the legislature and governor are bound in advance by the Iowa Code. I submit that Congress also has a structure, the Congressional Budget Act of 1974 (as amended),<sup>137</sup> but they often choose to ignore it. Iowa legislators can amend the Iowa Code at any time. They can include “notwithstanding” language to exempt certain bills from statutory requirements. As a general matter, policymakers here in Iowa usually choose not to avoid the REC estimate, although they may employ ingenious or deceptive budget accounting methods. Basic agreement on how much revenue is available allows lawmakers to focus on how to spend that money or lower the tax burden. Accounting tricks and budget gimmicks such as underfunding, transfers, special funds, off-budget expenditures, and ephemeral savings that don’t save real dollars, abound at both the state and federal levels.<sup>138</sup> Iowa has not yet found a way to prevent these distortions, but we have found a way to agree on some of the basic numbers.

## VII. BUDGET PRINCIPLES MATTER

If Iowa state government spending exceeds revenues, it cannot borrow more than \$250,000.<sup>139</sup> At times, this limitation has been

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133. See *Information About the State of Iowa’s Budget*, IOWA DEP’T MGMT., [http://www.dom.state.ia.us/state/budget\\_info/index.html](http://www.dom.state.ia.us/state/budget_info/index.html) (last visited July 1, 2013).

134. *Revenue Estimating Conference*, *supra* note 127.

135. See IOWA CODE § 8.22A(3).

136. *Id.*

137. Congressional Budget Act of 1974, 2 U.S.C. §§ 601–688 (2006).

138. See, e.g., U.S. GOV’T PRINTING OFFICE, ANALYTICAL PERSPECTIVES: BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 2004, at 399 (2003), available at <http://www.gpo.gov/fdsys/pkg/BUDGET-2004-PER/pdf/BUDGET-2004-PER.pdf> (explaining that off-budget spending is a significant part of federal spending); *Fact Check on Democrats’ Budget Targets*, IOWA HOUSE REPUBLICANS (Mar. 5, 2009), <http://www.iowahouserepublicans.com/fact-check-on-democrats-budget-targets> (including off-budget spending with other budgeting difficulties).

139. IOWA CONST. art. VII, § 2. This constitutional provision has been

circumvented through bonding. Iowa cannot print money.<sup>140</sup> When states borrow, they issue bonds.<sup>141</sup> These bonds are marketed, and their soundness is evaluated by the market.

The fact that Iowa doesn't print money means that we have to solve problems. When states do not have enough money to meet their obligations or to spend on desired programs, they have two choices: raise taxes to increase revenue, or cut spending. Iowa law provides that only ninety-nine percent of revenues may be spent.<sup>142</sup> When this limitation is circumvented with gimmicks or budget tricks, it becomes a campaign issue. For example, in 2010, independently-elected Iowa State Auditor David Vaudt criticized Governor Chet Culver for exceeding the ninety-nine percent statutory spending limit.<sup>143</sup>

Iowa law provides a plan to deal with lean revenues and challenging economic times.<sup>144</sup> The ending balance of the Iowa General Fund must be transferred to the Cash Reserve Fund and then the Economic Emergency Fund until those reserves are replenished.<sup>145</sup> The Cash Reserve Fund is equal to 7.5 percent of revenues that can be appropriated,<sup>146</sup> and the Economic Emergency Fund is 2.5 percent.<sup>147</sup> Once both of these funds are replenished, the extra funds are available to be spent in the next fiscal year.<sup>148</sup>

The legislature has not always followed this law requiring replenishment of the Cash Reserve Fund and the Economic Emergency

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interpreted very narrowly. *See, e.g.*, Consequences of State Budget Deficit or Debt, 1992 Iowa Op. Att'y Gen. 97, 1992 WL 470346, at \*5 (1992).

140. *See U.S. CONST. art. I, § 10, cl. 1.*

141. *See* FREDERIC S. MISHKIN, THE ECONOMICS OF MONEY, BANKING, AND FINANCIAL MARKETS 3–4 (7th ed. 2004) (“A bond is a debt security that promises to make payments periodically for a specified period of time. The bond market is especially important to economic activity because it enables corporations or governments to borrow to finance their activities.”).

142. *IOWA CODE § 8.54(3) (2011).*

143. Press Release, Office of Auditor of State, State of Iowa, State Auditor Vaudt Reviews Governor's Fiscal Year 2011 Budget Proposal (Feb. 10, 2010), *available at* [http://auditor.iowa.gov/press/Briefing\\_02-10-2010.pdf](http://auditor.iowa.gov/press/Briefing_02-10-2010.pdf).

144. *See* IOWA CODE §§ 8.55–57.

145. *Id. § 8.57(1)(b), (3)–(4).*

146. *Id. §§ 8.56(2), .57(1)(a).*

147. *Id. § 8.55(2)(a).*

148. *See id. § 8.55(3)(d)* (providing that if the emergency fund is used, it must be replenished).

Fund. When they fail to do so, it becomes a campaign issue.<sup>149</sup>

In contrast, the federal government appears to act as though it has unlimited borrowing capacity. It does not have meaningful measures in place to deal with economic downturns or revenue shortfalls. In fact, it spends at a deficit on a yearly basis.<sup>150</sup> Iowa has fewer fiscal incentives to “kick the can down the road” because the state cannot run a deficit.<sup>151</sup> When Iowa runs out of money, it cannot pay the bills. If Iowa cannot pay its bills, employees are furloughed and programs are cut.

### VIII. ROLE OF RELATIONSHIPS AND CULTURE IN DECISIONMAKING

Relationships are essential to Iowa’s success relative to the federal government.<sup>152</sup> Constitutions, statutes, and political systems do not operate in a vacuum. Politics are built on relationships and culture. Compromise and the back and forth of legislation requires relationships and a culture that promotes an environment in which democratic decisions can occur.

In Iowa, we have the same personality conflicts and drama as Washington, D.C. Legislators are deeply divided along ideological, partisan, and geographic lines. Lawmakers run for office with an agenda, a plan for Iowa. They believe in their plans deeply and passionately. Often these plans are diametrically opposed to those of their colleagues. People also have personality conflicts and character flaws. Tempers flare. Although Iowans have an excellent reputation for kindness and courtesy, there are times individuals fail to live up to the standard.<sup>153</sup> Elected officials

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149. See, e.g., Press Release, Office of Auditor of State, State of Iowa, State Auditor Vaudt Reviews Fiscal Year 2011 Budget (Apr. 16, 2010), available at [http://auditor.iowa.gov/press/Briefing\\_04-16-2010.pdf](http://auditor.iowa.gov/press/Briefing_04-16-2010.pdf) (noting that the projected balance of the state’s “Rainy Day” funds at the end of fiscal year 2011 was “down nearly \$400 million from the beginning of Fiscal Year 2009” and would “create cash flow challenges and severely limit Iowa’s ability to deal with the continuing fiscal challenges looming ahead.” (internal quotation marks omitted)).

150. See CONG. BUDGET OFFICE, HISTORICAL BUDGET DATA—FEBRUARY 2013 tbl. 1 (2013), available at <http://www.cbo.gov/publication/43904> (follow “read complete document” hyperlink).

151. See IOWA CONST. art. VII, § 2.

152. Having spent more than seven years as the chief of staff for U.S. Representative Steve King and as legal counsel to Governor Branstad since 2011, I have personally seen the impacts that the differences between the legislative cultures in Washington, D.C., and Iowa have on the decisionmaking process.

153. See, e.g., James Q. Lynch, *Missteps Could Be Drag on Culver Re-election*, GAZETTE (Oct. 6, 2009), <http://thegazette.com/2009/10/06/missteps-could-be-drag-on-culver-re-election/> (describing “the perception [that then-Governor Culver] is

in Iowa are just as human as their federal counterparts.

Relationships grow through repeat interaction. Proximity matters for relationship building and growing a culture conducive to democratic decisionmaking. For example, during Iowa's legislative session, legislators often arrive at seven in the morning for breakfast in the state capitol's cafeteria. Tables form organically as Republicans and Democrats, legislative and executive branch members, staff, and elected officials sit together, unified by nothing more complicated than a shared interest in eggs, bacon, coffee, and conversation. It is simple, but often the simple things have the greatest impact. Different people eat breakfast together each day. People come and go throughout. Relationships form. People identify common personal interests and grow to understand each other as human beings. Sometimes deals are struck, but often nothing more than banter is exchanged.

This proximity extends to the chambers. Each legislator has a seat and a desk on the floor of the chamber. In between each legislator is his or her clerk, who sits in front of a file cabinet on a narrow chair. That is the office of rank-and-file legislators. Only lawmakers with leadership positions work in real offices. Committee chairs and ranking members have cubicles in a common room, with office space separated by party. Lawmakers literally rub shoulders with each other. It is noisy and crowded. There is no way to tune out debate completely. In this rough-and-tumble environment, interaction occurs between members, whether they like it or not. Tensions rise, but friendships and mutual respect also flourish.

In contrast, at the federal level, members of Congress are isolated from each other. They converge to vote on the floor, but they work in their own offices, surrounded by staff. Debate and floor action is monitored by watching C-SPAN. Often when members speak on the floor, very few members are present except for the presiding member and those who wish to speak next. After they speak, they leave. Most debates are not the true back-and-forth debate that most people recognize; they are canned speeches written in large type, double spaced. The most interesting debates are those on major legislation, in which members often will go off-script and actually respond to the arguments of the opposition.

Committee debate often operates in the same manner as floor debate. Members will wait until they have a chance to ask televised questions and then leave when their portion ends. Members don't have time to listen to

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unapproachable and unresponsive to Iowans' concerns").

all debate, or attend all committees, due to their busy schedules. Often they are double booked. They have large staffs that help them navigate a demanding schedule by providing speeches, briefings, statements, and hearing questions that can be utilized throughout the day. Most members are consistently surrounded by at least a few staff. These entourages make it more difficult to interact personally with other members. Even in this difficult environment, members do form relationships with one another—but not to the level needed for a well-functioning legislature.

Even if members of Congress interacted with each other more personally and formed more relationships, it would not be enough. No legislature can operate without staff. Staff perform the drafting and negotiating needed to accomplish legislative action. Staff must be able to form relationships with each other. Relationships between staff members occur in Congress, but typically within their narrow areas of focus or specialty.

## IX. CONCLUSION

Readers of this article may question whether the author thinks that Iowans are better than other people. Only half kidding, my answer is “yes.” When people ask me why I am not anxious to return to Washington, D.C., I tease them by reminding them that my enemies in Iowa are nicer to me than my “friends” in Washington, D.C. There is some truth to that statement. Iowa is a wonderful place to live and work, but Iowa is not perfect. We are just as human as everyone else, with all of the problems and flaws that entails. I do believe, however, that Iowa has a better functioning democracy than the U.S. government.

Iowa, like many states, has a better track record for functionality than the federal government. Iowa illustrates the beauty of federalism. Iowa state and local government proves the case for why decisionmaking should occur at the most local level possible—and why the federal government can be more effective by doing less. But even so, the federal government would do well to learn from the states.

Iowa, as a laboratory of democracy, has generated some great products and processes for the federal government to use and apply. Advances in transparency and information clarity could serve to hold the federal government more accountable by providing greater citizen access. If state redistricting were based on population, not politics, Congress would face potential realignment every ten years and the voters could have greater choice. If members of Congress took time to focus on federal

problems, rather than all problems, there could be more time for real relationships and practical problem solving. Iowa has invented a process for budgeting that is not perfect, but the state has never “shut down” or failed to deliver services. Iowa has some concrete, laboratory-tested ideas that the federal government could use to improve the practical functioning of politics and constitutional processes.